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Innovation & Skills

Equality Impact Assessment of
implementing employee owner
status

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Introduction

This consultation stage Equality Impact Assessment accompanies the consultation on implementing employee owner status.

Any queries about this EQIA should be addressed to:

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This assessment covers all of the nine protected groups which include: age, race, gender, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership. Our analysis suggests that there will be no significant equality or discriminatory impacts on these groups.

Diversity organisations and individuals will be consulted during the consultation process.

Scope of this Equality Impact Assessment

On 5th April 2011 the new public sector Equality Duty came into force. The Equality Duty replaces the three previous duties on race, disability and gender, bringing them together into a single duty, and extends it to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment (as a whole these are called protected characteristics or protected groups). Based on a proportional analysis we outline the equality impacts, both positive and negative, on these protected groups.

Equality Impact Assessments are an important framework for demonstrating due regard through considering evidence and analysis to help identify the likely positive and negative impacts that policy proposals may have on certain protected groups of individuals and to estimate whether such impacts disproportionately affect such groups. This Equality Impact Assessment takes a summary view of the equality impacts of the employee owner status.

Description of the policy

Policy Rationale

The aim of implementing the employee owner status is to provide additional flexibility to employers, in particular fast growing innovative companies who require adaptable workforces. These companies could benefit from the added flexible employment opportunities to allow them to adjust their workforce in line with their growth or expected growth.

The risk of being taken to a tribunal over some employment rights and the costs of providing some rights can create obstacles to hiring employees. The employee owner status ensures that these risks can be overcome in a way that is fair to employees.

Companies will choose whether to use the employee owner status or other available statuses (e.g. employee or worker). The employee owner status will carry the same rights as an employee with certain exceptions. Employee owners will receive shares in the company upon adopting this status. Employee owners will potentially have greater attachment to the success of their employer by virtue of the stake that they own in the company.

The UK labour market is performing well. Employment and whole economy hours worked are almost back at their pre-crisis level. It is not envisaged that the new status will be appropriate for all companies. It simply adds to the options and flexibility available to companies and employees in determining their employment relationships.

Brief outline of the proposal

The Government will introduce a new employment status in which employee owner will not have all the employment rights of an employee but will have shares in the company they work for that will not be subject to capital gains tax (CGT).

Companies of any size will be able to use this new status, but it is principally intended for fast growing companies that want to benefit from the flexibilities available through the new status.

Under the new arrangement, an employee owner will be given between £2,000 and £50,000 of shares. This new employment status does not have the following rights:

- unfair dismissal rights (except for reasons that are automatically unfair or that relate to discrimination)
- the right to statutory redundancy pay
- certain rights to request flexible working and time to train

Employee owners would also have to give:

- 16 weeks' notice of the intention to return early from maternity and adoption leave (compared to 8 weeks notice for other employees).

Any gain on the shares (however large) linked to the status will not be subject to CGT.

The Government intends that all shares will be eligible for use under this arrangement. So these shares may carry rights to dividends, voting rights, or rights to a share in the company's assets if it is wound-up. The Government expects that this will take effect as part of a contractual arrangement between employer and the employee owner.

The Government anticipates that employers would be able to apply restrictions on the trading of shares that they issue, as is common practice with ownership arrangements, in order for employers to protect their companies. The employer would be allowed to include a clause in contracts requiring the employee owner to surrender the shares when the employee owner left, was dismissed or made redundant.

However, to ensure that employee owners are also protected, the Government will require that if shares are surrendered, the employer would have to buy back the employee owner's shares at a reasonable value.

For the purposes of the limits on the shares that can be awarded under this status, shares will be valued according to their unrestricted market value at the time that they are awarded. This is the price that the shares might reasonably expect to fetch on the open market, disregarding any restrictions. The Government is aware that valuing company shares may present difficulties in certain cases, particularly for unquoted companies, and it is keen to ensure that this new employment status does not impose any valuation requirements beyond those that already exist when valuing companies for other tax purposes.

Background

In May 2010, the Government committed to review employment laws for "employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive". Since then we have been carrying out a Parliament-long review of employment-related legislation under the umbrella of the Employment Law Review.

The OECD has recognised that the UK labour market is one of the most lightly regulated in the world. The World Economic Forum has also recently cited it as a source of competitive strength. However, the Government believes that more can be done to improve the effectiveness and flexibility of the labour

market. The Government has therefore brought forward a series of reforms to improve the current framework.

The UK employment law regime enables individuals to choose between various types of employment status. This includes being an employee or a worker, both of which are defined in the Employment Rights Act 1996¹. These statuses form the basis of an individual's contract and lead to different rights and obligations.

The Government does not regulate which type of employment status or type of contract businesses must use to take someone on. This means that businesses are free to choose the best arrangement for their particular circumstances. They can choose to use full-time, part-time or fixed-term employees, workers (including agency workers) or self-employed individuals. The choice businesses face when deciding between these categories is a trade-off between flexibility, control and obligation (between the employer and the individual engaged).

The Government will amend the Employment Rights Act 1996 to create a third employment status, that of '*employee owner*'. This will give companies an additional contract type to choose from. Employee owners will have the same rights as current employees except for unfair dismissal (except where this is automatically unfair or relates to anti-discrimination law), certain rights to request flexible working and training, and statutory redundancy pay, and will have to give longer notice to return from maternity and adoption leave. Importantly, employee owners will own part of the company they work for.

¹ The self-employed are not defined in employment law and have very limited rights associated with employment law (restricted to discrimination and health and safety in the workplace).

The evidence base

Who does the proposal affect?

Employers

The employers that should be able to access the employee owner status are all companies limited by share capital and established under the Companies Act 2006 or earlier legislation, excluding community interest companies. According to Companies House data², there were around 2.3 million private companies limited by shares and around 6,000 public limited companies (PLC) in October 2012.

It is envisaged that the employers that might be most likely to employ employee owners would be fast growing companies with a requirement for a flexible workforce.

Individuals

In terms of potential employee owners, the proposal can draw on two pools of people. Those that are already employed by a company (as defined above) may change their employment contract and become an employee owner. Those in the labour force seeking employment with a company can also become employee owners. There is no legal requirement for companies to use this status.

The table below outlines UK employment statistics for Q2 2012 split by protected group characteristics. This is an estimate of the potential pool of individuals that may become an employee owner.

² FAME

Table 1: UK economic activity and inactivity statistics by protected group, Q2 2012

2012 Quarter 2	Whole economy Employee*	Private sector employee	Whole economy Self-employed	ILO unemployed	Inactive
Sex					
Male	12,865,485	10,373,308	2,938,803	1,444,236	7,441,255
Female	12,372,597	7,845,129	1,237,391	1,074,761	11,127,627
Age					
16-19	999,411	908,271	21,540	423,321	1,550,017
20-24	2,456,494	2,106,961	162,585	545,383	1,117,681
25-29	3,113,602	2,419,568	299,627	321,785	711,996
30-34	2,880,324	2,105,283	358,686	237,953	570,099
35-39	2,751,685	1,932,883	426,081	190,248	556,902
40-44	3,122,817	2,155,978	579,867	211,965	587,517
45-49	3,233,473	2,134,386	570,826	192,447	636,193
50-54	2,781,016	1,801,466	544,128	162,924	674,225
55-59	2,062,147	1,340,779	491,544	133,381	922,192
60-64	1,245,990	860,373	376,545	82,121	1,878,888
65 +	591,123	452,489	344,765	17,469	9,363,172
Disability					
Disabled	3,597,814	2,469,238	759,915	569,260	8,097,715
Not Disabled	21,575,334	15,711,569	3,401,756	1,942,343	8,271,057
Religion					
No Religion	8,040,782	6,002,378	1,271,689	930,805	3,578,317
Christian	14,778,835	10,479,481	2,396,124	1,239,549	12,842,518
Hindu	413,487	326,581	53,575	48,924	207,659
Muslim	655,958	492,837	162,044	149,757	807,683
Any Other Religion	621,701	441,791	172,156	76,718	520,249
Ethnicity					
White	19,914,586	14,489,500	3,364,953	1,805,305	14,611,692
Mixed/Multiple ethnic groups	202,742	143,214	22,371	47,885	116,645
Asian/Asian British	1,225,439	917,401	223,078	183,472	959,080
Black/African/Caribbean/Black British	597,625	381,126	61,179	119,370	386,991
Chinese	86,272	60,932	17,652	17,821	109,886
Arab	52,448	37,923	12,625	16,187	69,943
Other	276,268	208,123	56,740	47,610	174,583

*Note that employee numbers are calculated as employees in addition to those on a government training scheme and unpaid family workers

Also total numbers across a group (e.g. ethnicity) are not equal to other groups total (like religion) as survey respondents opt out of some questions

Source: ONS, Labour Force Survey

Take-up

Take-up levels for this proposal are currently uncertain. Although all companies able to issue or allot shares could potentially participate, there is no strong evidence which estimates the number or proportion of companies that would participate. At this point it is not possible to fully assess the take-up of this proposal. However, our consultation intends to inform our implementation of this policy, including take-up levels by companies and individuals as well as any impacts, positive or negative, on protected groups.

Overarching equality impacts

Recruitment

There could potentially be some impacts from this policy on hiring decisions made by companies and on employment choices made by individuals.

Companies may be more inclined to offer an employee owner contract to those who are more likely otherwise to exercise the specific rights that are not part of the employee owner status. If these characteristics were more frequently occurring in certain protected groups, this could indirectly encourage discriminatory behaviour during the hiring process for jobs offered subject to this status. Although discriminatory behaviour might be encouraged, it is important to consider that this is an indirect effect of the policy and that protected groups would be protected against this behaviour by discrimination laws set out in the Equality Act 2010. A company discriminating during the recruitment process would be contravening legislation unless it can show objective and proportionate justification.

Certain individuals may be more attracted to the employee owner status when it is not in their best interest to do so. This could be due to, for example, myopic (short sighted) behaviour resulting in an undervaluing of individuals' rights in the future or uncertainty about the future. There is currently no strong evidence to suggest that this would have a negative impact on a particular protected group more than the general population.

Dismissal

One of the rights that would not be held by an employee owner is the right not to be unfairly dismissed which, under normal terms of employment, is a right that is acquired after two years of qualifying employment. It is important to note that where the unfair dismissal right relates to an automatically unfair reason for dismissal, the right will be unaffected by the employee owner proposal. Automatically unfair dismissal situations are listed fully in annex B. As well as this, employee owners will be protected by the Equality Act 2010 which will provide protection against dismissing a person on discriminatory grounds. Because of this, our assessment is that there are no significant equality issues imposed during dismissal as a result of this policy.

How does the proposal affect protected groups?

Although the effects of the proposal may impact on different protected groups in different ways, our assessment suggests that there will be no adverse equality impacts on these groups from the implementation of the employee owner status. The status is optional for employers and furthermore, there is extensive legislation in place which offers protection and remedies to those who may be discriminated against.

The following section examines how certain elements of the implementation of the employee owner status will impact upon specific protected groups. Below we have identified the protected groups that we believe could be most impacted by elements of the employee owner status. We have considered whether there are features of the policy that mitigate against any potential risks of inequality or discrimination. As mentioned above, there is limited information on the potential take-up of the employee owner status.

Age

There may be different effects of this policy on different age groups however our assessment suggests that there will be no issues in terms of equality. Furthermore, individuals are protected against age discrimination by the Equality Act 2010.

Table 2 below outlines the proportion of people in different age groups working full-time that utilise flexible working, whether they have the right to request it or not. Generally, different age groups demonstrate similar characteristics to the full population. However, the 40-49 age group had an 8% higher proportion of people using flexible working than the general population of the survey. In addition, the 60+ age group had a 5% lower proportion of individuals using flexible working than the general population. It is important to note that there may be a variety of reasons for these slight variations across age groups and it is not possible to comment on the effect of the right to request flexible working on these proportions across age groups. Furthermore, this distribution is not strong evidence to suggest that any particular age group would be disproportionately affected by the part of the proposal relating to the right to request flexible working.

Table 2: Flexible working by full-time employees

	All full-time employees	
	Full-time, flexible working	Full-time, no flexible working
25-39	43%	57%
40-49	48%	52%
50-59	39%	61%
60+	35%	65%
All full-time employees	40%	60%

Source: *The Fourth Work Life Balance Survey, BIS, July 2012*

Although an employee owner would not have the right to request flexible working, it is important to consider that individuals may enter in to an agreement with their employer to work flexibly regardless of whether they have the statutory right to request this.

Employee owners aged 16-17 would have the right to make a request in relation to study and training under the proposals. This is an important factor given that the participation age will increase from 16 to 17 in 2013 and 17 to 18 in 2015. Those of participation age that are employed must undertake at least 280 hours of training over the course of a year. As employee owners aged 16-17 will have the right to request training, the implementation of the employee owner status is not expected to have a negative equality impact on people aged 16 and 17.

Disability

The table below tells us about the proportion of full-time employees that utilise flexible working split by whether they are registered disabled or not. The evidence suggests that there is not a large difference between individuals classified as disabled and those not classified as disabled in terms of utilising flexible working, whether they have the right to request it or not.

Table 3: Flexible working by full-time employees

	All full-time employees	
	Full-time, flexible working	Full-time, no flexible working
Disabled status	40%	60%
No disabled status	41%	59%
All full-time employees	40%	60%

Source: *The Fourth Work Life Balance Survey, BIS, July 2012*

Although the employee owner status does not include the right to request flexible working, staff who have a disability will retain the right to a reasonable adjustment as set out in the Equality Act 2010 – i.e. staff who are disabled can request flexible working as a reasonable adjustment to enable them to work. This means that those who have a disability will not be disadvantaged by the employee owner status.

Gender

Under the current proposal, an employee owner will need to give 16 weeks notice of their intention to return early from maternity or adoption leave. This compares to the 8 weeks notice required from employees.

The maternity element of the policy only impacts on women as clearly only a woman can return from maternity leave. In this case however, a woman retains her right to maternity leave or pay; she is only being asked to agree to a procedural change in the exercise of the leave right. It is important to note that all other rights related to maternity would be the same as those held by an employee.

The change to adoption leave is gender neutral as it applies to either a man or a woman who takes adoption leave. Our assessment is that there is no gender discrimination directly imposed by the adoption and maternity elements of the proposal.

When considering the right to request flexible working, it is our assessment that men and women will not be disproportionately affected. The table below shows that the estimated proportion of people that utilise flexible working is broadly similar across men and women.

Table 4: Flexible working by full-time employees

	All full-time employees	
	Full-time, flexible working	Full-time, no flexible working
Female	40%	60%
Male	42%	58%
All full-time employees	40%	60%

Source: *The Fourth Work Life Balance Survey, BIS, July 2012*

More data showing the proportion of full-time employees utilising flexible working for selected other protected groups is in Annex A.

According to table 5 below, more tribunal claims were made in 2008 relating to unfair dismissal and redundancy payments by men than women. Comparing this to Labour Force Survey data from winter 2008 suggests that the proportion of men and women claiming does not strongly mirror the proportion of men and women in employment. However, it is important to note that the proportion of men making all tribunal claims in 2008 was higher than the proportion of women.

Table 5: Tribunal claims 2008

	Unfair dismissal	Redundancy payments	Other	All	LFS winter 2008 ³
male	65%	62%	52%	60%	51%
female	35%	38%	48%	40%	49%

Based on all claimants

Source: *Findings from the Survey of Employment Tribunal Applications 2008, BIS*

More data showing the proportion of tribunal claims in 2008 for selected other protected groups is shown in Annex A.

Sexual Orientation

Our assessment of the equality impacts of the employee owner proposal is that there is not likely to be adverse equality impacts on groups with a particular sexual orientation. Adopting same-sex couples that become employee owners would be affected due to the notice period for parents on adoption or maternity leave wishing to return to work early. However, as mentioned above, our assessment is that there is no discrimination based on sexual orientation directly imposed by the proposal.

Pregnancy and Maternity

An individual becoming an employee owner would result in them agreeing to a procedural change in the exercising of their right to maternity leave while all

³ GB employees only

other rights relating to pregnancy and maternity would be the same as those held by an employee. According to the Maternity and Paternity Rights and Women Returners Survey 2009/10, it was estimated that 23% of mothers taking maternity leave took 52 or more weeks in 2008. This element of the proposal will impact on individuals who are pregnant or those who are new mothers. However, it is our assessment that there are no disproportionate equality impacts relating to pregnancy and maternity.

Other Protected Groups

Our assessment of the equality impacts of the employee owner proposal suggests that there would be no equality impacts on other protected groups. However, we welcome any comments and evidence that may suggest otherwise through the public consultation.

Annex A: Additional data tables

Table A1: Flexible working by full-time employees

Race	All full-time employees	
	Full-time, flexible working	Full-time, no flexible working
White	42%	58%
Non-white	31%	69%
All full-time employees	40%	60%

Source: *The Fourth Work-Life Balance Employee Survey, BIS, July 2012*

Table A2: Flexible working by full-time employees

Religion	All full-time employees	
	Full-time, flexible working	Full-time, no flexible working
None	43%	57%
Christian	41%	59%
Other	26%	74%
All full-time employees	40%	60%

Source: *The Fourth Work-Life Balance Employee Survey, BIS, July 2012*

Table A3: Tribunal claims 2008

	Unfair dismissal	Redundancy payments	Other	All	LFS winter 2008 ⁴
White	91%	95%	89%	86%	91%
Black	4%	2%	3%	5%	1%
Asian	3%	2%	3%	5%	5%
Mixed	1%	2%	2%	2%	2%
Other	*	-	*	2%	3%

Based on all claimants

Note: percentages may not sum to individual parts due to rounding

Source: *Findings from the Survey of Employment Tribunal Applications 2008, BIS*

⁴ GB employees only

Table A4: Tribunal claims 2008

	Unfair dismissal	Redundancy payments	Other	All	LFS winter 2008 ⁵
long term illness/disability	20%	8%	15%	22%	22%
Of which long term limiting illness/disability	12%	8%	6%	15%	10%
no long term illness/disability	80%	92%	85%	78%	77%

Based on all claimants

Note: percentages may not sum to individual parts due to rounding

Source: Findings from the Survey of Employment Tribunal Applications 2008, BIS

Table A5: Tribunal claims 2008

	Unfair dismissal	Redundancy payments	Other	All	LFS winter 2008 ⁶
16-19	2%	2%	2%	2%	5%
20-24	5%	2%	5%	6%	10%
25-34	17%	18%	21%	20%	22%
35-44	26%	31%	25%	26%	25%
45-54	30%	28%	29%	27%	22%
55-64	21%	18%	17%	18%	14%
65+	1%	2%	*	2%	2%

Based on all claimants

Note: percentages may not sum to individual parts due to rounding

Source: Findings from the Survey of Employment Tribunal Applications 2008, BIS

⁵ GB employees only

⁶ GB employees only

Annex B: Automatic unfair dismissal

Usually an employee must be employed by their employer continually for two years before the protection from unfair dismissal is activated. There are however, automatically unfair reasons for dismissal, some of which apply from the first day an employee begins work (others may be subject to certain qualifying conditions). These include dismissal on the basis of:

- Trade union membership/activities/services /recognition
- The right to be accompanied at a disciplinary or grievance hearing
- Jury service
- Leave for family reasons (e.g. adoption and paternity)
- Certain specified types of action on health and safety grounds
- Subject to certain conditions, refusing Sunday work
- Trustee of occupational pension scheme
- Pension enrolment
- Duties relevant to role or candidacy as, or election of, an employee representative
- Making a protected disclosure, e.g. whistle blowing
- Having sought, in good faith, to assert a statutory employment protection right
- National minimum wage
- Flexible working request
- Official industrial action
- Blacklists, e.g. of individuals who are currently or used to be trade union members or are active in trade unions
- Education and training
- Study or training

The dismissal is automatically unfair if the reason relates to certain regulations contained in:

- Working Time Regulations 1998
- Transnational Information and Consultation of Employees Regulations 1999
- Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- European Public Limited-Liability (Employee-Involvement) Company Regulations 2009
- Information and Consultation of Employees Regulations 2004
- Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

- European Cooperative Society (Involvement of Employees) Regulations 2006
- Companies (Cross-Border Mergers) Regulations 2007
- European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009
- Agency Workers Regulations 2010

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