

**BIS** | Department for Business  
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**EMPLOYMENT RELATIONS  
RESEARCH SERIES NO. 118**

2009 Compendium of Impact  
Assessments

MARCH 2011

# About Labour Market Analysis & Minimum Wage

Labour Market Analysis & Minimum Wage is a multi-disciplinary team of economists, social researchers and statisticians based in the Employment Relations Directorate of the Department for Business, Innovation & Skills (BIS).

Our role is to provide the evidence base for good policy making in employment relations, labour market and equality and discrimination at work. We do this through:

- Conducting periodic benchmark surveys
- Commissioning external research reports
- Conducting in-house research and analysis
- Assessing the regulatory impact of new employment laws
- Monitoring and evaluating the impact of government policies

We publicly disseminate the results of this research through the BIS Employment Relations Research Series and other publications. For further details of the team's work, including PDF versions of all our publications, please see our web pages at:

<http://www.bis.gov.uk/policies/employment-matters/research>

## About this publication

The project manager for this compendium is Tim Harrison in the Labour Market Analysis & Minimum Wage Team.

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Please contact us at [labourmarket.analysis@bis.gsi.gov.uk](mailto:labourmarket.analysis@bis.gsi.gov.uk) if you would like to receive regular email updates on our research, new publications and forthcoming events.

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# Foreword

This publication was produced in March 2011 and at this time the Department for Business, Innovation and Skills (BIS) leads work to build a dynamic and competitive UK economy by creating the conditions for business success, promoting innovation, enterprise and science and giving everyone the skills and opportunities to succeed. To achieve this, we will foster world-class universities and promote an open global economy.

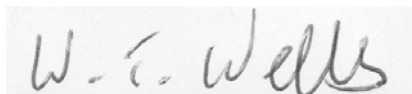
Within the Department the Labour Market Analysis & Minimum Wage team provides the evidence and information that underpins policy making and delivery in the Employment Relations Directorate. This involves an extensive programme of analysis, research and evaluation on areas including domestic and European employment legislation; labour market flexibility and diversity; employment and industrial relations; and monitoring developments in ACAS and other organisations in the employment relations area.

Impact assessments of policy and regulatory changes are a key component of this evidence base. This compendium provides a single source for all the Impact Assessments on employment relations policy we published in 2009. Similar compendia for earlier years can be found via:

<http://www.bis.gov.uk/policies/employment-matters/research>

We hope that you find this compendium of interest. Electronic copies of this and all other reports in our Employment Relations Research Series can be downloaded from the BIS website. (We have discontinued publishing printed copies). A complete list of our research series can be found at the back of this report.

Please contact us at [labourmarket.analysis@bis.gsi.gov.uk](mailto:labourmarket.analysis@bis.gsi.gov.uk) if you would like to receive regular email updates on our research, new publications and forthcoming events.



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## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BIS</b>	<b>Title:</b> <b>Impact Assessment of permitting the sharing of information between workplace rights enforcement bodies.</b>	
<b>Stage:</b> Consultation	<b>Version:</b> Final	<b>Date:</b> 5 October 2009
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.bis.gov.uk/files/file53063.pdf> .bis.gov.uk/files/file53063.pdf

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

The Government is committed to effective enforcement of the rights of workers under UK law. Enforcement of these rights is shared between various regulators. There are some information gateways set out in the relevant legislation permitting the sharing of information between them, but barriers remain. There is, for example, no gateway to and from the bodies responsible for enforcing the working time regulations. Information sharing is necessary to ensure regulators are able to inform other regulators when potential non-compliance is found for which it is not the responsible body.

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

The intended effects are to reduce the costs of enforcement by permitting the sharing of information and reducing the need for multiple inspections. The policy will reduce administrative inconvenience for Government and business by allowing the sharing of data and avoiding the need for unnecessary information gathering. The policy will also help improve efficiency and productivity of enforcement organisations by helping enforcement agencies coordinate targeted operations on employers most likely to be non-compliant to produce effective enforcement of workers rights.

### What policy options have been considered? Please justify any preferred option.

The implementation of a Legislative Reform Order (LRO) has been considered against a do nothing option. The LRO includes amendments to the Employment Agencies Act 1973, the National Minimum Wage Act, the Working Time Regulations 1998 and the Agricultural Wages Act 1948 that will enable information to be shared more effectively to enhance the enforcement of workplace rights. The LRO is the preferred option as it meets the intended effects of the policy more than the do nothing approach.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The costs and benefits will be reviewed when data on the efficacy of the policy is available, including further data from the Pay and Work Rights helpline and enforcement data from each organisation.

### **Ministerial Sign-off** For consultation stage Impact Assessments:

*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:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' There would be a small increase in prosecution costs if more organisations are found to be non compliant. These have not been quantified.  Non of these costs would arise under 100% compliance with existing regulations			
	<b>One-off</b> (Transition) <b>Yrs</b>				
	£ 0		1		
	<b>Average Annual Cost</b> (excluding one-off)				
	£ 0		<b>Total Cost (PV)</b>	£ 0	
Other <b>key non-monetised costs</b> by 'main affected groups'					

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' Efficiency savings from increased availability of information (£176,000)  Decreased administrative burden on business due to a reduction in unnecessary information gathering (£28,800)			
	<b>One-off</b> <b>Yrs</b>				
	£ 0		1		
	<b>Average Annual Benefit</b> (excluding one-off)				
	£ 190,648		<b>Total Benefit (PV)</b>	£ 1.9m	
Other <b>key non-monetised benefits</b> by 'main affected groups' Greater compliance with existing regulations, more unquantifiable benefits such as greater protection for vulnerable workers and protection for reputable employers against those who are non-compliant.					

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range</b> (NPV) £ N/A	<b>NET BENEFIT</b> (NPV Best estimate) £ 1.9m
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What is the geographic coverage of the policy/option?	Eng/Wal/Scot
On what date will the policy be implemented?	01/04/2010
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ nil
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro      Small      Medium      Large
Are any of these organisations exempt?	No      No      N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of    £	Decrease of    £ 28,800	<b>Net Impact</b> £ -28,800

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

## Evidence Base (for summary sheets)

### A: Background

The Government is committed to enforcing the rights of workers held under the Employment Agencies Act 1973 (the EA Act), the National Minimum Wage Act (the NMW Act) the Working Time Regulations 1998 (the WTR) and the Agricultural Wages Act 1948 (the AW Act).

These rights are enforced through a number of separate government organisations whose functions are summarised below:

- Employment Agencies Inspectorate (EAS): obtains information relating to the conduct of employment agencies and businesses to ensure they comply with the Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended.
- Her Majesty's Revenue and Customs (HMRC): obtains information regarding the payment of the national minimum wage to workers.
- Department for Environment, Food and Rural Affairs (DEFRA): obtains information regarding the payment of the agricultural minimum wage to workers.
- Health and Safety Executive (HSE), Local Authorities (LAs), the Civil Aviation Authority (CAA) and the Vehicle and Operators Services Agency (VOSA): obtain information on employers to assess compliance with working time, depending on the sector concerned.

During the exercise of their functions these organisations obtain information which would be relevant to other organisations for the purposes of enforcing different workplace rights. In addition, the introduction of a new Pay and Work Rights helpline has emerged as a source of useful information that is also relevant to the functions of these bodies.

The Pay and Work Rights helpline is a confidential helpline providing help and advice on government-enforced employment rights or an avenue for people to report allegations of workplace abuse. The helpline takes the place of five separate helplines and provides information on National Minimum Wage rights, Agricultural Minimum Wage rights, and workers rights under the Working Time Regulations. The helpline also provides information about the employment rights that apply if you are paid by an employment agency or gangmaster.

The helpline is now diagnosing, and referring, a significant number of multi-issue allegations (i.e. those where the allegations raise matters of interest for more than one enforcement body). This is creating an improved environment for joint inspections and joint enforcement activity which is hampered by the legal constraints on sharing information.

## **B: The Issue**

There are some information gateways which permit the sharing of information between enforcement bodies. There are, for example, gateways between HMRC and DEFRA for minimum wage enforcement purposes, and generally satisfactory gateways to and from the Gangmasters Licensing Authority. In addition, an amendment to the EA Act and the NMW Act contained in s18 of the Employment Act 2008 created a gateway permitting EAS and HMRC to pass information to each other which would be relevant to their enforcement powers.

However, there is no information gateway for EAS, HMRC or DEFRA to share relevant information with the HSE, local authorities or the other specialist organisations responsible for enforcing the WTR, except in the narrow circumstances where gateways created by the Anti-Terrorism, Crime and Security Act may apply. Conversely, there is no information gateway for working time inspectors to pass relevant information to EAS, DEFRA or HMRC. To do so would be a criminal offence committed by the relevant officers. Other restrictions are:

- An inability for the EAS to supply advice to the Gangmasters Licensing Authority on the suitability of an applicant for a licence where the applicant is not already operating as a gangmaster;
- An inability for EAS to supply information to DEFRA for agricultural minimum wage purposes and vice versa; and
- An inability for EAS to supply information to the bodies responsible for regulating the care and children's care sectors if it becomes aware that an employment agency is not carrying out the checks on the suitability of workers supplied to work with vulnerable people unless the EAS is itself considering a prosecution.

## **C: Objectives**

The policy will seek to achieve to achieve the implementation of an information gateway with the objective of reducing the following burdens:

### *(i) Financial cost:*

Undertaking an investigation is costly for each enforcement agency. Officers are required to take each complaint they received seriously. Information gathering such as a visit to the premises and an inspection of records all take time and money. If the EAS or HMRC obtains information that would be relevant to HSE<sup>1</sup> it would reduce the cost of several organisations investigating one employer if they could share information with each other.

### *(ii) Administrative inconvenience:*

EAS and HMRC officers who obtain information which would be relevant to the other organisations have an information gateway; however, they cannot pass on relevant material to the HSE. Similarly HSE cannot pass information

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<sup>1</sup> References to HSE should be taken as a reference to all the bodies responsible for WTR enforcement.



to the EAS and HMRC. This is an administrative inconvenience for officers given that each of these organisations enforces workplace rights. Callers to the Pay and Work Rights line, for example, are regularly making allegations involving both working time and national minimum wage abuses, but information sharing constraints hamper effective co-operation in the investigation of these complaints.

*(iii) Obstacle to efficiency and productivity:*

The fact that information between Government organisations cannot be shared (e.g. HSE with the EAS and HMRC) hampers the effective enforcement of key workplace rights. Valuable information and intelligence about possible wider non-compliance is not being passed on, representing an obstacle to targeted enforcement activity and joint working.

*(iv) Criminal sanctions which affect the carrying on of a lawful activity:*

It is burdensome that a criminal sanction exists for HMRC, EAS, HSE and Defra officers wanting to share relevant information. It is envisaged that the criminal sanction is removed only for the purposes of information sharing between this set of enforcement bodies and the GLA.

## **D: Options**

Option 1: Do nothing

Option 2: Implementation of a Legislative Reform Order that has the effect of:

Amending section 9 of the EA Act to provide for a subsection permitting the disclosure of information to the HSE and LAs and other specialist regulators responsible for enforcing the WTR, and to DEFRA for agricultural minimum wage purposes.

Amending section 9 of the EA Act to permit the EAS to provide advice to the Gangmasters Licensing Authority about the suitability of applicants for a GLA licence in circumstances where they are not operating as gangmasters in the GLA-regulated sectors.

Amending section 9 of the EA Act to provide for a subsection permitting the disclosure of information to the Care Quality Commission (established under the Health and Social Care Act 2008) when the EAS becomes aware that employment agencies are not carrying out checks on the suitability of workers being supplied to work with vulnerable people.

Amending section 15 of the NMW Act to provide for a subsection that permits the sharing of information to the organisations responsible for enforcing the working time regulations (e.g. HSE and Local Authorities).

Amending section 15A of the AW Act to provide for a subsection that permits the disclosure of information to the EAS and also to

the HSE, local authorities and other specialist regulators who are responsible for enforcing the WTR.

Amending paragraph 8 of Schedule 3 of the WTR to provide for the sharing of information to EAS, HMRC and DEFRA for the functions under the EA Act, NMW Act and AW Act. Secondary legislation divides the enforcement of the WTR between the HSE, LAs, VOSA and CAA<sup>2</sup>. To permit these authorities to share information if it is only necessary to amend the WTR.

Option 2 is assessed against the baseline do nothing option.

## **E: Analysis of Options**

### **Option 1**

Under this option the organisations EAS, HMRC and DEFRA would be unable to share information with the HSE local authorities and other organisations responsible for the enforcement of the WTR and vice versa.

The implications of this are that the financial costs of repeated inspections will continue to be incurred and the administrative inconvenience will remain. The current legislation will continue to put in place obstacles to efficiency by restricting the opportunities for targeted joint activities between organisations and restricting the extent to which enforcement bodies can pass on suspicions of wider abuses to other enforcement bodies.

### **Option 2**

The HSE, LA's, VOSA and CAA are responsible for the enforcement of the WTR. The HSE have a total of 1,323 front line inspectors who issued approximately 7,715 enforcement notices<sup>3</sup> to organisations in the financial year 2007/08. In addition, LA's served a total of 6,010 enforcement notices under various parts of their powers under the health and safety legislation.

However, HSE statistics show that only 3 enforcement notifications cited the WTR being the regulations that the notice had been issued under<sup>4</sup>. This small number of enforcement notices may be due to differing priorities of a limited number of inspectors who have enforcement powers under more than 50 separate regulations. In addition the lack of intelligence is also likely to be a factor.

Although enforcement notices issued under the working time regulations are low this does not lead to the assumption that most organisations are compliant with the regulations. The Employment Tribunal Service (ETS)

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<sup>2</sup> Health and Safety (Enforcing Authority) Regulations 1998 provide for the division of responsibility for local authorities.

<sup>3</sup> Enforcement notices can be issued in three categories, improvement, deferred prohibition and immediate prohibition and are issued to non-compliant organisations

<sup>4</sup> HSE Enforcement Statistics <http://www.hse.gov.uk/statistics/indexoftables.htm>

annual statistics show that in 2007/08 there were 55,712<sup>5</sup> employment tribunal claims accepted where the nature of the claim involved the WTR<sup>6</sup>.

The Legislative Reform Order (LRO) will provide benefits to the HSE's enforcement function by making available more information held by other enforcement bodies. This will enable the HSE and other WTR inspectors to target offenders in a more cost effective way.

### **Analysis of benefits**

#### *(i) Efficient use of information to target inspections*

Data on the number of inspections specifically relating to the WTR are unavailable and data on the number of inspections conducted by the HSE are only available for the years 2001 to 2003. Due to the lack of data it is difficult to ascertain the extent of enforcement of the WTR and thus the impacts of the LRO on enforcement operations. Therefore some assumptions are made in the assessment of the potential benefits of the LRO.

The Pay and Work Rights helpline is an avenue for people to raise issues regarding their rights at work. Some complaints fall under the jurisdiction of multiple organisations which would require them to share information about the case. The LRO would enable the organisations to share information which would allow them to co-ordinate their investigatory work, and remove or reduce the need for separate inspections by different organisations.

Table 1 shows the estimated benefits of the LRO by allowing the sharing of information between HMRC and the HSE. HMRC is the only organisation shown as the number of multi-issue cases that require further investigation involving other enforcement organisations is too small for a reliable estimate.

**Table1 – Estimated benefits of the LRO based on issues raised to the Pay and Work Rights helpline**

	Issues raised per year <sup>a</sup>	Total cost of inspections (£'000) <sup>bc</sup>	Inspections needed to achieve an equivalent number of issues <sup>d</sup>	Total Cost (£'000)	Savings (£'000)
HMRC	90	38	407	172	134

a - 12 month estimate based on calls received in June and July 2009 to the Pay and Work Rights helpline which involved the HMRC and the HSE (Annex A).

b - estimated labour costs of inspectors are based on known labour costs of EAS inspectors divided by average inspections by HSE over the period 2001-03

c - the total cost of inspections = cost per inspection x issues raised per year

d - issues raised per year divided by strike rate. The strike rate is calculated by the number of issued enforcement notices divided by the number of inspections over the period 2001-03 by the HSE

The issues shown in table 1 are classified as issues that are covered by more than one enforcement organisation and will require follow up investigations. The total cost of inspections shows the estimated cost of inspecting these 90

<sup>5</sup> The figure for 2007/08 includes 10,000 claims from airline employees that have been submitted a number of times.

<sup>6</sup> Employment Tribunal Statistics (2008) -

[http://www.employmenttribunals.gov.uk/Documents/Publications/EmploymentTribunal\\_and\\_EAT\\_Statistics\\_v9.pdf](http://www.employmenttribunals.gov.uk/Documents/Publications/EmploymentTribunal_and_EAT_Statistics_v9.pdf)

cases that have been raised. If this prior information from the helpline was not available, to uncover the equivalent number of issues 407 inspections would have to be made (explained in footnote d) at a cost of 172 thousand pounds. This assumes that all 90 cases would result in non compliance and therefore the savings indicate the upper limit of the estimated savings that could be made.

It is assumed that the costs of inspections are similar across all enforcement organisations and as inspections are led by a different organisation in different cases that savings would also be spread across each of the organisations.

This estimate is based on a strike rate of 22 per cent calculated by the number of enforcement notices issued by the HSE divided by the number of inspections conducted over the period 2001-03 (Annex A). Unfortunately, data on the number of inspections is no longer published therefore it is assumed that the average strike rate over this period is applicable in 2009. In addition, due to the lack of data regarding the number inspections into the WTR it is assumed that the strike rate is the same for inspections under the WTR.

The helpline provides a valuable source of information on which to target inspections which will be facilitated by the LRO. Equally, the LRO will enable information from organisations' existing enforcement functions to be shared. For example, HMRC enforcement is initiated either by a complaint from workers or third parties, or as a result of risk assessment (including targeted enforcement of key low paying sectors). If during an investigation into an offence under the NMW Act it transpires a potential offence may be likely under the WTR then this information can be passed to the relevant enforcement organisation. The same would be true the other way round. Information discovered by a working time inspector suggesting that NMW or EAS regulations were being breached could be passed on to the relevant enforcement body.

Table 2 shows the estimated benefits the LRO will introduce due to the increased cooperation between enforcement organisations. This is a separate benefit to table 1 which shows information from the Pay and Work Rights helpline which may not have been captured in each organisations usual enforcement operations.

nd = no data

**Table2 – Estimated benefits of the LRO from increased cooperation between enforcement organisations**

	Inspections 2007/08	Proportion of cases involving the HSE <sup>a</sup>	Number of cases involving the HSE	Estimated cost of investigating these cases (£'000) <sup>b</sup>
HMRC	4,473	5.0%	222	28
EAS	1,632	6.5%	106	13
DEFRA	nd	5.1%	nd	nd
Total	6,105		327	42

Source: HMRC Inspections: National Minimum Wage Evidence Paper, Department for Business Innovation and Skills, 2008 <http://www.berr.gov.uk/files/file49011.pdf>

EAS Inspections: Employment Agency Standards Inspectorate Annual Report, 2007/08  
<http://www.berr.gov.uk/files/file49464.pdf>

a - proportion is estimated from the number a multi-agency complaints involving the HSE divided by the total number of complaints for each organisation (Annex A)

b - number of cases involving the WTR multiplied by the cost per inspection used in table 1.

Table 2 shows the number of inspections which took place in 2007/08 by different enforcement organisations and the number of cases that would likely have also involved complaints made under the WTR. The information collected from these inspections could be shared under the proposed LRO, thus reducing the need for a second inspection and reducing costs (shown in the final column). Inspections may still need to occur even when prior information has been provided by another enforcement organisation therefore we have assumed that the number of inspections will be reduced by approximately 30 per cent. This is included in the estimated cost saving.

The table shows the estimated cost of an inspection by the HSE which could be saved by allowing an information gateway between other enforcement organisations and the HSE. While this is indicative of the potential benefits of a flow of information to the HSE, it has not been possible to quantify the benefits that could be made by other enforcement organisations from information provided by the HSE's existing enforcement operations. This is due to not having a reliable figure for the number of inspections into alleged non-compliance with the WTR and therefore the volume of information which is likely to be available for other enforcement organisations.

An increase in inspections based on targeted information is likely to increase the revenues from fines related to WTR offences. It is not possible to estimate the monetary value of any increase in fines or convictions as this is based on a case by case basis and fines will differ depending on each outcome. The maximum fine under the WTR is £20,000.

#### *(ii) Reduced burden on business*

If an inspection is made by an enforcement agency and it is suspected that an offence may have occurred or is occurring under the WTR then the HSE would have to conduct a second inspection due to restrictions on the sharing of information.

This repeated inspection causes a burden on the business due to the regulations in place. By reducing this burden the two enforcement organisations would be able to share information about the case which will reduce, or remove, the need for a second inspection.

The Admin Burdens Measurement Exercise published by the Department for Trade and Industry (now Department for Business, Innovation and Skills) in 2006 estimates the admin burden of the WTR requirement of businesses to allow inspections to take place at a cost of £96,000 (This is the total admin burden of the regulation, not a cost per inspection).

Table 1 estimates a reduction in inspections where no prior information is available of approximately 78 per cent. The LRO will not cause this reduction as spot check inspections are still necessary to ensure that offences are found when not reported. In addition, inspections may still need to occur even when prior information has been provided by another enforcement organisation. Due to these reasons it is estimated that the admin burden will be reduced by approximately 30 per cent to £67,200.

### *(iii) Benefits to vulnerable workers*

The purpose of the proposed LRO is to allow the sharing of information between enforcement organisations with the overall aim of providing a more efficient and effective structure of protection for workers. If the LRO is effective then potentially law breaking employers will face a greater chance of being prosecuted. This would then lead to benefits to workers who will be subject to fewer practices that contravene these regulations. Although there are currently only a small number of prosecutions each year under the WTR, the improved targeting effect of the LRO could lead to a larger number of prosecutions. This increase in prosecutions will directly benefit those workers who are affected by the convicted organisation, however, this may also have a deterrent effect whereby more workers will benefit and organisations will not gain an unfair advantage by exploiting workers. It is not possible to provide quantification of these benefits.

### ***Analysis of costs***

The proposed LRO will place no additional costs on business as the aim is to provide a more efficient system of sharing information to decrease costs for Government and to increase administrative efficiency. As the number of convictions under the WTR is low, there may be additional costs related to prosecutions if more employers are found to be non-compliant with the WTR. In the financial year 2007/08 there was 1 conviction under the WTR however while the LRO could feasibly raise the number of successful prosecutions, the number of cases considered for prosecution would still be expected to be low in comparison to the total number of businesses who are affected by the WTR.

### ***Competition assessment***

It is expected that the policy will not impose any specific competition issues. The LRO will allow the sharing of data between existing Government enforcement organisations to provide effective enforcement of workplace rights. By increasing the effectiveness of enforcement, the occurrence of organisations gaining an unfair advantage resulting from the exploitation of workers will be deterred.

### ***Small firms impact test***

UK workplace regulations are applicable to all firm sizes and the LRO contains no amendments which will specifically impact on small firms. It is not expected that the current distribution of inspections will be altered in a significant way as to impact disproportionately on small businesses.

## ***Equality***

After initial screening as to the potential impacts of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of the numbers affected or the seriousness of the likely impact, or both.

## **F: Risks**

The LRO could feasibly raise the number of prosecutions under the WTR and other workplace rights however due to the current level of prosecutions the number of prosecutions would still be expected to be low in comparison with the coverage of the regulations.

The benefits outlined above contain assumptions due to the limited amount of data in some cases. This risk will be mitigated as data becomes available through the Pay and Work Rights helpline which will give a more in depth understanding of the levels multi-issue cases per year and their relevance to each enforcement organisation.

## **G: Enforcement**

The LRO proposes to remove restrictions on the sharing of information between the organisations listed above therefore enforcement will not be necessary.

## **H: Recommendation**

The Government considers that it is important to ensure that enforcement organisations are able to work efficiently and provide the best use of resources to target those who do not adhere to current employment regulations. The Government's preferred option is option 2 as we have concluded that the LRO will help provide greater protection to vulnerable workers, greater availability of information to enable more targeted inspections and reduce administrative burdens on both the government and business.

## **I: Implementation**

The policy will be implemented on the 1<sup>st</sup> April 2010 or as soon as possible thereafter.

## **J: Monitoring and evaluation**

The cost and benefits contained in this impact assessment will be reviewed when more data becomes available from the Pay and Work Rights helpline and from existing enforcement operations.

## Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No



# Annexes

## Annex A

**Table A1 - 12 month estimate of calls to the Pay and Work Rights helpline by enforcement organisation**

	Complaints <sup>ab</sup>	of which multi-issue complaints
EAS	1,020	66
HMRC	3,630	180
DEFRA	588	30
HSE	342	96

a - 12 month estimate of complaints based on calls received to the Pay and Work Rights helpline in June and July 2009

b - The figures exclude calls which are dealt with over the phone and only show those complaints that require further investigation

**Table A2 - Inspections and enforcement notices issued by organisations responsible for the enforcement of the working time regulations**

	Inspections	Enforcement notices issued <sup>a</sup>
2001/01	80,447	16,866
2001/02	75,237	17,042
2002/03	84,234	19,104
Average	79,973	17,671

a - Enforcement notices can be issued in three categories, improvement, deferred prohibition and immediate prohibition and are issued to non-compliant organisations

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BERR</b>	<b>Title:</b> <b>Final Impact Assessment - The Work And Families (Increase Of Maximum Amount) Order 2009</b>	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 03/06/2009
<b>Related Publications:</b> <a href="http://www.hm-treasury.gov.uk/bud_bud09_repindex">http://www.hm-treasury.gov.uk/bud_bud09_repindex</a>		

Available to view or download at:

<http://www.>

**Contact for enquiries:** Stephen Taylor/Asad Ghani

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

Government introduced the statutory redundancy scheme in 1965 to provide a safety net for those who find themselves being made redundant. If left to private markets 'unemployment insurance' type schemes are likely to be underprovided as they result in perverse incentives. Since 1999, the weekly limit used to calculate statutory redundancy pay and other compensation payments has been uprated annually in line with the RPI, rounded up to the nearest £10. On the grounds of fairness, the Government has decided to introduce a one-off increase in statutory redundancy pay and compensation payments, to help those being made redundant without placing undue burdens on employers and the Exchequer.

What are the policy objectives and the intended effects?

The Government wishes to ensure rapid help for those made redundant during these difficult economic times without placing undue burdens onto employers and the Exchequer. A one-off uprating in the weekly statutory redundancy limit will enhance the support given to those made redundant.

What policy options have been considered? Please justify any preferred option.

We have considered a range of possible levels of increasing the weekly limit, taking into account both the concerns of business and the unions. This impact assessment compares raising the weekly limit to £380 against a 'do nothing' baseline (weekly limit of £350) and an option of increasing the limit to average weekly earnings (£450), as suggested by the Lindsay Hoyle private members bill (which seeks to cover redundancy payments only). The preferred option is to raise the statutory weekly limit by £30 to £380 as this strikes the right balance between helping those made redundant without placing undue burden on employers. The Government announced this in the 2009 budget. The Government also proposes suspending the annual uprating exercise in February 2010, so the weekly limit will remain unchanged until February 2011.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? BERR produces an annual monitoring and evaluation report for all employment policies and will be reviewing this policy change in over a year after implementation (summer 2011).

**Ministerial Sign-off** For SELECT STAGE Impact Assessments:

*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:

.....  
MP, Pat McFadden, Minister of state for Employment Relations and Postal Affairs

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Increasing the statutory redundancy weekly limit to £380 and associated compensation payments. And also suspending the 2010 annual uprating exercise.**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'. Cost to business from increasing the weekly limit: £51-77 million. Cost to the Exchequer from an increase in weekly limit: £15-29 million. Cost to business from suspending 2010 uprating: £19-27 million. Cost to the Exchequer from suspending 2010 uprating: £5-10 million. Cost to Business/Exchequer from wider associated compensation payments £14.6-14.9 million. £2.3 million familiarisation cost to business.	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	<b>£ 2.3M</b>	1		
	<b>Average Annual Cost</b> (excluding one-off)			
<b>£115.6- 144.9m</b>		10	<b>Total Cost (PV)</b>	<b>£997 - 1,249m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None. Although note the upper and lower ranges above are taken from two key scenarios on number of redundancies and hence do not sum up to the total range. More details in the impact assessment.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Increase in redundancy pay for employees £74-96 million. Increase in redundancy pay from suspending 2010 uprating £27-34 million. Increase in wider compensation payments associated with the statutory redundancy pay limit £14.6-14.9 million.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ 0</b>	1		
	<b>Average Annual Benefit</b> (excluding one-off)			
<b>£ 115.6- 144.9m</b>		10	<b>Total Benefit (PV)</b>	<b>£995-1,247m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Improved safety net for all employees with more than two years of service.				

**Key Assumptions/Sensitivities/Risks** That total eligible redundancies for statutory redundancy pay will range between 443,000 and 576,000. Note that we expect around half will benefit from this policy change. The cost estimates presented here are likely to be overestimates as some employers already pay above the weekly limit.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ -2.3m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ -2.3m</b>
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		October 2009		
Which organisation(s) will enforce the policy?		HMRC / BERR		
What is the total annual cost of enforcement for these organisations?		£ negligible		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off) Not quantifiable (N/Q)	Micro N/Q	Small N/Q	Medium N/Q	Large N/Q
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)		
Increase of	£ negligible	Decrease of	£ negligible	<b>Net Impact</b> £ negligible

Key: Annual costs and benefits: Constant Prices (Net) Present Value

### A. Strategic overview

Government introduced statutory redundancy pay in 1965 as a response to an investigation from the Dunnett Committee. The intention at the time was in the words of the Dunnett Committee "to encourage greater efficiency in industry and contribute to economic growth". This was a measure designed to encourage workers to move from one industry or part of the economy to another. Employees with redundancy protection were reluctant to move to other sectors without that protection.

The redundancy scheme provides a better safety net for employees if made redundant. If left to private markets only, 'unemployment insurance' type schemes are subject to problems of moral hazard – which will result in under provision as employees' may have perverse incentives.

The Government took an enabling power<sup>7</sup> to make a one-off increase to the statutory redundancy pay (SRP) limit and to suspend the annual uprating exercise in the Work and Families Act 2006, these powers can only be applied once. In the 2009 Budget, Government announced that it would be increasing the level of statutory redundancy payments by £30 from £350 to £380.

The Government feels that during these difficult economic times it is fair to introduce a one-off increase in statutory redundancy pay and compensation payments to help those being made redundant, without placing undue burdens on employers and the Exchequer.

### B. The issue

Under the statutory redundancy scheme, employees with two or more years' service are entitled to a redundancy payment from their employer, based on their age, length of service (up to a 20-year cap) and earnings capped to the weekly limit. Statutory redundancy pay is calculated in the following way:

Number of years service (max 20 years) x multipliers x week's pay  
(actual pay is used if the employee earns below the limit; otherwise the weekly limit is used)

The multipliers used in the payment calculation are:

- 1.5 weeks' pay for each full year of service, where age during the year was not below age of 41;
- 1.0 week's pay for each full year of service, where age during the year was not below age of 22;
- 0.5 week's pay for each full year of service, not falling in the categories above.

The statutory redundancy limit is in essence a statutory minimum, which a firm must pay in redundancy if their employees are earning above the limit and equal to their actual pay if they are earning below the limit. Firms have the option to go beyond the minimum and anecdotal evidence from informal consultation suggests that perhaps around half of firms do.

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<sup>7</sup> An enabling power in this context, refers to S14 of the Work and Families Act 2006 which gave the Secretary of State the power to make a one-off increase to the limit via secondary legislation.

## Box 1: Illustrative examples of how statutory redundancy pay is calculated

### Example 1

Heather is an employee with 5 full years' length of service with the same employer and started work at 17 years old. Heather is currently aged 22 and has a weekly wage of £305. Heather is entitled to redundancy payments as she has more than 2 years' length of service with the same employer. Heather is entitled to 0.5 weeks pay for each year of full service, when her age was less than 22 ( $0.5 \times 5 = 2.5$ ). Heather's total redundancy payments will be paid at her weekly wage of £305 (as this is below the currently weekly limit of £350). Hence total redundancy payments =  $2.5 \times £305 = £762.5$ .

### Example 2

David is an employee with 20 years' service and started work with his current employer at 22 years old. He is currently aged 42 and has a weekly wage of £421. David is entitled to redundancy payments as he has more than 2 years' length of service with the same employer. He is entitled to 1.0 week's pay for each year of full service, when his age during the year was 22 or above but less than 41 ( $1.0 \times 19 = 19$ ), plus 1.5 week's pay for each full year of service, where his age during the year was 41 or above ( $1.5 \times 1 = 1.5$ ). Adding these multiples together - sums to 20.5. His total redundancy payments will be paid at the weekly limit of £350 (as David earns above the weekly limit). Hence total redundancy payments =  $20.5 \times £350 = £7,175$ .

### Example 3

Jenna is aged 24 and only has one full year's length of service with her current employer and is not entitled to any statutory redundancy payments.

Note that the highest level of statutory redundancy payments is £10,500 (=  $£350 \times 20 \times 1.5$ ). Firms can however exceed the statutory minimum. These examples were calculated using BERR's ready reckoner ([http://www.berr.gov.uk/cgi-bin/er\\_feb07\\_reconner.pl](http://www.berr.gov.uk/cgi-bin/er_feb07_reconner.pl))

In 1999, the Government introduced an annual uprating formula, which provides for the weekly limit to be uprated each February in line with the retail price index (RPI), rounded up to the nearest £10. Employees earning below the weekly limit receive a redundancy payment calculated using their actual wage, while those earning above the limit have their pay capped to the limit. The current weekly limit is £350.

Under the Employment Rights Act 1996, the figure for the weekly redundancy limit is also used for a wide range of other compensation payments:

- non-compliance with flexible working procedures;
- the basic and additional awards for unfair dismissal;
- compensation where an individual has been unjustifiably disciplined by a trade union;
- compensation where an employer has failed to consult with a collective bargaining unit;
- compensation in relation to a right not to be excluded or expelled from a union;
- compensation for failure by an employer to allow an employee to be accompanied to a disciplinary or grievance hearing;

- compensation for failure by an employer to give a statement of employment particulars;
- failure of employer to comply with duty to notify employee of date on which he intends employee to retire or of right to make request not to retire on the intended date); and
- various payments due in the event of insolvency (redundancy pay, arrears of pay, pay in lieu of notice, holiday pay, unpaid compensation for unfair dismissal).

The compensation payments listed above mainly fall on employers except when a firm becomes insolvent and the Exchequer pays redundancy pay, arrears of pay, pay in lieu of notice, holiday pay, unpaid compensation for unfair dismissal from the NIF.

#### Consultation:

##### *Within Government*

These proposals have been developed in consultation with the following Government Departments: Insolvency Service and HM Treasury.

##### *Public Consultation*

No formal consultation exercise was undertaken for these proposals, although informal discussions have previously taken place with the CBI, EEF and TUC.

### **C. Objectives**

The Government feels that during these difficult economic times it is fair to introduce a one-off increase in statutory redundancy pay and compensation payments to help those being made redundant by providing a better safety net without placing undue burdens on employers and the Exchequer.

If left to private markets 'unemployment insurance' type schemes are subject to problems of moral hazard. This occurs when an employee for instance is insulated from risk (i.e. unemployment) and as result of this may behave differently from the way they would behaved if it were fully exposed to the risk (in this case they may be less likely to enter employment). And as a result private markets will not provide an optimal amount of unemployment insurance leading to insufficient coverage.

### **D. Options identification**

**Option 1: do nothing and let the RPI indexing formula determine the weekly limit in February 2010.**

**Option 2: raise the level of statutory redundancy payments and other compensation payments from £350 to £380 and suspend the annual uprating exercise in February 2010.**

**Option 3: raise the level of statutory redundancy payments and other compensation payments from £350 to £450.**

Lindsay Hoyle MP has proposed linking the weekly limit to average earnings (currently £450) in his private members bill which has passed second reading at the time of drafting this impact assessment. His bill covers only redundancy payments. However, this impact assessment for

option 3 assesses all the costs related to a £450 SRP limit including compensation payments, as with option 2.

The cost and benefits of option 2 and 3 have been measured against option 1, the 'do nothing' baseline.

The Government's preferred option is option 2, as option 3 is deemed too expensive for business and option 2 strikes the right balance between helping individuals who are made redundant without placing undue burdens on business.

## E. Analysis of options

### Option 2 and 3: Business sectors affected

This proposed policy amendment will affect all sectors of the Great Britain economy, however some sectors will be hit harder than other sectors. This depends on the economic climate going forward and the structural difference between and within sectors. For example, low paying sectors such as distribution, hotels and restaurants are likely to have fewer individuals who earn above £350 per week and are made redundant. Therefore they would be less affected by this policy change compared to a higher paying sector such as banking and finance. Table 1 shows the distribution of redundancies by sectors in 2008. Over this period, manufacturing, construction and banking, finance and insurance were all hit hard by the global slowdown in economic growth. We have then assumed that the distribution of redundancies would be the same in the future as in 2008 for two scenarios:

1) Assume around 443,000 redundancies eligible for SRP. This figure is based on scaling down Labour Force Survey (LFS) figures for redundancies in 2008 (around 654,000 redundancies) to remove employees made redundant with less than two years' service.

2) Assume around 576,000 redundancies eligible for SRP. This is based on assuming a total of 850,000<sup>8</sup> redundancies and scaling this figure down to strip out those with less than two years' service. We do not know the exact length of service of those made redundant but assume that the distribution is the same as all employees in the labour market.

#### 1. Distribution of redundancies by sector

	Percentage share of total redundancies	Total redundancies assuming around 443,000 eligible for SRP	Total redundancies assuming around 576,000 eligible for SRP
Agriculture and fishing	1.3%	5,903	7,675
Energy and water	1.3%	5,864	7,624
Manufacture	22.8%	100,998	131,320
Construction	17.4%	77,139	100,298
Distribution, hotels and restaurants	16.4%	72,834	94,701
Transport and communication	8.7%	38,644	50,246
Banking, finance and insurance etc	19.6%	86,984	113,098
Public admin, education and health	7.9%	34,834	45,292
Other services	4.5%	19,800	25,745

NB: Figures have been rounded and totals may not sum to individual parts

BERR estimates based on Labour Force Survey, 2008

<sup>8</sup> For sensitivity analysis 576,000 redundancies has been chosen as an illustrative upper estimate and is approximately 30% higher than the number of redundancies in 2008. This is essentially based on historical redundancy data. This is based on assuming a total of 850,000 redundancies and scaling this figure down to strip out those with less than two years' service. We do not know the exact length of service of those made redundant but assume that the distribution is the same as all employees. Since 1996 redundancies peaked at 741,000 in 2002. An 850,000 upper range was chosen to factor in a value that was higher than the highest historical value since 1996 as redundancies were higher than 741,000 in the early 1990's (we don't have official ONS statistics but the Employment Gazette suggests higher redundancy levels than 741,000 in the early 1990's).

## Costs

**Option 2: raise the level of statutory redundancy pay limit and other compensation payments from £350 to £380 and suspend the annual uprating exercise in February 2010.**

**Direct cost to business and the Exchequer from raising the statutory redundancy pay limit from £350 to £380**

The primary duty to pay any redundancy entitlement falls onto employers. However where an employer has become insolvent, the National Insurance Fund (NIF)<sup>9</sup> pays redundancy and other compensation payments. Tables 2 and 3 show a summary of the total costs and breakdown of costs between business and the Exchequer under two different scenarios. Tables 2 and 3 assume around 443,000 and 576,000 redundancies eligible for SRP respectively. Note that the costings presented in this impact assessment assume that firms meet the statutory minimum only. In reality some firms go beyond the statutory minimum and hence our costings are likely to be an overestimate.

The share of the total cost incurred by the Exchequer is derived from the amount of redundancy payments the Insolvency Service has to pay out from the NIF. Annex B table B1 shows that NIF payments have ranged between £191m and £293m between 2001 and 2006. Given the fluctuation in NIF payments we assume that between 20-30 percent of the total cost of redundancies will be paid out from the NIF. This percentage range is used as an approximation of the share of total redundancy costs that the Exchequer may be liable for.

**Annex B contains further details on how the cost estimates were derived.**

### Summary of direct costs

#### 2. Summary of annual costs - scenario one 443,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
			£350	£1,317m	-	£263m	£395m	£1,053m	£922m	-
£380	£1,391m	£74m	£278m	£417m	£1,112m	£973m	£15m	£22m	£59m	£51m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 654,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings, 2008. Totals may not sum to individual parts due to rounding.

#### 3. Summary of annual costs - scenario two 576,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
			£350	£1,711m	-	£342m	£513m	£1,369m	£1,198m	-
£380	£1,807m	£96m	£361m	£542m	£1,446m	£1,265m	£19m	£29m	£77m	£67m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 850,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings, 2008. Totals may not sum to individual parts due to rounding.

<sup>9</sup> Under the Social Security Administration Act 1992 benefits due under the National Insurance Scheme, including statutory redundancy pay, are payable out of the National Insurance Fund. The funds are mainly provided from National Insurance contributions payable by employed earners, employers and others.



The direct marginal cost of uprating the SRP from £350 to £380 will be in the range **£74m - £96m**. The direct marginal cost to the Exchequer will be between and **£15m and £29m**. The direct marginal cost to business will be between **£51m and £77m**. Note: The upper and lower ranges above are taken from two key scenarios on a number of redundancies and hence the total do not sum up to the total range. These costs will represent transfers from employers to employees or the Exchequer to employees hence the net effect (with the exception of implementation costs) will be zero.

### **Direct cost to business and the Exchequer from suspending annual uprating exercise in February 2010**

As mentioned in section B, the weekly SRP limit is uprated each February in line with RPI and rounded to the nearest £10. Using actual data to date and Treasury's independent forecasts, we estimate that RPI in September 2009 will be negative by around 4 percent<sup>10</sup>. Using the standard uprating methodology, this could result in the SRP limit reducing from £350 to £340 ( $£350 \times 0.96 = £336$ , rounded to nearest £10 gives £340).

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<sup>10</sup> BERR estimate using actual RPI data up to March 2009 (which was the latest data available) and April HM Treasury independent forecasts. BERR estimate that RPI will be around 4% (negative) in September 2009 which would imply a £10 fall in the weekly limit.

## Box 2: Forecast of RPI in September 2009

The annual uprating exercise of the statutory redundancy weekly limit is based on the value of the RPI in September. The annual growth in the RPI (year ending September) is then used in the uprating formula.

To determine how the weekly limit will change in February 2010 in the absence of any policy change we need to estimate the value of the RPI in September 2009. At the time of drafting this impact assessment the RPI value for **September 2008 was 218.4**. We had actual RPI data up to March 2009 (211.3).

In order to estimate the value of the RPI in September 2009 we applied the HM Treasury independent forecast rate for 2009 RPI (-1.6%) at a monthly compounded rate to the March 2009 value to extrapolate a forecasted value for RPI in **September 2009 at 209.6**. This is a fall of around **4%** compared to the value of the RPI a year ago.

Section 14 of the Work and Families Act 2006 gives the Government a one off power to suspend the annual uprating. We assume in the absence of any intervention a 'down rating' of the SRP limit will take place. Therefore we propose a suspension in the February 2010 uprating exercise to avoid a fall in the SRP limit. This will leave the SRP limit unchanged from our one-off up-rating until February 2011.

### 4. Summary of annual costs - suspending the SRP uprating - scenario one 443,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,317m	-	£263m	£395m	£1,054m	£922m	-	-	-	-
£340	£1,290m	£27m	£258m	£387m	£1,032m	£903m	£5m	£8m	£22m	£19m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 654,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings, 2008. Totals may not sum to individual parts due to rounding.

### 5. Summary of annual costs - suspending the SRP uprating - scenario two 576,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,711m	-	£342m	£513m	£1,369m	£1,198m	-	-	-	-
£340	£1,677m	£34m	£335m	£503m	£1,342m	£1,174m	£7m	£10m	£27m	£24m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 850,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings, 2008. Totals may not sum to individual parts due to rounding.

The methodology used for estimating the cost of suspending the annual uprating in 2010 will be the same as estimating the cost of uprating the current SRP. For full details please refer to annex B.

The direct marginal cost of suspending the annual uprating will be in the range **£27m - £34m**. The direct marginal cost to the Exchequer will be between and **£5m and £10m**. The direct marginal cost to business will be between **£19m and £27m**<sup>11</sup>. These costs will represent

<sup>11</sup> The upper and lower ranges above are taken from two key scenarios on a number of redundancies and hence the total do not sum up to the total range.

transfers from employers to employees or the Exchequer to employees hence the net effect (with the exception of implementation costs) will be zero.

### **Indirect cost associated with raising SRP**

Under the Employment Rights Act 1996, the figure for the weekly SRP limit is also used for a wide range of other compensation payments (Table 6)<sup>12</sup>. This section of the impact assessment will attempt to estimate the expected indirect costs from increasing the SRP limit from £350 to £380. These indirect costs will result in a transfer of payments from businesses to employees, and hence the net benefit (cost minus benefits) present value of this policy change will be zero.

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**Table 6: Compensation payments affected by the weekly limit to redundancy**

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non-compliance with flexible working procedures;  
the basic and additional awards for unfair dismissal;  
compensation where an individual has been unjustifiably disciplined by a trade union;  
compensation where an employer has failed to consult with a collective bargaining unit;  
compensation in relation to a right not to be excluded or expelled from a union;  
compensation for failure by an employer to allow an employee to be accompanied to a disciplinary or grievance hearing;  
compensation for failure by an employer to give a statement of employment particulars;  
failure of employer to comply with duty to notify employee of date on which he intends employee to retire or of right to make request not to retire on the intended date); and  
various payments due in the event of insolvency (redundancy pay, arrears of pay, pay in lieu of notice, holiday pay, unpaid compensation for unfair dismissal).

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### **Cost of compensation payments (excluding insolvency payments)**

The proposed amendment in this IA, increasing the SRP limit from £350 to £380 will result in increase costs for compensation payments. BERR (Department for Business, Enterprise and Regulatory Reform) estimated that the extra cost will be between **£1.9m and £2.2m**. For a detailed breakdown of these costs estimates, refer to annex C.

### **Cost of insolvency payments**

When an employer becomes insolvent, the Insolvency Service through the NIF pays arrears of pay, pay in lieu of notice, redundancy pay, unpaid compensation for unfair dismissal and other payments.

In 2008/09, the Insolvency Service paid out a total of £428 million to employees' working for insolvent employers. Once we remove redundancy pay this figure reduces to £186 million. Accounting for the increase in the number of compensation claims made to the Insolvency Service due to the economic climate in the next financial year, BERR estimates as a result of the uprating the SRP limit, the additional cost of insolvency payments will be around **£12.7m per year**<sup>13</sup>.

### **Option 3: raise the level of statutory redundancy payments and other compensation payments from £350 to £450**

#### **Direct cost to business and the Exchequer from raising the statutory redundancy payments from £350 to £450.**

Lindsay Hoyle MP has proposed linking the weekly limit to average earnings (currently £450) in his private members bill which has passed second reading at the time of drafting this impact assessment. His bill covers only redundancy payments. However, this impact assessment for option 3 assesses all the costs related to a £450 SRP limit including compensation payments, as with option 2.

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<sup>12</sup> In table 6 'Redundancy Pay' has been estimated in the direct cost section of this Impact Assessment.

<sup>13</sup> Please refer to annex c for the full methodology.

The methodology used to calculate the impact of raising the weekly limit to £380 has also been used on option 3. A summary of the costs are below.

#### 7. Summary of annual costs - scenario one 443,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
			£350	£1,317m	-	£263m	£395m	£1,054m	£922m	-
£450	£1,538m	£221m	£308m	£461m	£1,231m	£1,077m	£44m	£66m	£177m	£155m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 654,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund. Totals may not sum to individual parts due to rounding.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings, 2008

#### 8. Summary of annual costs - scenario two 576,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
			£350	£1,711m	-	£342m	£513m	£1,369m	£1,198m	-
£450	£1,999m	£288m	£400m	£600m	£1,599m	£1,399m	£58m	£86m	£230m	£202m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 850,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund. Totals may not sum to individual parts due to rounding.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings, 2008

The direct marginal cost of uprating the SRP from £350 to £450 will be in the range **£221m - £288m**. The direct marginal cost to the Exchequer will be between and **£44m and £86m**. The direct marginal cost to business will be between **£155m and £230m**<sup>14</sup>.

### Indirect cost associated with raising SRP

We have applied the same methodology and assumptions used to calculate the indirect cost of associated compensation payments that was used for option 2 to option 3. More detail on the methodology can be found in annex C and D. The only change in methodology is the percentage rise in the SRP weekly limit. In option 2 the weekly limit is increased from £350 to £380 - a 8.6 percent rise. However, in option 3 the weekly limit increases from £350 to £450 - a 28.6 percent rise. Our methodology uses a simplifying assumption that all individuals made redundant earning more than £350 benefit by £30 in option 2 and by £100 in option 3. This will lead to an overestimation as for example an individual earning £400, which is between the current weekly limit (£350) and the new proposed rate (£450 in option 3) will only benefit by £50 (as you receive your weekly pay if you earn less than the limit.) The marginal indirect cost for option 3 is **£48.7m - £49.7m**.

<sup>14</sup> The upper and lower ranges above are taken from two key scenarios on a number of redundancies and hence the total do not sum up to the total range.

## Costs to the Government

The cost to Government for this exercise will not be different to that of the annual uprating exercise. These include updating websites, including the 'SRP calculator'<sup>15</sup> and the replacing of information leaflets. As this cost is in effect being brought forward from February 2010 to October 2009, we consider these costs to be negligible.

### Implementation costs

Costs associated with this one-off uprating for business are assumed to be small. They will involve firms becoming aware of the rate increase this October 2009 and that the February 2010 uprating will be suspended. We estimate for illustrative purposes that the cost for businesses to become aware of the change in the law will cost around **£2.3million** and this will be a one-off cost<sup>16</sup>. We assume that firms will be familiarising themselves with the law again in February 2010 to ensure correct compliance, hence the implementation costs for the October announcements are treated as additional.

### Benefits

The direct cost related to the increase in the weekly limit and indirect cost of compensation awards linked to the level of statutory redundancy pay represent transfers from either employers to employees or transfers from the Exchequer to employees. Employees will essentially benefit from these payments and the net effect (costs minus benefits) will be zero (with the exception of implementation costs). Redundancy pay creates a safety net for employees, and this one-off uprating will improve this safety net for workers earning over £350.

## F. Risks

This impact assessment is based on the best evidence base available and a set of assumptions. We have produced costings on an assumption that all firms pay the statutory minimum requirement for redundancy payments. Anecdotal evidence from stakeholders suggests that perhaps half of firms pay above the statutory minimum. In the absence of precise data our assumption will lead to an overestimation of the costs and benefits. In addition to this assumption there are three other key assumptions that have a significant influence on the cost benefit analysis. These are discussed further in turn. First, we assume that redundancies will mirror the general earnings distribution (i.e. weekly wage is not a deciding factor when making redundancies). This may not turn out to be the case if firms layoff cheaper workers to avoid being affected by this policy change. This would lead to an overestimation of costs and benefits. Second, we assume 20-30 percent of redundancy payments fall on to the Exchequer. If during this economic downturn more firms become insolvent compared to our assumption this would exert greater pressure on the Exchequer and our Exchequer costs would be an underestimate. Finally, we assume a range of 443,000 to 576,000 eligible redundancies will potentially be affected by a rise in SRP limit and associated compensation payments. The lower range is based on redundancy levels in 2008 and the upper range is based on historical redundancy data from the early 1990's. If the economy improves greatly over the next decade we may be overestimating the total number of redundancies eligible for SRP leading to an overestimation of costs and benefits.

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<sup>15</sup> [www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html](http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html)

<sup>16</sup> For illustrative purposes we assume that the equivalent of 5 minutes of management time (£21.50 an hour, including 21 percent non wage labour costs) will be spent by every enterprise in the GB that has employees (around 1.3 million) in order to become familiar with the change in the law. This equates to around £2.3 million.

There may be some anticipation effects for firms from this policy announcement and some firms may decide to bring forward planned redundancies, so that payments can be made at the current lower rates. However, the risk of employers bringing forward redundancies is low. Table 9 below shows that in 2007 and 2008 the weekly limit rose by £20 whereas in all other years since 1999 (the year in which the weekly limit became indexed to RPI) the weekly limit increased by £10. And in 2007 and 2008 the number of redundancies in the quarter before the uprating takes effect (quarter 3) shows no statistically significant increase in number of redundancies compared to years in which the limit increased by a smaller amount (£10). We note that the time period examined in table 9 is mostly during economic growth and hence some caution should be taken when drawing conclusions from the data in table 9.

#### 9. Historic weekly limit rates since 1999 and Q3 level of redundancies

Year	Weekly limit	Marginal increase in weekly limit	Q3 level of redundancies 000's
1999	220	-	173
2000	230	10	161
2001	240	10	196
2002	250	10	176
2003	260	10	158
2004	270	10	133
2005	280	10	160
2006	290	10	137
2007	310	20	129
2008	330	20	156

Source: BERR and ONS

For individual firms, an increase in the SRP limit may result in reduced firm flexibility (a potential reduction in the scope to make operational decisions). Also a rise in the SRP limit may increase labour costs for some firms which may lead to reduced profitability.

#### G. Enforcement

If an employee believes he has been paid an incorrect redundancy payment, or no redundancy payment where one is due, he can take his former-employer to an employment tribunal.

If an employer fails to pay an employment tribunal award, the employee can apply to the County Court. We expect no change in the number of employment tribunal cases as a result of the increase in the weekly limit.

## H. Summary table of costs and benefits

A summary of the costs and benefits of option 2 and 3 are presented below.

### 10. Summary of costs and benefits for option 2 and 3

	Group affected	One-off or ongoing?	Option 2	Option 3
			Amount (per annum)	Amount (per annum)
<b>Costs</b>				
Implementation costs	Business	One-off	<b>£2.3 million</b>	<b>£2.3 million</b>
Implementation costs	Government	One-off	No additional cost over and above annual uprating	No additional cost over and above annual uprating
Cost of raising SRP limit to £380	Business	On-going	<b>£51-77 million</b> in increased statutory redundancy payments	<b>£155-230 million</b> in increased statutory redundancy payments
Cost of raising SRP limit to £380	Exchequer	On-going	<b>£15-29 million</b> in increased statutory redundancy payments	<b>£44-86 million</b> in increased statutory redundancy payments
Cost of suspending the annual uprating exercise in February 2010	Business	On-going	<b>£19-27 million</b> in increased statutory redundancy payments	<b>N/A</b>
Cost of suspending the annual uprating exercise in February 2011	Exchequer	On-going	<b>£5-10 million</b> in increased statutory redundancy payments	<b>N/A</b>
Associated compensation payments	Business	On-going	<b>£1.9-2.2 million</b> in increased compensation payments	<b>£6.3-7.3 million</b> in increased compensation payments
Associated compensation payments	Exchequer	On-going	<b>£12.7 million</b> in increase compensation payments	<b>£42.3 million</b> in increase compensation payments
<b>Total costs (excluding implementation costs)</b>			<b>£115.6-144.9 million</b>	<b>£269.7-337.9 million</b>
<b>Benefits</b>				
Benefit of raising SRP limit to £380	Employees	On-going	<b>£74-96 million</b> in increased statutory redundancy payments	<b>£221-288 million</b> in increased statutory redundancy payments
Benefit of suspending the annual uprating exercise in February 2011	Employees	On-going	<b>£27-34 million</b> in increased statutory redundancy payments	<b>N/A</b>
Associated compensation payments	Employees	On-going	<b>£14.6-14.9 million</b> in associated compensation payments	<b>£48.7-49.7 million</b> in associated compensation payments
<b>Total benefits</b>			<b>£115.6-144.9 million</b>	<b>£269.7-337.9 million</b>
<b>Net benefit</b>			<b>£-2.3 million</b>	<b>£-2.3 million</b>

Source: BERR estimates. Raising the SRP limit and associated compensation payments from £350 to 380 is a transfer from employers and the Exchequer to employees. The implementation costs for business is not a transfer. The upper and lower ranges presented in this table (for raising the SRP limit) are taken from two key scenarios on redundancy levels and hence the disaggregated costs (for employers and the Exchequer) do not sum to the total cost. However the total costs (excluding implementation costs) do sum to the total benefits. Individual parts may not sum to total because of rounding.

The net benefit (benefit minus cost) of options 2 and 3 are identical because of transfers between employers, Exchequer and employees. However, option 3 is deemed too expensive for business and option 2 strikes the right balance between helping individuals who are made redundant without placing undue burdens on business.

### Implementation

The new statutory redundancy pay weekly limit of £380 will come into force from 1 October 2009 and the annual uprating due to take effect from 1 February 2010 will be suspended.

In line with Departmental good practice, we will be ensuring that businesses start being made aware of the changes 12 weeks in advance of 1 October. This will involve updating websites, including the 'SRP calculator'<sup>17</sup> and the replacing of information leaflets. We consider the costs associated with this to be negligible.

<sup>17</sup> <http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html>

## **I. Monitoring and evaluation**

On an annual basis BERR Employment Relations team produces a monitoring and evaluation report of all employment relations policy changes. We plan to evaluate this policy change in summer 2011. We will be able to monitor the volume of redundancies, level of firm insolvencies and payments made by the Exchequer.



## Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

## Annex A: Specific impact tests

### Small Firms Impact Test

The proposed amendment to the regulations would apply to firms of all sizes. However, its impact will be the greatest amongst firms who make redundancies with employees earning over £350 and paying the statutory minimum in redundancy pay. We do not have robust evidence in this area, but anecdotal evidence would suggest that firms of all sizes would not be equally affected.

Table A1 presents the distribution of employees who have been made redundant and compares this to the distribution of all employees by firm size across the economy. The indication is that small and medium sized workplaces would be disproportionately affected by this proposed policy amendment as they are more likely to make employees redundant and more likely to pay SRP, however if we did exempt small and medium firms it would defeat the objective of this policy change.

#### A.1. Distribution of employment and redundancies by firm size (number of employees)

	Redundant	All in employment
1-10	26.2%	20.5%
11-19	8.6%	8.6%
20-24	6.7%	4.6%
don't know but under 25	3.3%	1.9%
25-49	14.2%	13.6%
50-249	21.3%	22.7%
250-499	5.1%	7.3%
don't know but between 50 and 499	3.7%	3.1%
500 or more	10.9%	17.7%

NB: Figures have been rounded and totals may not sum to individual parts

Source: Labour Force Survey, 2008

### Competition Assessment

The initial analysis of the competition filter test reveals that a detailed competition assessment is not considered necessary. The proposed legislation will apply to all firms and the Government feels that is fair to introduce this one-off uprating to the SRP limit, to partly restore its value in real terms and help those made redundant during this current recession. Table A2 below gives the result of the competition filter test.

#### A.2. Results of the competition filter test – In any affected market, would the proposal:

Directly limit the number or range of suppliers?	No
Indirectly limit the number or range of suppliers?	No
Limit the ability of suppliers to compete?	No
Reduce suppliers' incentives to compete vigorously?	No

## Equality Assessment

In line with better regulation best practice and the 2002 Equalities duty, we have considered the impact of changing the law and conclude that there will not be a disproportional impact by gender, race and disability.

### *Who will be affected?*

The Labour Force Survey (LFS) indicates that around 35 percent (Table A3) of employees that stand to benefit for the proposed policy amendment will be women. This is almost identical to the distribution of women that will be affected by redundancies. This suggest that women will not be disproportionately affected.

#### **A.3. Distribution of redundancies by sex**

	All in employment	Redundant	Earning over £350*
Male	53.8%	64.6%	65.2%
Female	46.2%	35.4%	34.8%

NB: Figures have been rounded and totals may not sum to individual parts

\*Distribution of all employees whose gross weekly earnings are £350

Source: Labour Force Survey, 2008 and ASHE,2008

The distribution on ethnicity is very similar on redundancies and those affected by this proposed policy amendment, hence we do not think that any group classified by ethnicity will be disproportionately affected from the proposed policy amendment.

#### **A.4. Distribution of redundancies by ethnicity**

	All in employment	Redundant	Earning over £350*
White	92.2%	91.0%	92.0%
Mixed	0.4%	0.7%	0.7%
Asian or Asian British	4.3%	4.3%	3.5%
Black or Black British	1.2%	2.1%	2.1%
Chinese	0.6%	0.5%	0.5%
Other ethnic group	1.3%	1.4%	1.2%

NB: Figures have been rounded and totals may not sum to individual parts

\*Distribution of all employees whose gross weekly earnings are £350

Source: Labour Force Survey, 2008 and ASHE 2008

Evidence from the Labour Force Survey does not suggest that employers employing individuals with disabilities will be unduly affected by the proposed adjustment in this impact assessment.

#### **A.5. Distribution of redundancies by disabilities**

	All in employment	Redundant	Earning over £350*
DDA disabled and work-limiting disabled#	5.2%	5.1%	3.6%
DDA disabled#	5.1%	5.3%	5.1%
Work-limiting disabled only	3.6%	2.6%	2.5%
Not disabled	86.0%	87.0%	88.8%

NB: Figures have been rounded and totals may not sum to individual parts

#DDA - Disability Discrimination Act

\*Distribution of all employees whose gross weekly earnings are £350

Source: Labour Force Survey, 2008 and ASHE 2008

### *Removal of barriers which hinder equality*

The proposed changes reflect a broad policy and are designed to have a positive impact on all employees regardless of their gender, race or disability. Therefore, the proposed changes are unlikely to create any barriers to equality in terms of gender, race and disability.

## **Annex B - Technical note to cost estimates for raising the weekly limit to £380**

### Formula for calculating statutory redundancy payments

To qualify for payment an employee must have completed two years continuous service.

- 1.5 weeks' pay for each full year of service, where age during the year was not below age of 41;
- 1.0 week's pay for each full year of service, where age during the year was not below age of 22;
- 0.5 week's pay for each full year of service, not falling in the categories above;

There is a 20-year cap on the number of service years for which an employee is entitled to payment.

The amount of payment received depends upon the employee's weekly earnings and is subject to a cap set at the statutory weekly limit e.g. currently £350. An employee earning below the weekly limit will receive payments calculated using their current weekly earnings, and an employee earning above the weekly limit will receive the weekly limit.

### **Methodology used to estimate costs**

Step 1: Estimate the number of week's payment an employee is entitled to according to their age and length of service, using the formula set out above.

Step 2: Estimate the number of employees eligible to receive payments. Estimates are taken from LFS data on the number of people made redundant with over two years' service. The LFS data does not tell us how many years service a person who has been made redundant in the last year had completed with their employer. We therefore had to make the assumption that employees who are made redundant have the same distribution with regards to age and length of service as other employees in the workforce i.e. length of service with an employer is not a deciding factor when making people redundant. The number of employees eligible is disaggregated according to their age and the number of service years with their employer in order to work out how many weeks payment they are entitled to.

Step 3: Calculate the total number of weeks for which redundancy payments are required according to segments by age and length of service. This is found using the information in steps 1 and 2.

Step 4: Examine average earnings by age. To calculate the cost of redundancies, we need to estimate the wage rate at which the number of week's payments due will be paid. This will vary according to each individual's salary. In order to cost this we use the average earnings from ASHE 2008 data taking the proportion earning below the set weekly limit and multiplying by the average earnings of these earners and the proportion earning above the weekly limit multiplied by the weekly limit. From this we get an estimate of the weekly wage rate at which the required number of week's statutory redundancy payments is paid.

Step 5: Final cost of redundancies by age under different weekly rates. This uses the information in steps 3 and 4. Step 3 establishes the total number of week's redundancy payment required for each age segment. Multiplying step 3 by the average weekly wage rate of the employees in the corresponding age segment from step 4 gives the cost of redundancies for each age segment. Summing across all age segments then gives the total cost under the different weekly limits.

Note that we assume throughout that all employers pay out under the SRP. We have limited data in this area and believe that many (perhaps half) may actually pay more than the statutory limit.

## Historic National Insurance Fund redundancy payments and receipts

Table B.1. shows redundancy payments made out of the NIF by the Exchequer for redundancy payments when a firm becomes insolvent.

Financial Year	Payments	Receipts
2000-01	191,210	22,826
2001-02	230,365	21,097
2002-03	252,923	24,123
2003-04	237,893	26,991
2004-05	219,495	31,772
2005-06	293,174	37,553

*(NB: data in current prices)*  
Source: National Insurance Fund annual accounts

In this impact assessment we assume 20-30 percent of the total cost of redundancy payments falls to the Exchequer. We do not have actual cost data on total redundancy payments. For this impact assessment we have taken the historical NIF payments and divided through by our cost estimates for the current weekly limit of £350 – and this proportion averages to around 20 percent over 2000 to 2006. This will be underestimating the proportion falling on the NIF as historical NIF payments are based on current prices and the redundancy rates were lower in previous years. To factor this in we incorporate sensitivity by assuming 20-30 percent of redundancy payments will fall on to the Exchequer. This range takes into account our underestimation and allows for some buffer if a greater proportion of firms become insolvent in the future.

## **Annex C: Methodology used to estimate compensation payments associated with raising the SRP limit (excluding insolvency payments):**

1) Estimate the number of accepted claims to the Tribunals Service, which will be affected by the uprating of the statutory redundancy limit<sup>18</sup>. For a lower bound estimate, BERR has taken the number of accepted claims<sup>19</sup> to the Tribunals Service in the financial year 2008/9. For an upper bound estimate, we have added 20 percent to the number of accepted claims to the Tribunals Service in the financial year 2008/9. The 20 percent increase reflects economic uncertainty and previous increases in accepted claims since 2005. BERR has estimated that the Tribunals Service will accept between 55,000 and 66,000 claims in 2008/09.

2) BERR has assumed 8.7 percent of accepted claims will be successful at Tribunal. This number has been estimated based on the average success rate at Tribunal for Unfair Dismissal (UD)<sup>20</sup> claims in the last three financial years (2005/6, 2006/07, and 2007/08). The estimated numbers of successful claims at Tribunal in 2009/10 are between 4,793 and 5,752.

3) BERR has estimated that the average payout for successful claims will be £8,237. This figure is an average payout for successful UD claims over the last three financial years (2005/6, 2006/07, and 2007/08).

4) We then multiply the number of successful claims at Tribunal by the average payout at Tribunal (i.e. 4,793\*£8,237 and 5,752\*£8,237). This gives the total cost for successful claims at Tribunal for the financial year 2009/10 (no uprating) is expected to be in the range £39.5 million and £47.4million.

5) If we inflate the expected total cost for successful claims (no uprating) at Tribunal by the new proposed SRP limit (£380) and divide by the existing SRP limit (£350) we get the expected total cost for successful claims including the uprating (i.e.  $\{380-350\}/350 = 8.6$  percent). However, we then need to adjust for workers earning over £350, as not all employees will benefit from this uprating. BERR estimate that the total cost for successful claims to between £41.3 million and £49.6 million. The marginal cost of increasing the SRP limit for compensation payments will be between £1.9 million and £2.2 million.

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<sup>18</sup> The following compensation payments will be affected by uprating the statutory redundancy pay limit: non-compliance with flexible working procedures, the basic and additional awards for unfair dismissal, compensation where an individual has been unjustifiably disciplined by a trade union, compensation where an employer has failed to consult with a collective bargaining unit, compensation in relation to a right not to be excluded or expelled from a union, compensation for failure by employer to allow an employee to be accompanied to a disciplinary or grievance hearing, compensation for failure to give by employer to give statement of employment particulars, failure of employer to comply with duty to notify employee of date on which he intends employee to retire or of right to make request not to retire on the intended date.

<sup>19</sup> Accepted claims to the Tribunals Service throughout this document will refer to accepted claims which will be affected by the uprating of the statutory redundancy limit.

<sup>20</sup> The majority of accepted claims will be UD claims, therefore UD data has been used as a proxy for determining if the claims will be successful and what the average level of payout will be.

## Annex D: Methodology used to estimate the marginal insolvency payments from raising the SRP limit

When a firm becomes insolvent the Exchequer pays out any arrears of pay, pay in lieu of notice, redundancy pay, unpaid compensation for unfair dismissal that is due to employees.

In 2008/09, the Insolvency Service paid out nearly £428 million in cash payments to employees from insolvent employers. These payments included arrears of pay, pay in lieu of notice, redundancy pay, unpaid compensation for unfair dismissal and other payments. We have removed the cost of redundancy payments from our calculations to avoid double counting (with annex B). The cash payments over this period were based on 165,000 claims.

In 2009/10, BERR and Insolvency Service estimate that there will be approximately 200,000 cases. This is an increase of 21 percent ( $\{200,000-165,000\}/165,000$ ) and is mainly driven by the economic cycle. Having factored in the expected increase in the number of claims, we have next estimated what we expect the total payments (including and excluding redundancy payments) will be in 2009/10 (lines eight and nine of table D1).

The proposed policy amendment – increasing the SRP limit from £350 to £380 represents an increase of 8.6 percent ( $\{380 - 350\}/350$ ). In addition, this amendment will only affect those earning over £350, as those earning below the SRP limit will receive their actual pay. From ASHE 2008, BERR has estimated that 55 percent of employees earn more than £350 and account for 66 percent of the total cash payment made by the Insolvency Service. Putting this information together BERR has estimated that the total cash payment (excluding SRP) made by the Insolvency Service in 2009/10 (line 16 of table 1) will be £238 million. Therefore, the marginal cost of increasing the weekly limit on insolvency payments excluding SRP will be **£12.7 million per annum.**

### D.1. Payments due in event of insolvency

1 Total cash payments 2008-09	£427,622,263
2 Total cash payments 2008-09 excluding SRP	£185,651,421
3 Total claims in 2008/09	165,000
4 Expected total claims in 2009/10	200,000
5 % rise in total claims	21%
6 <b>No uprating, affect of increase claims</b>	
7 Expected total payments in 2009/10 (£)	£518,330,016
8 Expected total payments (excluding SRP) in 2009/10 (£)	£225,032,025
9 <b>Effect of increase in weekly limit</b>	
10 Old limit	350
11 New limit	380
12 % rise in weekly limit	8.6%
13 <b>55% of workers that earn more than £350</b>	
14 Weight of total costs from those earning more than £350	66%
15 Expected total payments in 2009/10 (£)	£547,652,685
16 Expected total payments (excluding SRP) in 2009/10 (£)	£237,762,409
17 <b>Marginal cost of increasing weekly limit (£)</b>	
18 Expected marginal payments in 2009/10 (£)	£29,322,669
19 Expected marginal payments (excluding SRP) in 2009/10 (£)	£12,730,383

Relationship between columns:  $5=(4-3/3)*100$ ;  $7=1*5$ ;  $8=2*5$ ;  $12=(11-10/10)*100$ ;  $15=7*12$ ;  $16=8*12$ ;  $18=15-7$ ;  $19=16-8$

1,2 and 3 data comes from the Insolvency Service

10, 11 current policy and proposed amendment



## Summary: Intervention & Options

<b>Department /Agency:</b> BIS (formerly known as BERR, Department for Business, Enterprise and Regulatory Reform )	<b>Title:</b> Final impact Assessment of amendment to the National Minimum Wage regulations 2009	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 08 June 2009
<b>Related Publications:</b>		

Available to view or download at:

<http://www.berr.gov.uk/files/file51722.pdf>

Contact for enquiries: Asad Ghani/Rob Cottam

Telephone: 020 7215 1627/0169

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

The National Minimum Wage (NMW) is part of the government’s strategy to provide fair standards in the workplace by avoiding potential exploitation of workers by employers who in the absence of a NMW would undercut competitors by paying unacceptably low wages. The NMW came into force in April 1999 and since then the NMW rates have been updated annually. The government has accepted the Low Pay Commission’s (LPC) recommendations on the new October 2009 rates for the NMW. This impact assessment also looks at amending exemptions of the NMW to cover Erasmus students and Comenius assistants.

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

The NMW sets a wage floor below which pay cannot fall ensuring fair standards in the workplace. The aim when setting the rates is to help the low paid through an increased minimum wage, while making sure that we do not damage their employment prospects by setting it too high. Extending the NMW exemption to Erasmus students and Comenius assistants will bring the treatment of these groups in line with others on the European Union Lifelong Learning programme.

**What policy options have been considered? Please justify any preferred option.**

The NMW policy targets an improvement in the wage rates of those earning low wages. The NMW rates are reviewed by the independent LPC annually. The LPC carries out a wide ranging consultation on the operation of the NMW and takes account of the economic position before recommending rates. DIUS and BERR have carefully considered amending exemptions to the NMW to cover Erasmus students and Comenius assistants.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The government has again asked the Low Pay Commission to monitor, evaluate and review the National Minimum Wage and its impact. The LPC will be producing an annual report as usual.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:

Pat McFadden, Minister of State (Business)

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Business - £0 million cost from proposed 2009 rates.
	One-off (Transition)	Yrs	
	£ 0 million	1	
	Average Annual Cost (excluding one-off)		
£ £0 million	1	<b>Total Cost (PV)</b>	£ 0 million
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Workers - £0 million benefit from the proposed 2009 rates.
	One-off	Yrs	
	£ 0 million	1	
	Average Annual Benefit (excluding one-off)		
£ £0 million	1	<b>Total Benefit (PV)</b>	£ 0 million
Other <b>key non-monetised benefits</b> by 'main affected groups'			

### Key Assumptions/Sensitivities/Risks

We assume that the NMW would have increased by average earnings, excluding bonuses (in the absence of any regulation) and this assumptions leads to a £0million impact on costs and benefits. The cost and benefits are transfers.

Price Base Year 2009	Time Period Years 1	<b>Net Benefit Range (NPV)</b> £ 0	<b>NET BENEFIT (NPV Best estimate)</b> £ 0
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	1 <sup>st</sup> Oct 2009			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?				
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ Negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off) (n/Q = not quantifiable)	Micro NQ	Small NQ	Medium NQ	Large NQ
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0
<b>Net Impact</b>			£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

### **A: Strategic overview**

#### *Existing Government initiatives*

#### **NMW uprating**

The NMW was introduced in April 1999. The rates have increased in a number of steps annually, most recently in October 2008. The adult minimum wage rate has increased from £3.60 in April 1999 to £5.80 (to come into effect in October 2009). The development rate of the NMW has also increased from £3.00 in April 1999 to £4.83 (to come into effect in October 2009). The 16-17 year olds rate was only introduced in October 2004 and has increased from £3.00 to £3.57 (to come into force in October 2009).

#### **Amending NMW exemptions**

The European Union Lifelong learning programme (LLP) aims to support member states policies on employability, lifelong learning and social exclusion by providing opportunities for mobility between member states, including work experience placements.

Authors of the LLP took the decision to move higher education participants in vocational training from the Leonardo Da Vinci Programme into the Erasmus programme in order to keep all higher education activities together. An exemption was created in 2007 through the National Minimum Wage Regulations 1999 (Amendment) Regulations 2007 - for participants in Leonardo. It does not cover those taking part within Erasmus – although the intention was to include this group.

Comenius Assistants are one stream of the Comenius Programme, which is part of the LLP. They can come from all LLP countries (EU, EFTA-EEA, Turkey, Overseas Territories) and work as classroom assistants within UK schools for between 13 and 45 weeks, for up to 16 hours per week (spread across up to three UK schools). Comenius Assistants receive stipend support (intended to contribute towards travel and living costs) from the Comenius National Agency of their home country of up to 6,224 euros for the first 13 weeks, and up to 271 euros per week thereafter.

Comenius Assistants are selected by the Comenius National Agency of their home country. Their hosting schools in the UK are selected by the UK Comenius National Agency, the British Council. Hosting schools are not required to pay a wage to the Comenius Assistants.

Comenius Assistants are thus work placements in exactly the same way as are the work placements carried out under the EU's Leonardo da Vinci Programme. Hence Comenius assistants should also be subject to the same exemption as participants in Leonardo.

The scope of this policy change is relatively small and further details can be found in annex C.

## **B: The issue**

### **NMW uprating**

Decisions on the NMW rates are made by the government following consideration of recommendations by the independent LPC. The LPC reports contain a large body of evidence and analysis on the impact to date of the NMW. The evidence and data collected and produced by the LPC have been used to inform this IA<sup>21</sup>.

#### **Consultation**

##### *Within government*

BERR has been working closely with DIUS and HM Treasury.

##### *Public consultation*

The LPC consulted a range of stakeholders including employee and employer organisations to recommend new updated NMW rates. A full list of those consulted can be found in the LPC report<sup>22</sup>.

## **C: Objectives**

##### *Background*

### **NMW uprating**

The purpose of the NMW is to create a minimum pay level and thus to protect workers from unacceptably low rates of pay. The NMW forms part of the government's policies to make work pay, alongside other measure particularly tax credits.

Decisions on the NMW rates are made by the government following consideration of recommendations by the independent LPC. This year the LPC were given a few months longer to prepare their report so that more recent economic data could be examined compared to previous years.

## **D: Options identification**

### **Options**

#### **NMW uprating**

The LPC in their latest report to the government have recommended the following NMW rates:

Adult rate (for workers aged 22+)	£5.80
Development rate (for workers aged 18-21)	£4.83
16-17 year olds rate	£3.57

<sup>21</sup> National Minimum Wage , Low Pay Commission report 2009  
(<http://www.lowpay.gov.uk/lowpay/report/pdf/7997-BERR-Low%20Pay%20Commission-WEB.pdf>)

<sup>22</sup> National Minimum Wage , Low Pay Commission report 2009  
(<http://www.lowpay.gov.uk/lowpay/report/pdf/7997-BERR-Low%20Pay%20Commission-WEB.pdf>)

The LPC has recommended this latest rate rise after a wide ranging consultation and careful consideration of economic evidence and the impact on the employment prospects of low paid workers. The government has accepted this recommendation and the new NMW rates will come into force in October 2009.

The government accepts the LPC's analysis, that these proposals represent an acceptable balance between maintaining and enhancing the value of the NMW and preserving employment prospects for many of the most vulnerable workers. The LPC's analysis is set out in their report.

## **E: Analysis of options**

### ***Costs and Benefits***

#### **NMW uprating**

The NMW is now a recognised part of employment practices and implementation costs of administering the proposed increase will be minimal.

#### **Business sectors affected**

All sectors are affected by the NMW, although agriculture has its own minimum wage machinery. The agriculture minimum wage rate for grade 1 workers over the compulsory school age is £5.74 and the pay rates for Grade 2-6 workers is £6.26 per hour<sup>23</sup>. In practice, the impact of the NMW is most felt in a number of sectors: retail; hospitality; cleaning and security; social care; manufacture of textiles, clothing and footwear; and hairdressing. In their report, the LPC paid particular attention to these sectors.

#### **Number of potential workers covered by the NMW uprating**

The latest data relating to the low paid jobs in the UK relates to Spring 2008. The data shows that at that time:

- an estimated 1.4 million jobs held by those aged over 21 were paid below the proposed October 2009 NMW adult rate of £5.80.
- an estimated 0.14 million jobs held by those aged between 18 and 21 were paid below the proposed development rate of £4.83 for October 2009.
- an estimated around 36,000 16-17 year olds were earning less than £3.57 – the proposed rate for 16-17 year olds from October 2009.

The numbers of jobs that are actually covered by the proposed increases in October 2009 will depend upon what has happened, and is likely to happen, to the wages of workers in the period between Spring 2008 and October 2009.

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<sup>23</sup> Further details on the agricultural minimum wage can be found at <http://www.defra.gov.uk/farm/working/agwages/pdf/awo08.pdf>

The adult and development rates of the NMW were increased to £5.73 and £4.77, respectively, in October 2008, and it is assumed that these changes fed through into earnings for all workers earning below those levels. We are assuming full compliance with the NMW<sup>24</sup>. The vast majority of businesses are compliant with NMW.

### Increase in NMW rates from October 2009

In this IA, our main assumption is that the hourly pay of all those earning less than the October 2009 rates increases in line with average earnings growth (measured by the Average Earnings Index excluding bonuses) between Spring 2008 and October 2009. This is based on an average increase using actual data for the period April 2008 to February 2009,<sup>25</sup> and a forecast rate of increase thereafter derived from the HM Treasury comparison of independent economic forecasts.<sup>26</sup>

On this assumption, around 950,000 workers will be covered by the proposed October 2009 NMW uprating. This comprises of around 30,000 16-17 year olds; around 100,000 18-21 year olds, and around 0.82 million workers aged 22 and over.<sup>27</sup> Of the around 1 million covered by the NMW uprating, around two-thirds will be women.

### **Impact on labour costs of uprating**

The impact of the upratings on wage and labour costs also depends upon the assumptions made about the likely path of wage increases between October 2007 and October 2008.

The methodology for estimating the increase in wage costs for the uprating is as follows:

- We calculate the additional average hourly uplift in pay that is required to bring all those jobs paying less than the October 2009 proposed rates onto the minimum wage. The size of this average increase will depend on the assumption made about what happens to earnings in these low paid jobs between October 2008 and October 2009. It is assumed that there is full compliance with the October 2008 rate<sup>28</sup>. Multiply this average increase per hour by the average number of hours worked by those workers affected. The latest data<sup>29</sup> shows average hours worked per week excluding overtime was 26.0 hours for low paid 16-17 year olds; 24.7 hours for low-paid adults (22 and over) and 26.9 hours for low-paid 18 to 21 year olds<sup>30</sup>;
- Multiply by 52 weeks per year.
- Multiply by the number of potential beneficiaries (see above).

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<sup>24</sup> It is very difficult to measure the precise level of non-compliance using ASHE data as there are exemptions from paying the NMW. The Low Pay Commission include a chapter on this issue in their annual report <http://www.lowpay.gov.uk/lowpay/report/pdf/7997-BERR-Low%20Pay%20Commission-WEB.pdf>

<sup>25</sup> Average earnings (including bonuses) grew by 2.2% April 2007 -January 2008. ONS Average Earnings Index (LMNQ).

<sup>26</sup> Source: <http://www.hm-treasury.gov.uk/d/200904forecomp.pdf>

Independent average forecast for AEI growth in 2008 was 4.0 per cent in March 2008.

<sup>27</sup> This is calculated by deflating the October 2009 proposed rates by actual and forecast headline average earnings growth (excluding bonuses).

<sup>28</sup> Although full compliance with the October 2008 rates indicate presumed minimum rates of pay of £5.73/£4.77, we need to maintain a constant price base. So, we deflate these presumed minima to take account of 6 months of earnings growth between April and October 2008 under the AEI scenario.

<sup>29</sup> Source: April 2008 Annual Survey of Hours and Earnings.

<sup>30</sup> Low pay defined by hourly pay excluding overtime in April 2008 for all ages earning less than or equal to the October 2009 minimum wages, deflated by 18 months AEI growth to give equivalent April 2008 rates.

To go from the total wage bill to total labour costs, we add 15 per cent to take account of the cost to employers of National Insurance and any other non-wage benefits (such as pension contributions) that are linked to wages. We use a figure of 15 per cent, which is less than the 21 per cent figure used in other IAs, because low-paying jobs are likely to be associated with smaller non-wage benefits.

It should be noted that the IA only considers the direct impact of the uprating. This means we have not accounted for additional costs to employers or benefits to workers (earning above the NMW) as a result of the uprating.

The size of the average hourly increase in pay that employers are required to pay to comply with the minimum wage policy depends on the assumption made about what happens to low-paid earnings between April 2008 and October 2009. We assume that in the absence of any uprating, earnings would have risen in line with average earnings (excluding bonuses).

### **Costs for a typical business**

The proposed changes to the October 2009 rates represent an increase of 1.2 per cent on the current rate for adults; 1.3 per cent for 18 to 21 year olds and 1.1 per cent on the current rate for 16-17 year olds. Those employers with staff currently paid at or close to the minimum wage will therefore see the earnings of these workers increase by an amount less than the expected growth rate of average earnings (excluding bonuses). At the time of writing this IA HM treasury independent forecasts made in April 2009 forecasted a 2.2% growth rate in average earnings (including bonuses)<sup>31</sup>. However, most workplaces do not employ people at or near current NMW rates and therefore will be unaffected.

Under our assumption that low pay wages would have risen in line with average earnings (excluding bonuses) in the absence of an uprating the estimated **cost impact of the 2009 rates is assumed to be zero**.

BERR has conducted some sensitivity analysis of the counterfactual assumption used in this IA and concluded that if the adult NMW was increased by around 2.4% to £5.87 this would start to impose an additional cost on business.

### **Benefits**

#### **Increase in minimum wage rates in October 2009**

The aggregate additional benefit for workers is expected to be neutral in the year commencing October 2009. This is because the minimum wage will rise less than the expected average earnings growth.<sup>32</sup>

### **F: Risks**

The estimates of costs and benefits presented in this impact assessment are necessarily based upon a number of assumptions which are subject to uncertainty. If our counterfactual assumption that wages would have increased by average earnings (excluding bonuses) turns out to be incorrect and instead wages would have increased by an amount lower than the increase in the NMW this would place a cost on business.

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<sup>31</sup> To note independent forecasters only forecast average earnings including bonuses hence we assume in this IA that this forecast will be the same for average earnings excluding bonuses.

<sup>32</sup> IA calculations assume on average hours worked per week of 25.1 for adults, and 27.2 for 18-21 year olds and 31.3 for 16-17 year olds. ASHE 2008. We also assume that the NMW would have grown in-line with Average Earnings if there was no uprating.

## G: Enforcement

The NMW is enforced by the HM Revenue and Customs. HMRC respond to complaints about situations where workers may not be being paid NMW. They also visit employers identified through risk assessment. Individuals may also make a complaint to an Employment Tribunal that their employer has not paid them the NMW. Employers found to have underpaid their workers NMW are required to pay arrears (at the current NMW rates) to their workers and may be subject to a penalty.

## H: Recommendation and summary table of costs and benefits

### NMW uprating

Table 1 below, shows the effect on the aggregate wage bill and labour costs of the October 2009 uprating under the assumption that in the absence of any uprating, low-paid earnings would have risen in line with average earnings (excluding bonuses).

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**Table 1: Impact of the October 2009 uprating on aggregate wage and labour costs (assumes low-paid earnings rise in line with average earnings, (excluding bonuses))**

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Increase in wage bill for proposed 2009 rates	£0 million
Percentage increase in economy's total wage bill due to uprating	0.0%
Increase in labour costs for proposed 2009 rates	£0 million

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Source: BERR estimates, based on ONS sources.

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Table 1 shows that employers face no additional cost (over and above what they would in any case have to pay their workers) because the NMW is not rising faster than average earnings (excluding bonuses) in October 2009.

### Amending NMW exemptions

Exempt Erasmus students seeking work placements and Comenius assistants (classroom assistants within UK schools) from payment of the National Minimum Wage.

## I: Implementation

The new NMW rates and amendments to the NMW exemptions will apply to pay reference periods beginning on or after 1 October 2009. HMRC investigate complaints about situations where workers may not be being paid the NMW and also investigate companies where HMRC believe there is a high risk of non-compliance.



## **J: Monitoring and evaluation**

The government has asked the LPC to monitor, evaluate and review the NMW and its impact, with particular reference to the effect on pay, employment and competitiveness in the low paying sectors and small firms; the effect on different groups of workers, including different age groups, ethnic minorities, women and people with disabilities and migrant workers and the effect on pay structures. The report is due by the end of February 2010.

Information on enforcement is set out in the government's evidence to the LPC. The evidence is published on the BERR website and copies are placed in House Libraries.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

## Annex A

### Coverage estimates of the 2009 uprating by sex and Government Office region

BERR estimates that around 950,000 to a million workers are covered by the October 2009 uprating of the National Minimum Wage (NMW). The lower range of this estimate is based on 1p pay bands from the ONS' Annual Survey of Hours and Earnings (ASHE) 2008, and takes account of actual and forecast average earnings growth (excluding bonuses) between April 2008 and October 2009. The higher range reflects uncertainty. Of the workers estimated to be covered, around two thirds will be women.

**Table A1. Number of workers that are covered by the October 2009 National Minimum Wage uprating by age and sex**

	Male	Female	Total
16-17	20,000	10,000	30,000
18-21	60,000	40,000	100,000
22 and over	270,000	540,000	820,000
<b>Total</b>	<b>350,000</b>	<b>600,000</b>	<b>950,000</b>

Source: BERR estimates based on ONS' Annual Survey of Hours and Earnings (ASHE) 2008

Note: These data are based on 1p pay bands from the ONS ASHE and take account of actual and forecast average earnings inflation between the period Spring 2008 and October 2009; ASHE 1p pay bands measure number of jobs; therefore coverage estimates assume workers do not hold more than one job at the NMW. Figures have been rounded to the nearest 10,000. Numbers may not sum to total due to rounding.

Coverage estimate by country and Government Office region are also provided (Table A2).

**Table A2. Number of workers that are covered by the October 2009 National Minimum Wage uprating by country and government office region**

Country or region	Coverage estimate
Wales	50,000
Scotland	80,000
<i>Northern Ireland</i>	40,000
<b>England</b>	<b>770,000</b>
North-East	60,000
North-West and Merseyside	110,000
Yorkshire & Humberside	100,000
East Midlands	80,000
West Midlands	110,000
Eastern	90,000
London	70,000
South East	100,000
South West	70,000
<b>United Kingdom</b>	<b>950,000</b>

Source: BERR estimates based on ONS' Annual Survey of Hours and Earnings (ASHE) 2008

Note: These data are based on 1p pay bands from the ONS ASHE and take account of actual and forecast average earnings inflation between the period Spring 2008 and October 2009; ASHE 1p pay bands measure number of jobs; therefore coverage estimates assume workers do not hold more than one job at the NMW. Figures have been rounded to the nearest 10,000. Numbers may not sum to total due to rounding.

## Annex B

### SPECIFIC IMPACT TESTS

#### 1. Competition Assessment

The NMW provides a floor for wages and therefore ensures that firms cannot compete against each other by driving down wages to unacceptable levels. Most of the sectors where the impact of the NMW is felt are characterised by large numbers of relatively small firms. To the extent that the NMW increases labour costs, these are borne by all employers in a sector. It is therefore unlikely that the NMW creates significant barriers to entry.

We have fully considered the questions posed in The Office of Fair Trading competition assessment test<sup>33</sup> and conclude that clarifying the exemptions for those participating in employment programmes, extending work trials or uprating the NMW is unlikely to hinder the number or range of suppliers or the ability and incentive for businesses to compete. Although the effects of extended work trials alone are expected to be small, it supports an increase in labour supply, increasing the efficiency of the supply side of the labour market.

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**Table A1. Competition assessment.**

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BERR

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#### 2. Small Firms Impact Test

The LPC's remit required them to consider the impact of the NMW on small firms. Their recommendations were based upon extensive analysis and gathering of evidence, including evidence received from, and discussion with, small businesses and their representatives.

#### 3. Equality Impact Assessment

##### NMW uprating

In line with better regulation best practice and the Equalities Duties we have considered the impact of the NMW uprating on minority groups.

##### *Who will be affected?*

The Low Pay Commission has carefully monitored the position of women, ethnic minorities and people with work limiting disabilities in relation to the NMW uprating.

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<sup>33</sup> [http://www.oft.gov.uk/shared\\_oftr/reports/comp\\_policy/oft876.pdf](http://www.oft.gov.uk/shared_oftr/reports/comp_policy/oft876.pdf)

## Gender

There is a higher prevalence of women in part-time roles and low-paying sectors, which suggests that the National Minimum Wage upratings plays a more important role in raising women's wages than men's. Although, the NMW is still important for men on or around the NMW. The gender pay including and above the middle of the earnings distribution is largely independent of the NMW. However, towards the lower end of the distribution the reduction in the gender pay gap is most obvious, declining from 11.6 per cent in 1998 to 7.1 per cent in 2008 – lowest decile.

The general reduction in the gender pay gap since 1998 provides evidence that the minimum wage is having a greater impact on women's earnings than men's.

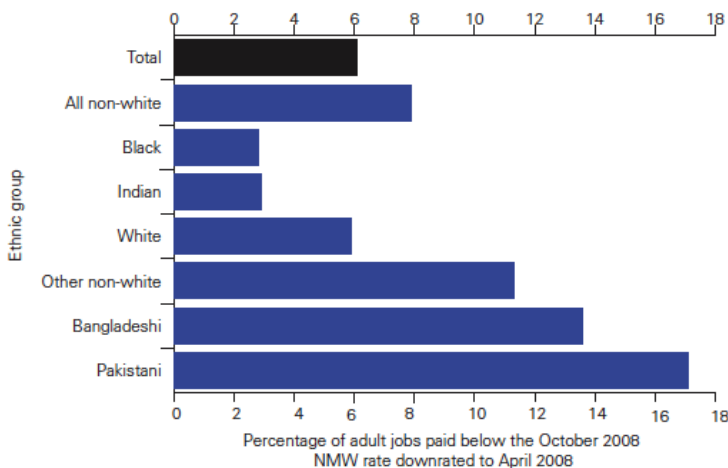
We estimate that around 600,000 women will be covered by the October 2009 upratings.

## Ethnicity

Workers from the ethnic minorities are more likely to be employed in the low paying sectors as compared to their white counterparts. There is evidence that the minimum wage has significantly reduced the pay gap at the lowest decile. An estimate by the LPC suggests that the proportion of ethnic minority adults covered by the October 2008 minimum wage uprating was around 8 per cent which is 2 percentage points higher than for white adults.

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### Coverage of the minimum wage for ethnic minority groups UK, 2008



Source: ONS estimates based on LFS microdata, not seasonally adjusted, UK, Q2 2008.

Note: Covered employees defined as adults (aged 22 and over) earning less than £5.63 in April 2008

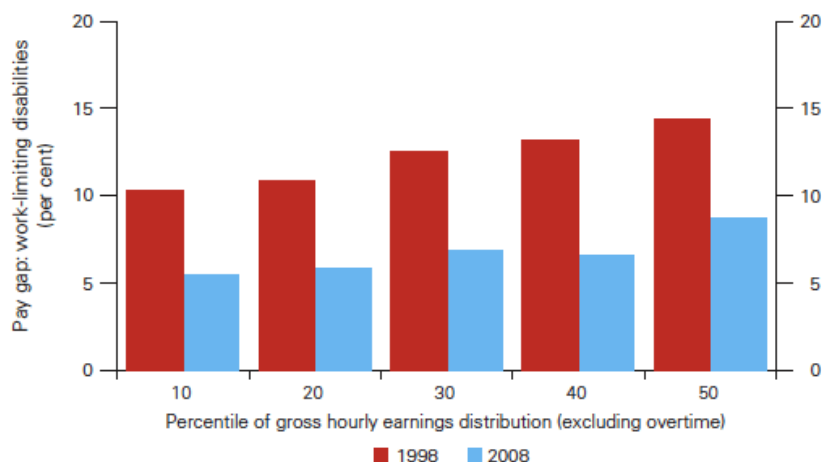
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## Work limiting Disability

The LPC have estimated that 4.3 per cent of people with a work-limiting disability were paid at minimum wage in the second quarter of 2008 compared with 3.1 per cent of all workers. The chart below shows that a pay gap exists, that is median hourly earnings for people with a work limiting disability are lower than for workers without a disability. There is evidence that the minimum wage has caused a reduction in the pay gap at each of the lowest five deciles.

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## Pay gap for people with work limiting disabilities compared with people without work-limiting disabilities, UK, 1998 and 2008.



Source: LPC estimates based on LFS microdata, not seasonally adjusted, UK, spring seasonal quarter 1998 and Q<sup>4</sup> calendar quarter 2008

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## Consultation with stakeholders in relation to the October 2009 uprating of the NMW

The LPC conducted a broad consultation when preparing their report. They consulted with individuals; businesses; groups representing each of the low-paying sectors and employer unions. The LPC carried out two formal written consultations and spent two days taking oral evidence from stakeholders. In addition, the LPC visited different parts of the UK to hear from those who are directly affected by the NMW. The increase in the NMW is unlikely to have any additional intentional specific impact in terms of race, gender and disability as it is a broad policy and is targeted at a broader group of people (paid at or below the NMW) rather than any specific minority group.

### Removal of barriers which hinder equality

The NMW policy is a broad policy and is designed to have a positive impact on all workers in low paid sectors regardless of their gender, race or disability. Therefore the current NMW uprating is unlikely to create any barriers to equality in terms of gender, race and disability. The LPC<sup>34</sup> have concluded that women, ethnic minority groups and people with work-limiting disabilities have become more involved in the labour market over the last ten years and there is no evidence of an adverse impact on their employment due to the minimum wage.

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<sup>34</sup> National Minimum Wage , Low Pay Commission report 2009  
(<http://www.lowpay.gov.uk/lowpay/report/pdf/7997-BERR-Low%20Pay%20Commission-WEB.pdf>)

## **Annex C**

### **Amending NMW exemptions**

Government is seeking to exempt Erasmus students seeking work placements and Comenius assistants (classroom assistants within UK schools) from payment of the National Minimum Wage.

Exempting Erasmus students seeking work placements and Comenius assistants will bring the treatment of these groups in line with others on the EU's Leonardo da Vinci Programme. Their initial exclusion from the NMW exemptions was unintentional. Amending this 'loophole' will also reduce the risk of legal challenge in the European Court of Justice.

The option considered in this impact assessment is to amend Regulation 3(12) of the National Minimum Wage Regulations 1999 so that Erasmus students seeking work placements and Comenius assistants are exempted from NMW pay. This was the original intention of the amendments to the NMW regulations that were made in 2007. This option will bring Erasmus students and Comenius assistants in line with the treatment of all those on the European Union Lifelong Learning Programme. The costs and benefits of this option have been considered against a 'do nothing' baseline.

#### **Costs**

There is no cost implication to the public or private sector to the exemption of higher education students participating in Erasmus work placements, and of Comenius assistants, from the NMW. Participants in these programmes, which are intended to offer students an opportunity of some work experience abroad, receive a grant from the European Commission. Employers providing work placements are not required to pay a wage but may, if they choose to, supplement this grant.

#### **Benefits**

Exempting Erasmus students seeking work placements and Comenius assistants will bring the treatment of these groups in line with others on the EU's Leonardo da Vinci Programme. Their initial exclusion from the NMW exemptions was unintentional. Amending this 'loophole' will also reduce the risk of legal challenge in the European Court of Justice.

These exemptions will allow providers of 'work placement schemes' for Erasmus students and Comenius assistants more flexibility in the pay rate offered and reduces the risk of these schemes being withdrawn on the grounds of cost. In total DIUS estimate that each year around 1,500 Erasmus students and 200 Comenius assistants will be covered by the exemptions.

#### **Equality assessment**

This policy change will affect all Erasmus students seeking work placements and Comenius assistants regardless of their gender, race or disability. Therefore we have concluded that it is unlikely to create any barriers to equality in terms of gender, race and disability.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Business, Enterprise &amp; Regulatory Reform (BERR)</b>	<b>Title:</b> <b>Impact Assessment of the Pregnant Workers Directive</b>	
<b>Stage:</b> Consultation	<b>Version:</b> FINAL	<b>Date:</b> February 2009
<b>Related Publications:</b> Consultation Document		

### Available to view or download at:

<http://www.berr.gov.uk/>

**Contact for enquiries:** Dhiren Patel

**Telephone:** (020) 7215 3945

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

The European Commission published a proposal to amend the Pregnant Workers Directive (92/85/EEC) ("the Directive") in October 2008. The Directive sets down minimum levels of maternity rights, including leave and pay, which Member States must provide.

The rationale for the proposal is to improve work-life balance and protection for pregnant workers and workers who have recently given birth or are breastfeeding. The Government is currently seeking views on the Commissions proposals including the likely costs and benefits. The aim is to inform the UK Government's ongoing negotiations which will take account of existing UK provisions.

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

The revision of the Directive is a step towards the Commission's objective of achieving more gender equality in labour market participation rates and allowing women and men to achieve a better reconciliation of their professional, private and family lives. The Commission's overall objective in amending the Directive is to improve and build upon the common minimum standard of protection already in place across all Member States for pregnant workers and workers who have recently given birth or are breastfeeding. The amending Directive also codifies case law that has arisen in this area since 1996 and brings into the Directive provisions relating to pregnancy which are already in place under the Equal Treatment Directive.

### What policy options have been considered? Please justify any preferred option.

- (i) No action;
- (ii) Non-binding measures such as communication and exchange of information;
- (iii) Legally binding measures – directive or regulations.

The European Social Partners are currently discussing the Parental Leave Directive. In light of this, the Commission believes the revision of the Pregnant Workers Directive is the appropriate starting point and has therefore brought forward its proposals.

See impact assessment (below) for a full explanation of the options. Once a directive has been agreed at EU level, the UK must implement the necessary changes. This assessment assesses the impact of the proposals on UK provisions.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The legislation would be reviewed by the Commission five years after the adoption of the Directive and every five years thereafter.

### **Ministerial Sign-off** For consultation stage Impact Assessments:

*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: February 2009



## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Amend the length of maternity leave, protection from dismissal, suspension from work, right to return, maternity pay, flexible working, and defence of rights.**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Amending the length of compulsory maternity leave to six weeks would incur a cost to the exchequer, small and large firms and individuals who would have returned to work before six weeks.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ N/A</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 6.7m to 6.9m</b>		<b>Total Cost (PV)</b> <b>£ 58m to 60m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Under the proposal of protection from dismissal, firms who employ mothers on Maternity Allowance (MA) with less than six months tenure would have to provide a written reason for dismissal. The right to request flexible working would impact employers as there could be some procedural and accommodation costs.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Mothers would benefit from reduced childcare services as they would be on six weeks compulsory leave rather than two weeks.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ N/A</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 442k to 506k</b>		<b>Total Benefit (PV)</b> <b>£ 3.8m to 4.4m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' The extension of flexible working would result in a better work-life balance for employees, improved health and wellbeing, increased labour supply due to availability of more flexible working opportunities and positive environmental impact, e.g. reduction in commuting. In addition businesses could benefit from the extension of flexible working as there would be lower turnover, increased profits and lower absenteeism.			

**Key Assumptions/Sensitivities/Risks** See impact assessment (below) for a full explanation of the assumptions used for the calculations. Provision in the UK already meets many of the new minimum standards being proposed.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ -54m to -55m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ -54.5m</b>
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What is the geographic coverage of the policy/option?		UK	
On what date will the policy be implemented?		2 years after the directive is agreed	
Which organisation(s) will enforce the policy?		EHRC	
What is the total annual cost of enforcement for these organisations?		£ NK	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		No	
What is the value of the proposed offsetting measure per year?		£ N/A	
What is the value of changes in greenhouse gas emissions?		£ N/A	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro NK	Small NK	Medium NK
Are any of these organisations exempt?	No	No	N/A

<b>Impact on Admin Burdens Baseline</b> (ORC Interim Results - 2008 Prices)		(Increase - Decrease)	
Increase of	£ 0k	Decrease of	£ 0k
<b>Net Impact</b>		<b>£ 0k</b>	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

### A. Strategic Overview

The European Commission published a proposal to amend the Pregnant Workers Directive (92/85/EEC) in October 2008. The Directive sets down minimum levels of maternity rights, including leave and pay, which Member States must provide. The Commission's aim is to contribute to better work-life balance through improving the protections offered to pregnant workers and workers who have recently given birth or are breastfeeding.

This Impact Assessment (IA) covers the impact the proposed changes would have on the UK's provisions. The UK Government has built on the minimum standards set out in the existing Directive and provides a longer period of maternity leave and a higher rate of maternity pay than is currently required.

The Commission's proposal and its Impact Assessment are available from <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=402&furtherNews=yes>

### B. Issue

#### **B1. Groups Affected**

The groups that would be affected by the Directive are; pregnant workers, workers who have recently given birth or are breastfeeding and their employers.

#### **B2. Consultation**

##### **Within Government**

The Department for Business, Enterprise and Regulatory Reform (BERR) has developed these proposals in consultation with the following Government departments: Department for Work and Pensions (DWP) and Government Equalities Office (GEO).

##### **Public Consultation**

This partial IA accompanies a formal public consultation.

#### **B3. Rationale for Government Intervention**

The Directive proposed by the Commission sets down minimum levels of maternity rights, including leave and pay, which Member States must provide. The rationale for the proposal is to improve work-life balance and protection for pregnant workers and workers who have recently given birth or are breastfeeding.

### C. Objectives

#### **C1. Objectives**

The Commission's overall objective in amending the Directive is to improve and build upon the common minimum standard of protection already in place across all Member States for pregnant workers and workers who have recently given birth or are breastfeeding. The amending Directive also codifies case law that has arisen in this area since 1996 and

brings into the Directive provisions relating to pregnancy which are already in place under the Equal Treatment Directive<sup>35</sup>.

The Commission's IA also sets out the following objectives:

The objectives are to contribute to the strategy for more growth and better jobs by achieving more gender equality in labour market participation rates and allowing women and men to achieve a better reconciliation of their professional, private and family lives.

The more specific objectives are (in order of importance) to:

1. Reduce the difference in employment rates of women with and without children;
2. Widen the scope of family-related leave and the conditions for taking it;
3. Reduce the gender imbalance in taking the leave;
4. Give financial support during leave; and
5. Ensure that taking family-related leave does not lead to discrimination or to weakened job security.

## **C2. Background**

The Directive sets out minimum provisions to ensure the health and safety at work of pregnant workers and workers who have recently given birth or who are breastfeeding. The Directive was adopted in 1992 and was transposed into UK law in October 1994. The UK provisions are contained within the Social Security Contributions and Benefits Act 1992 and related regulations plus the Employment Rights Act 1996, and the Maternity and Parental Leave Regulations 1999, supported by the Sex Discrimination Act 1975, as amended.

The proposal would extend the minimum period of maternity leave from 14 to 18 weeks', of which at least six must be taken after birth. The proposal allows for additional leave to be provided in a number of eventualities including late, premature or multiple births. It also introduces the principle of full pay during maternity leave although Member States may set a cap so long as the cap is at least equal to the amount of sick pay a woman would receive. The proposal strengthens the employment rights of workers covered by the Directive: this includes a right to return to the same job or to a suitable alternative; and the right to request flexible working when returning from maternity leave. The proposal also includes protections common to Directives on equal treatment such as transference of the burden of proof and protection from victimisation.

The UK government has worked with employer and employee representatives to create a system which allows both parties to plan ahead and to manage both the maternity absence and return to work. The UK system is in many ways more generous than the proposed minimum standards set by the Commission including: providing 52 weeks' maternity leave; 39 weeks' Statutory Maternity Pay or Maternity Allowance at a higher level than Statutory Sick Pay; the right to return to the same job or to a suitable alternative; and the right to request flexible working for parents of children under six (16 and under from April 2009). In addition, the employment rate of women is fairly high compared to other member states. In 2007, the employment rate of females in the UK was around 65.5 per cent, this compares to the EU-27 average of 58 per cent and EU-15 average of 60 per cent<sup>36</sup>.

## **D. Options**

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<sup>35</sup> Directive 76/207/EEC on the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions as amended by Directive 2002/73/EC, and as recast in Directive 2006/54/EC on the principles of equal opportunities and equal treatment for men and women in matters of employment and occupation.

<sup>36</sup> Eurostat.

## **D1. Option 1**

### **Do Nothing**

Once a directive has been agreed at EU level, the UK must implement the necessary changes or be subject to infraction proceedings. Doing nothing therefore will not be a viable option.

## **D2. Option 2**

### **D2.1 Maternity Leave**

Article 8 of the Directive would be amended to ensure that a longer minimum period of maternity leave is provided to women to enable full recovery from pregnancy and childbirth and to support breastfeeding for a longer period, specifically:

- The minimum period of maternity leave available to workers covered by the Directive would be extended from 14 to 18 continuous weeks, of which at least six weeks would be compulsory after childbirth;
- Women would have complete freedom as to when to take the non-compulsory element of maternity leave;
- In cases of a child being born later than expected, leave would be extended so that there is no reduction in the post-natal portion;
- Additional periods of leave would be provided by Member States in the event of premature births, multiple births, children hospitalised at the time of birth, and new-born children with disabilities. The amount of leave must be proportionate to accommodate the special needs of mothers and their child/children that arise from these events;
- Any period of pregnancy-related sick leave, four weeks or more before childbirth, would not shorten the period of maternity leave.

### **D2.2 Protection from Dismissal**

Article 10(1) would be amended to prohibit employers from dismissing a worker covered by the Directive, or making preparations in order to dismiss a woman, save in exceptional cases not connected with their condition, during the period from the start of pregnancy to the end of maternity leave. Article 10(2) of the proposal would give women who are dismissed during the six months following return from maternity leave the right to written reasons for the dismissal, should they request them. This implements the judgement in *Nadine Paquay v Société d'architectes Hoet* (C 460/06) which found that an employer may not make preparations to dismiss a worker during her maternity leave except where the dismissal is not connected to pregnancy or maternity.

### **D2.3 Suspension from Work**

New Article 11 (1a) would provide that when a pregnant worker is suspended from work during her pregnancy by her employer, because the employer considers her unfit for work even though the worker has not given medical information to support this, the worker is to be entitled to full salary until the start of their maternity leave. This implements the judgement in *Pedersen v Fællesforeningen* (Case C-66/96) which found that an employer may not send home a woman who is pregnant, although not unfit for work, without paying her salary in full when he considers that he cannot provide work for her.

### **D2.4 Right to Return**

New Article 11(2c) would give employees the right to return to their jobs or to equivalent posts on terms and conditions no less favourable than if they had not been absent. This

right is currently provided within the Equal Treatment Directive<sup>37</sup> but was not previously within the Pregnant Workers Directive.

### **D2.5 Maternity Pay**

New Article 11(3) would provide the principle of entitlement to payment of full monthly salary during maternity leave. Member States may place a ceiling on this payment so long as it is not lower than the allowance a woman would receive if she were off work sick.

### **D2.6 Flexible Working**

New Article 11(5) would require Member States to give women returning from maternity leave the right to request changes to their working hours and patterns with an obligation on employers to consider such requests, taking into account business and employee needs.

### **D2.7 Defence of Rights**

Article 12 would be amended to reflect the protections already provided by the Equal Treatment Directive<sup>38</sup>. Changes to the Pregnant Workers Directive would be:

- The transference of the burden of proof in judicial procedures to the respondent;
- Provision for protection from victimisation for those who have brought complaints based on matters protected under the Directive;
- An express requirement that no upper limit can be placed on penalties (including compensation) for breach of provisions within the Directive;
- Existing equality bodies would be given responsibility covering the equal treatment aspects of the proposal. (For Great Britain this would be the Equality and Human Rights Commission, and for Northern Ireland the Equality Commission for Northern Ireland).

## **E. Costs and Benefits**

### **Option 2**

#### **E2.1 Maternity Leave**

##### **Existing UK Provisions**

The UK provides 52 weeks' maternity leave to all employed mothers, which allows a generous period of maternity leave to cover all special circumstances, whilst providing certainty for both the employer and employee as to when the mother should return to work.

UK mothers can choose to start their maternity leave up to 11 weeks before the expected week of childbirth. Maternity leave starts automatically if a woman gives birth before then. If the woman is absent from work due to pregnancy or childbirth in the four weeks prior to the expected week of childbirth, then the employer can automatically start maternity leave.

All UK mothers must take two weeks (or four weeks if employed in a factory) of 'compulsory maternity leave' after childbirth.

The proposals would mean that women could start their maternity leave at any point in their pregnancy, but must take six weeks' maternity leave following childbirth. The 'sickness trigger', which allows employers to automatically start maternity leave where the mother is sick because of her pregnancy within four weeks of the expected week of childbirth, would remain.

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<sup>37</sup> Ibid

<sup>38</sup> Ibid

### Impact of Proposal

The UK provides all employed women with 52 weeks' maternity leave, longer than the 18 week minimum set by the proposal. This allows all mothers the freedom to choose to take as much or as little time off (within overall limits) that they need according to their own circumstances. We therefore do not expect the UK's maternity leave period to be extended as a result of the proposal.

The proposal would require a woman to take six weeks compulsory maternity leave following childbirth. This would pose additional costs and benefits, as currently the UK has two weeks' compulsory maternity leave following childbirth.

### GENERAL ASSUMPTIONS & DATA

- The Maternity Rights Survey (MRS) 2007 found that around 99 per cent of new mothers took at least six weeks or more of maternity leave.
- The table below sets out the proportion of mothers that have taken maternity leave of 6 weeks or fewer:

**Table E2.1.1: Length of Maternity Leave**

Length of leave (weeks)	Per cent	Cumulative Per cent
1	0.2	0.2
2	0.2	0.4
4	0.2	0.5
5	0.1	0.6
6	0.4	1.0

Source: MRS 2007

- In 2008/09 there are expected to be around 329k mothers on Statutory Maternity Pay (SMP) and around 58k on Maternity Allowance (MA)<sup>39</sup>.
- The table below shows a breakdown of the number of mothers receiving SMP and MA during maternity leave in 2008/09:

**Table E2.1.2: Number of Mothers on Maternity Leave**

Length of leave (weeks)	SMP	MA*
1	327,956	57,884
2	327,463	57,797
4	326,970	57,710
5	326,642	57,652
6	325,327	57,420

\* We applied the same length of leave to the MA figures as we were unable to obtain a breakdown for mothers on MA.

Source: MRS 2007

- The Annual Survey of Hours and Earnings (ASHE) 2008 shows that the mean weekly pay for female employees is around £359.30. Assuming that wages would rise by 3.5 per cent in 2009, the average weekly pay would be around £371.88. As the first six weeks of SMP is 90 per cent of a mothers' salary, the average weekly pay would be around £334.69.
- MA in 2009 will be around £123.06 per week<sup>40</sup>.

<sup>39</sup> Source: DWP.

<sup>40</sup> The 2009 MA rate is likely to come into effect from April 2009. However, it is subject to Parliamentary approval.

- We assume that mean weekly earnings of female employee jobs where the mother is entitled to MA are likely to be around £246.85.<sup>41</sup>
- When calculating the cost to firms we assume a 21 per cent mark-up for non-wage costs. Therefore a female employees weekly pay would be around £449.97 and weekly earnings for females on MA would be around £298.69.
- The Labour Force Survey (LFS) shows that in 2007, of the females interviewed, around 36 per cent worked for an organisation with less than 25 employees.<sup>42</sup>
- It is assumed that 70 per cent of larger employers and 40 per cent of smaller employers accommodate maternity leave through temporary replacement.<sup>43</sup>
- The costs of extending the employment of temporary replacement are assumed to be 3 per cent to 5 per cent of weekly labour costs. The costs of internal allocation are assumed to be around 9 per cent to 15 per cent of weekly labour costs.<sup>10</sup>
- Statistics from the Day Care Trust show that the cost of childcare for a child under 2 in 2008 was between £139 and £159 per week. Assuming a 3.5 per cent increase to adjust to 2009 prices, the cost would amount to around £143.87 to £164.57 per week. The Maternity Rights and Mothers Employment Decisions<sup>44</sup> found that 30 per cent of mothers use formal childcare services.

## COSTS

Given that under the new proposal, mothers will have to take six weeks' compulsory maternity leave, the additional cost would arise from the 1 per cent of mothers who currently take less than six weeks maternity leave.

The additional cost to the Exchequer from paying SMP to mothers for six weeks compulsory leave would be around £3.5m per year. For paying MA it would be around £225k per year.

Large firms are reimbursed at a rate of 92 per cent; therefore the additional cost to them would be around £176k per year. Furthermore, the additional cost to employers (small and large) of covering for absence would be around £2.2m to £2.4m per year.

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<sup>41</sup> The 2005 Work & Families Regulatory Impact Assessment (RIA) estimates that in 2007/08, MA weekly earning would be around £238.58. To adjust for 2008/09 prices we assume a 3.5 per cent increase.

<sup>42</sup> The 2005 Work & Families RIA uses 25 employees or less as the cut-off. For the purpose of this IA, we will use the same cut-off.

<sup>43</sup> This was used in the 2005 Work & Families RIA, and we assume the same ratios for 2008.

<sup>44</sup> <http://www.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf>

There is also a potential cost to mothers, as those who would have returned to work before six weeks' would now not be able to under the new proposals. Therefore, these mothers would not be earning their full salary. We estimate that the cost to individuals claiming SMP would be around £385k per year, and the cost to mothers on MA would be around £226k/year.

**Table E2.1.3: Summary of Costs**

	£/year
Costs to the Exchequer	£3.7m/year
Costs to Firms (Small )	£759k - £843k/year
Costs to Firms (Large)	£1.6m - £1.7m/year
Costs to Individuals	611k/year
<b>TOTAL</b>	<b>£6.7m - £6.9m/year</b>

## BENEFITS

As mothers will be on compulsory six weeks' leave, they would benefit from savings associated with not having the need for childcare services. From the difference between the number of mothers who would be required to take compulsory leave and those that currently take six weeks, we estimate that the benefits of these savings would be around £442k to £506k per year.

Benefits to employers would be that mothers would have more time to recover from giving birth and therefore are more likely to be productive when they return to work should they decide to after the compulsory six weeks. However, without better data, we are unable to quantify this benefit.

**Table E2.1.4: Summary of Benefits**

	£/year
Benefits to Individuals	£442k - £506k/year
Benefits to Firms (Small & Large)	Productivity might increase (not quantified)
<b>TOTAL</b>	<b>£442k - £506k/year</b>

## E2.2 Protection from Dismissal

### Existing UK Provisions

In the UK, the Employment Rights Act 1996 and the Employment Rights (Northern Ireland) Order 1996 (both as amended) provide protection from dismissal or detriment for reasons related to pregnancy or maternity leave for workers covered by the Directive.

All UK employees who have been continuously employed for a period of one year or more are entitled to request a written statement of reasons for dismissal. A woman dismissed during her pregnancy or maternity leave also is entitled to request written reasons for her dismissal, regardless of how long she has been employed and regardless of whether she requests a written statement.

### Impact of Proposal

Women without the qualifying length of service, i.e. those who are dismissed within six months of return and who have less than 12 months service with their employer in total (including their period of maternity leave), would, under this proposal be eligible to request written reasons for dismissal. Without better data we are unable to quantify the costs and



benefits. The table below shows a summary of the qualitative costs and benefits of this option.

**Table E2.2.1: Summary of Costs & Benefits**

Costs	Benefits
Firms would have to provide a written reason for dismissal if woman is dismissed (not quantified)	Individuals would be entitled to request written reasons for dismissal (not quantified)

### **E2.3 Suspension from Work**

#### Existing UK Provisions

Under UK law, an employee who has been suspended from work on maternity grounds is entitled to payment equivalent to full salary during the suspension until maternity leave begins.

#### Impact of Proposal

None.

### **E2.4 Right to Return**

#### Existing UK Provisions

In the UK an employee returning to work before or at the end of Ordinary Maternity Leave (weeks 1 – 26 of maternity leave) has the right to return to the same job on the same terms and conditions as if they had not been absent. This also applies to an employee returning during or at the end of Additional Maternity Leave (weeks 27- 52 of maternity leave), unless it is not reasonably practicable for the employer to keep the original job open. In that case, the employee must be offered suitable and appropriate alternative work with terms and conditions no less favourable than if she had not been absent.

#### Impact of Proposal

None.

### **E2.5 Maternity Pay**

#### Existing UK Provisions

Statutory Maternity Pay is paid at 90 per cent of average earning with no upper limit for the first six weeks and a maximum of £123.06 for the remaining 33 weeks. State paid Maternity Allowance is similar but with a ceiling of £123.06 throughout the 39 weeks of payment. This ceiling is set considerably above the level of Statutory Sick Pay (SSP) which is £79.15<sup>45</sup>.

#### Impact of Proposal

Member States will be permitted to set a cap, so long as that is not less than a woman would receive if she were on sick leave. In negotiations we are seeking to clarify the level of the permitted cap. However for the purposes of this Impact Assessment we have assumed that we would be able to retain our standard rate of SMP as a ceiling on maternity pay since this is more than the SSP a woman would receive.

### **E2.6 Flexible Working**

#### Existing UK Provisions

Parents of children aged under six years or disabled children under 18 years, who have worked for their employer for six months or more, have the legal right to apply to work flexibly and their employers have a duty to consider these requests seriously. Employers may refuse a request on one of a number of specified business grounds.

<sup>45</sup> Likely to come into affect in April 2009.

The UK Government has announced its intention to extend this provision to parents of children 16 and under from April 2009.

### Impact of Proposal

Mothers who return back to the same employer, who have less than six months tenure (including the period of maternity leave), will be eligible to request flexible working. This right to request flexible working would pose additional costs and benefits.

Annex A2 shows a breakdown of the number of mothers that would be affected by this proposal. Given the small numbers, we have not quantified the costs and benefits as the overall impact would be negligible. The table below provides a qualitative summary of the likely costs and benefits of this option.

<b>Costs</b>	<b>Benefits</b>
Procedural costs arising from exercise of the right to request flexible working (not quantified)	Benefits from lower labour turnover (not quantified)
Costs of accommodating requests, when they are accepted (not quantified)	Benefits from increased productivity (not quantified)
	Benefits from lower absenteeism (not quantified)
	Better work-life balance for employees (not quantified)
	Increased labour supply due to availability of more flexible working opportunities (not quantified)
	Improved health and wellbeing (not quantified)
	Positive environmental impact, e.g. a reduction in commuting as a result of enabling more employees to work from home (not quantified)

## **E2.7 Defence of Rights**

### Existing UK Provisions

The proposal would transfer the burden of proof in judicial procedures to the respondent; require protection from victimisation for those who have brought complaints based on matters protected under the Directive; require that no upper limit can be placed on penalties (including compensation) for breach of provisions within the Directive. The proposed amendments reflect the protections already provided by the Equal Treatment Directive which has been implemented in the UK. In the UK, the Sex Discrimination Act 1975 and the Sex Discrimination (Northern Ireland) Order 1976 (both as amended) already provide these protections for those bringing a claim on the grounds of sex discrimination, including pregnancy and maternity discrimination.

### Impact of Proposal

In negotiations we are clarifying whether these provisions apply only to cases where equal treatment is the primary concern. As the UK has already implemented the Equal Treatment Directive we do not expect a change to be necessary.

## F. Risks

The estimates of costs and benefits presented in this impact assessment are necessarily based upon a number of assumptions. We will continue to firm up our estimates for the final impact assessment as new data and information becomes available.

## G. Enforcement

The policy will be enforced by the Equality and Human Rights Commission (EHRC) and individual complaints made to the Tribunals Service.

## H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

<b>Table H.1 Summary of Costs and Benefits</b>		
<b>Proposal</b>	<b>Cost</b>	<b>Benefit</b>
<b>E2.1</b>	£6.7m - £6.9m/year	£442k - £506k/year Productivity might increase (not quantified)
<b>E2.2</b>	Firms would have to provide a written reason for dismissal (not quantified)	Individuals would be protected from dismissal (not quantified)
<b>E2.6</b>	Procedural costs arising from exercise of the right to request flexible working (not quantified)	Benefits from lower labour turnover (not quantified)
	Costs of accommodating requests, when they are accepted (not quantified)	Benefits from increased productivity (not quantified)
		Benefits from lower absenteeism (not quantified)
		Better work-life balance for employees (not quantified)
		Increased labour supply due to availability of more flexible working opportunities (not quantified)
		Improved health and wellbeing (not quantified)
		Positive environmental impact, e.g. a reduction in commuting as a result of enabling more employees to work from home (not quantified)
<b>TOTAL</b>	<b>£6.7m - £6.9m/year</b>	<b>£442k - £506k/year</b>

## I. Implementation

The Commission's proposal is that Member States should implement the proposed directive within two years of its adoption.

## J. Monitoring and Evaluation

The legislation would be reviewed by the Commission five years after the adoption of the Directive and every five years thereafter. Monitoring and evaluation of the measures within the UK will be carried out through surveys of employers and employees. BERR and DWP conducts surveys of this nature, recent examples include the *Maternity rights and mothers' employment decisions*<sup>46</sup> and *Maternity and Paternity Rights and Benefits: Survey of Parents 2005*<sup>47</sup>. It is likely that the next survey will be carried out in two – three years time.

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<sup>46</sup> <http://www.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf>

<sup>47</sup> <http://www.berr.gov.uk/files/file27446.pdf>

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

## A1. Specific Impact Assessments

### **Competition Assessment**

No option would directly limit the range of suppliers as new firms can enter the market to supply individuals. Firms will enter the market if it is economically viable for them to do so. No option would indirectly limit the number of suppliers. This is because the proposals are not likely to significantly raise the costs of new entrants relative to existing ones. No option would limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Thus we do not consider that the Regulation changes would cause a significant detriment to competition.

### **Small Firms Impact Test**

The proposed changes apply to firms of all sizes. Without better data it is not possible to breakdown the number of female employees by the size of organisation they work in. However, it is judged that the impact is not significant or disproportionate, as the same costs would be borne by all businesses.

### **Equality Impact Test**

The proposed changes apply to female workers that are either pregnant, new mothers or breastfeeding. However, the impact would not be disproportionate as most of the amendments being proposed are already implemented in the UK and employers would still have to comply with the Sex Discrimination Act.

The proposed changes would not have a disproportionate effect by race or disability.

## A2. Flexible Workers

	2008/09	Notes
MA (Employees)	20,500	<i>This figure excludes the self-employed, and mothers on MA with more than six months tenure. Source: DWP</i>
% return to same employer	53%	<i>Source: Maternity Rights and Mothers Employment Decisions</i>
MA	10,931	
Length of Leave	1%	<i>% of mothers on MA who took less than 26 weeks Maternity Leave. <a href="http://www.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf">http://www.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf</a></i>
<b>Entitled Employees</b>	<b>77</b>	
<b>Eligibility</b>		
Entitled Employees	77	
% that made a request	38%	<i>Source: Third Work-Life Balance Survey - pg 55 <a href="http://www.berr.gov.uk/files/file38388.pdf">http://www.berr.gov.uk/files/file38388.pdf</a></i>
Number of Requests	29	
Deadweight Request	30%	<i>Assumption. Deadweight is defined as request that would have occurred already</i>
	23	
New Requests	6	
Acceptance Rate (1st Stage)	87%	<i>Source: Third Work-Life Balance Survey - pg 58 <a href="http://www.berr.gov.uk/files/file38388.pdf">http://www.berr.gov.uk/files/file38388.pdf</a></i>
	5	
Unsuccessful Cases (1st Stage)	1	
% taken to Appeal Stage	25%	<i>Assumption from previous IA's</i>
	0	
Acceptance Rate (2nd Stage)	20%	<i>Assumption from previous IA's</i>
	0	
Unsuccessful Cases (2nd Stage)	11	
Referred to Dispute Resolution	2%	<i>Assumption from previous IA's</i>
	0	
Of which Successful	20%	<i>Assumption from previous IA's</i>
	0	
<b>TOTAL FLEX WORKERS</b>	<b>5</b>	

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BIS</b>	<b>Title:</b> Review of Commission Directive 94/45/EC on European Work Councils for the purpose of informing and consulting employees. Impact assessment to accompany Government response on implementing draft UK regulations	
<b>Stage:</b> Government response on implementation	<b>Version:</b> Version 2	<b>Date:</b> March 2010
<b>Related Publications:</b> Government consultation document and Government response		

Available to view or download at: <http://www.bis.gov.uk/Consultations/european-works-council-directive>

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

A Commission review of the European Works Council (EWC) Directive identified a number of problems with respect to the practical application of the Directive with regard to the information and consultation of employees; legal certainty, and coherence between EWCs and national level procedures, with a significant market failure noted in the form of information asymmetry between employer and employee. Following Member State negotiation, the Commission has published a recast of the EWC Directive which seeks to address the problems set out above. The Government has conducted a consultation on draft Regulations

**What are the policy objectives and the intended effects?** The Government's objective is to transpose the recast Directive in order to achieve the Commission's objectives in amending the Directive, which are:

- to improve the effectiveness of information and consultation of employees in existing EWCs;
- to increase the number of EWCs being established;
- to improve legal certainty in the setting up and the operation of EWCs (for example during mergers and acquisitions); and
- to enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

### What policy options have been considered? Please justify any preferred option.

Government issued a consultation paper in September 2008 on the European Commission's proposals to recast Directive 94/45/EC (the European Works Council directive). A Government response to the consultation was published in December 2008. The UK Government held a further consultation on regulations to transpose the recast Directive in November 2009 and plans to publish the accompanying Government response in March 2010. Policy options consist of (1) do nothing or (2) implement the Directive in UK law. Option 1 is not viable as the UK would face infraction proceedings and is only used as a benchmark in this IA. A more detailed description of option 2 can be found later in this IA.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Article 15 of the Directive requires a review by the Commission five years after the revised Directive comes into force. The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS), next report expected in 2011. The Central Arbitration Committee (CAC) and the Employment Appeals Tribunal (EAT) are currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999.

### **Ministerial Sign-off** For consultation stage Impact Assessments:

*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:

Lord Young of Norwood Green, Minister for Postal Affairs and Employment Relations Date: 30/03/2010



## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Implement proposed review to the Directive.**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Direct costs are increased costs borne by existing EWCs and indirect costs capture the cost of additional take-up. One-off costs are estimated at £2.61m over 3 years (as 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £4.87m and £5.95m depending upon scenario considered.	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	£ 2.6m	3		
	<b>Average Annual Cost</b> (excluding one-off)			
	£ 4.9 – 6.0m	10	<b>Total Cost over 10 years (PV)</b>	£ 44.0m – 53.3m
Other <b>key non-monetised costs</b> by 'main affected groups' There are a number of negligible costs relating to Admin Burdens detailed within individual articles.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'. It was not possible to quantify benefits, given their intangible nature.	
	<b>One-off</b>	<b>Yrs</b>		
	£ n/a	0		
	<b>Average Annual Benefit</b> (excluding one-off)			
	£ n/a	10	<b>Total Benefit (PV)</b>	£ n/a
Other <b>key non-monetised benefits</b> by 'main affected groups' More effective information & consultation of employees, if achieved, has the potential to demonstrate a positive commitment to employees and to enhance understanding of management employee-management relationship and the impact of restructuring on				

**Key Assumptions/Sensitivities/Risks.**

Please refer to Sections E and F, which detail assumptions made and risks identified.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ -44.0m – -53.3m	<b>NET BENEFIT (NPV Best estimate)</b> £ m
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		5 June 2011		
Which organisation(s) will enforce the policy?		CAC/ EAT/ ET		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	Yes	No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of £ negligible	Decrease of £ 0	<b>Net Impact</b> £ negligible

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

### A: Strategic overview

#### *Existing Government initiatives*

The European Works Council (EWC) Directive was adopted in September 1994, with an implementation date of September 1996. At the time, the UK Government had not signed the social chapter of the Maastricht Treaty 1992 and so the Directive did not apply to the UK. The Government accepted the social chapter in June 1997, and as a result the original Directive was extended to cover the UK and was given effect in UK law in January 2000 by the Transnational Information and Consultation of Employees (TICE) Regulations 1999.

### B: The issue

The TICE Regulations implement the EWC Directive and set out requirements for informing and consulting employees at the European level in undertakings or groups of undertakings, who have their central management in the UK, with at least 1,000 employees across the Member States of the European Economic Area (EEA) and at least 150 employees in each of two or more of those Member States. The purpose of the Directive is to establish mechanisms for informing and consulting employees where the undertaking has been requested to do so in writing by at least 100 employees or their representatives in two or more Member States, or on the management's own initiative. This will entail the setting up of a European Works Council (or some other form of transnational information and consultation procedure). Where no request is received or where management does not initiate the process, there is no obligation to start negotiations or to set up an EWC.

Once a request has been made (or at the management's initiative) employee representatives are either elected or appointed to a Special Negotiating Body (SNB). Article 6 of the Directive requires the SNB to negotiate with central management to determine the scope, composition and functions of the EWC and the duration of the agreement. Negotiations can last up to three years but where agreement has not been reached after that period, or the undertaking has failed to initiate negotiations six months after receipt of the employees' request to establish an EWC, a set of minimum 'subsidiary requirements' will apply which are laid out in the Annex to the Directive and in the Schedule to the TICE Regulations. In practice few, if any, EWCs have been set up under these fall-back subsidiary requirements but it is understood that the provisions of many EWC agreements have been influenced by them.

Where a company had already in place arrangements to inform and consult all of its employees in the EEA prior to the Directive coming into force, such agreements are exempt from the provisions of the EWC Directive. These provisions are made at Article 13 of the 1994 Directive and apply to agreements concluded by 22 September 1996 (or 15 December 1999 for UK companies when the Directive was extended to the UK). Such voluntary arrangements are often referred to as 'Article 13 agreements' and 'Article 3 agreements' respectively and make up approximately 40 per cent of the EWCs in operation in the EEA today.

Expenses related to the negotiations are borne by the employer, including the cost of one expert to advise the SNB. The Directive further sets out the procedures for the handling of confidential information and makes provisions to ensure that the employees' representatives do not suffer any detriment as a result of their role. Representatives are also entitled to time off with pay for attending SNB or EWC meetings.

## *Review of the EWC Directive*

Responding to concerns about the operation of the 1994 Directive, the European Commission issued a legislative proposal in July 2008 to recast the EWC Directive, aiming to increase the number of EWCs and improve their effectiveness. The resultant recast Directive (2009/38/EC) was heavily informed by joint advice submitted by the European Social Partners (BusinessEurope, the European Trade Union Confederation, CEEP and UEAPME) and, as a result, it represents a compromise that balances the interests of business and employees.

The recast Directive seeks to address existing problems in EWCs – which include ineffective information and consultation (I&C) of employees, lack of legal clarity on I&C issues and lack of coherence between national and transnational procedures – involve clearer definitions of I&C and the scope of EWC activities and purpose, provision for more balanced representation within EWCs, establishment of arrangements to link national-level procedures to those at European level (i.e. EWCs), increased obligation of reporting of information following information and consultation before and during the establishment of EWCs and the right to training without loss of wages for EWC members.

The Transnational Information and Consultation of Employees (Amendment) Regulations 2010 (TICE 2010) transpose the recast Directive.

### **Consultation**

#### *Within government*

These proposals have been developed in consultation with the following Government departments: The Foreign and Commonwealth Office, the Ministry of Justice and the Devolved Administrations.

#### *Public consultation*

The Government conducted a public consultation on the proposed negotiating strategy in September 2008. The consultation closed on 6 October 2008. A further public consultation on draft regulations to transpose the recast Directive in the UK was started in November 2009. This consultation closed on 12 February 2010. A total of 44 responses to the second consultation were received, of which 6 commented on the Impact Assessment. These are discussed below in Section E on Costs and Benefits. The consultation responses highlighted a divergence in views between unions and employers on the Government's transposition proposals as well as suggesting alternative approaches to a number of issues, though a majority of those who commented on the IA felt that the estimated cost of an EWC meeting was too low.

## **C: Objectives**

### *Background*

This Impact Assessment (IA) seeks to assess the impact of the proposed amendment of TICE 1999 following the revision of Council Directive 94/45/EC, which allows for the provision and establishment of European Work Councils (EWCs) within companies of more than 1,000 employees operating in two or more EU Member States. The aim of such councils is to improve employee understanding of management decisions in issues such as restructuring by encouraging effective information and consultation for employees in all operating countries. The European Commission was under a duty to review the Directive and, following a Commission review of its failings, the objectives for the recast Directive are:

1. To improve the effectiveness of information and consultation of employees in existing EWCs
2. To increase the number of EWCs being established

3. To improve legal certainty in the setting up and operation of EWCs
4. To enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

The following analysis will review the impact the Directive has had on such companies with headquarters in the UK since its creation in 1994, as well as the likely effect on affected UK businesses of the proposed implementing Regulations.

## D: Options identification

### **Option One: Do nothing**

The directive has been agreed at EU level, the UK will now have to implement the necessary changes. Doing nothing therefore is not a viable option.

### **Option Two: Implement changes proposed by the draft Directive**

The European Commission decided that the best approach for achieving their goal of improved operation of EWCs was to recast the EWC Directive.

The Commission's proposal of July 2008, as amended by the Social Partners, has now been adopted, and the Government is undertaking this Impact Assessment accordingly as part of its public consultation exercise on the implementing regulations.

The detail of the proposed changes to UK legislation was discussed fully in the consultation document<sup>48</sup> and is presented in summary form below in the section on costs and benefits.

Given that it is not feasible for the UK not to implement the changes stemming from the recast Directive, the Impact Assessment will solely assess the changes to UK legislation.

## E: Analysis of options

### *Costs and Benefits*

#### **Assumptions**

A number of information sources have been used to inform the cost-benefit analysis that follows. These include data on the current number of EWCs created across the EEA. Although there is no requirement to register EWCs, the European Trade Union Institute (ETUI) maintains a database of EWCs created since the early 1990s<sup>49</sup>, providing information such as date of creation, date ended (if the EWC is no longer effective), the article of the Directive under which the EWC was established, the sector in which the undertaking operates, the number of meetings per year and the number of EWC members by country. These are the best available data to allow an up to date analysis<sup>50</sup> of the current take-up of EWCs in both the UK and across the EEA. The ETUI database has been widely used as a reference source by assorted EU and national institutions as well as research and academic centres.

More detailed information relating, amongst other things, to the costs of setting up and running EWCs are derived from two key sources. First, we revisit and, where necessary, revise original unit cost estimates used in the original Department of Trade and Industry (DTI) Regulatory Impact Assessment<sup>51</sup> (RIA) which accompanied implementation of Directive 97/74/EC extending to the UK Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees. Much of the analysis used for that RIA was based on a study commissioned by the then DTI<sup>52</sup>.

More recent data and information have been taken from the European Commission Impact Assessment<sup>53</sup> (IA) of July 2008 which underpinned the proposal for the recast Directive. The

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<sup>48</sup> <http://www.berr.gov.uk/files/file52969.pdf>

<sup>49</sup> ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu/>

<sup>50</sup> As of mid-August 2008

<sup>51</sup> The Transnational Information and Consultation of Employees Regulations 1999, <http://www.berr.gov.uk/files/file34183.pdf>

<sup>52</sup> Costs and benefits of the European Works Councils Directive, DTI, ERRS No.9. Tina Weber, Peter Foster and Kursat Levent Egriboz. URN 00/630; <http://www.berr.gov.uk/files/file11620.pdf>

<sup>53</sup> Impact Assessment on the revision of the European Works Council Directive SEC(2008)2166 of 2 July 2008, [http://ec.europa.eu/employment\\_social/labour\\_law/docs/2008/impact\\_assesment\\_part1\\_en.pdf](http://ec.europa.eu/employment_social/labour_law/docs/2008/impact_assesment_part1_en.pdf)

European Commission IA itself drew on the findings of a preparatory study<sup>54</sup> and we have used these data where appropriate.

It should be noted that these studies of EWCs are based on a case study approach and therefore the sample size for obtaining cost estimates is relatively small and may result in wide variations. This may be exacerbated by the fact that the recent European Commission studies report estimates based mainly on EEA averages. These may not always reflect the costs experienced in the creation and operation of UK-based EWCs. Therefore where suitable data exist, we use relevant UK cost estimates wherever possible.

The issue of differential costs by size of EWC was also raised in the consultation. While instructive to present costs with such a breakdown, the lack of reliable data at this level prevents this. Therefore costs in this IA remain based on the average across all sizes of EWC. The unit cost estimates for the set-up and operation of EWCs we have used in this Impact Assessment are presented in tables 1 and 2 below:

### 1. Set-up costs

The UK price estimates are derived from the ECOTEC study in 1999, which formed the basis of the UK Impact Assessment (1999), updated to 2010 prices. Details of how prices have been updated are noted below relevant tables. The 'Commission IA average', included for the sake of comparison, comes from the 2008 Commission Impact Assessment figure for the average cost of setting up an EWC agreement since 1996 (hence of Article 6 agreements).

**Table 1: Average costs of setting up UK EWC (2010 prices)\***

Element	Average setting up costs
management time	£23,586
employee time	£10,029
cost of venue	£10,835
Travel	£10,335
translation costs	£5,001
interpretation costs	£18,503
Language and other	£13,335
admin support	£2,000
dissemination costs	£1,667
costs of experts - for employees	£4,829
costs of experts - for management	£6,686
documentation for meetings	£667
admin of ballot	£22,837
<b>Total</b>	<b>£130,308</b>
<b>Commission IA average – 2008</b>	<b>£98,584</b>

Source: Source: UK EWC IA (1999). All figures are updated using RPI (CHAW) (factor change of 1.33) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the average earnings index (JODW), excluding bonuses (a factor change of 1.49). A further 25% uplift has been added to the costs to reflect consultation responses where numerous stakeholders felt the costs presented in the November 2009 IA were underestimated.

<sup>54</sup> Preparatory study for an Impact Assessment of the European Works Council Directive, EPEC GHK, May 2008, [http://ec.europa.eu/employment\\_social/labour\\_law/docs/2008/ewc\\_impact\\_assessment\\_preparatory\\_study\\_en.pdf](http://ec.europa.eu/employment_social/labour_law/docs/2008/ewc_impact_assessment_preparatory_study_en.pdf)

## 2. Operating costs

Table 2: Average costs of a UK EWC annual meeting (2010 prices)

Element	Running Costs (£)
management time	£8,153
employee time	£11,886
cost of venue	£24,970
travel	£17,048
translation costs	£8,435
interpretation costs	£17,769
admin support	£2,600
dissemination costs	£4,484
costs of experts - for employees	£3,491
costs of experts - for management	£9,750
documentation for IT	£1,617
<b>TOTAL</b>	<b>£110,204</b>

Source: UK EWC IA (1999) . UK EWC IA (1999). All figures are updated using RPI (CHAW) (factor change of 1.33) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the average earnings index (JQDW), excluding bonuses (a factor change of 1.49). A further 25% uplift has been added to the costs (apart from travel) to reflect consultation responses where numerous stakeholders felt the costs presented in the November 2009 IA were underestimated.

Table 3: Total average annual running costs of a UK EWC (2010 prices)

Type of meeting	Average unit cost	Average annual frequency	UK average annual cost	Commission IA average
Annual meeting	<b>£110,204</b>	1.13	£124,530	£79,574
Extraordinary meeting				£79,574
Select Committee	<b>£7,505</b>	1.6	£12,008	£20,208
Training	<b>£38,371</b>		£38,371	£34,440
<b>Total</b>			<b>£174,908</b>	<b>£213,796</b>

Source: UK EWC Impact Assessment (1999) and Commission IA (2008)

\*\*Unit cost for Select Committee taken from Commission IA. The Commission IA total assumes there are 3 meetings per year.

The UK price estimates are again derived from the ECOTEC study in 1999, which formed the base of the UK Impact Assessment (1999), updated to 2009 prices and the 'European averages' come from the Commission IA (2008), converted from Euros at €1 = £0.8760<sup>55</sup>. The average annual frequency of general (plenary) meetings is derived from the ETUI EWC database data<sup>56</sup>, in which UK EWCs list the number of general meetings held each year, whereas the Commission averages assume each EWC holds on average two full-size plenary meetings each year; one standard annual meeting along with one extraordinary meeting. The frequency of Select Committee meetings is calculated from the ECOTEC study (1999) assumption that 80 per cent of UK EWCs hold Select Committee meetings, of which each holds two per year.

Data from the ETUI EWC Database indicates that the majority of UK EWCs hold just one annual meeting (with an average of 1.1 meetings per year for UK EWCs), hosting an average of eight UK and eleven non-UK members. Beyond this, nearly all UK EWCs have provision for Select Committees to meet before the annual meeting in order to prepare the agenda, currently with a maximum of three members, which is proposed to be increased to five members.

<sup>55</sup> Source: Bank of England, Monthly average End month Spot Quarterly average, Spot exchange rate. Data for February 2010

<sup>56</sup> ETUI Database on European Works Councils Agreements <http://www.ewcdb.eu/>

Responses to the consultation noted that some of the unit costs derived from the ECOTEC study may have increased since enlargement of the EU from 2004 onwards. We have therefore revised the following unit costs to take account of this:

- the unit costs for travel and subsistence for an annual meeting are now taken from the GHK study<sup>57</sup> at £17,048
- the unit costs for Select Committees have also been taken from GHK such that per meeting the at £7,505.
- an additional 25 percent has been added to all other unit costs (excluding training which comes from the commission's impact assessment). Numerous consultation responses felt that the impact assessment underestimated the unit costs. One consultation response felt the annual cost of running a EWC could be as much as £500,000 per annum. Other responses felt there was underestimation without expressing the magnitude of likely costs. There was also one response which felt the costs were overestimating. To reflect the most typical view from consultation respondents that the costs were an underestimate a 25 percent uplift was applied. This figure is to an extent arbitrary but attempts to incorporate consultation responses. The underlying figures are derived from the ECOTEC study which are now over 10 years old so there is scope for these costs to drift away from the true costs.

### *Implications for Administrative Burdens (AB)*

Original PwC administrative burdens exercise estimated total post-BAU (Business as Usual) costs of just under £5.4m a year. This was based on an estimated 55 UK-based EWCs. The proposed changes to the Directive on EWCs has no potential to reduce admin burdens, as amendments increase the obligation to provide information in a number of areas. However, as detailed in more depth in Section E, the additional admin burdens are predicted to be negligible in each of the areas when admin burdens are affected.

### *Take-up of EWCs in the UK*

Since the Directive was originally implemented across the EU in 1994 141 undertakings<sup>58</sup> with headquarters in the UK had, according to the EWC database, been established by the end of August 2008. Of these 113 are currently effective.

Graph 1 below provides a summary of UK-based EWCs created by year. Around 60 per cent were created under Article 13 of the Directive, which allows companies to continue with agreements arranged before the Directive came into force, with the remaining 40 per cent having established newly formed council agreements under Article 6, which entails a specific procedure as set out by the Directive.

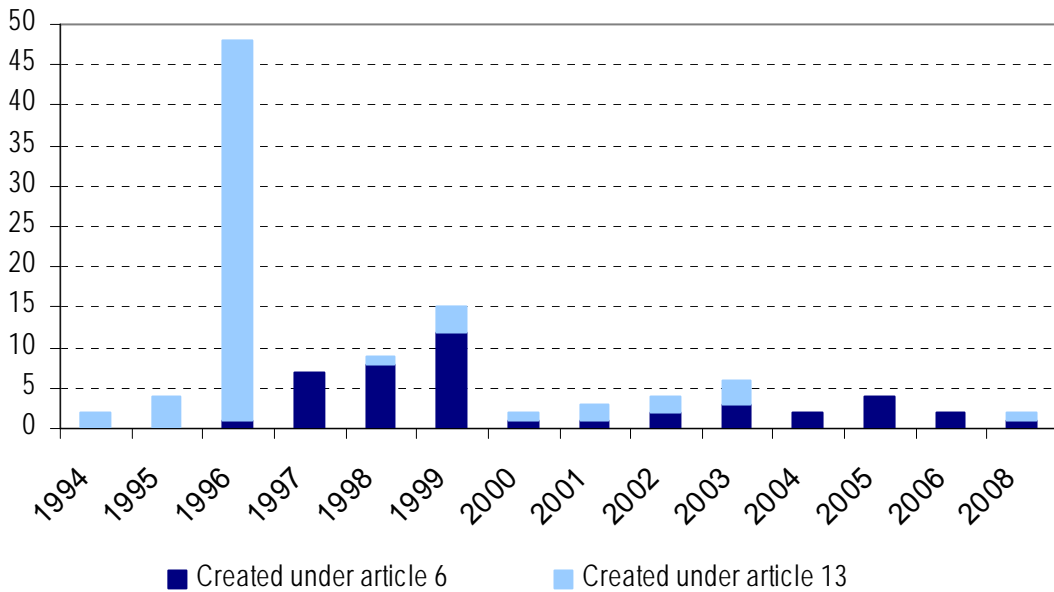
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<sup>57</sup> Travel costs per meeting were estimated at EUR 15,300 and subsistence costs EUR 4,160

<sup>58</sup> In November 2008 146 and 116 of these were still effective.



Graph 1: Creation of UK EWCs (those currently effective) by year and by Directive article.



There are an estimated 265 companies<sup>59</sup> with UK headquarters that could potentially fall within the scope of the Directive. This implies a current take-up rate of 43 per cent<sup>60</sup>, which compares with the EEA average of 36 per cent.

Under Directive 94/45/EC, companies are only obliged to set up an EWC at the request of 100 or more of its employees. This would remain the case under the 2009 recast Directive, though such amendments intend to allow EWCs to be created more easily, by obliging management to ‘obtain and provide information to enable the commencement of negotiations...’ Take up could also be increased following proposed improvements to current EWCs, in terms of the provision of more effective information and consultation, improved legal clarity and increased coherence between national and transnational procedures.

**BENEFITS**

It is extremely difficult to quantify benefits associated with EWCs, given their intangible nature, though it is still worth considering positive effects the establishment and maintenance an EWC may have for a UK company.

The potential benefits of the recast Directive largely mirror those set out during the establishment of Directive 94/45/EC, as the recast Directive aims to enhance the working of EWCs, by improving the effectiveness of information and consultation of employees.

Evidence from the ECOTEC study in 1999 identified a number of benefits perceived by a majority of companies surveyed, primarily a notion of ‘symbolic value’ of EWCs, wherein the presence of an EWC ‘demonstrates a positive commitment to employees’. This was accompanied by a general consensus that the establishment of an EWC had increased ability to exchange information with employee representatives and had involved employees more closely in the business.

<sup>59</sup> Commission Impact Assessment 2008, page 66, from ETUI-REHS, Brussels, 2006.

<sup>60</sup> Data from the EWC Database in August 2009 suggest that the UK take-up rate around 42 per cent

A number of sample companies also believed the EWC had improved employees understanding of reasons for management decisions.

GHK (2008)<sup>61</sup> drew similar perceived benefits from their survey of EWCs across Europe, with 81 per cent of surveyed EWCs agreeing or strongly agreeing that understanding of management decisions had been improved; 79 per cent that there was a better exchange of information trans-nationally and 75 per cent that relations between management and employees had improved. Such benefits, as with those found by ECOTEC, are surely a desirable consequence of the presence of an EWC, though it remains difficult to assess their economic impact and indeed to be certain that the perceived benefits mirror reality.

The Commission Impact Assessment goes further in their benefit analysis, suggesting that associated improvements in legal clarity and effectiveness of information and consultation of employees – particularly on restructuring issues – is likely to improve the management of change within the company. From this, they suggest costs relating to labour disputes and legal processes in situations could be reduced; huge economic costs relating to redundancy payouts (of up to €220 000 per worker)<sup>62</sup> could thus be reduced, which could far outweigh the costs of the running of an EWC. However, the Department for Business, Innovation and Skills (BIS) does not believe that there is sufficient evidence to support this proposed benefit; whilst effective information and consultation is highly desirable in effecting management of change, the presence of an EWC is unlikely to have such a direct impact on issues of this kind.

The Chartered Institute of Personnel Development (CIPD)<sup>63</sup> have identified in principle increased employee voice leads to benefits for employers from employees' skills and knowledge being better used, leading to higher productivity. Employees feeling more valued, so they are more likely to stay and contribute more. The organisation gains a positive reputation, making it easier to recruit good employees. Conflict is reduced and co-operation between employer and employee is based on interdependence. Employees in turn should benefit from having more influence over their work, higher job satisfaction and more opportunity to develop skills.

In July 2009 BIS published its 'Engaging for Success: enhancing performance through employee engagement report'<sup>64</sup>. David MacLeod and Nita Clarke led an independent review on employee engagement. The review found that levels of engagement can positively correlate with performance. One area of evidence was the 2006 Gallup study of 23,910 business units which compared top quartile and bottom quartile financial performance with engagement scores. They found that those with engagement scores in the bottom quartile averaged 31-51 per cent more employee turnover, 51 per cent more inventory shrinkage and 62 per cent more accidents. Those with engagement scores in the top quartile averaged 12 per cent [higher?] customer advocacy, 18 per cent higher productivity and 12 per cent higher profitability. It should be noted that the review found correlation between engagement and performance and that correlation does not necessarily imply causation.

Given mixed evidence for company support for the merits of EWCs, the potential positive impact of EWCs on issues such as the management of change should not be overestimated. It seems more reasonable that, at best, the establishment and presence of an EWC may ameliorate the impact of restructuring on employees rather than achieving significant reductions in the cost of restructuring.

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<sup>61</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007.

<sup>62</sup> 1999. Commission Impact Assessment, page 41.

<sup>63</sup> <http://www.cipd.co.uk/subjects/empreltns/comconslt/empvoice.htm>

<sup>64</sup> <http://www.berr.gov.uk/files/file52215.pdf>

## **COSTS**

The cost estimates presented below focus on two broad areas:

- The direct effect of proposed changes to the Transnational Information and Consultation of Employees Regulations 1999 that seek to implement the recast Directive; and
- The indirect effect of these changes on the possible take-up of EWCs

### **Direct effect of proposed changes**

The changes required by the recast Directive can summarised as follows:

- Information and consultation must be effective and allow undertakings to take decisions effectively (Article 1.2)
- EWCs to be limited to transnational issues only (Article 1.3/4)
- Information to be defined and consultation to be redefined (Articles 2.1.f and 2.1.g)
- Obligation on management to provide information to enable commencement of negotiations (Article 4.4)
- Changed rules on size and composition of Special Negotiating Body (SNB) to ensure balanced representation of employees (Article 5.2.b)
- The SNB to be allowed to meet before and after any meeting with the central management, without presence of employee representatives (Article 5.4)
- Where possible, ensuring balanced representation of employees as EWC representatives (Article 6.2.b)
- Establishment of arrangements for linking EWC procedures with those of national employee representation bodies (Articles 6.2.c and 12).
- The option to set up a select committee (Article 6.2.e)
- Management and SNB able to amend and terminate agreement and date of entry into force (Article 6.2.g)
- Duty of EWC to represent collectively the interest of employees, with an entitlement to the 'means required' to do this. (Article 10.1)
- EWC members to ensure that they report the outcome of EWC discussions to their members (Article 10.2)
- Access to training without loss of wages for EWC and SNB representatives (10.4)
- Clarification that there is no obligation to renegotiate EWC agreements established under Article 6.
- In the case of 'significant changes in structure' taking place within the company, agreements must be renegotiated at the request of at least 100 employees or their representatives (Article 13)

The anticipated effect of each of these changes and their estimated costs are presented in turn below.

## **Article 1: Legal Clarity on EWC objectives and information and consultation.**

*Article 1 has been amended so that the arrangements for informing and consulting employees must be defined and implemented in such a way to ensure the effectiveness of the procedure and enable the undertaking to take decisions effectively. The UK has implemented the new measures in a way that seeks to retain the balance of the recast Directive between effective information and consultation and efficient business decision-making.*

The Commission Impact Assessment argues that the current lack of clarity on information and consultation leads to time-consuming and therefore costly disputes within companies, citing examples of EWC companies who have suffered greatly lengthened restructuring processes, which they claim to be partially as a result of such a lack of clarity. Therefore, it is argued that proposals to this Directive should reduce costs in this area, rather than increase them. However, BIS questions the extent to which a clarification of I&C would reduce costs associated with restructuring and prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

*In addition, the Commission has proposed a new paragraph in order to clarify that the information and consultation procedures for consideration by EWCs is limited to transnational issues and thereby distinct to matters of national interest only. Thus, matters for the consideration of the EWC must concern the Community scale undertaking as a whole, or at least two undertakings or establishments situated in two different Member States. The UK has introduced the new definition of 'transnational' through Regulations 3 of TICE 2010. It very closely reflects the wording of the Directive. The definition does not include words from recital 16 to the Directive (which sets out what might be considered transnational) as there is no legal obligation on the UK to transpose the recitals of the Directive and it is our policy not to do so generally.*

Clarifying that EWC business should be limited to transnational issues only is unlikely to create any additional costs; conversely, it is likely to shorten EWC meetings by ensuring that the objectives of EWC meetings are understood. Taking a relatively narrow approach to the implementation of the definition should ensure that the burden on business is controlled.

## **Article 2: Definitions of information and consultation**

*The Commission has proposed a new definition for 'information' and has amended the definition for 'consultation', introducing the concept of time, fashion and content for the information and consultation procedures, in order to bring it into line with other Directives containing information and consultation provisions. The UK has implemented these 'definitions' as obligations on central management to conduct information and consultation in a specified manner because they do not fit easily as pure definitions in the UK legal context.*

This is a very similar argument to part one of Article 1 (above), wherein more clearly defined information and consultation could improve company operations, for example by reducing costs resulting from lengthening of undertaking restructuring due to labour disputes. However, BIS prefers the logic that improved I&C is likely to improve the impact restructuring has on employees. By introducing the 'definitions' as obligations on management the UK has ensured that they are effectively enforceable, but also that the impact on business is controlled by limiting their application to the information and consultation of EWCs or information and consultation representatives, as was the intention of the recast Directive.

## **Article 4: Responsibility for the establishment of an EWC**

*The undertaking must make available information relating to the number of its employees. The new text also states that the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body (SNB); in particular to the structure of the undertaking and the structure of its workforce. The UK has implemented this provision by amending the current right for employees to receive information to decide if their company is within scope of the Regulations. The amended Regulations requires that central or local management obtain and provide information to employees or their representatives on the structure of the undertaking or group of undertakings and the structure of its workforce.*

The amendment to this article amounts to the provision of more information, which could involve additional management time. Requests relating to information on number of employees can come from companies covered by the directive and haven't adopted a EWC along with new UK EWCs. We assume in this impact assessment that 50% of companies under scope that don't have a EWC receive information requests from employees, this amounts to 76 companies<sup>65</sup>. Given past growth in EWCs we predict four new UK EWCs per year.<sup>66</sup> In total we estimate 80 companies per year receiving requests. As these companies will be large multinationals it is likely that they may receive more than one request so we assume that on average two requests are received per company per annum. Given the scale of these numbers the total cost will be relatively small. Even if five hours are devoted to such a responsibility, the additional burden would only be  $(5 \times £22^{67} \times 80 \times 2) = \mathbf{£17,600}$ . At an estimated £220 per company, this is certainly a negligible cost, whatever the extent of aggregation.

## **Article 5: Special Negotiating Body (SNB)**

A number of changes are proposed for this Article:

- *Introduction of a simplified method for composition of the SNB*
- *Informing other bodies about SNB composition and negotiations*
- *Entitlement for SNB to meet separately from central management*
- *Use of experts*

### *Introduction of a simplified method for composition of the SNB*

*The recast Directive introduces a simplified method for the composition of the SNB which means that one SNB seat will be allocated per portion of employees employed in that Member State amounting to 10 per cent, or a fraction thereof, of the total number of employees of the undertaking in the EEA.*

The Commission IA (2008) states that the change to SNB composition is not controversial and that this Directive update would have 'minimal impact on set-up costs' and lead to a 'limited increase in the number of SNB members and therefore in the costs'. The UK agrees with this view.

### *Informing other bodies about SNB negotiations*

*There is currently a requirement that the central and local management must be informed about the composition of the SNB. This requirement has been expanded by article 5(2)(c) so that central and local management are also informed of the start of the negotiations and European workers' and employers' organisations are informed of both the SNB composition and the start of negotiations. The UK has applied this duty to the SNB as an extension of the SNB's requirement at Regulation 12(4) TICE 1999 to inform central and local management of the composition of the SNB.*

The obligation to inform management and the European workers' and employers' organisations about the start of negotiations is likely to take very little additional employee representative time. Even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13<sup>68</sup> per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external goods and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**<sup>69</sup> to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

### *Entitlement for SNB to meet separately from central management*

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<sup>65</sup> Based on an estimated 265 companies in scope of the directive using take-up figures (113 companies) from the ETUI database (data extracted on November 2008) we estimate that a 152 companies don't take-up a EWC (265-113).

<sup>66</sup> Taking into account the termination of certain agreements through mergers and acquisitions etc., there has been an average of four new EWCs established per year.

<sup>67</sup> Source: Annual Survey of Hours and Earnings (ASHE). ASHE 2009, managers and senior official code 1 Table 2.5a Hourly pay - Gross (£) - For all employee jobs: United Kingdom, 2009. 21 per cent was added to account for non-wage labour costs and then figures were rounded to the nearest pound.

<sup>68</sup> Source: Annual Survey of Hours and Earnings (ASHE) ASHE 2009, all employees Table 2.5a Hourly pay - Gross (£) - For all employee jobs: United Kingdom, 2009. 21 per cent has been added to account for non-wage labour costs and figures have been rounded to the nearest pound.

<sup>69</sup> (£200 + (2 x £13 per hour) = £226 per EWC = total of £904 (figures have been rounded)

*In order to enable employees' representatives to be able to cooperate together to define their positions in the negotiations, a new entitlement has been proposed to allow the SNB to meet before and after any meeting with the central management without the employers' representatives being present. In implementing this provision the UK has required that both meetings take place within a reasonable time of the main SNB meeting.*

The entitlement for the SNB to meet separately will increase set-up costs of an EWC, by increasing the time and resources taken up by SNB negotiations. If it is assumed that, in addition to the one standard meeting with management there would be two additional meetings held solely by the SNB (one before meeting with management and one after). The requirement that these meetings take place within a reasonable time of the main SNB meeting may help to minimise additional costs to business by keeping costs associated with travel, accommodation and translation to a minimum.

Taking the cost break-down for setting up of an EWC, which in practice details the cost of the SNB meeting aimed to establish the EWC, the average daily cost of an SNB meeting of **£77,200** (excluding management time and costs of experts for management which are not relevant, and excluding ballot costs – which should not be duplicated), giving a total average costs per SNB of £154,400<sup>70</sup>. For the estimated four newly established UK EWCs, this would give a total additional cost burden of **£0.62m**.

#### *Use of experts*

*Article 5(4) entitles the SNB to be assisted by experts of its choice; **the cost of one of which must be met by the undertaking**. The recast Directive introduces a further entitlement for the SNB's expert to attend the negotiating meeting. The Directive also states that an appropriate Community level trade union could fulfil the role of an expert, although it should be noted that the choice remains one for the SNB to make. In order to enable the monitoring of new EWCs being established and the promotion of best practice, European trade union organisations and European employers' organisations have also been added to bodies to be informed about these sorts of matters.*

The amendment only extends the amendment so that 'an appropriate Community level trade union could fulfil the role of an expert'; 'the choice remains one for the SNB to make.' There is therefore little likely increase in costs related to the use of experts, rather a wider choice for the SNB.

### **Article 6: Content of the Agreement**

#### *EWC composition – size and representation*

*The current requirement, relating to the composition of the EWC, its size and how seats are allocated, has been expanded to include that, where possible, in the interest of the balanced representation of employees, its composition should also take into account the activities, category and gender of the employees of the undertaking. In implementing this requirement to the UK has required that this should be recognised where 'reasonably practicable'.*

It is unlikely that ensuring balanced member composition will involve any significant costs. Firms are only required to 'take in account' 'where reasonably practicable' the composition of representation in terms of activities, categories and gender, which should not involve more than a simple consideration in the case of setting up a new EWC and perhaps a minor redistribution of representative members in the case of established EWCs.

#### *Linking national and transnational provisions*

*The establishment of arrangements for linking of the EWC procedures with national employee representation bodies. This Article is closely related to the amendments made at Article 12.*

For this reason, the impact of linking of national and transnational provisions is detailed under Article 12.

#### *Composition of the Select Committee*

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<sup>70</sup> Assumed that SNB would meet without management twice.

*The number of members of the select committee permitted under the subsidiary requirements at Annex 1(1)(d) has been increased from three members to a maximum of five members.*

The current average number of members in a UK EWC that has voluntarily set up a Select Committee is four,<sup>71</sup> and the GHK EU average estimate is five<sup>72</sup> so the amended article to limit the size of the Select Committee under the subsidiary requirements to a maximum of five is unlikely to have a large impact on set-up or operation costs.

### **Article 10: Role and Protection of Employees' Representatives**

*There is a new duty on the members of the EWC to inform the employees of the content and outcome of an information and consultation procedure carried out in accordance with this Directive. Employees can complain to the CAC if the EWC does not do this, but it shall be a defence if the EWC was not provided with the means required from central management to enable it to fulfil its duty.*

This duty to inform employees could take additional time of EWC members. However, as with the argument provided in Article 5, even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13 per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**<sup>73</sup> to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

*Members of the SNB and EWC are to have access to training without loss of wages in so far this is necessary for their representational duties in an international environment. In implementing this provision the UK has required that the central management should pay for the necessary training and that the SNB and EWC members should be provided by their employer with paid time off to participate in the training.*

The right of members of the SNB and EWC to training without loss of wages is likely to account for the largest increase in cost burden to UK EWCs, as both current and newly established EWCs will be affected.

Though evidence on current provision of training within EWCs is rather limited, the most recent study on EWCs (GHK, 2008) indicates that only around 36 per cent<sup>74</sup> of companies with EWCs currently provide training to all members. However, beyond this, another 43 per cent<sup>75</sup> of EWC companies provide training to at least one member of the EWC. Therefore, if an upper-limit estimation is taken by which 50 per cent of current UK EWCs do not provide any EWC members with training (and thus the remaining half provides full training: a simplification of the picture perceived by GHK), then 50 per cent x 113 = 56 UK EWCs would be obliged to provide training following the revision of the Directive. The GHK report (2007) on EWCs suggests that the European average that those who already provide training are spending is £38,371 (€43 800) per EWC.

If these 56 EWCs were to all immediately spend this average amount on training, then the total additional cost burden would be **£2.17m**, although this cost is divided amongst 56 transnational companies of more than 1,000 employees.

It should also be noted that:

- a) There is likely to be some additional deadweight within this estimation, as in reality some proportion of the 'remaining 50 per cent of EWCs' not currently reported to provide training are likely to do so to some extent, to all or some members of their EWC.
- b) The average training figure per EWC may overestimate the true average amount an EWC will spend on training, because the figure used is taken uniquely from firms which are providing training on initiative and therefore are more likely to have a strong culture of training.

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<sup>71</sup> Average members in Select Committee of effective UK EWCs giving relevant data: ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu>

<sup>72</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007, page 17.

<sup>73</sup> (£200 + (2 x £13 per hour) = £226 per EWC = total of £904

<sup>74</sup> 46 per cent (fraction which provided training) x 79 per cent (companies which provided at least some training within their EWCs)

<sup>75</sup> 54 per cent (of companies providing training to less than all EWC members) x 79 per cent (of all EWC companies providing training) = 43 per cent.

In order to account for this issue, an alternative scenario, potentially closer to the true likely consequence of the Directive changes, could be added to the analysis above. If only 25 per cent of EWCs were to start fully training their EWC members following Directive amendments – taking into account the deadweight issue and the likelihood that there would not be a 100 per cent take-up of training, then only 28 EWCs will be subject to the training costs of £38,371. This would imply a cost burden of only **£1.08m**.

This amendment is not said to be controversial in the eyes of the social partners, who recognise the benefit to the EWC of having a well-trained representative body, which would be extended to include EWCs not currently offering training to their employees.<sup>76</sup>

## **Article 12: Links between this Directive and Other Community and National Provisions**

*The SNB and management are required to establish the arrangements for linking the national and transnational arrangements on informing and consulting employees which exist within the company during the negotiating period. The implementing Regulations require that this link is related to timing of the start of information and consultation only and that it should not create new rights for national bodies to be informed and consulted.*

## **Article 13: The Adaptation Clause**

The recast Directive requires that unless provisions exist within existing agreements that allow for their modification, any *significant change to the structure* of an undertaking would result in the requirement for an EWC agreement to be renegotiated under the provisions of Article 5.

As the Directive does not define what constitutes a change in structure, we have assumed (on the basis of recital 40) here that this would relate to mergers and acquisitions (M&A). Using data from the ETUI EWC database, of the 28 UK-based EWC agreements that are no longer effective, 86 per cent - or 24 agreements - were because of mergers and acquisitions. Furthermore the results of these mergers and acquisitions indicate that a third of these re-located their headquarters outside of the UK. Therefore, overall, 16 of the 28 agreements that ended resulted in new UK-based EWCs. Since 1992 this averages at two UK-based EWCs a year that may undergo a merger or acquisition.

In the absence of detailed information concerning provisions for changes of structure within existing Article 6 or Article 13 provisions, we assume here that such provisions exist in half of all EWC agreements. From this we estimate therefore that the proposed changes to Article 13 would affect one UK-based EWC each year. Using the estimated set-up costs from table 1 above this would lead to an **increase in costs to business of around £0.1m a year**.

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<sup>76</sup> Lessons learned on European Work Councils, 2005.



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**Table 4: Summary of estimated direct effect costs**

	<b>Estimated cost p.a £m</b>
Article 1: Legal Clarity on EWC objectives and information & consultation.	Not quantified
Article 2: Definitions of Information & Consultation	Not quantified
Article 4: Responsibility for the establishment of an EWC	negligible*
Article 5: Special Negotiating Body	0.62
Article 6: Content of the Agreement	negligible*
Article 10: Role and protection of Employees' Representatives	1.08 - 2.17**
Article 12: Links between this Directive and Other Community and National Provisions	Not Quantified
Article 13: The Adaptation Clause	0.1
<b>Total</b>	<b>1.70 - 2.79</b>

Source: BIS estimates, 2010. \*\*Depending on training scenario considered.

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## **2. Indirect effect of new directive on take-up of EWCs**

As noted above, the database of EWCs indicates that there are 113 effective UK headquartered EWCs and the most recent data available on the total number of companies covered by the Directive (ETUI-REHS, 2006) suggests there to be 265 with headquarters in the UK. This gives a UK take-up rate of 42.6 per cent, compared to the EEA average of 35.5 per cent, where 583 EWCs have been established from a potential 1,642.

One objective of the proposed amendments to the existing Directive is to increase the take-up rate. An addition to Article 4 of the Directive provides that the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body, which seems to be the most direct attempt to encourage take-up. Proposed improvements to EWCs – through improved effectiveness of information and consultation, legal clarity and coherence – could also be seen as an indirect method for inciting eligible companies to establish a new EWC.

However, it seems unlikely that the 152 eligible UK companies are currently without an EWC agreement solely due to a lack of guidance on information provision; in other words it is questionable whether amendments of this nature are likely to greatly increase the current take-up of EWCs in the UK. As it is only 28 new UK-based EWCs have been created since 2001.

Further to this, evidence from the Commission Impact Assessment suggests that the establishment of an EWC depends upon factors such as the sector the company operates in (41 per cent average take-up rate in the metals sector compared to only 24 per cent in the services sector) and the presence of employees in certain EEA member states (for instance, over half of eligible companies operating in Sweden have established an EWC).

Perhaps most essentially, it will remain the case that the establishment of an EWC agreement is voluntary and company management are only obliged to do so at the request of at least 100 employees, hence the proposed changes to the Directive are unlikely to have any marked impact on the take-up rate.

In light of this, it is worth considering the additional cost burden which would be borne if the UK take-up rate were to increase. For illustrative purposes we have assumed an increase in the take-up rate to 50 per cent from the current level of 42.6 per cent, which would result in 132 UK-based EWCs, or 19 new UK EWCs. It seems reasonable to assume that the creation of these new EWCs would be spread over a number of years following the amendment to the Directive. We assume here a 3-year period for creation of the 19 new EWCs with seven established in the year following the Directive amendment and six more established in each of the following two years. On this basis the estimated additional costs to the set-up and running of UK EWCs would be as follows:

**Table 5:** Indirect costs, per year, envisaged as a result of additional take-up of EWCs (current prices followed by Present Values)

Table 5: Indirect costs, per year (with Present Value prices)						
Discount Rate	3.50%					
Number of new EWCs	7	6	6	0		
Year following change	1	2	3	4 etc.	TOTAL over 10 years	Average per year – over 10 years
Set-up costs	£912,158	£912,158	£781,850	£0	<b>£2,606,165</b>	£260,617
Running costs	£1,224,357	£2,448,715	£3,498,164	£3,498,164	£31,658,383	<b>£3,165,838</b>
Set-up costs (PV)	£2,136,515	£3,360,873	£4,280,013	£3,498,164	£34,264,548	£3,426,455
Running costs (PV)	£912,158	£881,312	£729,865	£0	£2,523,335	£252,333

Source: Impact Assessment (1999) and BIS estimates.

**Table 6:** Summary of quantifiable costs

Table 6: Summary of additional quantifiable costs			
2010 Prices	Direct Costs £m	Indirect Costs £m	Total £m
One-off costs £m*	0	2.6	<b>2.6</b>
Running costs £m #	1.7-2.8	3.2	<b>4.9-6.0</b>

Source: Impact Assessment (1999) and BIS estimates. \*One-off costs are spread over 3 years. # average running costs over 10 years. Figures have been rounded and totals may not sum to individual parts due to rounding.

## F: Risks

The estimates of costs and benefits presented in this Impact Assessment are based upon actual data sources where they exist. Beyond this a number of assumptions have been made where there are gaps in the data. Furthermore there is inevitably a degree of uncertainty surrounding the indirect and direct effects of the changes introduced by the recast Directive.

## G: Enforcement

The Central Arbitration Committee (CAC), the Employment Appeals Tribunal and the Employment Tribunal (ET) are currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999. The enforcement regime will be changed slightly so that the CAC will hear complaints and the EAT will issue penalties, whilst the ET will deal with issues relating to detriment, unfair dismissal and time-off. It is therefore likely that the enforcement of most of the amendments to the EWC Directive will fall to the CAC. The number of cases brought before the CAC under the Transnational Information and Consultation of Employees Regulations to date has been minimal, suggesting that compliance is high. Therefore there is no reason to believe that these proposed changes are likely to have a significant impact.

In response to consultation responses the Government has increased the maximum penalty payable for a failure under the Regulations to £100,000 from £75,000. This was done partly to restore the real value of the penalty to the level first agreed in 1998, since when RPI inflation has totalled 36%.

## H: Recommendation and summary table of costs and benefits

**Table 7** below presents a summary of the estimated quantifiable costs and benefits. These costs and benefits reflect the policy option of implementing amendments set out by revised Community Directive 94/45/EC on European Work Councils.

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Table 7. Summary of quantifiable costs and benefits

Scope of law, £m	Annual Costs (ongoing)	One off costs	Annual Benefits (£m p.a.)
Direct Effect of Changes Proposed by Directive (i.e. on existing EWCs)	1.7 - 2.8	0	Not quantified – please refer to EWC Benefits description in Section E.
Indirect effect of increased take-up of EWCs	3.2	2.6	Not quantified – please refer to EWC Benefits description in Section E.

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Source: BIS estimates. Figures have been rounded

## I: Implementation

The changes to the EWC Directive will be implemented by way of the Transnational Information and Consultation of Employees (Amendment) Regulations 2010 which amend the Transnational Information and Consultation of Employees Regulations 1999. Following a consultation on draft regulations the Regulations have been laid in Parliament and will come into force on 5 June 2011.

## J: Monitoring and evaluation

A review of the EWC Directive will be undertaken by the European Commission five years after the Directive comes into force.

The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS) (expected to be completed in 2011) which provides an integrated picture of employment relations, including information and consultation arrangements.

The Government monitors the cases brought before the CAC under the Transnational Information and Consultation for Employees Regulations 1999, which are published annually in the CAC's Annual Report. It will continue to do so following the implementation of the revised EWC Directive.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

# Annexes

## Annex A: SPECIFIC IMPACT TESTS

### 1. Competition Assessment

#### *Business sectors affected*

Table A1 below presents the distribution of currently effective EWC's with UK headquarters. All of these EWCs are in the private sector.

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A2 below). The proposed legislation will apply to all undertakings with at least 1,000 employees within EU member states and, given the relatively small magnitude of the costs, is unlikely to affect the competitiveness of any particular sector.

**Table A1: Distribution of currently effective UK-based EWCs by sector**

% distribution	Effective
Building and Woodwork	3%
Chemicals	20%
Food, hotel, catering and agriculture	15%
Graphical	5%
Metal	24%
Other services	10%
Public services	0%
Services Commerce	5%
Services Finance	7%
Services IBITS	2%
Textile	2%
Transport	7%

Source: EWC Database, ETUI\*\*

\*\*Online database accessible through <http://www.ewcdb.eu/>. Data accessed and retrieved on 20 August 2008

#### – **Table A2. Competition assessment.**

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BIS

### 2. Small Firms Impact Test

Undertakings with fewer than 1,000 employees across the EEA and fewer than 150 employees in any member state are not affected by the provisions of this directive.

### **3. Equality Impact Assessment**

In line with better regulation best practice and the Equalities Duties we have considered the impact of changing the law by gender, race and disability.

The Commission Impact Assessment has not identified any negative impacts on equality which would result as a consequence of a revision to this Directive.

In addition, the proposed amendment to Article 6, detailed in Section E, stipulates 'balanced representation of employees within the EWC', taking the 'activities, category and gender' of employees of the undertaking into account.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Business, Enterprise &amp; Regulatory Reform (BERR)</b>	<b>Title:</b> <b>Impact Assessment of Employment Agencies Conduct Regulations</b>	
<b>Stage:</b> Consultation	<b>Version:</b> Final	<b>Date:</b> February 2009
<b>Related Publications:</b> Consultation Document		

### Available to view or download at:

<http://www.berr.gov.uk/>

**Contact for enquiries:** Dhiren Patel

**Telephone:** (020) 7215 3945

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

- Duplication of checks in the recruitment of permanent staff via employment agencies
- Improve the protection for vulnerable workers employed via employment agencies and employment businesses.
- Correcting an anomaly relating to medical deaneries
- Reduce the admin burdens for the recruitment industry

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

The policy objectives are to consult on:

- Reducing duplication and improve clarity around suitability checks around permanent recruitment
- Maintaining fair treatment for workers
- Reclassify medical deaneries
- Reduce the admin burden costs on employers so that they are proportionate to risks

### What policy options have been considered? Please justify any preferred option.

Policy Option 1: 1a) Do nothing 1b) Remove suitability check for agencies who introduce workers for permanent employment. 1c) Same as 1b, plus reducing 3 month period of informing hirer of new information on worker.

Policy Option 2: 2a) Do nothing 2b) Total ban on upfront fees. 2c) As 2b but directories can charge clients upfront fees in the entertainment sector 2d) Raise awareness of 7 days cooling off period.

Policy Option 3: Change position of Postgraduate Medical Deaneries.

Policy Option 4: Make amendments to Regulations: 14,16,17; 27; and 32.

See separate impact assessment (attached) for details of options in the various policy areas.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed after 3 years of implementation. However, the

Employment Agency Inspectorate (EAI) monitor and review the Regulations and complaints received on these issues on an ongoing basis.

### **Ministerial Sign-off** For consultation stage Impact Assessments:

*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: February 2009



## Summary: Analysis & Evidence

Policy Option: 1b

Description: Remove suitability checks for employment agencies who introduce workers for permanent employment

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Removing suitability checks for employment agencies would not incur a cost for the agency or the employer. This is because, by law, employers have to carry out their own suitability checks when they hire permanent workers from agencies.	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	<b>£ 0m</b>			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ 0m</b>		<b>Total Cost (PV)</b>	<b>£ 0m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' There were around 727k workers placed into permanent employment. Therefore agencies should save around £726k per year from a reduction in admin burdens.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ 0m</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ 681k</b>		<b>Total Benefit (PV)</b>	<b>£ 5.9m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' None.				

**Key Assumptions/Sensitivities/Risks** PricewaterhouseCoopers (PwC's) estimate for information obligation (IO) 28512 is over the number of 15,000 agencies rather than the number of agency workers. Therefore, we apportioned the savings of this IO over the number of workers placed into permanent employment via an agency.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 5.5m to 6.5m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 5.9m</b>
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What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			October 2009	
Which organisation(s) will enforce the policy?			EAI	
What is the total annual cost of enforcement for these organisations?			£ NK	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0k	Decrease of	£ 631k	<b>Net Impact</b>	<b>£ -631k</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

Policy Option: 1c

Description: Same as Option 1b, plus reducing the 3 month period in which the agency has to inform the hirer if new information arises about the worker

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Same as Option 1b. In addition, reducing the 3 month period shouldn't increase costs as if the employer does its own checks (which it has to by law), then it should be informed of any changes in circumstances from whomever they contacted to get the information about the worker.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 0m		<b>Total Cost (PV)</b> £ 0m
Other <b>key non-monetised costs</b> by 'main affected groups' None.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Same as Option 1b, plus a reduction in admin burdens of around £173k per year due to a simplification in Regulation 20(5)&(6) (IO 28315). Therefore aggregate benefit is around £854k per year.
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 854k		<b>Total Benefit (PV)</b> £ 7.4m
Other <b>key non-monetised benefits</b> by 'main affected groups' None.			

**Key Assumptions/Sensitivities/Risks** Assumes that for around 1% of the 727k permanent workers, the agency gets information that they are unsuitable, and for illustration purposes we further assume that around half of these cases would not arise due to a shorter period.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ 7m to 8m	<b>NET BENEFIT (NPV Best estimate)</b> £ 7.4m
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			October 2009		
Which organisation(s) will enforce the policy?			EAI		
What is the total annual cost of enforcement for these organisations?			£ NK		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0m	Decrease of	£ 791k	<b>Net Impact</b>	£ -791k

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

Policy Option: 2b

Description: Total ban on upfront fees

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Agencies would have to produce a publication, but would not be able to recoup this cost. Therefore the cost to agencies would be around £2m per year. This is based on anecdotal evidence that around 10,000 people join these agencies and get charged around £200 for a publication.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 2m		<b>Total Cost (PV)</b> <b>£ 17m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The banning of upfront fees would result in a saving of around £2m for models and entertainers seeking work. This is based on anecdotal evidence that around 10,000 people join these agencies and get charged around £200 for a publication.
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 2m		<b>Total Benefit (PV)</b> <b>£ 17m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' None.			

**Key Assumptions/Sensitivities/Risks** Anecdotal evidence suggests that there are around 10,000 model and entertainment agencies and they charge an upfront fee of around £200.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 0m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 0m</b>
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			October 2009		
Which organisation(s) will enforce the policy?			EAI		
What is the total annual cost of enforcement for these organisations?			£ NK		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)	
Increase of	£ 0m	Decrease of	£ 0m	<b>Net Impact</b> <b>£ 0m</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

Policy Option: 2c

Description: As option 2b but with an exemption that allows directories to charge clients upfront fees in the entertainment sector

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Agency directories not in the entertainment sector would have to produce a publication, but would not be able to recoup this cost. Therefore the cost to these agencies would be around £800k per year. This is based on anecdotal evidence that around 40% of the 10,000 people that join these agencies get charged around £200 for a publication.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 0m</b>	0	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 800k</b>		<b>Total Cost (PV)</b> <b>£ 7m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'. The banning of upfront fees would result in a saving of around £800k for individuals that seek work as models. This is based on anecdotal evidence that around 40% of the 10,000 people that join these agencies get charged around £200 for a publication.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0m</b>	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 800k</b>		<b>Total Benefit (PV)</b> <b>£ 7m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' None.			

**Key Assumptions/Sensitivities/Risks** Anecdotal evidence suggests that around 60% of the 10,000 people that join these agencies, do so in order to seek work in the employment sector.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 0m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 0m</b>
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What is the geographic coverage of the policy/option?		UK	
On what date will the policy be implemented?		October 2009	
Which organisation(s) will enforce the policy?		EAI	
What is the total annual cost of enforcement for these organisations?		£ NK	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		No	
What is the value of the proposed offsetting measure per year?		£ N/A	
What is the value of changes in greenhouse gas emissions?		£ N/A	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro NK	Small NK	Medium NK
Are any of these organisations exempt?	No	No	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0m	Decrease of	£ 0m
		<b>Net Impact</b>	<b>£ 0m</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

Policy Option: 2d

Description: Invest in raising awareness of 7 day cooling off period, providing a refund should no publication materialise & ban the taking of post-dated cheques or credit/debit card impressions

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Agency's would have to inform clients of the 7 day notice period. We use PwC IO 28345 as a proxy of giving notice to the work-seeker of the 7 day notice period.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 0m</b>	0	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 133k</b>		<b>Total Cost (PV)</b> <b>£ 1.1m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Cost to agency of chasing up payment and providing a refund. Cost to individual of obtaining a refund if agency fails to notify them.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Assumes that for 25% to 30% of individuals that join these agencies, no publication materialises. Therefore they would benefit from a refund.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0m</b>	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 375k to 450k</b>		<b>Total Benefit (PV)</b> <b>£ 3.2m to 3.9m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' None.			

**Key Assumptions/Sensitivities/Risks** Assumes that there are around 10,000 model and entertainment agencies and they charge an upfront fee of around £150.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 2.1m to 2.7m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 2.4m</b>
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	October 2009			
Which organisation(s) will enforce the policy?	EAI			
What is the total annual cost of enforcement for these organisations?	£ NK			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ 123k	Decrease of	£ 0k
		<b>Net Impact</b>	<b>£ 123k</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

Policy Option: 3

Description: Change position of Postgraduate Medical Deaneries

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' None.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost (excluding one-off)</b>		
	£ 0m		<b>Total Cost (PV)</b> £ 0m
Other <b>key non-monetised costs</b> by 'main affected groups' None			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Not Known (NK).
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£ NK		<b>Total Benefit (PV)</b> £ NK
Other <b>key non-monetised benefits</b> by 'main affected groups' Medical Deaneries would no longer be classified as agencies, thus correcting the anomaly created during the 2006 NHS re-organisation. In addition, there are no risks for Deaneries of having to comply with employment agency regulations.			

Key Assumptions/Sensitivities/Risks None.

Price Base Year N/A	Time Period Years 0	<b>Net Benefit Range (NPV)</b> £ NK	<b>NET BENEFIT (NPV Best estimate)</b> £ NK
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	October 2009			
Which organisation(s) will enforce the policy?	DH			
What is the total annual cost of enforcement for these organisations?	£ NK			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)	
Increase of	£ 0m	Decrease of	£ 0m	<b>Net Impact</b> £ 0m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

**Policy Option: 4.1b**

**Description:** Remove the requirement to agree terms with work-seekers in respect of permanent candidates. Terms will instead be agreed when the work-seeker gets a job

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' None.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost (excluding one-off)</b>		
	£ 0m		<b>Total Cost (PV)</b> £ 0m
Other <b>key non-monetised costs</b> by 'main affected groups' None.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Admin burdens for agencies would fall. There were around 727k workers placed into permanent employment in 2007/08.
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£ 75k		<b>Total Benefit (PV)</b> £ 642k
Other <b>key non-monetised benefits</b> by 'main affected groups' None			

**Key Assumptions/Sensitivities/Risks** Opinion Research Corporation (ORC's) estimate for IO 28282 is over the number of 15,000 agencies rather than the number of agency workers. Therefore, we apportioned the savings of this IO over the number of workers placed into permanent employment via an agency.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ 600k to 700k	<b>NET BENEFIT (NPV Best estimate)</b> £ 642k
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			October 2009		
Which organisation(s) will enforce the policy?			EAI		
What is the total annual cost of enforcement for these organisations?			£ NK		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (ORC Interim Results - 2008 Prices)			(Increase - Decrease)	
Increase of	£ 0m	Decrease of	£ 75k	<b>Net Impact</b> £ -75k

## Summary: Analysis & Evidence

Policy Option: 4.2b

Description: Remove the obligation to specify whether the hirer is acting as an employment agency or employment business

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' NK
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ NK		<b>Total Cost (PV)</b> £ NK
Other <b>key non-monetised costs</b> by 'main affected groups' Work-seeker would not know if the hirer is an employment agency or an employment business. However, the impact would be small as anecdotal evidence suggests that most individuals do not know the difference between an employment agency and employment business.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Agencies and employment businesses would no longer have to state if it is an agency or business.
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 100k		<b>Total Benefit (PV)</b> £ 857k
Other <b>key non-monetised benefits</b> by 'main affected groups' None.			

**Key Assumptions/Sensitivities/Risks** PwC IO 2029 includes 2 parts: 1. Agency must state full name and 2. Agency must state if it is an agency or business. We assume that by removing the 2<sup>nd</sup> obligation, the cost of this IO would fall by 50%.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ 800k to 900k	<b>NET BENEFIT (NPV Best estimate)</b> £ 857k
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			October 2009		
Which organisation(s) will enforce the policy?			EAI		
What is the total annual cost of enforcement for these organisations?			£ NK		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)	
Increase of	£ 0k	Decrease of	£ 92k	<b>Net Impact</b> £ -92k

Key: Annual costs and benefits: Constant Prices (Net) Present Value



## Summary: Analysis & Evidence

Policy Option: 4.3b

Description: Repeal Regulation 32 in its entirety

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' None.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost (excluding one-off)</b>		
	£ 0m		<b>Total Cost (PV)</b> £ 0m
Other <b>key non-monetised costs</b> by 'main affected groups' None.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Using PwC admin burdens exercise, by repealing Regulation 32 (IO 28393), businesses could save around £14m per year (using 2008 prices).
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£ 14m		<b>Total Benefit (PV)</b> £ 120m
Other <b>key non-monetised benefits</b> by 'main affected groups' This option would not leave the worker vulnerable to non-payment and the employer would be able to transfer a worker from a temporary contract to a permanent contract.			

**Key Assumptions/Sensitivities/Risks** Assumes that the number of businesses using Regulation 32 in 2005 stays roughly the same for 2008.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ 100m to 150m	<b>NET BENEFIT (NPV Best estimate)</b> £ 120m
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What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			October 2009	
Which organisation(s) will enforce the policy?			EAI	
What is the total annual cost of enforcement for these organisations?			£ NK	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)	
Increase of	£ 0m	Decrease of	£ 12.9m	<b>Net Impact</b> £ -12.9m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

Policy Option: 4.3c

Description: Issue better guidance for workers

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Admin burdens for agencies would rise under this option. PwC or ORC estimates could not be used as an IO proxy could not be found.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost (excluding one-off)</b>		
	£ 3.5m to 7m		<b>Total Cost (PV)</b> £ 30m to 60m
Other <b>key non-monetised costs</b> by 'main affected groups' None.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' NK
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£ NK		<b>Total Benefit (PV)</b> £ NK
Other <b>key non-monetised benefits</b> by 'main affected groups' This option would not leave the worker vulnerable to non-payment.			

**Key Assumptions/Sensitivities/Risks** Assumes that 40% (520k) of the 1.35m agency workers would need guidance, and it takes around 30 minutes to 1 hour for the agency staff to explain the opt-out. In addition, we use Annual Survey of Hours & Earnings (ASHE) 2008 data, which shows that agency staff gets around £13 per hour (this includes a 21% mark-up for non-wage costs).

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ -30m to -60m	<b>NET BENEFIT (NPV Best estimate)</b> £ -45m
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	October 2009			
Which organisation(s) will enforce the policy?	EAI			
What is the total annual cost of enforcement for these organisations?	£ NK			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ NK	Decrease of	£ 0m
		<b>Net Impact</b>	£ NK (Increase)

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

Policy Option: 4.3d

Description: Make it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' None
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 0m	<b>Total Cost (PV)</b> £ 0m	
Other <b>key non-monetised costs</b> by 'main affected groups' None			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' NK
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ NK	<b>Total Benefit (PV)</b> £ NK	
Other <b>key non-monetised benefits</b> by 'main affected groups' This option would not leave workers vulnerable to non-payment as they would not be forced to opt-out of certain regulations.			

Key Assumptions/Sensitivities/Risks N/A

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ NK	<b>NET BENEFIT (NPV Best estimate)</b> £ NK
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			October 2009		
Which organisation(s) will enforce the policy?			EAI		
What is the total annual cost of enforcement for these organisations?			£ NK		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0m	Decrease of	£ 0m	<b>Net Impact</b>	£ 0m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

**Policy Option: 4.3e**

**Description: Make opt-out not apply to certain key Regulations, such as Regulation 6 (restriction on detrimental action relating to work-seekers working elsewhere) and Regulation 10 (restriction on charges to hirers)**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' None.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 0m</b>	0	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 0m</b>	<b>Total Cost (PV)</b>	<b>£ 0m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' NK
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0m</b>	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ NK</b>	<b>Total Benefit (PV)</b>	<b>£ NK</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' This option would not leave workers vulnerable to non-payment as they would not be forced to opt-out of certain regulations and employers would be able to transfer a worker from a temporary contract to a permanent contract.			

Key Assumptions/Sensitivities/Risks N/A.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ NK</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ NK</b>
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			October 2009		
Which organisation(s) will enforce the policy?			EAI		
What is the total annual cost of enforcement for these organisations?			£ NK		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0m	Decrease of	£ 0m	<b>Net Impact</b>	£ 0m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

### A. Strategic Overview

The Government is planning to launch a consultation on the Employment Agency Standards Conduct Regulations 2003 to improve the protection afforded to vulnerable workers, reduce the administrative (admin) burdens faced by industry and take Medical Deaneries out of the scope of the Employment Agencies Act 1973 (also known as “the Act”).

#### **Definitions of employment agencies and employment businesses**

There is often confusion about the differences between employment agencies and employment businesses. To clarify:

**Employment agencies** introduce workers to hirers for permanent employment. The worker subsequently becomes the employee of the hirer and has no further contractual relationship with the agency. Work-seekers looking for permanent employment would, therefore, use the services of an employment agency.

**Employment businesses** introduce workers to hirers for temporary work only. The employment business (also known as temp agencies) will place a worker with a hirer to work. The worker’s contractual relationship is with the employment business and it is the employment business that is responsible for paying the worker and managing annual leave etc. These workers are often known as agency workers, hence the confusion over the terms employment agency and employment business.

#### **Recruitment businesses that do both.**

Some recruitment businesses offer both temporary and permanent vacancies. A work-seeker’s relationship with this type of recruiter depends on the nature of the vacancy they are applying for.

For example if a work-seeker is looking for a job on an online jobs board<sup>(1)</sup> and applies for a permanent vacancy, the recruiter must act as an employment agency in their dealings with the work-seeker. If the work-seeker was using the same recruiter and applied for a temporary job then that recruiter’s relationship with the work-seeker is as an employment business and it must act accordingly.

<sup>(1)</sup> An online jobs board is an internet site where job vacancies are posted (vacancies could be permanent or temporary).

## **B. Issue**

### **B.1 Groups Affected**

The groups that would be affected by the proposed changes are; all employment agencies and employment businesses, work-seekers and hirers that use their services.

Specifically changes to:

- Regulation 26 would impact modelling and entertainment agencies, certain trade press in this sector and 'vulnerable work-seekers'.
- Regulation 32 would impact on anyone who is employed through an incorporated company.
- Regulations 14, 16, 17, 19, 20, 22, and 27 would have an impact on employment agencies and employment businesses and to a lesser extent work-seekers and hirers.
- The Medical Deaneries exemption would have an impact on Deaneries.

The full regulations are available from <http://www.opsi.gov.uk/si/si2003/20033319.htm>

### **B.2 Consultation**

#### **Within Government**

The Department for Business, Enterprise and Regulatory Reform (BERR) has developed these proposals in consultation with the following Government departments: Department for Children, Skills and Families (DCSF), Health and Safety Executive (HSE), Department for Work and Pensions (DWP), Home Office (HO) and Department of Health (DH).

#### **Public Consultation**

This partial impact assessment (IA) accompanies a formal public consultation.

### **B.3 Rationale for Government intervention**

#### **Policy Objective 1: Checking Suitability for Permanent Recruitment**

In the absence of Government intervention, there is a risk that agencies are duplicating the work, with respect to suitability checks for permanent recruitment that the employer has to do by law. As a result, inefficiencies arise as both the agency and the employer carry out the checks, when it is possible that only one of the parties would have to do this.

#### **Policy Objective 2: Fees payable by entertainers and models**

In the absence of Government intervention, there is a risk that some vulnerable agency workers will continue to be mistreated as a result of certain work practices carried out by a minority of businesses and agencies who act in ways the vast majority of agencies would never consider, and who, in doing so, cut corners at the expense of workers and gain an unfair commercial advantage at the expense of reputable agencies.

#### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

In 2006 the Deaneries, following NHS re-organisation, moved to become part of strategic health authorities. This moved them within scope of the Employment Agencies Act 1973 and therefore subject to employment agency legislation. In the absence of Government intervention, Deaneries would continue to fall under the employment agencies legislation, when it should be exempt from the Act as Deaneries are not employment agencies.

#### **Policy Objective 4: Miscellaneous Regulation Changes**

In the absence of Government intervention, there is a risk that some vulnerable agency workers will continue to be mistreated as a result of certain work practices carried out by a

minority of businesses and agencies who act in ways the vast majority of agencies would never consider, and who, in doing so, cut corners at the expense of workers and gain an unfair commercial advantage at the expense of reputable agencies. In addition, there is the risk that some of these regulations pose admin burdens on agencies.

## C. Objectives

### C1. Objectives

#### **Policy Objective 1: Checking Suitability for Permanent Recruitment**

The objective is to consult on the extent to which the Government can reduce regulatory burdens, clarify lines of responsibility, address overlap and eliminate duplication in respect of suitability checks for workers introduced by employment agencies for permanent employment.

#### **Policy Objective 2: Fees payable by entertainers and models**

The objective is to look again at the fees entertainment and modelling agencies charge with a view to proposing a ban on the taking of upfront fees altogether. Evidence suggests that despite the introduction of the 7 day cooling off period, some agencies continue to abuse it.

#### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

The objective is to correct an anomaly where, as a result of NHS re-organisation, Deaneries now fall within the scope of the Employment Agencies Act and are subject to employment agency legislation. Deaneries were previously exempt and it was never the intention that they be covered by the Act.

#### **Policy Objective 4: Miscellaneous Regulation Changes**

The objective is to consult on the extent to which the Government can reduce regulatory burdens in areas such as the requirements to agree terms with work-seekers and hirers in respect of permanent recruitment; and the requirements when placing advertisements. In addition this policy objective aims to look at the protection for temporary workers being employed by umbrella companies.

### C.2 Background

#### **Vulnerable workers**

<b>Regulation</b>	<b>Relevant Information Obligations (IO)</b>	
<b>26:</b> Charging of upfront fees by entertainment and modelling agencies.	<b>IO 28345</b> (used as proxy)	Giving notice to the work-seeker of arrangements to pay fares or offer free travel for the work-seeker's journey to the place of work including details of free travel or payment of fares, including any conditions on which they are offered.
<b>32:</b> Amendments to regulations that allow temporary workers employed through umbrella companies to opt-out of the Conduct Regulations.	<b>IO 28393</b>	Providing notice to an agency/employment business of an agreement that you (as a company work-seeker) or persons that you supply would not be covered by these regulations (concerning conduct of employment agencies and businesses).

#### **Reducing Admin Burdens for the Industry**

<b>Regulation</b>	<b>Relevant Information Obligations (IO)</b>
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19, 20, 22: Reduce the duty for employment agencies, involved in recruitment of permanent workers, to carry out suitability checks when placing work-seekers with an employer.	IO 28512	Obtaining confirmation of required information prior to introducing or supplying a work-seeker to a hirer.
	IO 28315	Informing the hirer of a work-seeker that he/she may be unsuitable for the position in which they have been employed.
14, 16, 17: Remove obligations to agree terms with workers in case of permanent recruitment.	IO 28282	Sending a copy of the agreed terms to the hirer (unless hirer already has a copy) before first providing services.
27: Simplify the requirements for employment agencies and employment businesses when advertising vacancies.	IO 2029	Ensuring that every advert you issue mentions the details stated in the regulation.

## Exempting Medical Deaneries

- Exempt Postgraduate Medical Deaneries from the Employment Agencies Act, who following re-organisation of the NHS are now within scope of, and therefore subject to employment agency legislation. This is an anomaly. Deaneries were previously exempt and it was never the intention that they be within the scope of the Act.

## D. Options

### Policy Objective 1: Checking Suitability for Permanent Recruitment

Option 1a is to make no changes (do nothing).

Option 1b Amend Regulations 19 (a) & (b) and Regulation 22 in order to remove the requirement for employment agencies (who introduce workers for permanent employment) to undertake suitability checks.

Regulations 19 (a) & (b): Remove the need for employment agencies to carry out checks on the identity of the work-seeker or any checks that the work-seeker has the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which are required by law or by any professional body, to work in the position which the hirer seeks to fill.

Regulation 22: When supplying a work-seeker that will be involved with vulnerable workers then no need to provide:

1. Copies of the qualifications and authorisations,
2. Two references, and
3. Take other steps to ensure that the work-seeker is not unsuitable.

Option 1c is to do the same as Option 1b, plus consult on whether Regulation 20 (5) & (6), (which require an agency to inform the hirer if they receive or obtain information that the worker is unsuitable) is necessary and/or whether there is any benefit in shortening the current 3 month period (after which the obligation lapses).

### Policy Objective 2: Fees payable by entertainers and models

Option 2a is to make no changes (do nothing).

Option 2b involves a total ban on upfront fees for individuals seeking work in the entertainment and modelling sector.



Option 2c is the same as option 2b but with an exemption that allows directories to charge clients upfront fees in the entertainment sector.

Option 2d proposes to tighten existing regulations (combined with targeted awareness campaign) by amending to include:

- Requirement to notify clients in writing about 7 day cooling off period & right to cancel;
- Ban on taking of credit card impressions/post dated cheques;
- Provision for refund if no publication produced or circulated; and
- Explicit reference to assessment fees not being permissible.

### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

Option 3a is to make no changes (do nothing).

Option 3b proposes to exempt Postgraduate Medical Deaneries from the employment agency legislation.

### **Policy Objective 4: Miscellaneous Regulation Changes**

#### ***REGULATIONS 14, 16, 17: Obligations to agree terms with workers in case of permanent recruitment***

Option 4.1a is to make no changes (do nothing).

Option 4.1b involves removing the requirement to agree terms with work-seekers in respect of permanent candidates. Prior to submitting candidates to clients, terms must be agreed. This option proposes to remove these so that terms will instead be agreed when the work-seeker gets a job.

#### ***REGULATION 27: Advertisements***

Option 4.2a is to make no changes (do nothing).

Option 4.2b is to simplify advertising requirements by removing the obligation to specify whether the hirer is acting as an employment agency or employment business.

#### ***REGULATION 32: Application of the Regulations to work-seekers which are incorporated***

Option 4.3a is to make no changes (do nothing).

Option 4.3b involves repealing Regulation 32 in its entirety.

Option 4.3c is to issue better guidance for workers so they do not agree to sign an opt-out without understanding what they are agreeing to.

Option 4.3d is to make it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company.

Option 4.3e is to make opt-out not apply to certain key Regulations such as; Regulation 6 (restriction on detrimental action relating to work-seekers working elsewhere) and Regulation 10 (restriction on charges to hirers).

## **E. Costs and Benefits**

For the majority of the policy options, the savings or costs arise due to a change in admin burdens.

To estimate these increases or reductions in this IA, we shall be using Opinion Research Corporation (ORC) International's Employment Law Administrative Burden Measurement Research 2008 interim results<sup>77</sup>. Where ORC have not estimated the cost for an IO, we will use PricewaterhouseCoopers (PwC) 2005 admin burdens exercise.

## **Policy Objective 1: Checking Suitability for Permanent Recruitment**

### *General Assumptions and Data*

- PwC's 2005 admin burdens exercise estimates that there are around 15,000 agencies. In order to calculate the reduction or increase in admin burdens, we have to use this figure.
- The Recruitment and Employment Confederation's (REC) Annual Industry Turnover and Key Volumes Survey 2007/8 found that around 726,863 workers were placed into permanent employment via an agency.
- BERR's Survey of Recruitment Agencies (SORA) 2007 showed that there are around 1.5m temporary agency workers in the UK, and REC's survey found that there are around 1.2m. We use a mid-figure between the 2 surveys of around 1.35m.

### Option 1b – Remove suitability checks for employment agencies who introduce workers for permanent employment

#### *Costs*

Removing suitability checks for employment agencies would not incur a cost for the agency or the employer. This is because, by law, employers have to carry out their own suitability checks when they hire permanent workers from agencies.

#### *Benefits*

As agencies would no longer be required to carry out suitability checks, they should benefit from a decrease in admin burdens.

To estimate the reduction in admin burdens, we use PwC's 2005 admin burdens exercise estimates. The IO that corresponds to this regulation is IO 28512. The cost of this IO to an agency is around £120 (2005 prices). Apportioning this cost over the number of permanent workers<sup>78</sup>, the aggregate savings (from a decrease in admin burdens) would be around £631k per year (£681k per year for 2008 prices<sup>79</sup>).

### Option 1c – Same as Option 1b, plus reducing the 3 month period in which the agency has to inform the hirer if new information arises about the worker

#### *Costs*

As stated in Option 1b, there would be no costs involved from removing the requirement for the agency to carry out suitability checks on workers being placed into permanent employment. In addition, reducing the 3 month period shouldn't increase costs as if the employer does its own checks (which it has to by law), then it should be informed of any changes in circumstances from whomever they contacted to get the information about the worker.

#### *Benefits*

This option would have the same benefits as option 1b.

In addition, the PwC admin burdens exercise estimates that the cost of Regulation 20(5) & (6) (IO 28315) is around £44 per work-seeker (2005 prices). Anecdotal evidence suggests that a small number of hirers receive new information about a worker. Therefore, if under the assumption that for around 1% of the 727k permanent workers, the agency gets

<sup>77</sup> The Final IA will be published containing the definitive estimates.

<sup>78</sup> (Cost of IO / Number of workers per agency) \* Number of Workers Placed into Permanent Recruitment. Where: Number of Workers per Agency = (Permanent Workers + Temporary Workers) / Number of Agencies.

<sup>79</sup> Using Her Majesty's Treasury's (HMT) Gross Domestic Product (GDP) deflator figures.

information that they are unsuitable, and for illustration purposes we further assume that around half of these cases would not arise due to a shorter period, the aggregate saving (from a decrease in admin burdens) would be around £161k per year (£173k per year for 2008 prices).

Therefore the aggregate benefit (which includes the benefits from Option 1b) of this option would be around £791k per year (£854k per year for 2008 prices).

## **Policy Objective 2: Fees payable by entertainers and models**

### *General Assumptions and Data*

- Anecdotal evidence suggests that the upfront fee may be around £200.
- Anecdotal evidence suggests that around 10,000 people per year join these agencies.<sup>80</sup>
- Anecdotal evidence suggests that around 60% of the 10,000 people join these agencies to seek work in the entertainment sector.

### Option 2b – Total ban on upfront fees

#### *Costs*

The banning of upfront fees would impose a cost to modelling and entertainment agencies as they would still have to publish a portfolio for their worker, but would not be able to recover the cost of the publication. It is not possible to accurately estimate the costs of this policy in the absence of better data. However, using anecdotal evidence, the aggregate cost of this option would be around £2m per year (2008 prices).

#### *Benefits*

The banning of upfront fees would result in a saving for models and entertainers seeking work. Therefore, the aggregate benefit would be around £2m per year (2008 prices).

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<sup>80</sup> These figures were used in the 2007 IA on Protecting Vulnerable Agency Workers. We are assuming that these numbers have not changed by a great amount.

### Option 2c – Same as option 2b but with an exemption that allows directories to charge clients upfront fees in the entertainment sector

#### *Costs*

The costs of this option would be similar to those in option 2b, but smaller as directories in the entertainment sector would be able to charge upfront fees. It is not possible to accurately estimate the costs of this policy in the absence of better data. However, anecdotal evidence suggests that around 40% of the 10,000 people that join these agencies do so in order to seek work that is not in the entertainment sector. Therefore, the aggregate cost to agencies of this option would be around £800k per year (2008 prices).

#### *Benefits*

The benefits of this option would be similar to those in option 2b, but smaller as directories in the entertainment sector would be able to charge upfront fees. It is not possible to accurately estimate the benefits of this policy in the absence of better data. However, using anecdotal evidence, the aggregate benefit of this option would be around £800k per year (2008 prices).

### Option 2d – Invest in raising awareness of 7 day cooling off period, providing a refund should no publication materialise & ban the taking of post-dated cheques or credit/debit card impressions

#### *Costs*

Under this option, the agency would have to inform all new clients of the 7 day cooling off period in writing. PwC or ORC does not have a specific IO for this regulation. However, if we use PwC's IO 28345<sup>81</sup> as a proxy, the increase in admin burdens would be around £12 per individual. Therefore the aggregate cost would be around £123k per year (£133k per year 2008 prices).

Given that under this proposal the agency would have to refund the fee should no publication materialise after a certain period, poses a possible cost for the agency and a cost to the individual. Costs for agencies would increase as it would have to refund the money that it owes the work-seeker. In addition, there would be costs to agencies of chasing up individuals for payment as they cannot take a post-dated cheque or credit/debit card impression. This option would also pose costs to the work seeker (individual), as they would have to chase up the agency to get their money back, if the agency fails to notify them of the refund. In the absence of better data it is difficult to estimate these costs.

#### *Benefits*

It is not possible to accurately estimate the benefits from this policy in the absence of better data. However, if we assume that for around 25% to 30% of the 10,000 people who join these agencies no publication materialises, then the benefit from a refund would amount to around £375k to £450k per year (2008 prices).

### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

#### Option 3b – Change position of Postgraduate Medical Deaneries

#### *Costs*

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<sup>81</sup> Giving notice to the work-seeker of arrangements to pay fares or offer free travel for the work-seeker's journey to the place of work including details of free travel or payment of fares, including any conditions on which they are offered.

Under this option Postgraduate Medical Deaneries will not fall under the Employment Agency Act. We estimate that there would be no costs involved as Deaneries were not considered as employment agencies prior to the 2006 NHS re-organisation and changing them back to their pre-2006 status would have no impact.

### *Benefits*

The benefit of this option would be that Deaneries would no longer be classified as employment agencies. In addition, there are no risks for Deaneries of having to comply with employment agency regulations.

## **Policy Objective 4: Miscellaneous Regulation Changes**

### *General Assumptions and Data*

- Data from ASHE 2008 shows that the average pay of a labour recruiter is around £11 per hour. Assuming a 21% mark-up to include non-wage costs, total hourly pay would be around £13 per hour.
- PwC's 2005 admin burdens exercise estimates that there are around 15,000 agencies. In order to calculate the reduction or increase in admin burdens, we have to use this figure.
- REC's survey found that around 726,863 workers were placed into permanent employment via an agency in 2007/08.
- SORA showed that there are around 1.5m temporary agency workers in the UK, and REC's survey found that there are around 1.2m. We use a mid figure between the 2 surveys of around 1.35m.

### ***REGULATION 14, 16, 17***

Option 4.1b – Remove the requirement to agree terms with work-seekers in respect of permanent candidates. Terms will instead be agreed when the work-seeker gets a job

### *Costs*

Removing the requirement to agree terms with work-seekers in respect of permanent candidates would not pose any costs.

### *Benefits*

To estimate the reduction in admin burdens for this option, we use ORC's interim results for IO 28282. The cost of this IO to an agency is around £14 (2008 prices). Apportioning this cost over the number of permanent workers, the aggregate savings (from a decrease in admin burdens) would be around £75k per year (2008 prices).

### ***REGULATION 27***

Option 4.2b – Remove the obligation to specify whether the hirer is acting as an employment agency or employment business

### *Costs*

The cost of this option would be that the work seeker will not know if the hirer is an employment agency or an employment business. However, the impact would be small as anecdotal evidence suggests that most individuals do not know the difference between an employment agency and employment business.

## *Benefits*

Employment agency and employment business would save some money from not printing its status as an agency or business. The PwC admin burdens exercise estimates that the cost of Regulation 27 (IO 2029) is around £12 per agency. However this IO also includes that the advert must state the full name of the agency/employment business. We assume that by taking out the requirement to state whether the hirer is acting as an agency or employment business, costs could fall by 50%. Consequently, each agency should save around £6 per year. Therefore, the aggregate reduction in admin burdens would be around £92k per year (£100k per year 2008 prices).

## **REGULATION 32**

### Option 4.3b Repeal Regulation 32 in its entirety

#### *Costs*

There would be no costs involved in repealing Regulation 32.

#### *Benefits*

The PwC admin burdens exercise estimates that the cost of Regulation 32 (IO 28393) is around £32 per number of businesses receiving work seekers from employment agencies. In 2005, there were around 540k businesses that received workers in this manner, if we assume that this figure hasn't changed by a great amount then the savings from repealing Regulation 32 would amount to around £12.9m per year in 2005 prices (£13.9m per year in 2008 prices).

In addition the benefit would be that it would not leave workers vulnerable to non-payment, and the employer would be able to transfer the worker from being on a temporary contract to a permanent contract. Without better data, it is difficult to estimate these benefits.

### Option 4.3c - Issue better guidance for workers

#### *Costs*

The PwC admin burdens exercise does not have a specific IO for this regulation and we were unable to find a relevant proxy. However, this option would result in an increase of admin burdens for agencies as they would have to issue better guidance for work seekers. If we assume that of the 1.35m agency workers, around 40% (540k) are employed through an umbrella company and it takes 30 minutes to 1 hour for the agency staff to explain the opt-out, then the cost to the agency would be around £6.50 to £13 per worker. The aggregate cost would be around £3.5m to £7m per year (2008 prices).

#### *Benefits*

In the absence of better data it is difficult to estimate the benefit of this option. However, the benefit would be that the worker would be better informed about what the opt-out involves. Therefore it would not leave the worker vulnerable to non-payment.

Option 4.3d - Make it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company

*Costs*

There would be no costs involved in making it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company.

*Benefits*

In the absence of better data it is difficult to estimate the benefit of this option. However, the benefit would be that it would not leave workers vulnerable to non-payment, as they would not be forced to opt-out of certain regulations.

Option 4.3e - Make opt-out not apply to certain key Regulations, such as Regulation 6 (restriction on detrimental action relating to work-seekers working elsewhere) and Regulation 10 (restriction on charges to hirers)

*Costs*

There are no costs involved with this option.

*Benefits*

The benefits of having these restrictions in place are that it would protect workers from non-payment, as they would not be forced to opt-out of certain regulations. and give the hirer the option to make the worker a permanent employee.

## **F. Risks**

### **Policy Objective 1: Checking Suitability for Permanent Recruitment**

No risks could be identified with respect to Options 1b and 1c as the suitability checks ought to be carried out by the employer, as they are required to do so by law.

### **Policy Objective 2: Fees payable by entertainers and models**

With Option 2b, there is the risk that the agency might not be able to recoup the cost of financing the publication of a portfolio.

There is the risk that in Option 2c, workers seeking employment in the entertainment sector would be charged an upfront fee, and no publication of a portfolio would materialise.

Under Option 2d some agencies might not inform their workers of the 7 day cooling off period, in order to cut corners and gain an unfair advantage over their competitors. There is also the risk that some agencies would not inform their worker that they have not distributed their portfolio, in the hope that the worker would have forgotten about joining the agency. Therefore there would be a cost to the individual (model/entertainer) on chasing up the issue with the agency.

### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

There are no risks involved under Option 3b.

### **Policy Objective 4: Miscellaneous Regulation Changes**

#### ***REGULATION 14, 16, 17***

Under Option 4.1b there is the risk that the work-seeker would be unaware of the terms that it has with the agency.

#### ***REGULATION 27***

Under Option 4.3b there is the risk that the work-seeker would not be aware if the hirer is an employment agency or employment business.

#### ***REGULATION 32***

The risk of the options proposed for Regulation 32 is that the umbrella company that an employment business uses could see a fall in demand and some could potentially shut down. As the majority of umbrella companies use umbrella companies for reducing payroll costs this risk is small.



## G. Enforcement

The Employment Agency Inspectorate (EAI) would enforce the policy changes for the options proposed in Policy Objectives 1, 2 and 4. If Postgraduate Medical Deaneries are exempt from the Employment Agency Act, then enforcement would fall upon DH.

## H. Summary and Recommendations

### Policy Objective 1: Checking Suitability for Permanent Recruitment

The table below outlines the costs and benefits of the proposed changes.

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Option	Cost	Benefit
1b	None	£681k/year for agencies
1c	None	£854k/year for agencies

Source: BERR, ASHE, REC, PwC

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### Policy Objective 2: Fees payable by entertainers and models

The table below outlines the costs and benefits of the proposed changes.

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Option	Cost	Benefit
2b	£2m/year for agencies and hirers	£2m/year for work-seekers
2c	£800k/year for agencies and hirers	£800k/year for work-seekers
2d	£133k/year for agencies Cost to agency of chasing up payment (not quantified) Cost to agency of providing a refund (not quantified) Cost to individual of chasing refund (not quantified)	£375k - £450k/year for work-seeker

Source: BERR, ASHE, PwC

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### Policy Objective 3: Position of Postgraduate Medical Deaneries

The preferred option is to exempt postgraduate medical deaneries from the Employment Agency Act.

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Option	Cost	Benefit
3b	None	Corrects the anomaly that placed Deaneries under the Employment Agencies Act (not quantified)  There are no risks for Deaneries of having to comply with employment agency regulations. (not quantified)

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## Policy Objective 4: Miscellaneous Regulation Changes

The table below outlines the costs and benefits of the proposed changes.

Option	Cost	Benefit
4.1b	None	£75k/year for agencies
4.2b	Negligible	£100k/year for employment business
4.3b	None	£13.9m/year for hirer Benefits to worker as they would not be vulnerable to non-payment (not quantified) Benefits to employer and individual as it could give the temporary worker a permanent contract (not quantified)
4.3c	£3.5m – £7m/year for agencies	Benefits to worker as they would not be vulnerable to non-payment (not quantified)
4.3d	None	Benefits to worker as they would not be vulnerable to non-payment (not quantified)
4.3e	None	Benefits to worker as they would not be vulnerable to non-payment (not quantified) Benefits to employer and individual as it could give the temporary worker a permanent contract (not quantified)

Source: BERR, ASHE, REC, PwC

## I. Implementation

The Government plans to implement these changes on 1 October 2009. The exemption on Deaneries may occur before this date.

## J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by EAI, who monitor and review the Regulations and complaints received on these issues on an ongoing basis.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

## A1. Specific Impact Assessments

### Competition Assessment

#### **Policy Objective 1: Checking Suitability for Permanent Recruitment**

No option would directly limit the range of suppliers as new firms can enter the market to supply individuals. Firms will enter the market if it is economically viable for them to do so. No option would indirectly limit the number of suppliers. This is because the proposals are not likely to significantly raise the costs of new entrants relative to existing ones. No option would limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Thus we do not consider that the Regulation changes would cause a significant detriment to competition.

#### **Policy Objective 2: Fees payable by entertainers and models**

No option would directly limit the range of suppliers as new firms can enter the market to supply individuals. Firms will enter the market if it is economically viable for them to do so.

No option would indirectly limit the number of suppliers. This is because the proposals are not likely to significantly raise the costs of new entrants relative to existing ones. In addition, costs are not expected to rise significantly for some existing firms relative to others, as all firms would have to comply with the options being proposed.

Under option 2b and 2c there is a possibility that it could limit the ability of suppliers to compete. This is because it is likely that the removal of the upfront fee or giving written notice will be more burdensome to some existing firms than others, as some agencies would not be able to recoup this cost by other means.

No option would reduce the suppliers' incentive to compete vigorously as there will be no exemption from competition law.

#### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

No Impact.

#### **Policy Objective 4: Miscellaneous Regulation Changes**

No option would directly limit the range of suppliers as new firms can enter the market to supply the individuals. Firms will enter the market if it is economically viable for them to do so. No option would indirectly limit the number of suppliers. This is because the proposals are not likely to significantly raise the costs of new entrants relative to existing ones. No option would limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Thus we do not consider that the Regulation changes would cause a significant detriment to competition.

## **Small Firms Impact Test**

### **Policy Objective 1: Checking Suitability for Permanent Recruitment**

SORA showed that there are around 16,000 agencies across the UK and less than 1% of these employ more than 200 people. Therefore given that the majority of agencies are SMEs, the proposals are likely to have a greater impact on smaller firms. However, the impact would not be judged to be disproportionate as all agencies would have to comply with the measures stated above.

### **Policy Objective 2: Fees payable by entertainers and models**

The measures discussed above are likely to have a greater impact on smaller firms as these dominate the agency sector. However, the impact would not be judged to be disproportionate as all agencies would have to comply with the proposals in the options put forward.

### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

No Impact.

### **Policy Objective 4: Miscellaneous Regulation Changes**

The measures discussed above are likely to have a greater impact on smaller firms as these dominate the agency sector. However, the impact would not be judged to be disproportionate as all agencies would have to comply with the proposals in the options put forward.

## **Equality Impact Test**

### **Policy Objective 1: Checking Suitability for Permanent Recruitment**

The proposed changes to the Regulation should apply equally to all groups. Without a better set of data it is not possible to accurately breakdown the number of workers that were put into permanent employment via an agency by sex, race or disability. However, none of the options would disproportionately affect any group over another as they would still be covered by the sex, race and disability discrimination act.

### **Policy Objective 2: Fees payable by entertainers and models**

The proposed changes to the Regulation should apply equally to all groups. Without a better set of data it is not possible to accurately breakdown the number of workers that are employed through a modelling or entertainment agency. However, none of the options would disproportionately affect any group over another as they would still be covered by the sex, race and disability discrimination act.

### **Policy Objective 3: Position of Postgraduate Medical Deaneries**

No Impact.

### **Policy Objective 4: Miscellaneous Regulation Changes**

The proposed changes to the Regulation should apply equally to all groups. None of the options would disproportionately affect any group over another as they would still be covered by the sex, race and disability discrimination act. The table below shows a breakdown of all temporary agency workers in the UK by sex and race.

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**Table A1. Temporary Agency Workers in the UK**

	(%)
Women	58
Ethnic Group	31
Of which:	
Asian	4
Black Caribbean	3
Black African	5
Other, including Eastern European	19

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Source: REC

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BERR</b>	<b>Title:</b> <b>Final Impact Assessment of Amending the National Minimum Wage Regulations</b>	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 5 May 2009
<b>Related Publications:</b> The National Minimum Wage Government response to consultation: Service Charges, Tips, Gratuities and Cover Charges May 2009		

Available to view or download at:

<http://www.berr.gov.uk/files/file51166.pdf>

Contact for enquiries: Amanda Lyne/Anthony Morris

Telephone: 020 7215 1709/0972

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

The National Minimum Wage is part of the Government's strategy to provide fair standards in the workplace and make work pay. Since the National Minimum Wage Act came into force in 1999 c39, regulation 31(1)(e) of the National Minimum Wage Regulations 1999 has permitted the use of service charges, tips, gratuities and cover charges to count towards the National Minimum Wage subject to certain conditions being met. Proposals in this Impact Assessment attempt to ensure tipping practices are made fairer ensuring all workers, whether they are paid tips or not, receive a fair wage in the form of at least the National Minimum Wage in basic pay and by providing greater transparency to consumers so that they can make a more informed choice when tipping.

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

The National Minimum Wage sets a wage floor below which pay cannot fall. The aim of this policy is to provide access to the National Minimum Wage in basic pay for low paid workers and create an equitable wage floor for all workers irrespective of if they are paid tips as part of their wage or not. The amendment to regulation 31(1)(e) will ensure that all eligible workers will receive at least the National Minimum Wage in basic pay and any tips that may be paid are in addition to that. This will create a level wage playing field for all workers and business. We also seek to improve transparency for consumers who may not be aware of what happens to their tips.

**What policy options have been considered? Please justify any preferred option.**

Two approaches have been considered: 1). all tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW, and consumer information and awareness is improved: 2). only discretionary tips and gratuities, and mandatory and discretionary service charges are excluded from counting towards the NMW and consumer information and awareness is improved. Policy options have been compared to a benchmark 'do-nothing' scenario. In November 2008, the Government consulted on this and in light of the responses will proceed with option 1, as it would create less ambiguity and we believe cover charges are used to limited extent.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The Low Pay Commission will assess the use of tips as part of their annual National Minimum Wage report to be published in 2010 and then annually thereafter. This policy amendment will be introduced in October 2009 and should have immediate effects.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*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:

Pat McFadden

.....Date:

## Summary: Analysis & Evidence

**Policy Option: 1**

**Description:** This summary sheet summarises option 1 – all tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Potential increase in employers' labour costs resulting from higher pay (£82M) and employers' National Insurance Contributions (NICs) (£10.5M). An increase in workers' NICs payments towards pensions, contributory benefits and the NHS. Annual costs calculated are static and constant over time
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£ negligible	0	
	<b>Average Annual Cost (excluding one-off)</b>		
	£ 92.5M	10	
		<b>Total Cost (PV)</b>	<b>£796 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups' one-off Small administrative and familiarisation costs for employers. Implementation and enforcement costs for HMRC. Associated policy costs in raising awareness amongst consumers. Firm may decide to increase prices			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Potential increase in basic pay for workers (£73M) with tips in addition to that. Increase in NICs receipts (£19.5M). Annual benefits calculated are static and constant over time.
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m	0	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£ 92.5M	10	
		<b>Total Benefit (PV)</b>	<b>£796 million</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Equalisation of NICs treatment across sectors and workers. Eligibility of workers for contributory benefits. Greater transparency for consumers.			

**Key Assumptions/Sensitivities/Risks** The analysis carried out is static and does not take into account the dynamics of the labour market. The costs equal the benefits because of transfers involving employers, workers and the exchequer.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 0 million</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 0 million</b>
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		October 2009		
Which organisation(s) will enforce the policy?		HMRC / BERR		
What is the total annual cost of enforcement for these organisations?		£ negligible		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt? No	This policy change will impose a cost for business, see page 9 for an illustrative example on average cost per employee.			

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ negligible	Decrease of	£ negligible
		<b>Net Impact</b>	<b>£ negligible</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value



## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### J. Strategic overview

#### Existing Government initiatives

The National Minimum Wage Act 1998 c39 states that all workers qualifying for the National Minimum Wage (NMW) must be paid at least the NMW. Regulation 30 of the NMW Regulations 1999 specifies which monies paid to the worker by their employer counts towards NMW pay. Regulation 31(1)(e) allows employers to use service charges, tips, gratuities and cover charges to contribute towards the NMW, providing it's paid to the worker via the employer's payroll.

The use of service charges, tips, gratuities and cover charges for payment of the NMW is a complex area. There is a variety of ways in which employers distribute tips to workers.

#### Some definitions:

**Service charges** we take to mean those amounts that are added to the customer's bill before it is presented to the customer (typically between 10 percent to 12.5 percent). If it is made clear that the amount is purely discretionary then there is no obligation for the customer to pay and the payment is voluntary. Where this is not the case, the payment is a mandatory charge.

**Tips and gratuities** we take to mean uncalled for and spontaneous payments offered by the customer either as cash tips (eg left on the table or deposited in a box by the till or on a bar etc, or given to a taxi driver, hairdresser etc) or offered as part of a cheque, debit or credit card payment or detailed on a bill and added at the point of transaction (typically a discretionary amount added by the customer paying by credit, debit, charge card or cheque). It is optional and not a mandatory charge.

**Cover charges** we take to mean to be a mandatory fixed amount, often per head, that pays for entertainment and other services, (not necessarily waiting service in the case of restaurants), but that generally provide assistance towards other costs that might relate to expenditure that contributes to the experience (typically for items such as bread etc).

### K. The issue

Ten years after the introduction of the National Minimum Wage Act on 31 July 2008 the Government announced its intention to amend the Regulations so that tips can no longer count towards the payment of the NMW.

The changes will end the practice of employers using cover charges, service charges, tips and gratuities processed through the employer's payroll in payment or part payment of the NMW for all individuals on the 16-17, 18-21 and main rate of NMW.

The Governments strategy is to provide fair standards in pay for all workers across all sectors. This final Impact Assessment attempts to establish costs and benefits of the policy change detailed in the consultation. These are:

- 1) All tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW, and consumer transparency and awareness is improved;
- 2) Only discretionary tips and gratuities, and mandatory and discretionary service charges are excluded from counting towards the NMW and consumer information and awareness is improved.

The reforms will also enable a 'level playing field' amongst employers and workers. At present tips and gratuities that count towards payment of the NMW may be exempt from employer and worker National Insurance contributions (NICs) depending on how they are allocated to the employee. In terms of workers in tipping sectors, those who do receive tips and gratuities as part of their NMW pay may benefit from exemptions from NICs whereas all other workers must pay NICs on earnings above the 'earnings threshold' which is currently £110 per week for each employment for the 2009/10 tax year (this figure is subject to annual change).

## Consultation

### *Within Government*

These proposals have been developed in consultation with the following Government departments: HM Revenue & Customs and HM Treasury.

### *Public consultation*

Since the consultation was launched back in November 2008, there has been an intensive programme of stakeholder engagement, involving meetings with trade unions, business representatives and trade bodies. Our consultation on the issue closed on 16 February. We had 182 complete responses to the consultation, with a further 100 partially completed responses. The majority of the responses (roughly 75 per cent) support proposals to exclude tips from payment of the NMW. Of the total responses, half were from business. For more information please refer to the Government response on amending the NMW Regulations so that in future, tips are paid in addition to the NMW.

Following our consultation responses, this Impact Assessment (IA) reports a single point estimate as opposed to a range estimate presented in the consultation IA. It was felt that the lower range estimate did not adequately reflect the use of tips to top up pay to the NMW, as one of the variables that was used from ASHE (Annual Survey of Hours and Earnings) was 'other pay' which explicitly excludes 'bonus or incentive pay'. As a result, this lower range estimate has now been dropped from this IA.

## **L. Objectives**

The Government is intervening for three reasons:

1. To ensure that workers receive at least the NMW that is not made up from service charges, tips or gratuities and that any tips are paid in addition to the NMW.
2. To create a 'level playing field' amongst employers and workers regarding wages and NICs.
3. Increase consumer information and promote greater awareness

## Background

Under the current regulations, amounts paid by a customer as a service charge, tip, gratuity or cover charge can count towards NMW pay in certain circumstances.

Other sectors (i.e. non-tipping sectors) are compelled by law to pay their staff the NMW and both employer and employee pay NICs on all elements of pay above the earnings threshold (currently £110 per week).

ASHE shows that in 2008, average basic hourly pay actually exceeded the NMW in the tipping sectors – see table 1. It means that *on average*, people working in these sectors are paid a basic pay (without tips) above the NMW and that therefore the proposed amendments will have no impact on them.

The proposed change in legislation would affect people whose basic pay is less than the NMW and topped up by tips, thus potentially increasing employers and workers' NICs.

SIC code	Name	Mean basic hourly pay (£)
55	Hotels and restaurants	7.66
60.22	Taxi operations	7.41
92.71	Gambling and betting activities	9.00
93.02	Hairdressing and beauty treatments	6.51

Source: ASHE and BERR estimates

Table 2 below shows the mean hourly basic pay for workers earning less than the NMW in basic pay. We assume later on in the Impact Assessment that some workers earn less than the NMW in basic pay because their pay is being topped up by tips to reach the NMW. When analysing wage distributions the median is often preferred over the mean (as it is not affected by outliers). However, for the purpose of this Impact Assessment the use of the mean hourly wage is more appropriate when estimating the impact of legislative change because ultimately we are interested in the total difference between NMW and those earning below the NMW in basic pay for all workers, which can not be captured using the median hourly wage (as the median by definition does not provide any information on the total), .

SIC code	Name	16-17	18-21	22 and over
55	Hotels and restaurants	£3.23	£3.65	£4.72
60.22	Taxi operations	-	-	£5.47
92.71	Gambling and betting activities	-	-	£4.74
93.02	Hairdressing and beauty treatments	£2.29	£3.11	£4.29

Source: ASHE and BERR estimates. - Not possible to report a figure due to sample size

There are different levels of NMW, which depend on your age. The rates from 1 October 2008 are:

- adults (which means people aged 22 and over) receive the main rate of £5.73 an hour
- workers aged 18 to 21 inclusive, receive a rate of £4.77 an hour.
- young people receive £3.53 an hour (known as the youth rate)

A young worker is someone who is older than school leaving age and younger than 18. In England and Wales, you are under school leaving age until the last Friday in June of the school year in which you turn 16. (School leaving age is different in Scotland and NI).

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**3.a.** NMW rates (in £ per hour)

Employee's age	2006/07	2007/08	2008/09
22 and over	5.35	5.52	5.73
18 – 21	4.45	4.60	4.77
16 - 17	3.30	3.40	3.53

Source: LPC

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**3.b.** Mean wage and wage differential of those earning below the NMW

Sectors	16 - 17		18 - 21		22 and over	
	Mean pay	Wage differential	Mean pay	Wage differential	Mean pay	Wage differential
SIC 55	£3.23	£0.17	£3.65	£0.95	£4.72	£0.80
SIC 60.22	-	-	-	-	£5.47	£0.05
SIC 92.71	-	-	-	-	£4.74	£0.78
SIC 93.02	£2.29	£1.11	£3.11	£1.49	£4.29	£1.23

NB: wage differential = NMW – basic salary; Employers' NICs is set at 12.8% of total extra pay

NB: due to small sample size some values are missing in the above table

Source: ASHE and BERR estimates

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In this Impact Assessment when analysing the difference between basic pay and the NMW the 2007/08 NMW rates have been used as these were the NMW rates at the time when the 2008 Annual Survey of Hours and Earnings was compiled.

## **M. Options identification**

### Option 1

All tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW and consumer information and awareness is improved.

### Option 2:

Only discretionary tips and gratuities, and mandatory and discretionary service charges are excluded from counting towards the NMW and consumer information and awareness is improved.

Both of the options above have been measured against a 'do-nothing' benchmark.

### Preferred option

There has been little interest shown on the issue of cover charges. Only the British Hospitality Association (BHA) has commented on this aspect of the Regulations substantially. Their view is to permit cover charges for use in payment of the NMW, however, the Government have decided that option 1 is the preferred option for following two reasons:

- If cover charges are not included at this time, this may create ambiguity in the law and could increase the chance of non-compliance.
- Cover charges already attract PAYE and NICs so there is little added benefit for business to use cover charges in the payment of NMW. Therefore, the removal of cover charges would have the least economic impact on business of all the tipping practices. It is also

worth noting that the BHA suggests that cover charges are not well used in the UK, although we have no data to support this.

## **N. Analysis of options**

### **1. Business sectors affected**

When measuring the impact of the proposed amendments, we are considering the tipping sectors of the economy; these are principally the hospitality and gambling sectors:

- SIC 55: Hotels and restaurants
- SIC 60.22: Taxi operations
- SIC 92.71: Gambling and betting activities
- SIC 93.02: Hairdressing and other beauty treatments

### **2. Costs to the employers**

The proposed change to the legislation may cause an increase in some employers' labour costs. The increase in labour costs would concern employers who pay their staff less than the NMW and use tips in payment or part payment of the NMW. The increase would come from:

- the additional pay the employer would have to provide, and
- the increase in employers' NIC (12.8 percent) resulting from that.

These monetised costs would be similar under both options 1 and 2 as the impact of NIC payments in both instances will be the same.

Under option 2 (which permits cover charges counting towards payment or part payment of the NMW), cover charges already attract NICs. Although cover charges will form part of the business income we anticipate these payments to be small.

Under option 1 (all service charges, tips, gratuities and cover charges are excluded from the payment of NMW) employers concerned would have to top up basic pay with additional pay on which NICs will may also need to be paid (NICs are only due on earnings in excess of the earnings threshold currently £110 per week).

### **Increase in labour costs**

In order to calculate the increase in labour costs, the following methodology was followed:

- 1) Estimate the number of people who are earning a basic pay below the NMW (because the use of tips is used to top up to NMW pay), and
- 2) Differentiate between sectors and age group because NMW rates differ depending on age – see table 2.
- 3) Calculate the increase in labour costs.

#### **Estimating the number of people earning a basic pay below the NMW**

See Annex B for detailed calculation. Table 4 below gives a summary of the number of estimated workers that currently receive basic pay below the NMW and might be affected by the proposed amendment.

BERR estimates, based on Annual Survey of Hours and Earnings (ASHE) data, are that **60,500** workers could be effected by the change in legislation.

4. Estimates of the population concerned by the proposed change to the legislation by age groups

Sectors	16 - 17	18 - 21	22 and over	Total
SIC 55	200	6,800	41,500	48,500
SIC 60.22	0	0	300	300
SIC 92.71	0	0	700	700
SIC 93.02	4,100	4,100	2,800	11,000
Total	4,400	10,900	45,300	60,500

Source: ASHE and BERR estimates

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Calculating the increase in labour costs for employers:

See Annex C for the details of the estimate in increased labour costs. Tables 5, 6 and 7 below show a summary of the additional labour costs due to the proposed change in the legislation.

The potential increase in extra pay could be **£82.0 million** and the increase in employers' NICs could be **£10.5 million**. Therefore the increase in labour costs could total **£92.5 million**

5. Summary table for people aged between 16 and 17

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
4400	7.2	0.9	8.1

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

6. Summary table for people aged between 18 and 21

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
10900	19.0	2.4	21.5

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

7. Summary table for people aged 22 and over

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
45300	55.8	7.1	62.9

NB: Figures have been rounded

Source: ASHE

8. Summary table for people aged 16 and over

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
60500	82.0	10.5	92.5

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

<sup>82</sup> We have assumed that some workers who earn less than the NMW in gross pay in the tipping sectors is because some employers are using tips to make up the NMW.

## Average cost per worker

Due to the nature of this policy change and the availability of evidence, it is difficult to estimate a meaningful estimate of the cost per business. For some businesses the cost will be zero, as they will be unaffected by this policy amendment, whereas some businesses could be more heavily affected. Hence for purely illustrative purposes we present an estimate of the average cost per worker of this policy amendment. From this estimate, the expected impact on individual businesses can be calculated e.g. if a business had three workers affected by this policy change, the cost to this business would be three multiplied by the average cost per worker. It should be noted that this average cost per worker is only an indicative number and the actual cost per worker may vary depending on the sector they are employed in, the number of hours they work and the gap between base pay and the NMW.

The average cost per worker per year of this policy amendment is **£1529**. This has been calculated by taking the total cost £92.5 million and dividing it through by the estimated number of workers affected 60,500.

## Administrative costs

The implementation costs may include: rewording of contracts and adjusting the payroll. Workers who don't have a written contract containing specified information and who are employed for one month or more have a statutory right to receive a written statement of employment particulars including 'the scale or rate of remuneration or the method of calculating remuneration', which may also imply the need for a change – depending on how the employer expresses the pay arrangements. It's a reasonable assumption that the relevant employers will also need to amend their payroll arrangements. Both of these costs are one-off costs, and are not on going costs, hence they will not add to the administrative burdens businesses face. BERR has looked at the cost involved in amending the payroll arrangements and as a result of that research it has concluded that the costs would be limited. For purely illustrative purposes it may take up to half an hour of a manager's time<sup>83</sup> to re-word contracts for some businesses this is equivalent to around £10.75. Further, this policy amendment will only affect a limited number of businesses, as most workers in the economy are receiving basic pay at or above the NMW rate, thus the administrative cost would be zero for these businesses. Thus, these costs have not been estimated and assumed to be negligible.

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<sup>83</sup> Source; Basic hourly pay Annual Survey of Hours and Earnings (ASHE) 2008, manager and senior officials basic hourly pay is £17.77 adding 21% for non-wage labour costs gives £21.50 (per hour) – half an hour is equivalent to £10.75 .

### 3. Costs/benefits to the workers

The proposed change to the legislation will affect workers, through an increase in their NICs and an increase in their **basic** pay.

#### Increase in NICs

See Annex D for details of the calculations.

The increase in workers' NICs could total **£9 million**.

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#### 9. Summary table for people aged between 16 and 17

Population	Total – extra pay (£m)	Employees' NICs (£m)
4400	7.2	0.8

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

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#### 10. Summary table for people aged between 18 and 21

Population	Total – extra pay (£m)	Employees' NICs (£m)
10900	19.0	2.1

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

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#### 11. Summary table for people aged 22 and over

Population	Total – extra pay (£m)	Employees' NICs (£m)
45300	55.8	6.1

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

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#### 12. Summary table for people aged 16 and over

Population	Total – extra pay (£m)	Employees' NICs (£m)
60500	82.0	9.0

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

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Again, the increase in NICs for workers would be the same under option 1 and option 2. We assume that tips that are currently used in payment or part payment of the NMW are not currently subject to NICs, but because employers would have to increase wages to at least the NMW, that extra amount would become subject to NICs under both options 1 and 2.

Workers could see their basic pay increase by **£82.0 million**.



## 4. Costs to the Government

### Implementation costs

BERR will have to raise awareness of this policy amendment and HMRC will have to inform employers and workers of the change to the law.

Enforcement costs are not expected to increase as a result of the amendment: HMRC investigates an employer when there is a complaint about possible non-payment of NMW and under their risk assessment programme. There is no evidence to suggest that the number of complaints will go up as a result of the changes. As is usual with NMW uprating, we would expect to see an increase in enquiries after commencement with stabilisation as employers and workers become accustomed to the new rules.

Implementation costs are assumed to be the same under option 1 and option 2 and to be small.

## 5. Benefits

- There may be increased retention of staff due to better pay for the worker and thus employers will retain skills.
- If employers pay tips on top of the NMW, there may be better quality of service because of greater incentivisation as tips become purely performance related.
- Equalisation of sectors and employers establishing a clear playing field across tipping and non-tipping sectors and amongst employers within the tipping sectors.
- Of the workers affected by the change in the legislation, some of them may become eligible for contributory benefits. A person builds entitlement to contributory benefits once his/her earnings become greater than the 'lower earnings limit', currently set at £95 per week. The lower earning limit is the point at which earnings count for benefit purposes however NICs only start to be paid at £110. However this benefit would be small and we do not attempt to quantify it.
- Greater Government revenues, which represent a transfer from employer and workers to the Exchequer: this is the sum of workers' and employers' NICs and would amount to **£19.5 million** under option 1.
- The time spent by employers calculating wage rates might lessen as the uncertainty over whether there will be enough tips to cover the difference between the basic pay and NMW will disappear.
- Increased consumer transparency may result in increased take-home pay for some workers as a result of fairer distribution of tips, and in customers making informed tipping decisions. The increase in take-home pay is estimated to be **£73 million**.
- Greater consumer confidence in tipping sectors.

## 6. Transparency

The consultation has shown that there is strong support for best practice guidance on transparency for the tipping sector from consumers, unions and business and we are working with these stakeholder groups to take this forward.

## **7. Risks**

The employers concerned by the amendments, and the data suggest that they are relatively few, may seek to offset the rise in their labour costs. The easiest way to do so would be to take a share or increase their existing share of the tips and discretionary service charges that they previously had not appropriated, thus possibly cancelling any increase in take-home pay for workers as a result of the increase in their basic pay. This could result in some workers receiving a lower take home pay.

There is a possibility that some workers could see their take home pay decrease as they find themselves paying higher employee NICs. This risk would increase if employers reduced the share of tips that went to workers.

Firms who previously offset the NMW through tips etc, will be faced with an increase in labour costs. As a result, they may decide to increase prices. The 'price elasticity of demand' will determine the extent to which prices could rise. Price increases would lead to the cost being transferred to the consumer. A final risk is that firms could decide to offset increased labour costs by employing fewer staff.

## **8. Enforcement**

The enforcement resulting from the change in regulations of the proposed amendments will be the responsibility of HMRC. HMRC do not expect this to be significantly costlier. Initially, there may be an increase in complaints as the new legislation beds in, but once a certain period of time has passed and business and workers become familiar with the changes, the number of NMW-related complaints may decrease.

The principles HMRC will use to enforce this policy change will be the same as they use for the NMW rates and have the aim to minimise administrative burden imposed on business. Further, there are no new measures in terms of enforcement that would add to the cost of business.

## 9. Summary table of costs and benefits

Below is a table outlining the costs and benefits of the proposed change to the legislation. Option 1 and 2 have similar costs and benefits although option 2 provides more flexibility for employers as cover charges can be included in the NMW.

### 13. Summary table of costs and benefits

		One off / On going	Affected	Option 1 (£m)	Option 2 (£m)
Costs	Increase in employers' labour costs	On Going	Employers	£92.5	£92.5
	Increase in administrative costs	One Off	Employers	Small	Small
	Implementation costs	One Off	Employers	Small	Small
Benefits	Better quality of service, equalisation of NICs treatment across sectors, eligibility for statutory benefits and less administrative burden	On Going	Customers and employees	Small - Not quantified because the number of people concerned is small	
	Transfer to the Exchequer	On Going	Exchequer	£19.5	£19.5
	Increase in pay	On Going	Employees	£73.0	£73.0

## 10. Implementation

BERR will work with HMRC to implement the new regulations during 2009 and it will come into force 1<sup>st</sup> October 2009.

## **11. Monitoring and evaluation**

Each year the Low Pay Commission (LPC) monitor, evaluate and review the NMW and going forward will be looking at the use of tips. The LPC pay particular reference to the effect on pay, employment and competitiveness in the low paying sectors and small firms; the effect on different groups of workers, including different age groups, ethnic minorities, women and people with disabilities and migrant workers and the effect on pay structures. The research they undertake is published, and will help inform future LPC recommendations. The next report will be published in 2010. BERR will also be monitoring data from the Annual Survey of Hours and Earnings to evaluate the use of tips and NMW pay.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

# Annexes

## Annex A: Specific impact tests

### Small Firms Impact Test

The proposed amendment to the regulations would apply to firms of all sizes. The Federation of Small Business responded to our consultation and felt that the amendment to the NMW regulations would have 'little impact on small firms in this industry'. The table below presents the distribution of workers by firm size in tipping sectors and compares this to non-tipping sectors.

<b>A1. Distribution of employees by firm size in the tipping and non-tipping sectors</b>				
Sector	1 to 49	50 to 249	250 and more	Total (m)
SIC 55 (restaurants)	77%	20%	2%	1.1
SIC 60.22 (taxis)	67%	27%	4%	0.0
SIC 92.71 (gambling)	73%	22%	5%	0.1
SIC 93.02 (hairdressing)	97%	2%	0%	0.1
Total – tipping sectors	79%	19%	2%	1.4

Source: LFS Q4 2008

The table shows the general distribution of firm size in tipping sectors, but does not represent the firm size distribution of businesses that will be affected. We believe that although it may be more likely that larger businesses are currently benefiting from the NICs exemption and using tips and gratuities to pay part of the NMW, a significant proportion of small businesses will also be following this practice. We estimate that about **60,500** workers will be affected and we believe there will not be a disproportional impact on small business in terms of costs or benefits. If for instance this policy amendment did affect small firms disproportionately, exempting small firms would defeat the objectives of this policy change.

### Competition Assessment

The initial analysis of the competition filter test reveals that a detailed competition assessment is not considered necessary. The proposed legislation will apply to all firms and is a measure that will ensure a more level playing field between firms in the tipping sectors. At present some firms are using tips and gratuities to count towards the NMW and may be benefiting from the NICs exemption and others are not. The proposed legislation will change this so that all of the NMW will exclude tips from NMW pay for all firms. Table A2 below gives the results of the competition filter test.

#### **A.2. Results of the competition filter test – In any affected market, would the proposal:**

Directly limit the number or range of suppliers?	No
Indirectly limit the number or range of suppliers?	No
Limit the ability of suppliers to compete?	No

## Equality Assessment

In line with better regulation best practice and the Equalities Duties we have considered the impact of changing the law by gender and race.

### *Who will be affected?*

The Labour Force Survey indicates that around 40 percent of workers in the tipping sector are men and around 60 percent are women. We believe that there will be similar proportions of men and women who are directly affected by policy changes.

The table below shows that a higher proportion of ethnic minority workers work in tipping sectors than in all sectors:

A.3. Distribution of people by ethnic minority		
	Total employees (%)	Employees in tipping sectors (%)
White	90.7%	84.8%
Mixed	0.8%	1.2%
Asian or Asian British	4.4%	6.7%
Black or Black British	2.2%	2.1%
Chinese	0.5%	2.4%
Other	1.4%	2.9%

Source: LFS Q4 2008

We estimate that **60,500 workers** may receive tips to top up pay below the NMW. This represents a weighted figure and it would not be sensible to attempt to disaggregate this figure further by ethnicity or disability as the results may not be reliable.

### *Removal of barriers which hinder equality*

The proposed changes reflect a broad policy and are designed to have a positive impact on all workers in tipping sectors regardless of their gender, race or disability. Therefore the proposed changes are unlikely to create any barriers to equality in terms of gender, race and disability.

## Annex B: Estimating the number of people earning a basic pay below the NMW and receiving tips

**N.B.:** The available data does not differentiate between different categories of service charges so the calculation of the increase in labour costs will be the same under both option 1 and option 2, but it will be an overestimate in the case of option 2 as employers' NICs have always been due on cover charges used to pay part or all of a worker's wages.

Data on the number of people who earn a basic pay below the NMW and are paid tips to top up wages to the NMW is not collected. Therefore, we have used ASHE (Annual Survey of Hours and Earnings) to estimate the number of workers that could potentially be affected. The ASHE provides information about the levels, distribution and make-up of earnings and hours paid for employees within industries, occupations and regions and is regarded as the best survey on pay.

ASHE gives details on basic pay. For the three NMW rate groups, data could be obtained on the number of people earning less than their NMW band in basic pay (ASHE does not provide specific data on tips).

Following our consultation responses, this IA reports a single point estimate as opposed to a range estimate presented in the consultation IA. It was felt that the lower range estimate did not adequately reflect the use of tips to top

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### B.1. Breakdown

	16 - 17	18 - 21	22 and over	Total
Total employed in the tipping sectors	83,126	283,065	970,107	1,336,298
Receiving basic salary below NMW <sup>#</sup>	4,357	10,874	45,295	60,527

Source: ASHE 2008. # This is an estimate. We have scaled down the number of employees receiving a salary less than the NMW by a factor of 0.8 to remove those who earn less than the NMW because of exemptions or non-compliance.

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up pay to the NMW and has now been dropped from this IA.

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We are considering in our calculations only workers earning less than the NMW in basic pay. According to 2008 ASHE data, 5.6 percent (75,322) of workers in the tipping sector are on a basic pay below the NMW. The same database further indicates that 1.1 percent of workers in the whole economy are paid below the NMW due to either being exempted from the NMW or due to non-compliance. Assuming this percentage is the same in the tipping sector (exempted from NMW or non-compliance), 14,794 workers will be unaffected by this regulation, as non-compliant employers will not change behaviour and those exempted from the NMW will be unchanged. As a result, our estimate on the number of workers who earn less than the NMW in basic pay because of the use of tips to top up basic pay is 60,527 (75,322 – 14,794, difference due to rounding).

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<sup>84</sup> We assume that some employees who earn less than the NMW in basic pay in tipping sectors is because tips are being used to top up to the NMW.



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**B.2.** Estimate of number of employers affected by age groups and sectors – estimate for 2008

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<b>Sectors</b>	<b>16 - 17</b>	<b>18 - 21</b>	<b>22 and over</b>	<b>Total</b>
SIC 55	221	6785	41508	48514
SIC 60.22	0	0	324	324
SIC 92.71	0	0	692	692
SIC 93.02	4136	4089	2771	10997
Total	4357	10874	45295	60527

Source: ASHE and BERR estimates

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## Annex C: Estimating the increase in labour costs

It has been assumed that all the workers are earning more than the earnings threshold of £110 a week (thus liable for NICs). Also, for ease of calculation, we have not adjusted for the NICs exemption on earnings below the earnings threshold, hence we will over estimate the additional employee and employer NICs from this policy amendment.

First, we estimate the differential between basic pay and the NMW, and then the increase in labour costs.

### Estimating the differential between basic pay and NMW

The 2008 ASHE survey provides figures about the wage differential, i.e. the difference between NMW and basic pay for the category of people earning less than NMW. We assume later that this differential does not change over

C.1. Mean wage and wage differential of those earning below the NMW

Sectors	16 - 17		18 - 21		22 and over	
	Mean pay	Wage differential	Mean pay	Wage differential	Mean pay	Wage differential
SIC 55	£3.23	£0.17	£3.65	£0.95	£4.72	£0.80
SIC 60.22	-	-	-	-	£5.47	£0.05
SIC 92.71	-	-	-	-	£4.74	£0.78
SIC 93.02	£2.29	£1.11	£3.11	£1.49	£4.29	£1.23

NB: wage differential = NMW – basic salary; Employers' NICs is set at 12.8% of total extra pay  
 NB: due to sample size, we only estimate a central estimate.  
 Source: ASHE and BERR estimates

time.

Another element to take into account before estimating the increase in labour costs is the amount of time worked by workers.

C.2. Hours worked

Sectors	Mean basic paid hours per week
SIC 55	28.6
SIC 60.22	28.5
SIC 92.71	31.2
SIC 93.02	29.9

Source: ASHE and BERR estimates

### Increase in labour costs

C.3. For employees aged between 16 and 17

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	200	0.17	28.6	0.1	0.0	0.1
SIC 60.22	0	0.00	28.5	0.0	0.0	0.0
SIC 92.71	0	0.00	31.2	0.0	0.0	0.0
SIC 93.02	4,100	1.11	29.9	7.1	0.9	8.0
Total	4,400	-	-	7.2	0.9	8.1

NB: wage differential = NMW – basic salary; Employers' NICs is set at 12.8% of total extra pay  
 NB: due to sample size, we only estimate a central estimate.  
 Source: ASHE and BERR estimates

**C.4. For employees aged between 18 and 21**

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	6,800	0.95	28.6	9.6	1.2	10.8
SIC 60.22	0	0.00	28.5	0.0	0.0	0.0
SIC 92.71	0	0.00	31.2	0.0	0.0	0.0
SIC 93.02	4,100	1.49	29.9	9.5	1.2	10.7
Total	10,900	-	-	19.0	2.4	21.5

NB: wage differential = NMW – basic salary; Employers' NICs is set at 12.8% of total extra pay

Source: ASHE and BERR estimates

**C.5. For employees aged 22 and over**

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	41,500	0.80	28.6	49.5	6.3	55.9
SIC 60.22	300	0.05	28.5	0.0	0.0	0.0
SIC 92.71	700	0.78	31.2	0.9	0.1	1.0
SIC 93.02	2,800	1.23	29.9	5.3	0.7	6.0
Total	45,300	-	-	55.8	7.1	62.9

NB: wage differential = NMW – basic salary; Employers' NICs is set at 12.8% of total extra pay

Source: ASHE and BERR estimates

**C.6. For employees aged 16 and over**

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	48,500	2	28.6	59.2	7.5	66.8
SIC 60.22	300	0	28.5	0.0	0.0	0.0
SIC 92.71	700	1	31.2	0.9	0.1	1.0
SIC 93.02	11,000	4	29.9	21.9	2.8	24.7
Total	60,600			82.0	10.4	92.5

NB: wage differential = NMW – basic salary; Employers' NICs is set at 12.8% of total extra pay

Source: ASHE and BERR estimates

## Annex D: Calculating the increase in NICs for workers

### D.1. Increase in NICs for employees aged between 16 and 17

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	200	0.17	28.6	0.1	0.0
SIC 60.22	0	0.00	28.5	0.0	0.0
SIC 92.71	0	0.00	31.2	0.0	0.0
SIC 93.02	4100	1.11	29.9	7.1	0.8
Total	4400	-	-	7.2	0.8

NB: wage differential = NMW – basic salary; Employees' NICs is set at 11% of total extra pay

NB: due to sample size, we only estimate a central estimate.

Source: ASHE and BERR estimates

### D.2. Increase in NICs for employees aged between 18 and 21

Sector	Population	Wage differential	Average hours	Total extra pay	Employees' NICs
SIC 55	6,800	0.95	28.6	9.6	1.1
SIC 60.22	0	0.00	28.5	0.0	0.0
SIC 92.71	0	0.00	31.2	0.0	0.0
SIC 93.02	4,100	1.49	29.9	9.5	1.0
Total	10,900	-	-	19.0	2.1

NB: wage differential = NMW – basic salary; Employees' NICs is set at 11% of total extra pay

Source: ASHE and BERR estimates

### D.3. Increase in NICs for employees aged 22 and over

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	41,500	0.80	28.6	49.5	5.5
SIC 60.22	300	0.05	28.5	0.0	0.0
SIC 92.71	700	0.78	31.2	0.9	0.1
SIC 93.02	2,800	1.23	29.9	5.3	0.6
Total	45,300	-	-	55.8	6.1

NB: wage differential = NMW – basic salary; Employees' NICs is set at 11% of total extra pay

Source: ASHE and BERR estimates

### D.4. Increase in NICs for employees aged 16 and over

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	48,500	1.92	28.6	59.2	6.5
SIC 60.22	300	0.05	28.5	0.0	0.0
SIC 92.71	700	0.78	31.2	0.9	0.1
SIC 93.02	11,000	3.83	29.9	21.9	2.4
Total	60,600	-	-	82.0	9.0

NB: wage differential = NMW – basic salary; Employees' NICs is set at 11% of total extra pay

Source: ASHE and BERR estimates

## Summary: Intervention & Options

**Department /Agency:**  
**BERR**

**Title: Implementing the Recommendations of Imelda Walsh's Independent Review and Amending and Extending the Right to Request Flexible Working to Parents of Older Children**

**Stage: Final**

**Version: FINAL**

**Date: 9 March 2009**

### **Related Publications:**

Consultation document and Recommendations of Imelda Walsh's Independent Review

**Available to view or download at:** [www.berr.gov.uk/consultations/page47553.html](http://www.berr.gov.uk/consultations/page47553.html)

Contact for enquiries: Ian Rutherford/Alan Martin

**Telephone: 020 7215 5934/1123**

### *What is the problem under consideration? Why is Government intervention necessary?*

Extending the right to request flexible working to parents of older children will introduce greater fairness and equity amongst working parents. Following the introduction of the right to request flexible working for parents of children under six and of disabled children under 18 in 2003 and the extension of the policy to cover carers of sick and disabled adults in 2007, the Government is looking to extend the scope of the law to parents of children aged 16 and under. Although flexible working arrangements exist for many parents of older children, a significant proportion would still benefit from legislation enabling them to request flexible working and having their employer consider such requests seriously.

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

To provide parents of children aged 16 and under with the same choices in balancing work and childcare responsibilities through flexible working as are available to parents of children under six and disabled children, whilst ensuring that businesses have the flexibility to refuse requests on business grounds. The quantifiable costs to employers are in terms of procedure and making adjustments to working arrangements. While the quantifiable benefits to firms are in terms of savings in recruitment costs, lower staff turnover and absenteeism and increased productivity and profits. There are also wider unquantifiable benefits of this policy, such as better work-life balance for employees, increased labour supply due to availability of more flexible working opportunities, improved health and well-being and positive environmental impacts.

### *What policy options have been considered? Please justify any preferred option.*

Beyond doing nothing, the option considered is to extend the right to request to parents of older children. Three age cut-offs were considered and the Government accepted the recommendations of the Walsh Review that the right to request should be extended to parents of children aged 16 and under. In August 2008 the Government consulted on how best to implement these recommendations. In light of the responses received, the Government decided not to implement the deregulatory measure but extend the right to parents of children aged 16 and under and provide relevant implementation support and guidance to business, especially small business.

### *When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?*

BERR regularly conducts baseline surveys of employees and employers to establish the effects of employment policy aimed at improving work-life balance. Forthcoming surveys that will assist monitoring and evaluation include the 2010 Workplace Employer Relations Survey. This survey will also contribute to an assessment in 2010 of the success, or otherwise, of the proposed policy extension.

### **Ministerial Sign-off**

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:

Pat McFadden, Minister of State for Employment Relations and Postal Affairs

Date: 9 March 2009

## Summary: Analysis & Evidence

<b>Policy</b>	<b>Description:</b> Baseline case - extend to parents of children aged 16 & under and implementation assistance to business				
<b>COSTS</b>	<i>ANNUAL COSTS</i>		Description and scale of key monetised costs by 'main affected groups' Additional procedural costs to employers of £48m (including £36m of administrative burdens, 2008 prices) plus £43m in costs of making adjustments to working patterns. There is also a £3 million cost savings from implementation assistance to business in the form of guidance and support (see Section I)		
	<b>One-off (Transition)</b>	<b>Yrs</b>			
	£ 0	10			
	<b>Average Annual Cost (excluding one-off)</b>				
	£ 88m				
<b>Total Cost (PV)</b>		£ 757m			
<b>Other key non-monetised costs by 'main affected groups'</b> It is assumed that the extension of the existing law will have negligible implementation costs. An outline of implementation measures can be found in Section D					
<b>BENEFITS</b>	<i>ANNUAL BENEFITS</i>		Description and scale of key monetised benefits by 'main affected groups'.  Savings to employers from higher productivity (£60m), lower labour turnover (£28m) and reduced absenteeism (£6m)		
	<b>One-off</b>	<b>Yrs</b>			
	£ 0	10			
	<b>Average Annual Benefit (excluding one-off)</b>				
	£ 94m				
<b>Total Benefit (PV)</b>		£ 809m			
Other key non-monetised benefits by 'main affected groups' - better work-life balance for employees, increased labour supply and improved health, wellbeing and positive environmental impacts for both parents and children.					
<b>Key Assumptions/Sensitivities/Risks.</b> Cost-benefit figures and Administrative burden totals based on working assumptions produced for this Impact Assessment (IA) and also draw on previous flexible working IAs. A linear relationship is assumed between both the costs and the benefits of extending the right to request flexible working and the age of the child. It is likely that the take-up initially rises and then tapers off as the age of the child increases. The scope for parents to request to work flexibly is likely to decrease with a child becoming older and more independent.					
<b>Price Base</b> Year 2008	<b>Time Period</b> Years 10	<b>Net Benefit Range (NPV)</b> £ 52m	<b>NET BENEFIT (NPV Best estimate)</b> £ 52m		
<b>What is the geographic coverage of the policy/option?</b>			England, Scotland, Wales		
<b>On what date will the policy be implemented?</b>			6 April 2009		
<b>Which organisation(s) will enforce the policy?</b>			Tribunals Service		
<b>What is the total annual cost of enforcement for these organisations?</b>			£ N/A		
<b>Does enforcement comply with Hampton principles?</b>			Yes		
<b>Will implementation go beyond minimum EU requirements?</b>			No		
<b>What is the value of the proposed offsetting measure per year?</b>			£ N/A		
<b>What is the value of changes in greenhouse gas emissions?</b>			£ N/A		
<b>Will the proposal have a significant impact on competition?</b>			No		
<b>Annual cost (£-£) per organisation (excluding one-off)</b>		<i>Micro</i> £16	<i>Small</i> £138	<i>Medium</i> £766	<i>Large</i> £2928
<b>Are any of these organisations exempt?</b>		No	No	N/A	N/A
<b>Impact on Administrative burdens Baseline (2005 Prices)</b>				(Increase - Decrease)	
<i>Increase of</i>		£ 32m	<i>Decrease of</i>		£ 0
		<i>Net Impact</i>		£ 32m increase	

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## Evidence base (for summary sheets)

### A. Strategic overview

#### Existing Government initiatives

The right to request flexible working was introduced in April 2003 following a report<sup>85</sup> by the Work and Parents Taskforce, led by Professor Sir George Bain. The Taskforce was established by the Government with the remit of developing the detail of legislation to give parents of young children a right to request flexible working and to have that request seriously considered by their employer.

One of the principal questions which the Taskforce had to consider was the age at which a child would most benefit from the immediate presence of a parent.

The Taskforce's considered view, in light of the many representations it received and the research available to it, was that the right to request flexible working should initially be introduced for those with parental responsibility for children up to the age of six, or up to the age of 18 for disabled children. The Government accepted this recommendation.

Ever since its introduction in 2003, there have been calls for the scope of it to be extended to other groups of employees. Following a major public consultation<sup>86</sup> in 2005, the Government decided that the legislation should be extended to carers of adults: this extension came into effect on 6 April 2007.

#### ***Implications for Administrative Burdens***

The 2005 PricewaterhouseCoopers (PwC) Administrative Burdens measurement exercise identified a number of information obligations associated with the Flexible Working (Procedural Requirements) Regulations 2002. In 2008, the Department for Business commissioned ORC International to conduct a survey to measure progress in relation to its objective to reduce administrative burdens associated with employment law<sup>87</sup>. As the current policy proposals would be implemented in a similar fashion, these would result in additional administrative burdens for employers. These are detailed in section E below on costs and benefits using the latest information from the ORC exercise and a comparison between the administrative burden per request as measured by PwC and then ORC can be found in Appendix B.

### B. The issue

In the Queen's Speech in November 2007 the Prime Minister announced that the Government had decided to extend the scope of the right to request to

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<sup>85</sup> Published as *About Time: Flexible Working* in November 2001

<sup>86</sup> *Work and Families: Choice and Flexibility – A Consultation Document*, published February 2005, URN 05/847.

<sup>87</sup> Published report and technical summary on BERR website, <http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employ-law-guidance/index.html>

those with parental responsibility for older children. This will introduce greater fairness and equity amongst working parents.

Imelda Walsh, HR Director of J Sainsbury plc, was appointed to lead an independent review to consider the questions of where the age cut-off of an older child should be set for this purpose; and whether the extension should be staged.

## **Consultation**

### ***Within Government***

These proposals have been developed in consultation with the following Government departments: the Department for Work and Pensions, the Government Equalities Office and the Department for Children, Schools and Families.

### ***Public consultation***

Since the announcement of the Walsh Review there has been an intensive programme of stakeholder engagement, involving meetings with trade unions, parents' bodies, personnel organisations and business representatives. As Imelda Walsh's own background is in big businesses (Barclays and Coca Cola, as well as Sainsbury's), she has been particularly keen to obtain the views of small businesses. A full public consultation was launched in August seeking views on implementation.

## **C. Objectives**

To provide those with parental responsibility for children aged 16 and under with the same choices in balancing work and childcare responsibilities through flexible working as are available to those with parental responsibility for children under six and disabled children under 18, whilst ensuring that businesses have the flexibility to refuse requests on business grounds. Although there are costs to employers in terms of procedure and making adjustments to working arrangements, these are estimated to be outweighed by the benefits to firms resulting from savings in recruitment costs, lower staff turnover and absenteeism and increased productivity and profits. In addition there will be cost savings from providing implementation assistance to business. Employees via an increase in take-up of flexible working are expected to benefit from a better work-life balance.

## **Background**

Since April 2003, the law provides those with parental responsibility for children under six or disabled children under 18 the right to apply to work flexibly, with a statutory duty on employers to consider such requests according to a set procedure.

The law is designed to meet the needs of parents and employers, particularly small employers. It aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns, and to find a solution that suits them both.



The law does not provide an automatic right for parents to work flexibly. This reflects the reality of the workplace where there will sometimes be circumstances when an employer is unable to accommodate an employee's desired work pattern. There are eight business grounds specified in legislation under which a request can be refused<sup>88</sup>.

BERR's Third Work-life Balance Employee Survey<sup>89</sup> showed that over the last two years, 17 per cent of employed parents made a change in how they regularly work for a sustained period of time. Twenty-two per cent of women said that they had made a request to change the way that they work in the past two years as compared to 14 per cent of men. Women made up 57 per cent of all those requesting a change.

There were also significant differences by work status: 28 per cent of those who were working part-time at the time of the research had approached their employer to request a change in their working pattern within the past two years. This compares to 15 per cent of full-time workers.

Employees were able to cite a range of ways that they might have submitted their request to work flexibly. The most common approach was to make the request in a face to face meeting or discussion. This was mentioned by 83 per cent of those making a request. Meanwhile, 18 per cent made the request by letter or on a form, four per cent by email and three per cent on the telephone.

In most cases, requests were either fully (60 per cent) or partially (18 per cent) agreed to. Women were more likely than men to be successful in making a request: 66 per cent of female workers had their requests fully agreed to, as compared to 53 per cent of male workers.

In the large majority of cases (87 per cent) requests were accepted outright; however, 13 per cent said that they had only had their request to change the way that they worked agreed once they had negotiated or appealed against an original employer decision.

Over half of all employees interviewed (56 per cent) were aware of the new right. A higher proportion of parents with children aged under six (65 per cent) were aware of the right to request than were other employees (53 per cent).

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<sup>88</sup> Section 80(G)(1)(b) of the Employment Rights Act 1996 list the following eight grounds for refusal of a request for flexible working:

- Burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.

<sup>89</sup> The *Third Work-Life Balance Employees Survey*, March 2007, Employment Relations Research Series No.58

## **D. Options identification**

### **Option 1: do nothing**

Keep flexible working legislation unchanged. Continue to allow parents of children under six or disabled children under 18 and carers of adults the right to request flexible working, but not extend it any wider.

### **Option 2: raise the age limit to cover more parents**

The Walsh Review was set up to consider to what age the extension of the right to request flexible working should apply. Imelda Walsh set out three different ages which she considered were significant stages in a child's education. A view which the vast majority of the interested parties agreed. The three cut-off ages considered were:

- children aged 12 and under: this would cover the transition from primary to secondary school;
- children aged 16 and under: this would allow parents to support their children until the end of their secondary education and GCSEs;
- children aged 18 and under: this would allow for support until the end of sixth form or vocational training and would be consistent with the existing right for parents of disabled children.

Some respondents argued that age 12 is the best option on the grounds that this is the age at which a child makes the transition to secondary school and when the child can safely be regarded as being responsible enough to be left to go home after school and look after him or herself. However, the NSPCC advise that although it depends on the individual child, most children under about 13 are not mature enough to cope with an emergency and should not be left alone for more than a very short period of time. Furthermore, although there is no clear legal position on when children can be left at home on their own, parents can be prosecuted for wilful neglect if they leave a child under 16 unsupervised "in a manner likely to cause unnecessary suffering or injury to health"<sup>90</sup>.

The majority of stakeholders highlighted that educational support is of increasing concern for parents, and argued that the completion of GCSEs or A-Levels were the most natural cut-off points. This narrowed the options down to age 16 and under or 18 and under. The arguments in favour of selecting 18 are that this would be consistent with the current right for a disabled child and would fit with the higher school-leaving age of 18 from 2013. However, as Ms Walsh argued, it is reasonable to regard a person aged 17 or 18 as a young adult who can be expected to show a good measure of independence and personal responsibility whether as part of further education, a first full-time job or vocational training. For these reasons, and because she felt there would be more support and understanding, Ms Walsh recommended that the cut-off point age be 16 and under.

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<sup>90</sup> Children and Young Persons Act 1933

The Government has accepted the recommendation to raise the age cut-off to parents of children aged 16 and under and is looking at how best to implement this with the aim of introducing the changes from April 2009. On this basis this impact assessment looks at the costs and benefits of extending the right to those with parental responsibility for children aged 16 and under.

Policy options on the implementation went to public consultation in August with a version of this impact assessment. Views were sought specifically on:

- the guidance available on the Businesslink website and what more the Government could do to assist businesses, and small businesses in particular, in implementing this extension to the flexible working right
- and a possible deregulatory measure to streamline the process of the right to request flexible working.

The proposed deregulatory measure meant to simplify the request procedure and remove the obligation for the employer to write notifying the employee of his agreement to a revised working pattern unless the employee specifically requested it. The obligation to write would not be removed for those employers refusing a request.

Feedback to the consultation was overwhelmingly (75 per cent) against the proposal. A number of respondents who agreed with the measure in principle felt however that any benefits might be outweighed by the risk of ambiguity with the lack of written evidence of decisions and that a formal letter provided formality and consistency. Others commended the Government's intention to lower administrative burdens but felt that there would be little cost saving in practice to business.

Additionally, the ORC survey of the administrative burdens associated with employment law found the total cost of this information obligation was £20 million compared with £171 million found by the earlier PwC study. Taking 80 per cent for non-business as usual requests and 65 per cent of the result as savings, predicted in the consultation impact assessment, means the total benefit from the proposed deregulation measure fell from £89 million to £10 million in light of the new ORC figures.

These figures cover the administrative burden saving from parents of children under 6 or disabled children under 18 because only this group were eligible to the right to request flexible working at the time of the PwC study in 2005. For the other groups, we estimate the total benefit from the proposed deregulation measure for carers would be £7 million and for the planned extension to older parents a total saving of £6 million, making a total saving of £ 23 million. This is less than the £28 million estimated by the consultation impact assessment as the ORC study has allowed better assumptions to be made to estimate a lower potential saving<sup>91</sup>.

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<sup>91</sup> Assume 65 per cent saving of admin burden calculated (see methodology on Page 12) where the admin burden is from additional or non-business as usual requests only less any external goods and services involved.

## **E. Analysis of option**

### **Costs and Benefits**

The analysis of costs and benefits is conducted in two parts below.

PART 1: First of all, cost and benefit estimates are provided for the extension of the current policy to cover parents of children aged 16 and under. It should be noted that this impact assessment is considering the marginal effect of extending the right to request to parents of older children. Clearly parents of children under six and of disabled children under 18 will already be covered by the legislation and hence are not included in the estimates of eligible parents discussed below<sup>92</sup>.

PART 2: Second, the cost-benefit analysis addresses the benefit of implementation assistance to business in the form of additional guidance and support.

The introduction of a deregulatory measure will not be taken forward as a result of feedback from the consultation stage. For information on the associated costs and benefits see the consultation impact assessment<sup>93</sup>.

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<sup>92</sup> For instance, where employed parents have one child aged five and one aged nine they would already be covered by the law and so are not counted here.

<sup>93</sup> Consultation impact assessment on [www.berr.gov.uk/files/file47434.pdf](http://www.berr.gov.uk/files/file47434.pdf)

## **PART 1: Extending the age limit to cover those with parental responsibility for children aged 16 and under**

### **Eligibility**

To be eligible to make a request under this right, a person must satisfy the following criteria:

#### **General**

- Be an employee
- Have worked for their employer continuously for 26 weeks at the date the application is made
- Not be an agency worker or a member of the armed forces
- Not have made another application to work flexibly under the right during the past 12 months

#### **Parents**

- Be the parent, or have parental responsibility for a child aged 16 or under
- Have responsibility for the upbringing of the child and be making the application to enable them to care for the child
- Be either:
  - the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has been granted a residence order in respect of a child; or
  - married to or the partner or civil partner of the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or of a person who has been granted a residence order in respect of a child.

### **Assumptions**

#### **Earlier impact assessment work**

The methodology adopted for estimating the costs and benefits associated with the extension of the right to request flexible working follows closely and builds upon that used for the development of earlier policy in this area. Specifically this relates to impact assessment work carried out in 2002 for those with parental responsibility for young children and in 2006 for carers of adults<sup>94</sup>.

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<sup>94</sup> See respectively *Imposing a Duty on Employers to Seriously Consider Requests for Flexible Working from the Parents of Young and Disabled Children*, 2002 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 40, [www.berr.gov.uk/files/file11440.pdf](http://www.berr.gov.uk/files/file11440.pdf), and *Extending the scope of the right to request flexible*

### ***Take-up of flexible working arrangements and deadweight***

Take-up of the extended right to request flexible working is likely to differ between mothers and fathers and also by current working pattern. Those who already have 'flexible' working patterns (such as part-time or flexi-time) may be more or less likely to request a change to working patterns than people with what appear to be 'non-flexible' working patterns. For this reason, the assumptions used to construct estimates of take-up are disaggregated by sex, full-time/part-time status and by whether the employed parent has some identifiable 'flexible' working pattern. The detail of the analysis is set out in Appendix C.

We have assumed that some requests will be regarded as 'deadweight' i.e. requests that would have occurred in the absence of any policy change. It is not straightforward to estimate the deadweight effect. Appendix C presents some illustrative estimates of deadweight requests.

This impact assessment uses data from the Second Work-Life Balance Survey<sup>95</sup> to estimate take-up rates and degree of deadweight requests. Updates of these assumptions from the Third Work-Life Balance Survey are under revision and not yet available. Apart from the deadweight cost, any new assumptions on take-up would change the level of costs and benefits but not alter the ratio between them.

A linear relationship is assumed between both the costs and the benefits of extending the right to request flexible working and the age of the child. It is likely that the take-up initially rises and then tapers off as the age of the child increases. The scope for parents to request to work flexibly is likely to decrease with a child becoming older and more independent.

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*working (Full)*, 2006 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 74, [www.berr.gov.uk/files/file38874.pdf](http://www.berr.gov.uk/files/file38874.pdf)

<sup>95</sup> The *Second Work-Life Balance Employees Survey*, March 2004, Employment Relations Research Series No.27

### ***Accounting for disabled children aged under 18***

The existing legislation covers disabled children aged under 18 and these are negligible and hence not included in the cost-benefit analysis<sup>96</sup>.

### **Benefits**

A number of benefits have been identified that may result from the extension of the right to request flexible working.

The principal benefits to business of the proposals are:

- Reduced vacancy costs and increased skill retention
- Increased productivity and profits
- Reduced absenteeism rates

These are considered in detail in this impact assessment and estimates of the associated monetised benefits are set out in the tables below.

### ***Wider benefits***

We also recognise that there are likely to be wider unquantifiable benefits of this policy, namely:

- Better work-life balance for employees
- Increased labour supply due to availability of more flexible working opportunities
- Improved health and wellbeing
- Positive environmental impact<sup>97</sup>
- Better quality upbringing/home life for children

### **Estimated eligibility and new working arrangements**

Table 1 below shows the number of eligible parents, number of new requests and the estimated number of new working arrangements per annum expected from parents of older children. We estimate extending the right to parents of children aged 16 and under will result in 308,000 additional requests<sup>98</sup> of which we estimate that 270,000 will be accepted.

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<sup>96</sup> The calculations for Table 1 and the following tables include parents of disabled children; these, however, are already covered by the law. Following ONS 2004 Health of Children and Young People report and BERR calculations the number of disabled children under 18 is estimated to be in 2008 less than 7,000, hence a relatively small proportion of all children and consequently negligible impact on the costs and benefits estimates. ONS report used two separate sources of data, data from the General Household Survey and data from Family Fund and Trust's register of applications.

<sup>97</sup> For instance a reduction in commuting as a result of enabling more employees to work from home

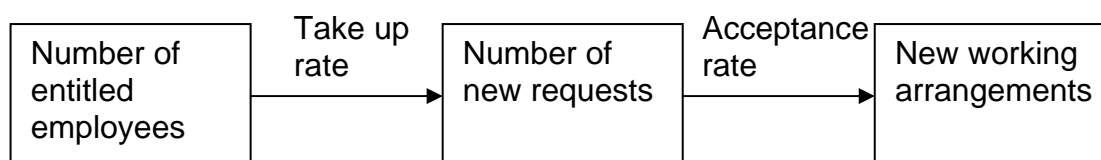
<sup>98</sup> Details in Appendix C, Table C4

**Table 1 Estimated number of eligible parents and number of new working arrangements**

SCOPE OF LAW	DERIVATION	NUMBER OF ENTITLED EMPLOYEES (000S)	NUMBER OF NEW REQUESTS (000S)	NEW WORKING ARRANGEMENTS (000S)
PARENTS OF CHILDREN UNDER 6	A	3,512	503	441
PARENTS OF CHILDREN AGED 16 AND UNDER	B	8,005	811	711
PARENTS OF YOUNGEST CHILD AGED 6 - 16	A-B	4,493	308	270

SOURCE: LFS Q2 2007, BERR ESTIMATES. FIGURES HAVE BEEN ROUNDED

This following chart illustrates the relationship between entitled employees and number of new working arrangements.



To be eligible to request to work flexibly parents should be employed for more than six months and have a child aged 16 and under. Data from the Second Work-Life Balance Survey is used to estimate take-up rates and degree of deadweight requests. Further assumptions underpinning the estimated number of new working arrangements can be found in Tables C1 to C3 in the Appendix.

### 1. Reduced vacancy costs and increased skill retention

Where flexible working enables parents to remain in the labour market, there will be benefits in terms of reduced staff turnover costs and increased skill retention. There may be broader savings to employers through reduced turnover among the parents of older children. At present, many working parents have some form of flexible working pattern, but to achieve this, a proportion will have had to change their job. Parents may leave their jobs for others with more flexible working patterns but which may be lower paid or lower skilled.

The latest CIPD survey on recruitment, retention and turnover estimated a UK labour turnover rate of 17.3 per cent, of those 27 per cent left their employer either to have or to look after their children. Due to issues with the data quality of the 27 per cent figure, an average is taken over the previous four years in the data series, see assumptions below.

The following three assumptions are made to calculate savings made through lower recruitment costs:



- 11.8 per cent of those who left their employer did so either to have or look after their children<sup>99</sup>, which means we estimate just over two per cent of labour turnover is due to competing child care responsibilities.
- The introduction of a right to request flexible working for parents of older children will prevent 5 per cent of employees leaving their jobs to look after family members.
- The cost of filling a post that becomes vacant is assumed to be £6,032<sup>100</sup>.

The three assumptions made above are applied to the number of entitled parents to calculate savings and this is presented in the Table 2 below.

**Table 2 Estimated savings in recruitment costs as a result of lower labour turnover**

<b>SCOPE OF LAW</b>	<b>NUMBER OF ENTITLED EMPLOYEES (000S)</b>	<b>ESTIMATED NUMBER OF EMPLOYEES WHO LEAVE THEIR JOB TO HAVE OR LOOK AFTER CHILDREN (000S)</b>	<b>ESTIMATED NUMBER OF EMPLOYEES WHO DECIDE TO REMAIN WITH THEIR EXISTING EMPLOYER AS A RESULT OF THE SCOPE OF LAW BEING EXTENDED (000S)</b>	<b>SAVINGS MADE BY EMPLOYER AS A RESULT OF REDUCED RECRUITMENT COSTS (£ MILLION)</b>
<b>PARENTS OF YOUNGEST CHILD AGED 6-16</b>	4,493	91	5	£28

**SOURCE: LPS Q2 2007, BERR ESTIMATES. FIGURES HAVE BEEN ROUNDED**

## **2. Increased productivity and profits**

Evidence has shown that flexible working arrangements can have a beneficial effect in terms of increased productivity, output and ultimately profits. BERR's Third Work-life Balance Survey, based on responses from 1,456 managers, asked what the effects of flexible working had at their establishment on six

<sup>99</sup> Since 2002, the CIPD have carried out an annual survey on recruitment and turnover covering between 715 and 905 UK organisations ([www.cipd.co.uk/subjects/recruitment/general/recruitment.htm](http://www.cipd.co.uk/subjects/recruitment/general/recruitment.htm)). Each year the survey calculates the rate of staff turnover in these organisations and asks the reasons given for staff leaving the employer. In the 2007 survey, only 69 organisations provided information on the percentage that left their employer either to have or to look after their children. This might explain why the figure of 27 per cent shows a dramatic increase on previous years. To provide a more robust figure for this impact assessment an average of the previous four years is taken which gives 11.8 per cent.

<sup>100</sup> The CIPD annual survey on recruitment and turnover also ask about the costs of labour turnover and costs of recruitment. Relatively few organisations provided information on the cost of overall labour turnover but figures for 2005 (£8,200) and 2006 (£7,750) showed dramatic increases on previous years for no apparent reason. However, the 2007 figure is more in line with earlier estimates. For this impact assessment the 2007 figure of £5,800 was used with an annual growth rate of four per cent applied to update for 2008 prices.

criteria; productivity, employee relations, motivation and commitment, recruitment, labour turnover and absenteeism. On productivity, the survey found 48 per cent of employers thought flexible working and leave arrangements had a positive effect while 12 per cent reported negative effect with the remainder reporting no impact<sup>101</sup>. We then assume 36 per cent as the net positive impact on productivity<sup>102</sup>.

For the most part, employers in the survey thought that flexible working and leave arrangements had a positive effect or no effect on employees and human resources management at the establishment. At least around four in ten employers thought that flexible working and leave arrangements had a positive effect on each of the six criteria. Relatively small proportions perceived these practices to have a negative effect. Other survey evidence supports this view showing eight per cent of employers provide staff with flexible working opportunities to improve productivity<sup>103</sup>. Only morale/staff retention/recruitment (41 per cent), a better work-life balance for employees (37 per cent) and improve services to customers (20 per cent) were given more times in the survey as the reason.

The following four assumptions are made to calculate increased gross profit as a result of improved productivity:

- 36 per cent of new flexible working arrangements result in increased productivity.
- Output per worker is £80,897<sup>104</sup>
- A notional five per cent output gain would be achieved for the new working arrangements that result in increased productivity. A five per cent level was chosen because employers must have realised a significant rise in productivity to report that flexible working has had a positive impact on their firm.
- Improved productivity leads to higher output and 15.4 per cent of the increased output will represent gross profit. This figure represents the ratio

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<sup>101</sup> We redistribute the 13 per cent of employers who did not or refused to answer perceived along the same proportions as those who did provide an answer, thereby assuming they perceived the same effect on productivity as those that did answer.

<sup>102</sup> We assume the magnitude of average productivity gains is broadly similar to the magnitude of losses, so the net gain is 36 per cent (48 per cent – 12 per cent).

<sup>103</sup> Future of work: *employers & workplace transformation*, Smeaton V. et al (Working Paper series No.56, 2007)

<sup>104</sup> To calculate output per worker the following sources and calculation are used. From ONS Labour market statistics (MGRZ) February 2009, there were 29,361 million workers in the period October-December 2008. From the ONS Blue Book 2006, UK output was £2,151,833 million in 2004 (latest available on this basis). After an average growth rate of 2.5 per cent is applied to UK output to update for 2008, we divide by the number of workers giving an output per employee of £80,897.

of gross operating surplus to domestic output of product for the entire economy<sup>105</sup>.

The four assumptions made above are applied to the number of new working arrangements to calculate the increased gross profit as a result of improved productivity and this is presented in the Table 3 below.

**Table 3 Increased profits as a result of increased productivity - parents of older children**

<b>SCOPE OF LAW</b>	<b>NEW WORKING ARRANGEMENTS ('000S)</b>	<b>ADDITIONAL NUMBER OF NEW WORKING ARRANGEMENTS THAT INCREASE PRODUCTIVITY ('000S)</b>	<b>OUTPUT BEFORE FLEXIBLE WORKING (£ MILLION)</b>	<b>INCREASED OUTPUT AFTER FLEXIBLE WORKING (£ MILLION)</b>	<b>EXTRA GROSS PROFITS (TOTAL) P.A. (£ MILLION)</b>
<b>PARENTS OF YOUNGEST CHILD AGED 6 - 16</b>	<b>270</b>	<b>97</b>	<b>£7,862</b>	<b>£393</b>	<b>£60</b>

**SOURCE: LFS Q2 2007, BERR ESTIMATES. FIGURES HAVE BEEN ROUNDED**

### **3. Reduced absenteeism rates**

Evidence also shows that flexible working arrangements can have a beneficial effect on absenteeism. BERR's third work-life balance survey found 44 per cent of employers thought flexible working and leave arrangements had a positive effect while 10 per cent reported negative effect with the remainder reporting no impact<sup>106</sup>. We then assume 34 per cent as the net positive impact on absenteeism<sup>107</sup>.

It is assumed that the absenteeism cost falls because flexible working allows employees to reduce the incidences of absence per year. The following three assumptions are made to calculate savings made by employers as a result of lower absenteeism:

<sup>105</sup> To calculate the proportion of profits to output the following sources and calculation are used. From ONS Economic Accounts series (ABNF) 2008 Q3, gross operating surplus or profit was £330,960 million in 2004. From before, UK output was £2,151,833 million in 2004 (latest available on this basis). We divide profit by output and assume the same ratio still applies in 2008 giving the proportion of profits to output as 15.4 per cent.

<sup>106</sup> We redistribute the 13 per cent of employers who did not respond or refused to answer along the same proportions as those who did provide an answer, thereby assuming they perceived the same effect on productivity as those that did answer.

<sup>107</sup> We assume the magnitude of average productivity gains is broadly similar to the magnitude of losses, so the net gain is 34 per cent (44 per cent – 10 per cent).

- 34 per cent of new working arrangements will result in lower employee absenteeism. For the purpose of this IA, we are using a constant rate of people being absent even though we do recognize that the likelihood to be absent is inversely related to the age of the child.
- The cost of absenteeism prior to making a request is £666 per year<sup>108</sup> and
- And after a request is accepted the cost of absenteeism falls by 10 per cent.

The four assumptions made above are applied to the number of new working arrangements to calculate the savings made by employers as a result of lower absenteeism and this is presented in the Table 4 below.

**Table 4 Savings in absence costs - parents of older children**

<b>SCOPE OF LAW</b>	<b>NEW WORKING ARRANGEMENTS ('000S)</b>	<b>ADDITIONAL NUMBER OF NEW WORKING ARRANGEMENTS THAT REDUCE ABSENTEEISM (000S)</b>	<b>COST OF ABSENCE BEFORE FLEXIBLE WORKING (£ MILLION)</b>	<b>SAVINGS IN ABSENCE COSTS (£ MILLIONS)</b>
<b>PARENTS OF YOUNGEST CHILD AGED 6 - 16</b>	<b>270</b>	<b>91</b>	<b>£61</b>	<b>£6</b>

**SOURCE: LFS Q2 2007, BERR ESTIMATES. FIGURES HAVE BEEN ROUNDED.**

<sup>108</sup> According to the latest CIPD absence management report 2008 ([www.cipd.co.uk/subjects/hrpract/absence/absmgmt.htm](http://www.cipd.co.uk/subjects/hrpract/absence/absmgmt.htm)), the average cost of an employee being absence is £666.

## Summary of quantifiable benefits

Table 5 below provides a summary of the quantifiable benefits adding together the savings in recruitment cost (Table 2), the quantifiable benefits of increased productivity (Table 3) and the quantifiable savings in absence costs (Table 4).

**Table 5 Total additional quantifiable benefits - parents of older children**

BENEFIT	TOTAL ADDITIONAL QUANTIFIABLE BENEFITS (£ MILLION)
<b>REDUCED LABOUR TURNOVER</b>	<b>£28</b>
<b>INCREASED PRODUCTIVITY</b>	<b>£60</b>
<b>REDUCED ABSENCE</b>	<b>£6</b>
<b>TOTAL</b>	<b>£94</b>

**SOURCE: BERR ESTIMATES. FIGURES HAVE BEEN ROUNDED**

## COSTS

The principal costs to business of the proposals fall under three headings:

1. Implementation costs of the proposals
2. Procedural costs arising from exercise of the right to request flexible working
3. The costs of accommodating such requests (when they are accepted)

These are considered in turn.

### 1. Implementation costs

The extension of the right to request flexible working would result in one-off Implementation costs for business. These are estimated and discussed in detail in part 3 below. It is assumed that the extension of the existing law will have negligible implementation costs. Firms are already familiar with how to process a request for flexible working. The cost of communicating the change in eligibility to employees will be very little as it is assumed that firms will already have a method of communication in place that will only need updating.

These are one-off costs. Most will be incurred in the period around when the legislation comes into force although in some cases, for example where smaller firms have no eligible employee at the time of implementation, the costs may not occur straight away.

### 2. Procedural costs & administrative burdens

It is important to note procedural costs are not wholly administrative burdens. The associated information obligations such as written notification of the employer's decision relating to the request are a subset of the procedural costs and can largely be estimated on the basis of time taken to complete the

relevant tasks. The remainder of the procedural costs are therefore considered to be policy costs.

In terms of administrative burdens these will fall on employers only. We assume initially that administrative burden costs apply to all formal and informal requests, although it is reasonable to assume that informal requests may not always result in formal written notification from the employer.

The administrative burden is based on the 2008 ORC Employment Law survey exercise. This provides per request, the cost of the information obligation placed on the employer by the current flexible working legislation. This cost includes wage costs as well as external costs like goods and services. This information updates an earlier survey done by PwC, and a comparison between the two sources is provided in Appendix B. This allows us to identify and separate out from the procedural costs, those activities under the current proposals that are likely to impose an information obligation on employers.

### ***2.1 Average cost of handling a formal request***

Essentially, the first stage encompasses a written request from the employee, deliberation by the employer both before and after a meeting with the employee, and then preparation of a decision. The principal cost will be the time of both management and employees (it is assumed that employees prepare requests during work rather than in their own time).

Clearly, there will be considerable variation in the time this process takes depending upon the nature of the request, the way the request is then handled by the employer (the level of management permitted to decide on requests, the degree of written protocol), whether an employee is accompanied at the meeting with management, and whether or not a decision is straightforward to make (e.g. whether other employees have to be consulted).

Experience has also shown the introduction of the formal right to request creates a culture change in the workplace and an acceptance of the procedure leading to many applications being made on a more informal basis which again significantly reduces the procedural costs.

The ORC survey tells us it takes 68 minutes (1.13 hours) or £26.74 per hour of management time to administer a first stage request. With external goods and services included this means the administrative cost per request is £88. For the overall procedural cost, we assume three hours of management time is allowed for a request dealt with formally and 1 ½ hours if dealt with informally<sup>109</sup>. Employee time taken is assumed as a proportion of the management time taken, so that it takes two hours of employee time for a formal request and half an hour of employee time for an informal request<sup>110</sup>.

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<sup>109</sup> On top of the admin burden, we assume 112 additional minutes spent in management time on formal requests and 22 additional minutes on informal requests, both charged at the same hourly management rate of £26.74.

<sup>110</sup> We assume employee time spent for formal requests as two-thirds of management time taken and for informal requests as a third of management time.

This works out at approximately £116 per request in total, with external goods and services included.

It is likely in practice that for 'deadweight' requests, i.e. those where employees are already allowed to work flexibly, the average procedural and administrative cost is likely to be much less. Even where flexible working is guaranteed, the cost of any existing procedure for changing working patterns – however informal - must be subtracted. Adopting the methodology used in earlier impact assessments that such a request represents a third of the cost, a notional procedural cost of £39 is assumed for each deadweight request, of which £29 is administrative burden<sup>111</sup>.

## **2.2 Average cost of appeal or internal grievance stage**

The appeal stage will involve a written statement of appeal by the employee, a meeting (where the employee may be represented) and a written response by the employer. Where requests reach this stage, it is likely that both employees and managers take more care and attention over their written communications. The meeting may also be longer and more wide-ranging.

The ORC survey tells us it takes 334 minutes or £20.84 per hour of management time to administer a decision to uphold a refusal without holding an appeal meeting. With external goods and services included this means the administrative cost per request is £329.84. Since this cost does not take account of the lengthier administrative burden in instances where a meeting is held to discuss the appeal and the employee is afterwards notified of the outcome, an additional half hour of management time is added. This means it takes 364 minutes to administer a request at the appeal stage at a cost of £340, again with additional external goods and services included.

We assume six hours and 26 minutes of management time is allowed for on a request dealt with formally and seven hours and 56 minutes of management time for an appeal dealt with formally<sup>24</sup>. Employee time taken is again assumed as a proportion the management time taken, so that it takes five hours and 17 minutes of employee time for a formal request and two hours and eight minutes of employee time for a informal request<sup>25</sup>. This works out at approximately £392 per request in total, again with additional external goods and services included.

In summary, the management and employee time spent processing a request for each stage/ type of request is given in Table 6. This is broken down further by the administrative burden time.

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<sup>111</sup> Cost per request = cost of time to process formal requests + cost of time to process informal requests + external goods & services, where 80 per cent are formal and 20 per cent informal request and cost of time to process a request = (management time x management hourly rate) + (employee time x employee hourly rate).

Table 6 Estimated time to process a request

TYPE/OUTCOME OF REQUEST		UNIT COST (HOURS)		OF WHICH ADMIN BURDEN (HOURS)	
		FORMAL	INFORMAL	FORMAL	INFORMAL
AVERAGE TIME TO PROCESSING REQUESTS AT FIRST STAGE (ACCEPTED)	MANAGEMENT TIME	3.00	1.50	1.13	1.13
	EMPLOYEE TIME	2.00	0.50	0.00	0.00
AVERAGE TIME TO PROCESSING REQUESTS AT FIRST STAGE (REJECTED)	MANAGEMENT TIME	3.00	1.50	1.00	1.00
	EMPLOYEE TIME	2.00	0.50	0.00	0.00
AVERAGE TIME TO PROCESSING REQUESTS AT FIRST STAGE (DEADWEIGHT REQUEST)*	MANAGEMENT TIME	1.00	0.50	0.38	0.38
	EMPLOYEE TIME	0.67	0.17	0.00	0.00
AVERAGE ADDITIONAL TIME PER REQUEST TAKEN TO APPEAL STAGE**	MANAGEMENT TIME	7.93	6.43	6.07	6.07
	EMPLOYEE TIME	5.29	2.14	0.00	0.00

SOURCE: BERR ESTIMATES. \* ASSUMED TO BE ONE THIRD OF A NEW REQUEST. \*\* ASSUMED APPEAL STAGE WILL TAKE 112 AND 22 MINUTES MORE OF MANAGEMENT TIME THAN FORMAL AND INFORMAL REQUESTS MADE RESPECTIVELY AT THE FIRST STAGE. EMPLOYEE TIME ASSUMED TWO THIRD AND A THIRD OF THIS FORMAL AND INFORMAL MANAGEMENT TIME AT APPEAL STAGE.

### 2.3 Average cost of external dispute resolution stage

The average cost to an employer of an application to an Employment Tribunal - £4,980<sup>112</sup> - is used as a benchmark figure. The cost to the employer excludes any financial or non-financial costs borne by the employee at this stage. Other sources of dispute resolution, e.g. the Acas arbitration scheme, may be cheaper for both parties.

### 3. Cost of accommodating requests for flexible working

Employers may also face costs in accommodating a request for flexible working. Examples might include re-organising work schedules or adjustments to IT systems (e.g. to permit flexible rostering). In some cases, the potential costs could be more substantial (e.g. if another employee had to be recruited to cover for an employee reducing their working hours). These examples should not be considered as exhaustive.

<sup>112</sup> Source *Survey of Employment Tribunal Applications 2003*



Employers can reject requests on cost but this does not imply that the additional costs of accommodating requests are zero. Employers will accept cases where some additional cost is involved.

On average the costs of accommodating requests for flexible working might be a week's wages for requests that ask to work part-time. For other types of requests we have assumed the equivalent of one day's wages to accommodate the request. Another assumption has been made that half of all request are to work part-time, hence the average cost of accommodation is three days' wages. Using average earnings from the 2007 Annual Survey of Hours and Earnings and allowing for 21 per cent for non-wage labour costs, this produces costs of £242 for male full-time, £77 for male part-time, £193 for female full-time and £99 for female part-time<sup>113</sup>. The annual cost of adaptation is assumed to be constant for each of the various proposals because evidence from the The Labour Force Survey (LFS) suggests that the stock of parents who work flexibly is approximately constant over time.

It is likely that requests accommodated at the appeal stage, or at the external dispute resolution stage, will be more finely balanced and therefore, on average, more costly to implement. The estimates above are, therefore, multiplied by factors of 1.5 and 2 respectively for the (small) number of requests that are successful at the appeal or external dispute resolution stage.

### **Summary of costs**

The total procedural costs and the cost of making adjustments to working patterns for the first year are presented in the table below. The last three columns of table 7 below show a) the additional cost to employers per year due to the new law and b) of this the increase in administrative burdens, presented both in 2008 and 2005 prices.

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<sup>113</sup> All the wage figures above are based on 60 per cent of average gross weekly earnings plus 21 per cent of non-wage labour costs.

**Table 7 Summary of annual procedural costs and cost of accommodating requests**

SCOPE OF LAW	DERIVATIVE	TOTAL PROCEDURAL COST (£ MILLIONS)	TOTAL COST OF MAKING ADJUSTMENTS TO WORKING PATTERNS (£ MILLIONS)	TOTAL COST TO EMPLOYER* (£ MILLIONS)	OF WHICH ADMIN BURDENS	
					2008 PRICE S	2005 PRICE S **
PARENTS OF YOUNGEST CHILD AGED 6-16	A - B	48	43	91	36	32

**SOURCE: BERR ESTIMATES. FIGURES HAVE BEEN ROUNDED. \*THIS COLUMN REPRESENTS THE DIFFERENCE BETWEEN THE TOTAL EMPLOYER COST (PROCEDURAL COST + COST OF ADJUSTMENT) FOR THE PROPOSED OPTION AND CURRENT SCOPE OF LAW. \*\* TO COMPARE AGAINST 2005 ADMINISTRATIVE BURDENS BASELINE**

## **Part 2: Assisting business with implementation**

Furthermore, the Government has accepted the recommendation in Imelda Walsh's independent review that the age cut-off point for the legal right to request flexible working should be increased to those with parental responsibility for children aged 16 and under and that this change should be implemented in a single step, rather than a staged introduction, to avoid creating confusion for business and employees. Therefore the focus of the consultation was implementation of this recommendation and simplification of the administrative procedures.

The Walsh Review also recommended that business would benefit from increased information and guidance about dealing with flexible working requests. The consultation asked for views about how this could best be done.

Ms Walsh's report highlighted that evidence shows that some groups of employees are less likely than others to be aware that they currently have the right to request flexible working, in particular fathers and carers of adults. In response, the Department for Business, Enterprise and Regulatory Reform (BERR) and the Government Equalities Office are working on campaigns to increase awareness of the right among both employees and employers. The campaigns will focus on raising awareness of both the individuals' right to request flexible working and helping business understand how to handle such requests through more effective use of tools and advice available on Businesslink

### **Information and improved guidance**

Access to flexible working arrangements has made an important difference to millions of employees. Many employers recognise that flexible working improves retention and some acknowledge additional productivity benefits

too. This is borne out by recent research<sup>114</sup> which found that the majority of flexible workers, co-workers of flexible workers and managers of flexible workers reported that there was either a positive impact or no impact on individual performance.

However, Ms Walsh's review found that many employers would appreciate more help and guidance about how to introduce flexible working as they are concerned about the impact on their business and the customers they serve. Despite having heard about the potential benefits, they are understandably cautious about how to go about introducing flexible working arrangements in their own organisations.

Ms Walsh therefore recommended that the Government consider how it can better assist and offer practical encouragement to businesses implementing these changes. She suggested that employer representative bodies, with Government support, could assist in the sharing of good practice and ideas.

In the consultation document, the Governments sought views as to what more Government could do to assist businesses in implementing flexible working arrangements, having regard to the existing guidance and templates available on Businesslink<sup>115</sup> and to any particular characteristics of parents of children 16 and under.

## **Calculating the impact of improved implementation assistance**

We assume here that additional measures to help business with implementation of the legislation for the extension to parents of older children will have an impact in terms of reducing the time it takes to process a request for flexible working.

From table 7 above we use those procedural costs that are net of administrative burdens, hence around £12m in this case, and assume that improved guidance will result in business reducing these costs by 25 per cent, or by £3m.

## **F. Risks**

The estimates of costs and benefits presented in this impact assessment are necessarily based upon a number of assumptions that relate among other things to possible take-up and the procedural costs associated with the right to request flexible working.

## **G. Enforcement**

Employees trigger the duty to consider by making a request for flexible working. If the employer rejects the request and the employee is not satisfied with the explanation, he or she can appeal to the employer.

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<sup>114</sup> " *Flexible Working and Performance* ", Cranfield University School of Management, April 2008

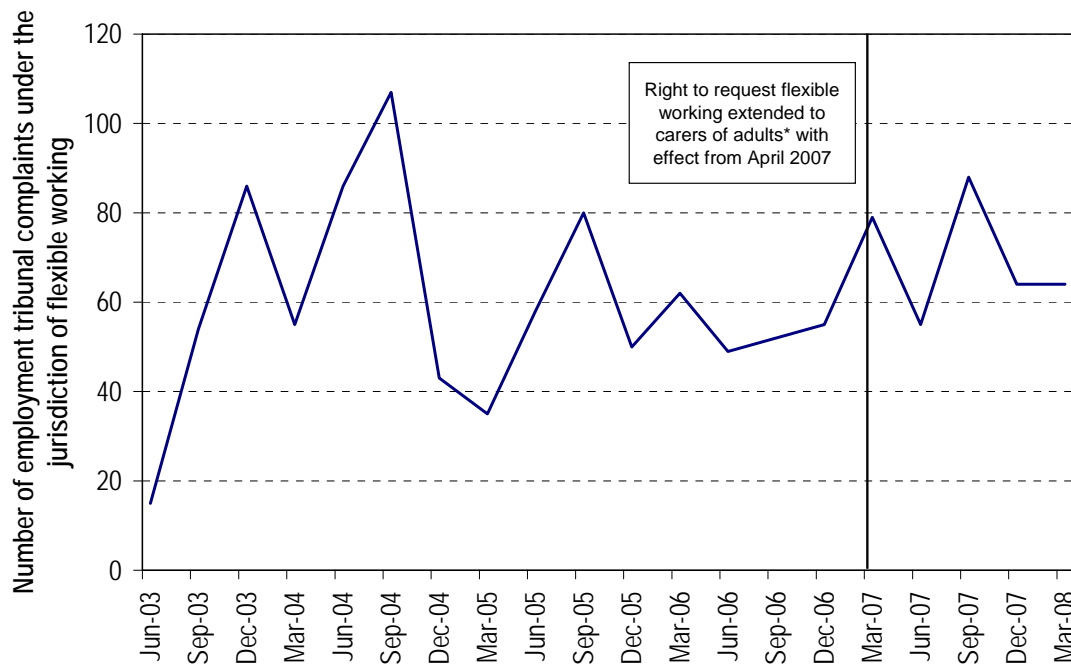
<sup>115</sup> [www.businesslink.gov.uk/flexibleworking](http://www.businesslink.gov.uk/flexibleworking)

If the employee still does not think the employer has given the matter serious consideration, he/she can seek resolution through an external dispute resolution mechanism and ultimately through an employment tribunal.

The chart below summarises the quarterly data on Employment Tribunal (ET) claims since early 2003 when the right to request flexible working was first introduced for parents of young children under six and disabled children under 18.

Overall the number of claims for the flexible working jurisdiction has been relatively small, accounting for less than 0.1 per cent of all ET claims over the period. Furthermore following the extension of the right to request to carers of adults in April 2007, there was not a significant increase in claims: in the year to March 2007 there were a total of 235 ET claims, whereas in the year to March 2008 there were 271 ET claims.

**Chart 1 – Number of employment tribunal complaints under the jurisdiction of flexible working**



Source: Tribunals Service. Great Britain, not seasonally adjusted.\* On 6 April 2007 the right to request flexible working was extended to carers of adults. Carer must be or expect to be caring for a spouse, partner, civil partner or relative; or if not the spouse, partner or a relative, live at the same address as the adult in need of care.

We therefore assume that an extension of the right to request to parents of older children will have a marginal effect on the number of ET claims.

**H. Recommendation and summary table of costs and benefits**

Table 8 presents a summary of the estimated quantifiable costs and benefits of policy proposal:

**Table 8. Summary of quantifiable costs and benefits for policy proposal**  
**SCOPE OF LAW**

		<b>ANNUAL COSTS (£M)</b>	<b>ANNUAL BENEFITS (£M)</b>
<b>PART 1: PARENTS OF YOUNGEST CHILD AGED 6-16</b>	<b>A</b>	<b>91</b>	<b>94</b>
<b>PART 2: IMPLEMENTATION ASSISTANCE TO BUSINESS</b>	<b>C</b>	<b>-3</b>	<b>0</b>
<b>POLICY PROPOSAL: RIGHT TO REQUEST EXTENDED TO PARENTS OF CHILDREN AGED 16 AND UNDER &amp; IMPLEMENTATION ASSISTANCE TO BUSINESS</b>	<b>A + C</b>	<b>88</b>	<b>94</b>

**SOURCE: BERR ESTIMATES. FIGURES HAVE BEEN ROUNDED**

In addition to the benefits quantified above, we also recognise that there are likely to be wider benefits of this policy, such as better work-life balance for employees, increased labour supply due to availability of more flexible working opportunities, improved health and wellbeing, and positive environmental impacts.

## **I. Implementation**

The amended regulations will be introduced in April 2009. We consulted on how best the change in the law can be implemented so that the costs of implementation can be minimised e.g. through providing clear guidance and developing simple procedures for implementation. The majority of respondents provided positive feedback on the guidance available on the Businesslink website and there was general agreement that it was particularly useful for small businesses. However some respondents felt that the information on the Businesslink site was not comprehensive enough. Many respondents thought that more could be done to promote the benefits of flexible working to employers. This might include the use of case studies based on different size and types of organisations demonstrating how the needs of employees and employers can be accommodated.

The Government will continue to work to enhance the guidance and tools available to both business and individuals on the Businesslink and Direct.gov websites. In response to the specific suggestions made in the consultation we will seek to improve the guidance on successfully managing flexible working and to link into toolkits and guidance provided by other organisations. We will also seek to provide more detailed information on the legal aspects of flexible working (e.g. sex discrimination) which may worry employers.

Publicity campaigns in the run up to April will highlight the information available on the Direct.gov and Businesslink websites.

## **J. Monitoring and evaluation**

Monitoring and evaluation of the extension of the right to request flexible working will be carried out through surveys of employers and employees. BERR regularly conducts baseline surveys of this nature, with the most recent

being the Work-Life Balance Employee Survey carried out in March 2007<sup>116</sup> and the Work-Life Balance Employer Survey in December 2007<sup>117</sup>. Information relating to this area should also be available from the next Workplace Employment Relations Survey (WERS), which will be conducted in 2010. This survey will also contribute to an assessment in 2010 of the success, or otherwise, of the proposed policy extension.

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<sup>116</sup> The *Third Work-Life Balance Employees Survey*, March 2007, Employment Relations Research Series No.58

<sup>117</sup> The *Third Work-Life Balance Employers Survey*, December 2007, Employment Relations Research Series No.86

## Specific Impact Tests: Checklist

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

## Appendix A: Specific impact tests

### 1. Competition Assessment

#### ***Business sectors affected***

The table below shows the number of additional employees by broad sector who would be eligible to request flexible working if the current law was extended to those with parental responsibility for older children. Overall the sectoral impact is likely to be minimal.

The distribution of eligible employees across sectors is in fact very similar to the overall distribution of all employees. The main exceptions to this are a) hotels and catering – where there is less likelihood of there being eligible parents, and b) public administration, education and health where there are likely to be disproportionately higher eligibility.

**Table A 1. Estimated additional eligible employees by business sector as per cent of total employees**

	<b>PARENTS OF YOUNGEST CHILDREN AGED 6- 16</b>	<b>TOTAL EMPLOYEES</b>
<b>A-B: AGRICULTURE AND FISHING</b>	<b>1 PER CENT</b>	<b>1 PER CENT</b>
<b>C,E: ENERGY AND WATER</b>	<b>1 PER CENT</b>	<b>1 PER CENT</b>
<b>D: MANUFACTURING</b>	<b>15 PER CENT</b>	<b>14 PER CENT</b>
<b>F: CONSTRUCTION</b>	<b>5 PER CENT</b>	<b>6 PER CENT</b>
<b>G-H: DISTRIBUTION, HOTELS AND RESTAURANTS</b>	<b>15 PER CENT</b>	<b>19 PER CENT</b>
<b>I: TRANSPORT AND COMMUNICATION</b>	<b>6 PER CENT</b>	<b>7 PER CENT</b>
<b>J-K: BANKING, FINANCE &amp; INSURANCE ETC</b>	<b>13 PER CENT</b>	<b>16 PER CENT</b>
<b>L-N: PUBLIC ADMIN, EDUC &amp; HEALTH</b>	<b>39 PER CENT</b>	<b>31 PER CENT</b>
<b>O-Q OTHER SERVICES</b>	<b>4 PER CENT</b>	<b>5 PER CENT</b>
<b>WORKPLACE OUTSIDE UK</b>	<b>0 PER CENT</b>	<b>0 PER CENT</b>
<b>TOTAL</b>	<b>100 PER CENT</b>	<b>100 PER CENT</b>

**SOURCE: LFS Q2 2007. PROPORTIONS MAY NOT ADD TO 100 DUE TO ROUNDING**



### **Public – private sector split**

Tables A2 and A3 below present estimates of the number of eligible parents, new requests for flexible working and new working arrangements in the public and private sectors respectively.

**Table A 2. Estimated number of eligible parents, new requests and number of new working arrangements in the public sector**

<b>SCOPE OF LAW</b>		<b>NUMBER OF ENTITLED EMPLOYEES (000S)</b>	<b>NUMBER OF NEW REQUESTS (000S)*</b>	<b>NEW WORKING ARRANGEMENTS (000S)</b>
<b>PARENTS OF CHILDREN UNDER 6</b>	<b>A</b>	<b>949</b>	<b>157</b>	<b>137</b>
<b>PARENTS OF CHILDREN AGED 16 AND UNDER</b>	<b>B</b>	<b>2,555</b>	<b>278</b>	<b>243</b>
<b>PARENTS OF YOUNGEST CHILD AGED 6-16</b>	<b>A-B</b>	<b>1,606</b>	<b>121</b>	<b>106</b>

**SOURCE: BERR ESTIMATES. \* EXCLUDING DEADWEIGHT REQUESTS**

**Table A 3. Estimated number of eligible parents, new requests and number of new working arrangements in the private sector**

<b>SCOPE OF LAW</b>		<b>NUMBER OF ENTITLED EMPLOYEES (000S)</b>	<b>NUMBER OF NEW REQUESTS (000S)*</b>	<b>NEW WORKING ARRANGEMENTS (000S)</b>
<b>PARENTS OF CHILDREN UNDER 6</b>	<b>A</b>	<b>2,559</b>	<b>346</b>	<b>303</b>
<b>PARENTS OF CHILDREN AGED 16 AND UNDER</b>	<b>B</b>	<b>5,443</b>	<b>533</b>	<b>467</b>
<b>PARENTS OF YOUNGEST CHILD AGED 6-16</b>	<b>A-B</b>	<b>2,884</b>	<b>187</b>	<b>164</b>

**SOURCE: BERR ESTIMATES. \* EXCLUDING DEADWEIGHT REQUESTS**

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A4 below). The proposed legislation will apply to all firms and is unlikely to affect the competitiveness of any particular sector.

**Table A 4. Competition assessment**

QUESTION: IN ANY AFFECTED MARKET, WOULD THE PROPOSAL...	ANSWER
... DIRECTLY LIMIT THE NUMBER OR RANGE OF SUPPLIERS?	NO
... INDIRECTLY LIMIT THE NUMBER OR RANGE OF SUPPLIERS?	NO
... LIMIT THE ABILITY OF SUPPLIERS TO COMPETE?	NO
... REDUCE SUPPLIERS' INCENTIVES TO COMPETE VIGOROUSLY?	NO
SOURCE: BERR	

**2. Small Firms Impact Test**

The proposed amendment to the regulations would apply to firms of all sizes. Table A5 presents the distribution of estimated eligible parents and compares this to the distribution of all employees by workplace size across the economy. The indication is that small and medium-sized workplaces would not be disproportionately affected.

**Table A 5. Estimated additional eligible employees by size of the company as per cent of total employees**

	PARENTS OF YOUNGEST CHILDREN AGED 6-16	TOTAL EMPLOYEES
1 – 10	19 PER CENT	20 PER CENT
11 – 19	9 PER CENT	9 PER CENT
20 – 24	5 PER CENT	5 PER CENT
25 - 49	14 PER CENT	14 PER CENT
50 – 249	26 PER CENT	26 PER CENT
250 – 499	8 PER CENT	8 PER CENT
500 OR MORE	19 PER CENT	18 PER CENT
TOTAL	100 PER CENT	100 PER CENT

**SOURCE: LFS Q2 2007. ASSUMING THAT THE “DO NOT KNOW BUT UNDER 25” HAVE THE SAME DISTRIBUTION AS THE 1-10, 11-19, 20-24 GROUPS AND THE “DO NOT KNOW BUT BETWEEN 50 AND 499” HAVE THE SAME DISTRIBUTION AS THE GROUP 50-249 AND 250-499. PROPORTIONS MAY NOT ADD TO 100 DUE TO ROUNDING**

### 3. Equality Impact Assessment

The equality impact assessment suggests there would not be any disproportionate effects by gender, race or disability. Table A6 presents the distribution of estimated eligible parents and compares this to the distribution of all employees by ethnicity. The indication is that no particular ethnicity would be disproportionately affected.

**Table A 6. Estimated additional eligibility by ethnicity of employees**

	PARENTS OF YOUNGEST CHILDREN AGED 6-16	TOTAL EMPLOYEES
<b>WHITE</b>	<b>92 PER CENT</b>	<b>92 PER CENT</b>
<b>MIXED</b>	<b>1 PER CENT</b>	<b>1 PER CENT</b>
<b>ASIAN OR ASIAN BRITISH</b>	<b>4 PER CENT</b>	<b>4 PER CENT</b>
<b>BLACK OR BLACK BRITISH</b>	<b>3 PER CENT</b>	<b>2 PER CENT</b>
<b>CHINESE</b>	<b>0 PER CENT</b>	<b>0 PER CENT</b>
<b>OTHER</b>	<b>1 PER CENT</b>	<b>1 PER CENT</b>
<b>TOTAL</b>	<b>100 PER CENT</b>	<b>100 PER CENT</b>

**SOURCE: LFS Q2 2007. PROPORTIONS MAY NOT ADD TO 100 DUE TO ROUNDING**

Parents with work-limiting or DDA disability account for around 12 per cent of the parents with youngest child aged 6 – 16, while similarly it is about 13 per cent amongst total employees. This indicates an employee with a disability would not be disproportionately affected by the extension of the right to request.

## Appendix B: Outline of Administrative Burden Information Obligations Relating to 2002 Regulations.

The table below sets out the administrative burdens information obligations under the Flexible Working (Procedural Requirements) Regulations 2002, includes estimates of cost and time taken per request from PwC and ORC studies in 2005 and 2008 respectively.

ID	IO DESCRIPTION	INFORMATION METRIC	PWC 2005 SURVEY				ORC 2008			
			TIME TAKEN (MINUTES)	TOTAL WAGE COST	OTHER COSTS (GOODS & SERVICES)	COST PER REQUEST	TIME TAKEN (MINUTES)	TOTAL WAGE COST	OTHER COSTS (GOODS & SERVICES)	COST PER REQUEST
30371 (STAGE 1 OBLIGATION)	PROVIDING AN EMPLOYEE WITH WRITTEN NOTICE OF THE DECISION RELATING TO A REQUEST FOR A CONTRACT VARIATION. SPECIFYING IN THE WRITTEN NOTICE: - THE CONTRACT VARIATION AGREED TO AND DATE ON WHICH THE VARIATION IS TO TAKE EFFECT, WHERE YOUR DECISION IS TO AGREE TO THE APPLICATION; OR - THE PRESCRIBED GROUNDS FOR REFUSAL WHERE THE APPLICATION IS TURNED DOWN.	NO. OF REQUESTS FOR A CONTRACT VARIATION IN RELATION TO FLEXIBLE WORKING.		£748	£0	£748	68	£30	£57	£88

30411 (APPEAL STAGE OBLIGATION)	NOTIFYING THE EMPLOYEE, IN WRITING, WHEN YOU UPHOLD YOUR DECISION TO REFUSE AN APPLICATION TO CHANGE WORKING ARRANGEMENTS AFTER THE EMPLOYEE HAS APPEALED. THE NOTICE OF YOUR DECISION SHOULD SPECIFY THE CONTRACT VARIATION AGREED TO AND STATE THE DATE FROM WHICH THE CONTRACT VARIATION IS TO TAKE EFFECT	NO. OF INSTANCES AN EMPLOYER UPHOLDS THEIR DECISION TO REFUSE AN APPLICATION TO CHANGE WORKING TIME ARRANGEMENTS AFTER THE EMPLOYEE HAS APPEALED.	946	£915	£34	£949	334	£116	£214	£330
30463	CONFIRMING THE WITHDRAWAL OF AN APPLICATION FOR A CONTRACT VARIATION TO CHANGE WORKING ARRANGEMENTS TO THE EMPLOYEE IN WRITING IN CERTAIN CIRCUMSTANCES, FOR EXAMPLE, WHERE THE EMPLOYEE HAS FAILED TO ATTEND MEETINGS.	NO. OF WITHDRAWALS OF AN APPLICATION FOR A CONTRACT VARIATION TO CHANGE WORKING ARRANGEMENTS IN CERTAIN CIRCUMSTANCES, FOR EXAMPLE, WHERE THE EMPLOYEE HAS FAILED TO ATTEND MEETINGS.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

30415 (APPEAL STAGE OBLIGATION)	<p>NOTIFYING THE EMPLOYEE OF YOUR DECISION FOLLOWING A MEETING TO DISCUSS THE APPEAL.</p> <p>WRITTEN NOTICE STATING:</p> <p>- WHERE YOU UPHOLD THE APPEAL, THE CONTRACT VARIATION AGREED TO AND THE DATE FROM WHICH THE VARIATION IS TO TAKE EFFECT OR;</p> <p>- WHERE YOU DISMISS THE APPEAL, THE GROUNDS FOR THE DECISION WITH A SUFFICIENT EXPLANATION AS TO WHY THOSE GROUNDS APPLY.</p>	NO OF APPEALS IN CONNECTION WITH REQUESTED CONTRACT VARIATIONS.	30	£11	£0	£11	N/A	N/A	N/A	N/A
30363	<p>REQUIREMENT FOR AN EMPLOYER TO NOTIFY AN EMPLOYEE IN WRITING WITHIN 28 DAYS OF AN APPLICATION FOR A CONTRACT VARIATION OF ANY AGREED VARIATION.</p> <p>WRITTEN NOTICE SPECIFYING THE CONTRACT VARIATION AGREED TO AND THE DATE FROM WHICH IT IS TO TAKE EFFECT.</p>	NO OF INSTANCES WHERE AN EMPLOYER AGREES TO AN EMPLOYEE'S APPLICATION FOR A CONTRACT VARIATION TO PROVIDE FOR AN ALTERNATIVE/FLEXIBLE WORKING ARRANGEMENT.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

SOURCE: BERR EMPLOYMENT LAW ADMIN BURDENS SURVEY 2008, MAIN REPORT

## Appendix C: Flexible working estimates for parents of older children

This impact assessment uses data from the Second Work-Life Balance Survey to estimate take-up rates and degree of deadweight requests. It may be possible for the final impact assessment to update these assumptions based on results from the Third Work-Life Balance Survey. This could change the level of costs and benefits. However, any changes to the degree of take-up or deadweight requests will not alter the ratio of costs to benefits.

The impact of extending the right to request flexible working to those with parental responsibility for older children will depend upon a number of factors. The key cost-benefit drivers, however, will be take-up of the right to request, i.e. how many parents of older children make a request for flexible working, and how employers respond to those requests.

It is likely that take-up will vary by sex and by whether or not parents already have any identifiable 'flexible' working pattern.

Table C1 disaggregates the eligible group of parents by sex, age of youngest child, full-time/part-time status and whether or not they said they had one of a number of identifiable 'flexible' working patterns.

**Table C 1. Disaggregation of eligible parents ('000s)**

AGE OF YOUNGEST CHILD	MOTHERS				FATHERS			
	FT	FT	PT	PT	FT	FT	PT	PT
	NON FLEX	FLEX	NON FLEX	FLEX	NON FLEX	FLEX	NON FLEX	FLEX
0	145	53	112	44	340	66	12	*
1	75	39	157	68	349	70	16	*
2	55	24	127	46	266	56	16	*
3	63	19	123	37	227	48	*	*
4	48	27	92	44	200	41	*	*
5	50	26	70	40	153	28	*	*
6	59	28	93	55	170	33	*	*
7	52	36	77	57	142	37	*	*
8	65	33	83	45	152	29	*	*
9	70	31	85	47	149	31	*	*
10	62	29	80	56	140	34	*	*
11	70	29	61	53	137	34	*	*
12	75	38	72	47	150	34	*	*
13	80	39	62	42	140	36	*	*
14	89	38	60	42	138	37	*	*
15	87	57	73	36	147	36	*	*
16	65	36	47	27	112	25	*	*

SOURCE: LFS Q2 2007. ASSUMING THAT THE "NO ANSWERS" AND "DOES NOT APPLY" BEHAVE AS THE REST OF THE POPULATION. \* = LESS THAN 10,000.

Notes: FT/PT = Full-time/Part-time. 'flex' = any of flexi-time, term-time working, job shares, annualised hours, nine-day fortnights and four and a half day weeks and zero hours contract.

Table C2 sets out some illustrative estimates of deadweight requests

**Table C 2 Illustrative deadweight assumptions**

AGE OF YOUNGEST CHILD	MOTHERS				FATHERS			
	FT	FT	PT	PT	FT	FT	PT	PT
	NON FLEX	FLEX	NON FLEX	FLEX	NON FLEX	FLEX	NON FLEX	FLEX
0	0.05	0.30	0.50	0.50	0.05	0.10	0.30	0.30
1	0.05	0.20	0.10	0.10	0.05	0.05	0.05	0.05
2	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
3	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
4	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
5	0.03	0.20	0.05	0.05	0.03	0.05	0.05	0.05
6	0.03	0.20	0.05	0.05	0.03	0.05	0.05	0.05
7	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
8	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
9	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
10	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
11	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
12	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
13	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
14	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
15	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
16	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05

**NOTE: ASSUMED UNCHANGED FROM PREVIOUS IA, AND ASSUMING THAT PARENTS OF CHILD AGED 18 BEHAVE AS PARENTS OF CHILD AGED 17**

Deadweight is expressed as a proportion, i.e. three per cent of mothers (and fathers) with a youngest child aged 16 working full-time without any identifiable 'flexible' working pattern are assumed to already make a request for flexible working.

The following principles have been used in deriving these assumptions:

- It has been assumed that the most likely time to seek a change to working patterns is in the year after birth of a child, especially the option to work reduced hours.
- Deadweight is not zero among full-time 'non-flexible' employees because some may obtain flexibilities not captured in surveys (e.g. changing starting and finishing times that do not fit into a formal flexi-time scheme).
- Nor is deadweight 100 per cent for those with part-time or other 'flexible' working options. Many parents will have changed jobs to secure these types of working (and thus made their 'request' via the jobs market rather than internally). In other cases, the 'flexibility' might be an incidental feature of a job they had taken for other reasons and thus no request for change had been made.
- For mothers working full-time, there is an increased proportion seeking flexible working options when their children start school (i.e. in the 5-6 age group).



Table C3 sets out take-up rates of 'new' (after excluding deadweight) requests for flexible working. New requests is expressed as a proportion i.e. seven per cent of mothers with a youngest child aged 16 working full-time without an identifiable 'flexible' working pattern are assumed to make a new request.

**Table C 3. Take up rates of "new" requests for flexible working**

AGE OF YOUNGEST CHILD	MOTHERS				FATHERS			
	FT NON FLEX	FT FLEX	PT NON FLEX	PT FLEX	FT NON FLEX	FT FLEX	PT NON FLEX	PT FLEX
0	0.55	0.40	0.25	0.25	0.15	0.20	0.20	0.20
1	0.25	0.10	0.15	0.15	0.05	0.15	0.05	0.10
2	0.17	0.10	0.15	0.15	0.05	0.05	0.05	0.10
3	0.22	0.15	0.20	0.20	0.05	0.05	0.05	0.10
4	0.17	0.10	0.15	0.15	0.05	0.05	0.05	0.10
5	0.22	0.05	0.20	0.20	0.07	0.10	0.05	0.10
6	0.27	0.10	0.20	0.15	0.07	0.10	0.05	0.10
7	0.17	0.10	0.15	0.15	0.03	0.05	0.05	0.10
8	0.17	0.10	0.15	0.15	0.03	0.05	0.05	0.10
9	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
10	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
11	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
12	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
13	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10
14	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10
15	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10
16	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10

NOTE: ASSUMED UNCHANGED FROM PREVIOUS IA, AND ASSUMING THAT PARENTS OF CHILD AGED 18 BEHAVE AS PARENTS OF CHILD AGED 17

### Numbers of requests accepted by employers

Requests can be accepted by employers at a number of stages: when a request is first made; at the appeal or internal grievance stage; and following recourse to external dispute resolution (either an Employment Tribunal or another form of dispute resolution). BERR's Third Work-life Balance Employee Survey showed that 87 per cent of new requests are accepted at first stage and 25 per cent of unsuccessful cases are taken to appeal stage. We assumed that 20 per cent of new requests are accepted at appeal stage, two per cent of unsuccessful requests referred to external dispute resolution, of which 20 per cent to be successful.

It is therefore necessary to map the progress of requests through these various stages. This is done in Table C4.

**Table C 4. Progress of requests through the various stages (000's)**

<b>SCOPE OF LAW</b>	<b>DERIVATION</b>	<b>PARENTS OF CHILDREN UNDER 6</b>	<b>PARENTS OF CHILDREN AGED 16 AND UNDER</b>	<b>ADDITIONAL NEW REQUESTS</b>
<b>NO OF NEW REQUESTS</b>	<b>A</b>	<b>503</b>	<b>811</b>	<b>308</b>
<b>PROPORTION ACCEPTED AT FIRST STAGE (0.87 = 87PER CENT)</b>	<b>B</b>	<b>0.87</b>	<b>0.87</b>	<b>0.87</b>
<b>NO. OF REQUESTS ACCEPTED AT FIRST STAGE</b>	<b>C = A X B</b>	<b>438</b>	<b>705</b>	<b>268</b>
<b>PROPORTION OF REQUESTS TAKEN TO SECOND STAGE (0.25 = 25 PER CENT)</b>	<b>D</b>	<b>0.25</b>	<b>0.25</b>	<b>0.25</b>
<b>NO. OF SECOND STAGE REQUESTS</b>	<b>E = (A-C) X D</b>	<b>16.4</b>	<b>26.4</b>	<b>10</b>
<b>PROPORTION ACCEPTED AT SECOND STAGE (0.2 = 20 PER CENT)</b>	<b>F</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>
<b>NO OF REQUESTS ACCEPTED AT SECOND STAGE</b>	<b>G = E X F</b>	<b>3.3</b>	<b>5.3</b>	<b>2</b>
<b>NO. OF REQUESTS TURNED DOWN BY EMPLOYER</b>	<b>H = E - G</b>	<b>13</b>	<b>21</b>	<b>8</b>
<b>PROPORTION REFERRED TO EXTERNAL DISPUTE RESOLUTION (0.2 = 2 PER CENT)</b>	<b>I</b>	<b>0.02</b>	<b>0.02</b>	<b>0.02</b>
<b>NO. OF ADDITION EXTERNAL DISPUTE RESOLUTION CASES</b>	<b>J = H X I</b>	<b>0.26</b>	<b>0.42</b>	<b>0.2</b>
<b>PROPORTION SUCCESSFUL AT EXTERNAL DISPUTE RESOLUTION STAGE</b>	<b>K</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>
<b>NO. OF REQUESTS ACCEPTED AT EXTERNAL STAGE</b>	<b>L = J X K</b>	<b>0.05</b>	<b>0.08</b>	<b>0</b>
<b>NO. OF REQUESTS UNSUCCESSFUL AT EXTERNAL STAGE</b>	<b>M = J - L</b>	<b>0.21</b>	<b>0.34</b>	<b>0.1</b>
<b>TOTAL NO. OF NEW WORKING ARRANGEMENTS</b>	<b>N = C + G + L</b>	<b>441</b>	<b>711</b>	<b>270</b>

## Summary: intervention and options

<b>Department/agency:</b> BIS	<b>Title:</b> Impact Assessment of European Commission proposal for a directive to implement revised Framework Agreement on Parental Leave.	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 29 October 2009
Available to view or download at:		
<b>Contact for enquiries:</b> Nicola Dissem /Sheila Honey	<b>Telephone:</b> 020 7215 0389/6984	

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

The Parental Leave Directive (96/34/EC) was adopted in 1995 and sets out the minimum requirements for parental leave to support the reconciliation of parental and professional responsibilities for working parents. The original Directive was based upon a Framework Agreement by the European Social Partners. In December 2007, the European Council called on the Commission to evaluate the legal framework supporting this reconciliation of work, family and private life and any need for improvement. The social partners strongly felt that any review of the original agreement should be carried out by them and formal negotiations with a view to revising the Directive began on 11 September 2008.

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

The revision of the Directive is a step towards the Commission's objective of achieving more gender equality in labour market participation rates and allowing women and men to achieve a better reconciliation of their professional, private and family lives. The Commission's overall objective in amending the Directive is to improve and build upon the common minimum standard of protection already in place across all Member States for parents with young children.

### What policy objectives have been considered? Please justify any preferred option

- (i) No action;
- (ii) Non-binding measures such as communication and exchange of information;
- (iii) Legally binding measures – directive or regulations.

Once a directive has been agreed at EU level, the UK must implement the necessary changes. This assessment assesses the impact of the proposals on UK provisions.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The outcomes of the policy will be assessed in a reasonable period after new entitlements have been implemented.

### Ministerial sign-off for consultation stage Impact Assessment

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:

## Summary: analysis & evidence

<b>Policy option</b>	<b>Description</b> Additional Parental Leave
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### Costs

**ANNUAL COSTS** Description and scale of **key monetised costs** by 'main affected groups'  
**One-off** Yrs Administrative costs of managing a request for parental leave (£636,000 to £1.3m)  
 (transition) Costs to employers for covering absence (£4.0m to £13.2m)

£0m 1

**Average annual cost**  
(excluding one-off)

£4.6m-£14.5m **Total cost (PV)** £45m-£125m

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

Very small cost in employers becoming aware of the new provision. Negligible costs for the right to request flexible working for employed agency workers.

### Benefits

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

**One-off** Yr

£

**Average annual cost** No evidence is available to quantify benefits.  
(excluding one-off)

£

**Total Benefit (PV)** £

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

Improved balance between work and family responsibilities, lower turnover of employees and greater commitment; greater connection of women to workplace; reduced gender gap in employment; wider social and economic benefits.

### Key assumptions/sensitivities/risks:

Estimated take-up of five weeks' additional parental leave will be between 6% and 12% of eligible parents. Amount of time taken is unlikely to be the full five weeks, more likely to be one or two weeks.

Price base year: 2009	Time period (years) 10	Net benefit range (NPV) £	Net Benefit (NPV best estimate) £
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		The proposal suggests the directive would be implemented two years after it is adopted		
Which organisation(s) will enforce the policy?		Tribunal Service		
What is the total annual cost of enforcement for these		£ N/A		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		Yes		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro £1.77	Small £10.98	Med £57.67	Large £1,090.00
Are any of these organisations exempt?	No	No	N/A	N/A

Key	Annual costs and benefits: constant prices	(Net) Present Value
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## Evidence Base (for summary sheets)

### A: Strategic Overview

1. The Government is committed to helping parents and carers to achieve a better balance between their home and work responsibilities. The benefits can include a happier, more motivated and productive workforce as well as wider social benefits and family cohesion. The difficulties faced by parents in reconciling the demands of work and family responsibilities generate wider economic and social costs, and can lead to social exclusion. Working parents may feel that their children are not receiving adequate care; while people who are forced to give up work may be at risk of becoming detached from the labour market.
2. The Government has developed a strong record in bringing forward measures to provide this support to parents, including generous maternity leave and pay provisions, paid paternity and adoption leave; a right to request flexible working; and, more widely, a substantial increase in childcare provision as well as parental leave.
3. Domestic provisions for parental leave implement the provisions of the Parental Leave Directive (96/34/EC) (“the Directive”). The Directive implemented the original 1995 social partner Framework Agreement on Parental Leave.
4. The European Social Partners began negotiations with a view to revising the original agreement in September 2008. The revised Framework Agreement was completed by the European Social Partners in June 2009. In July 2009, following a request by the Social Partners, the European Commission published a proposal for a Council Directive implementing a revised Framework Agreement on parental leave.
5. The revised Framework Agreement calls for changes to the minimum provisions of the existing directive, including extending parental leave to four months, of which one month must be non-transferable between parents; and a right to request flexible working on return from parental leave.

### B: The Issue

6. The Directive (96/34/EC) sets out minimum requirements for parental leave to support the reconciliation of parental and professional responsibilities for working parents. The Directive currently provides for a minimum of three months’ leave per parent, to take care of a child up to a given age up to eight years. Member States set the conditions of access and detailed rules for this leave, including the notice period, qualifying period and whether it is granted on a full time, part-time or piecemeal basis.
7. The proposal calls for the following substantive changes to the Parental Leave Directive (96/34/EC):

- Period of leave

Clause 2 of the Framework Agreement would extend the minimum period of parental leave from three to four months per child. The general principle is that parental leave is an individual right and should not be transferred from one parent to another. The Agreement requires that at least one of the four months of parental leave must be given on a non-transferable basis. Clause 5 makes it clear that decisions on pay or

income during parental leave are to be taken by the Member States and/or by social partners at national level.

- Application

Clause 1 sets out that parents should not be excluded solely because they are fixed-term, part-time or agency workers. Member States and/or social partners are called on to assess the need for adjustments to address the needs of parents of children with a disability or long-term illness and for additional provisions to address the needs of adoptive parents.

- Employment rights and non-discrimination

Clause 5 requires Member States to ensure that parents are protected from dismissal and other unfair treatment related to parental leave. Article 2 of the proposed Directive additionally includes provision that would require that Member States should not set an upper limit for compensation in cases where rights under the Directive are infringed.

- Right to request flexible working

Clause 6 would provide parents returning from parental leave with a right to request changes to their working hours or patterns for a set period of time. Employers must consider and respond to these requests taking account of both the parent's and employer's needs

## **Current UK arrangements**

### *Period of Leave*

8. The current Directive has been implemented in the UK through the Employment Rights Act 1996 and the Maternity and Parental Leave etc Regulations 1999 and corresponding legislation specific to Northern Ireland. Employed parents in the UK have a right to 13 weeks' parental leave for each child to be taken up to the child's fifth birthday. When a child is adopted, the leave may be taken up to the fifth anniversary of the child's placement for adoption (or the child's 18<sup>th</sup> birthday if that is sooner). Parents of disabled children may take up to 18 weeks' parental leave up to their child's 18<sup>th</sup> birthday. To be eligible parents must have been continuously employed for one year by the time they want to take the leave.
9. Parents and employers are encouraged to agree how parental leave will be taken. Where there is no local agreement the Government's fallback scheme applies. Under this scheme parents must give 21 days' notice of when they want to take parental leave. The leave must be taken in blocks of one week up to a maximum of four weeks in a year. Employers may postpone parental leave for up to six months if it would unduly disrupt their business. They must agree a new date with the employee.
10. There is no statutory entitlement to pay during parental leave. Parents may be able to receive Income Support during parental leave. A period of parental leave may also increase entitlement to child tax credits.
11. The social partners' Framework Agreement would require an additional month's parental leave for each parent. Parental leave has been provided as an individual entitlement in the UK – it cannot be transferred between parents. Employees are not excluded from



the right because they are part-time or fixed-term employees or employed agency workers.

12. This impact assessment assumes that parental leave in the UK will be increased from 13 weeks to 18 weeks. The UK government would carry out a consultation on implementation of the new directive in due course

#### *Right to Request Flexible Working*

13. The UK has had in place a right for employees to request flexible working since 2003 and its introduction has been a great success – it has contributed towards a culture change where working patterns are discussed more openly and freely. The UK right allows mothers and fathers of children aged 16 or under (children aged up to six in Northern Ireland) or of disabled children under 18 and carers of adults to request a flexible working pattern. The vast majority of UK parents covered by the Parental Leave Directive will already benefit from the existing domestic right to request flexible working as this is available to employees with 26 weeks' service with their employer. Employed agency workers are not currently covered by the statutory right to request flexible working but would become entitled to make a request on return from parental leave as a result of the directive. We estimate the number of employees affected by this change will be small (fewer than 2,000).

#### *Employment Rights and non-discrimination*

14. Parents who consider they have suffered a detriment or have been dismissed for reasons relating to taking or seeking to take parental leave can make a complaint to an employment tribunal. They may also make a complaint if their employer has prevented or attempted to prevent them from taking parental leave or unreasonably postponed their leave. Where an employment tribunal decides such a complaint is well-founded it may make an award of compensation which it considers just and equitable in all the circumstances, having regard to the employer's behaviour and any loss sustained by the employee which is attributable to the matters complained of.

#### **Consultation**

15. The Commission carried out a two-stage consultation with the social partners on measures to support the reconciliation of work and family life. In the first stage consultation, those social partners who responded acknowledged the importance of reconciliation, the majority of organisations considered that further action was needed but views differed on what should be done and at what level. In the second stage consultation the Commission sought the social partners' views on a number of legislative and non-legislative options, including changes to parental leave and maternity protections as well as new provisions relating to filial leave, adoption leave and paternity leave. The response of the social partners to the second stage consultation on the wider agenda is set out in Annex II to the Commission's Impact Assessment which accompanied the Pregnant Workers Directive proposal<sup>118</sup>. Broadly, employer's organisations were against further regulation while trade unions would welcome the introduction of new types of leave.

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<sup>118</sup> SEC(2008)2526/2

16. On 11 September 2008, the social partners informed the Commission that they would open formal negotiations with a view to revising Directive 96/34/EC. Negotiations were concluded on 18 June 2009 when a revised Framework Agreement on parental leave was signed by the Secretaries-General of Business Europe, UEAPME, CEEP and ETUC. A request was made to the Commission to submit the Agreement to the Council for a decision making it binding on all Member States. This proposal takes that process forward. The Framework Agreement is annexed to the Directive.
17. In reaching the revised agreement on parental leave the TUC, the CBI and CEEP UK undertook the role of the UK representatives in the European Social Partner negotiations.

### **C. Objectives**

18. The aim of the Commission's proposal is to give legal effect to the revised Framework Agreement on parental leave. Implementation of the Agreement will contribute to better reconciliation of work and family life and promote gender equality in the labour market.

### **D: Options Identification**

19. Once a directive has been agreed at EU level, the UK must implement the necessary changes within the required timescale or risk infraction proceedings.
20. This Impact Assessment costs the proposal based on an extension of existing parental leave provisions. It assumes the same qualifying conditions will apply (i.e. employees who have one year's service with their employer and parental responsibility for a child under five, or a disabled child under 18). Alternatives are not costed.

### **E: Analysis of Options**

#### **Number of beneficiaries - *Eligibility***

21. To be eligible to take parental leave, a person must satisfy the following criteria:

#### *General*

- Be an employee including part-time, fixed-term, or agency workers.
- Have worked for their employer continuously for 52 weeks.

#### *Parents*

- Have parental responsibility for a child under five, a disabled child under 18, or be an adopter of a child placed with them within the last five years.

22. The latest Labour Force Survey figures for Quarter 2 (April to June 2009) show that there are 3.4 million parents who are eligible for parental leave, in that they have been employed by their current employer for over a year and have a dependent child under the age of 5. This is split between 2 million men and 1.4 million women

## **Assumptions**

### *Earlier impact assessment work*

23. The methodology adopted for estimating the costs and benefits associated with the extension of parental leave follows closely and builds upon that used for the development of earlier policy in this area. Specifically this relates to impact assessment work carried out in 1999 and 2001<sup>119</sup>

### *Take-up of parental leave*

24. The statutory entitlement to parental leave is unpaid. The Regulatory Impact Assessment prepared in support of the original regulations assumed take-up of 10% for fathers and 50% for mothers. However, later survey evidence has found take up to be lower, particularly for mothers. Survey evidence collected by DTI in autumn 2000 found that 12% of employed parents who said their employers provided parental leave also said that they had taken parental leave since December 1999. Contrary to the assumptions made previously, take-up rates were identical for mothers and fathers.
25. More recent survey evidence indicates that these proportions have not changed greatly. The Maternity and Paternity Rights and Benefits survey of parents in 2005<sup>120</sup> found that of mothers who had returned to work, 11% had taken parental leave since their maternity leave had ended. This represented a small increase on the 2002 figure of 8%. Of fathers, 10% describing themselves as entitled to parental leave took advantage of the provision in 2002 and 8% in 2005.
26. The most recent evidence is from a DWP survey of mothers. This found that the take-up figures were lower in this first 18 months. 31% of mothers said they had access to unpaid parental leave but only 6% had used it.<sup>121</sup> It should be noted that maternity leave and pay have increased over this period. The same survey found 88% of mothers take their full entitlement to paid maternity leave. This would reduce their need to use parental leave during the first year<sup>122</sup>
27. These findings only relate to whether parental leave has been taken in the first 18 months after the birth of the child whilst parental leave is available up to the child reaching the age of 5. The Third Work Life Balance survey of employees asked all parents whether since starting their current job or in the last 12 months whether they had taken parental leave. The survey found that only six percent of all parents of dependent children had taken parental leave.<sup>123</sup>

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<sup>119</sup> Parental Leave Regulations 1999, Regulatory Impact Assessment, Employment Relations Directorate, DTI, November 1999, and Parental Leave Regulations: changes to extend entitlement, Employment relations Directorate, DTI, October 2001.

<sup>120</sup> Maternity and Paternity Rights and Benefits: Survey of Parents 2005, Deborah Smeaton and Alan Marsh, Policy Studies Institute, Employment Relations Research Series No. 50, 2005.

<sup>121</sup> Maternity Rights and Mothers Employment Decisions, Ivana La Valle, Elizabeth Clery and Mari Carmen Heurta, DWP Research Report No 496, 2008.

<sup>122</sup> Maternity and Paternity Rights and Benefits: Survey of Parents 2005, Deborah Smeaton and Alan Marsh, Policy Studies Institute, Employment Relations Research Series No. 50, 2005.

<sup>123</sup> Third Work Life Balance Employees Survey, Employment Relations Research Series No.58, DTI 2007.

28. Given these later survey findings, it is assumed that take-up of parental leave will be in the range 6-12% of eligible parents. This would mean that 207,000-413,000 employees are likely take parental leave, 87-174,000 mothers, and 119,000-239,000 fathers.

Table 1: Estimated eligibility for Parental Leave

	Number of parents			
	Fathers		Mothers	
Eligible for parental leave	1,990,738		1,453,492	
Estimated take-up	6%	12%	6%	12%
	119,444	238,889	87,210	174,419

Source: BIS analysis of the Labour Force Survey,

### Timing and Duration of Parental Leave

29. In assessing the timing of parental leave, there is no available evidence on when parents chose to take parental leave. It is possible that all 13 weeks could be taken in one year if employers agree to the arrangement. However, it is more likely that, parents will take parental leave in shorter durations spread over the period up to the child's 5<sup>th</sup> birthday. In this IA we assume that the fall-back position is the norm and that leave is taken in blocks of one week up to a maximum of four weeks in a year.
30. There is some evidence to support this. Data from the 2005 Maternity Survey suggest that of the 11% of mothers who say they have taken parental leave, more than half took just one week, 12% to two weeks and 18% had taken 3 weeks or more. For fathers, time taken is less. The 2005 survey found that three-quarters took less than one week.
31. This survey however, is only looking at leave taken in the first 18 months of the child's life when parents have had access to maternity and paternity leave. It is likely that the need to use parental leave increases after this time when other forms of leave are no longer available.
32. It is clear from this data, that many parents who take parental leave, currently do not take the full 13 weeks available to them. For these parents, therefore, providing an extra month is unlikely to add to the numbers of weeks taken overall. There is a small proportion however, who do take more and for them, some of the extra weeks will be used.
33. For this IA we have assumed that of eligible mothers taking parental leave, only 30% are likely to use any of the extra month (between 26,000 and 52,000 mothers), and that they are only likely to take two of those weeks. For fathers, we have assumed that only a quarter (between 30,000 and 60,000 fathers) will use any of the extra month and will probably only take a week of the additional leave.

## Costs

### *Elements of costs of Parental Leave*

34. There are three elements of the recurring costs that employers are likely to face in dealing with Parental Leave:
- administrative costs
  - cost of arranging cover for people on parental leave
  - defending applications to employment tribunals.
35. Previous IAs included a cost for additional tribunal cases. For this IA it is assumed the additional leave will not in itself generate more cases.

### *Administrative costs*

36. The bulk of the initial one-off administration costs were dealt with in the previous IAs in 1999 and 2001. However, there will be some one-off administrative costs in becoming familiar with the extension of the legislation. Larger organisations may have to make changes to record keeping systems. We have not made an estimate of these costs as it is assumed that they will be negligible.
37. There will also be some small administration costs associated with managing additional requests for parental leave. For cases where the request is granted, the costs relate mainly to arranging for the individual's job to be covered. It has been assumed in this IA that managing a request would take half an hour of a personnel manager's time in large firms or managing director in small firms. Details of these costs are set out in table 2 below.
38. For those firms where a request is to be postponed, firms are required to write to employees and this requirement represents an administrative burden of compliance. In this case it again has been assumed that this would take half an hour of HR or manager's time. This is probably a generous estimate since a standard letter has been made available for employers to use on the Business Link website. We have assumed that 10% of requests will be postponed.

Table 2: Estimated cost of administration from an additional period of Parental Leave

	£ (millions)			
	Fathers (1 week)		Mothers (2 weeks)	
	Low (6% take-up)	High (12% take-up)	Low (6% take-up)	High (12% take-up)
Cost of admin – request agreed	£305,000	£610,000m	£267,000	£534,000
Cost of absence – request postponed (10%)	£34,000	£68,000	£30,000	£59,000
<b>Total Cost</b>	<b>Low</b> £636,000		<b>High</b> £1.3m	

Source: BIS estimates

### Estimated costs of arranging cover

39. Employers may decide to cover an employee's absence on parental leave either through recruitment of a temporary replacement or through re-arranging existing workloads and staffing. As parental leave is taken in short spells of one week, it is assumed that all employers react by reallocating work within their organisations rather than by recruiting temporary replacements.<sup>124</sup> The costs of internal reallocation are assumed to be 9 to 15 per cent of weekly labour costs.<sup>125</sup>
40. This additional cost depends on the number of parents who take advantage of the extra leave entitlements, and is based on the range presented in Table 1. Table 3 shows the cost of absence borne by employers due to fathers taking one extra week of leave and mothers taking two weeks.
41. Combining length of leave assumptions by these average cost estimates implies that the annual cost of the proposed extension to the Regulations would cost employers between (£4.0 million and £13.2 million a year).

Table 3: Estimated cost of absence due to an additional period of Parental Leave

	£ (millions)			
	25% Fathers (1 week)		30% Mothers (2 weeks)	
	Low (6% take-up)	High (12% take-up)	Low (6% take-up)	High (12% take-up)
Cost of absence (9% wage cost – low)	£1.9m	£3.8m	£2.1m	£4.2m
Cost of absence (15% wage cost – high)	£3.1m	£6.3m	£3.5 m	£7.0m
<b>Total Cost</b>	<b>Low</b> £4.0m		<b>High</b> £13.2	

Source: BIS estimates

42. The range for the estimated cost of absence presented in Table 3 is wide as it incorporates both uncertainty about the number of parents who will take up their entitlement additional parental leave as well as uncertainty about the degree of costs that employers are likely to face.

### Other Costs

#### Additional benefit expenditure by DWP/ Exchequer

43. The introduction of parental leave may lead to increased payments of social security benefits. Lone Parents will be eligible for Income Support. Couples (with either one or two earners) who are currently in receipt of in work benefits (Working Families Tax Credit, Housing Benefit, Council Tax Benefit), will also be able to claim Income Support if they are on a low income due to parental leave.

<sup>124</sup> See "Work and Families: Choice and Flexibility, Final Regulatory Impact Assessment on the Work and Families Bill, DTI (October 2005)" for a full explanation of the methodology employed here.

<sup>125</sup> We estimate that the mean weekly earnings for male employee jobs are £700.85 and for women is £443.02. This is based on ASHE 2008 data for mean weekly gross pay uprated for 2009 and including a 21% for non-wage labour costs.

44. However, against this it is possible that this measure could lead to greater labour market attachment among some groups, particularly lone parents. If it leads to a rise in the number of lone parents in employment this could generate savings to the Exchequer (less spending on Income Support and more on WFTC).

### **Right to Request Flexible Working – Employed Agency Workers**

45. Employed agency workers are not currently covered by the statutory right to request flexible working but would become entitled to make a request on return from parental leave as a result of the directive.
46. Evidence from the Labour Force Survey suggests that the number of employed agency workers stands at around 100,000. In the absence of more accurate data, it is assumed that a similar proportion of employed agency workers would be eligible for parental leave as in the general population of employees. Assuming 13.6% of these agency workers are eligible, the total number would be 13,600. If similar proportions of take-up are applied, this suggests that between 1,200 and 1,600 are likely to take parental leave and so be eligible to request flexible working on their return. The number of employees affected by this change will be therefore be small (fewer than 2,000).
47. Of these, the numbers making a request for flexible working will be very small and so the costs have not been assessed.

### **Benefits**

48. It is expected that this legislation will ease the problems of many parents, giving them more choices over how they organise their time and thus widen employment opportunities. The benefits of parental leave will extend beyond employees to their partners and children, as well as to society as a whole.

#### *Benefits to individuals and their families*

49. The option of parental leave, even if not taken up, will enable people to achieve a better balance between work and family responsibilities as it widens choices. It will also give those parents who need to use parental leave a wider choice of employers. It will thus promote higher labour market attachment. Some parents will be less likely to leave the labour market and others (such as lone parents) will be more likely to return. It will particularly benefit mothers for whom an interruption to their working life can reduce earnings potential later. If people expect to stay in work then employers and employees may be more willing to invest in training.

#### *Benefits to the economy and society*

50. Employers are likely to see benefits from lower turnover (and so lower recruitment and training costs) and consequently higher commitment.
51. Parental leave, along with other family-friendly measures, may also confer wider social and economic benefits.

52. These include:

- contributing to sustaining family life and ensuring the next generation has the best possible start in life,
- increasing the sustainable level of employment by promoting labour market attachment thus increasing the effective labour supply,

## F: Risks

53. The estimates of costs and benefits presented in this impact assessment are necessarily based upon a number of assumptions. We will continue to firm up our estimates for the final impact assessment as new data and information become available.

## G: Enforcement

54. In putting enforcement mechanisms in place, the Government is aware of the need to strike a balance between avoiding placing undue burdens on business and ensuring that employees receive their rights
55. Full guidance is available at [www.direct.gov.uk](http://www.direct.gov.uk) and [www.businesslink.gov.uk](http://www.businesslink.gov.uk). Advice for employers and employees about parental leave is also available from Acas.
56. Under existing parental leave legislation employees who believe their rights have been infringed may seek redress through a statutory dispute resolution mechanism and ultimately through an employment tribunal.
57. We do not anticipate a significant change in the number of enquiries to Acas or in the number of employment tribunal applications as a result of implementation of the proposal.
58. A tribunal will be able to award an employee compensation if the employer does not comply with the legislation, or if the employee suffers a detriment or is dismissed for taking parental leave.

## H: Summary Table of Costs and Benefits

Table 4: Estimated cost and benefits of an additional period of Parental Leave (projection for 2011/12)

	£ (millions)			
	Fathers (1 week)		Mothers (2 weeks)	
	Low (6% take-up)	High (12% take-up)	Low (6% take-up)	High (12% take-up)
Administrative costs (incl admin burden)	£339,000	£678,000m	£297,000	£594,000
Cost of absence (9% wage cost – low)	£1.9m	£3.8m	£2.1m	£4.2m
Cost of absence (15% wage cost – high)	£3.1m	£6.3m	£3.5 m	£7.0m
<b>Total Cost</b>		<b>Low</b> £4.6m		<b>High</b> £14.5

Cost of right to request flexible working – agency workers - Negligible

Benefits – Not quantified

Source: BIS estimates



## **J: Monitoring and evaluation**

59. BIS conducts a number of key benchmark surveys across the diverse set of policy areas within Employment Relations to identify specific issues for both policy development and for monitoring and evaluation following implementation. Data from the latest maternity and paternity rights survey undertaken with DWP will be available in 2010. Information relating to this area should also be available from the next Work-Life Balance Surveys planned for 2010 and the next Workplace Employment Relations Survey (WERS) which will be conducted in 2011.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<i><b>Results in Evidence Base?</b></i>	<i><b>Results annexed?</b></i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

## Annexes

### **Annex A: SPECIFIC IMPACT TESTS**

#### **Competition Assessment**

##### *Business sectors affected*

60. Table 5, below, shows the distribution of parents across sectors and shows that there are no specific sectors more likely to be affected than others. Agriculture may be least affected having the lowest proportion of parents. Given the fairly low number of parents expected to take advantage of the extra leave, the overall impact on the sectors with higher proportions of parents, for example finance and energy, will remain small.
61. The proposed changes would apply to all firms and it is unlikely to affect the competitiveness of any particular sector, although for occupations that are traditionally female-dominated these proposals could have a greater impact since mothers are more likely to take parental leave for longer periods. Table 6 shows that this is particularly the case in the education, health and public administration sector and in distribution hotels and restaurants.
62. In terms of absences, the costs and difficulties could be greater if the employer operates in a skilled area where there is a shortage of temporary workers.

Table 5: Sectoral employment by proportion of eligible parents (2009)

Sector	Employees of over 52 weeks with a child under 5	Parents as proportion of all employed in this sector
Agriculture and fishing	6,277	5.9%
Energy and water	65,437	16.6%
Manufacturing	321,378	13.9%
Construction	193,098	14.7%
Distribution, hotels & restaurants	491,932	12.8%
Transport & communications	279,820	15.4%
Finance and business services	525,133	16.1%
Education, health and public administration	943,337	13.5%
Other services	135,736	14.0%

Source: Labour Force Survey Q2 (Apr to June) 2009

Table 6: Sectoral employment by gender (2009)

Sector	Employment (thousands)	Men as proportion of all employed in this sector	Women as proportion of all employed in this sector
Agriculture and fishing	792	51%	49%
Energy and water	197	74%	26%
Manufacturing	2,942	75%	25%
Construction	2,246	88%	12%
Distribution, hotels & restaurants	6,857	49%	51%
Transport & communications	1,845	75%	25%
Finance and business services	6,483	56%	44%
Education, health and public administration	8,145	30%	70%
Other services	1,981	50%	50%

Source: Labour Force Survey Q1 (Jan to Mar) 2009

### Small Firms Impact Test

63. Table 7 below indicates that small firms do not have a greater proportion of eligible parents compared with larger firms.
64. Small businesses may experience a disproportionate impact on the running of their business when an individual takes leave, compared to larger businesses, particularly where small businesses do not have a dedicated HR function. As a group, small businesses are as likely to encounter requests parental leave as larger businesses, though individual small businesses will be less likely to be affected by the new entitlements, as they have fewer employees per business.
65. Government recognises that absences could be more disruptive in a small firm. The existing Regulations provide firms with the maximum flexibility, and with provision for employers to delay leave (for up to six months) where the needs of the business make this necessary. Guidance on parental leave and model letter for employers to use are available through [Businesslink.gov](http://Businesslink.gov).

Table 7: Size of workplace and proportion of eligible parents (2009)

Workplace Size (employees)	Employed for longer than 1 year with child under the age of 5	Proportion
1-10	468,502	12.3%
11-19	242,183	13.9%
20-24	126,439	13.9%
don't know but under 25	44,763	13.0%
25-49	360,716	12.7%
50-249	706,433	14.1%
250-499	240,301	14.6%
don't know but between 50 and 499	94,654	16.0%
500 or more	671,557	16.8%

Source: Labour Force Survey Q2 2009

## Equality Impact Assessment

66. Overall, the proposal will enhance equity and fairness since they provide families with greater flexibility and choice.
67. It is important that the proposals outlined above do not have a disproportionate effect on any one ethnic group. Table 8 indicates that the proportions of eligible parents are slightly greater for some ethnic groups and so they will benefit more from the new provision.

**Table 8: Ethnicity by proportion of eligible parents**

Ethnicity	Employed for longer than 1 year with child under the age of 5	Proportion
White	2,569,073	13.4%
Mixed	18,347	13.0%
Asian or Asian British	215,234	24.1%
Black or Black British	93,303	22.4%
Chinese	8,988	11.7%
Other ethnic group	65,491	22.0%

Source: Labour Force Survey Q2 2009

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