

<b>Title:</b> Collective Redundancy Consultation: Government Response <b>IA No:</b> BIS0347  <b>Lead department or agency:</b> BIS  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 1/12/2013		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Vivien Brighton			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Green

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£309.45m	£680.01m	-£66.43m	Yes   OUT

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

UK law requires that proposed redundancies affecting 100 or more employees cannot take place until a minimum period of 90 days has elapsed, or after consultation is completed, whichever is longer. This goes beyond EU minimum requirements, where there is only a 30 day minimum period before dismissals can take effect. The minimum period starts when the government is notified of the proposals. EU law also requires employers to consult 'in good time'. Most employers argue that the 90 days minimum period is unnecessarily long and undermines productivity, hampering necessary change. There is also evidence of confusion and disagreement between employers and employee representatives about the process and aims of consultation, which prevents effective consultation from taking place. Employers also struggle to retain skilled key employees and experience detrimental impacts on employee morale and productivity. This increases risks that businesses will fail or struggle to succeed in the future, meaning continued uncertainty and risk for employees that remain. The preferred option seeks to remove unnecessary gold-plating, allowing parties to concentrate on the key issues, and discouraging delay or avoidance of consultation.

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

The aim of the proposed policy is to create a simple, understandable process that promotes quality consultation and will:

- allow the parties to engage in consultation that is best suited to their circumstances;
- improve business flexibility to restructure effectively;
- reduce business burdens; and
- balance the needs of employees made redundant with those that remain.

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

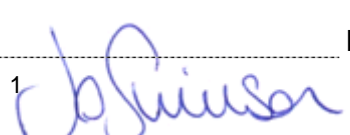
1 - Do nothing  
 2a - Reduce the minimum period before redundancies can take effect to 45 days.  
 2b - Reduce the minimum period before redundancies can take effect to 30 days.  
 3 - Improve the guidance available to help provide clarity for the parties involved. This is a non-regulatory measure.  
 4 - Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations.  
 The preferred option is a combination of the non-regulatory option 3 alongside regulatory options 2a and 4. This will help to improve consultation practice by providing more clarity over key issues and business flexibility by reducing the minimum period before dismissals can take effect.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 01/2016

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
	No	No	No	Yes	Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

**I have read the Impact Assessment and I am satisfied that (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 SELECT SIGNATORY: \_\_\_\_\_ Date: 29/11/2013

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# Summary: Analysis & Evidence

# Policy Option 2a

**Description:** Option 2 (a) Reduce the minimum period before redundancies could take effect to 45 days

## FULL ECONOMIC ASSESSMENT

Price Base year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 309.45

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		266.4	2292.7

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

Employers: reduction in output from employees made redundant more quickly. We currently estimate this to be in the region of £98.8m per annum.

Employees: reduction in the amount of time paid by their current employer, and therefore in the pay received from that employer. We expect this reduction in pay to result in a £167.6m net loss per annum across all affected employees.

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

Employees: Potential reduction in period of time in which to search for a new job.

Exchequer: possible short-term increase in employment tribunal claims relating to consultation in redundancy situations.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		302.3	2602.1

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

Employers: reduction in labour costs by allowing large scale redundancies to take place more quickly. We currently estimate this to be in the region of £197.5m per annum.

Employee benefit of taking up the best 'outside option' which includes looking for work, working in another firm or increased leisure time of £104.8m.

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

Employers: increased flexibility in making business changes, potential for improved productivity relative to current situation. Indirect benefit (output and profits) for firms who hire redundant employees.

Employees: reduction in period of uncertainty, possible reduction in stress experienced

Whole economy: this measure would facilitate resources moving to more productive uses more quickly, it should therefore be net beneficial to the UK economy.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

In understanding the scale of the issue we rely upon the European Restructuring Monitor which provides data on levels of redundancies announced in the media rather than the eventual numbers of redundancies. In monetising the benefits of a reduced consultation period, we have not included the impacts of improved quality consultation on employees' productivity or job search behaviour.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 66.4	Benefits: 132.9	Net: 66.4	Yes	OUT

# Summary: Analysis & Evidence

# Policy Option 2b

**Description:** Option 2(b) Reduce the minimum period before redundancies could take effect to 30 days

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 309.45

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		266.4	2292.7

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

Employers: reduction in output from employees made redundant more quickly. We currently estimate this to be in the region of £98.8m per annum. Employees: reduction in the amount of time paid by their current employer, and therefore in the pay received. We expect this reduction in pay to result in a £167.6m net loss per annum across all affected employees.

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

Employees: Potential reduction in period of time in which to search for a new job.  
 Exchequer: possible short-term increase in employment tribunal claims relating to consultation in redundancy situations; possible very small increase in job seeker's allowance claims.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		302.3	2602.1

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

Employers: reduction in labour costs by allowing large scale redundancies to take place more quickly. We currently estimate this to be in the region of £197.5m per annum.  
 Employee benefit of taking up the best 'outside option' which includes looking for work, working in another firm or increased leisure time of £104.8m.

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

Employers: increased flexibility in making business changes, potential for improved productivity relative to current situation. The impact will be lower than for policy option 2a. Indirect benefit (output and profits) for firms who hire redundant employees.  
 Employees: reduction in period of uncertainty, possible reduction in stress experienced

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The quantified costs and benefits of option 2b are the same as 2a as evidence suggests on average the length of consultation is greater than 45 days (so reducing the minimum period from which redundancies can take effect from 45 days to 30 days is not expected to add further monetised benefits). In monetising the benefits of a reduced minimum period, we have not included the impacts of improved quality consultation on employees' productivity or job search behaviour.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 66.4	Benefits: 132.9	Net: 66.4	Yes	OUT

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Improve guidance on carrying out collective redundancy consultations

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

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

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

Exchequer: production of guidance will entail a minimal amount of additional staff time.

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

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

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

Employers: improves certainty and provides greater clarity on their obligations for running collective redundancy consultations. Potential for higher quality consultations between employers and employees ensuring a more constructive relationship.

Employees: will benefit from any improvement in the quality of consultation, leaving them better placed to find alternative employment or maintain their existing employment relationship.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Realisation of the benefits of this option is dependent on the guidance being a clear and simple to understand product that can be well communicated to those affected.

## BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

# Summary: Analysis & Evidence

# Policy Option 4

**Description:** Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

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

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

Employers: for those employing significant numbers of fixed-term employees, there may be limited familiarisation costs. The majority of this impact is expected to be limited to the Higher Education sector.

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

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

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

Employers: provides certainty on the extent of their obligations for running collective redundancy consultations with regard to fixed-term employees. Potential for a reduction in costs where employers that make extensive use of fixed-term contracts no longer feel obliged to run collective consultations. Again, the majority of this impact is expected to be limited to the Higher Education sector.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

We assume that the businesses primarily affected by this option would belong to the Higher Education sector, as we have not received any evidence that fixed-term contracts have been an issue in other sectors. However, there is a possibility that there will be a broader impact across further sectors.

## BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

## Evidence Base (for summary sheets)

1. This impact assessment considers changes to the rules surrounding collective redundancy where employers are considering making 100 or more people redundant. These situations are often referred to as “large scale redundancies” throughout this text.
2. The current requirement for a minimum of 90 days before dismissals can take effect in large scale redundancies goes beyond EU minimum requirements and this impact assessment explores options to reduce this gold-plating and to clarify the legal requirements.
3. This impact assessment begins with some background to the UK labour market and collective redundancies, including an international comparison of requirements in other countries. It then presents the problem under consideration, rationale for intervention and policy objectives before detailing the policy proposals and the expected costs and benefits of each.
4. Two options are considered for reducing the minimum period before dismissals can take effect for a large scale redundancy: a new minimum of 45 days, or of 30 days. Both of these options would significantly improve business flexibility. However, the consultation process identified a high level of concern that moving to the lower 30 day minimum would risk having a negative impact on the quality of consultation, which is also required. The preferred option is therefore the 45 day minimum, in combination with policies to improve the quality of guidance on the consultation process and to clarify the law as it applies to fixed-term employees.

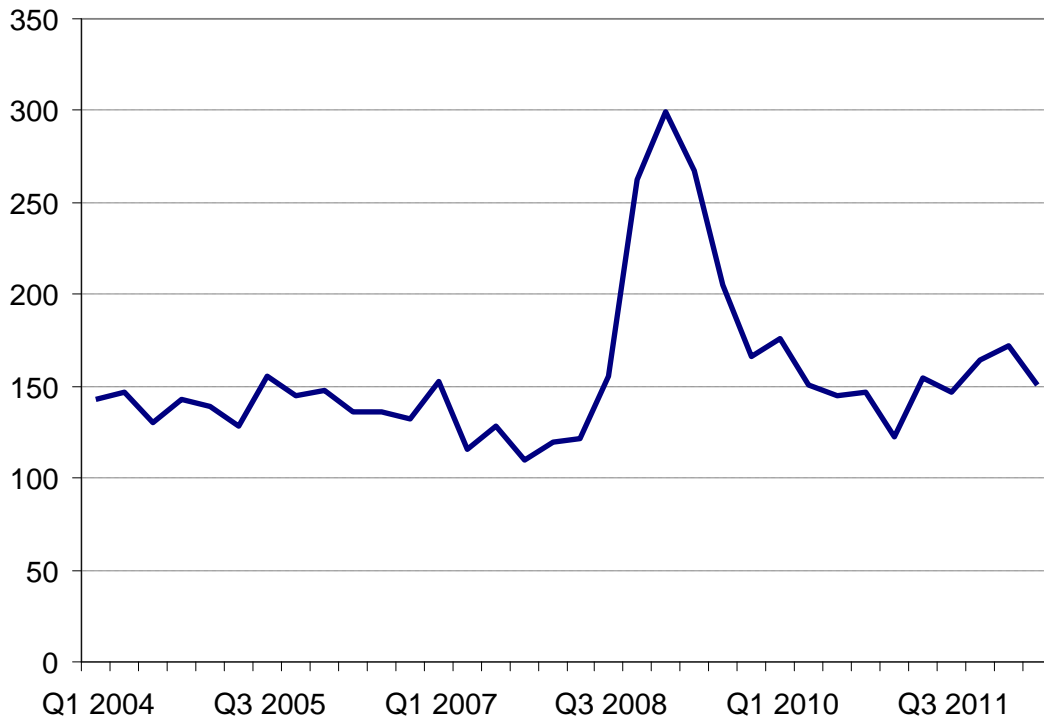
## Background

5. There are over 29 million people employed in the UK. The UK labour market is characterised by a high degree of churn – there is significant movement between jobs and between employment, unemployment and inactivity in a given year. Table 1 below demonstrates some of these movements in the period between quarter 4 of 2011 and quarter 3 of 2012 (note that this is just one year and comes from an ONS (Office for National Statistics) experimental series, but it illustrates the magnitude of movements). For example, this shows nearly 3.5 million movements out of employment in this period.
6. Redundancies are one reason why employees will leave their current employment. Labour Force Survey (LFS) data shows that the same period as Table 1, 614,000 people were made redundant. Whilst the two data sources are not directly comparable, this represents about 18 per cent of the gross outflows from employment.

<b>Table 1: Gross and Net Flows by Work Status Q4 2011 – Q3 2012</b>			
millions, totals may not add due to rounding			
	<b>EMPLOYMENT</b>	<b>UNEMPLOYMENT</b>	<b>INACTIVITY</b>
<b>Gross inflows</b>	4.1	3.61	3.36
<b>Gross outflows</b>	3.48	3.82	3.74
<b>Net flows</b>	0.62	-0.21	-0.41
Source: ONS, Labour market flows (Experimental statistics), working-age population, seasonally adjusted			

7. Quarterly redundancy figures back to 2004 are illustrated in Chart 1 below, which shows that apart from a peak in the recent recession, these have typically been around 150,000 individuals per quarter. After a redundancy some will move directly into other employment, whilst some will move to unemployment or inactivity (outside the labour market) for a period of time.

**Chart 1. Total UK redundancies (thousands) by quarter 2004-2012**



Source: Labour Force Survey

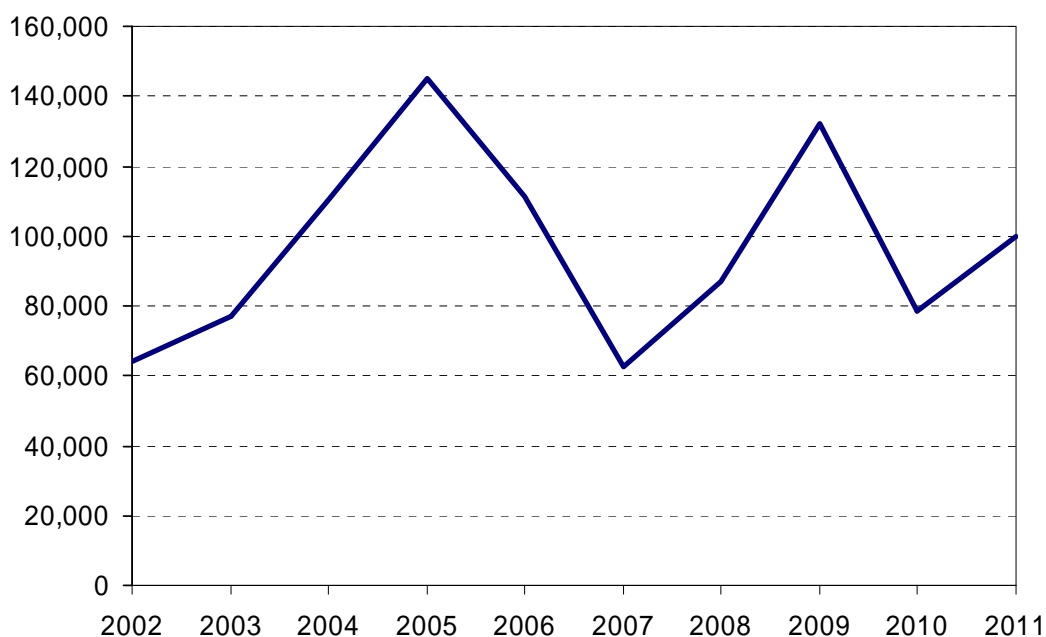
8. Large scale redundancies (where 100 or more people are made redundant in one exercise) are subject to collective redundancy rules including a minimum period before dismissals can take effect (the subject of this impact assessment). There is some uncertainty around the number of redundancies stemming from such large scale exercises. Where an employer proposes to make large scale redundancies they have a duty to inform the Secretary of State for Business, via completion of an “HR1” form to the Insolvency Service, about the proposals. The collection of this information is to allow Government (via Job Centre Plus and other local agencies) to offer assistance to employers and to any employees who are made redundant. Some of this information was used through the government consultation stage impact assessment; however, this response stage assessment uses the European Restructuring Monitor instead, as this period has revealed this source to be more robust.
9. The European Restructuring Monitor is maintained by Eurofound and gathers information about planned redundancies via press reports across European countries<sup>1</sup>. This source of evidence is considered to be the most robust for this impact assessment because Insolvency Service data from the HR1 form is commercially sensitive and can not be used for this impact assessment.

1. <sup>1</sup> ERM data can be found at <http://www.eurofound.europa.eu/emcc/erm/index.htm> whilst more information on the data limitations is set out <http://www.eurofound.europa.eu/emcc/erm/datalimitation.htm>

10. The European Restructuring Monitor data source is used throughout this Impact Assessment due to the systematic way it is collected and the ability to break down the data to look at sectors, reasons for redundancies and pick out large scale redundancies. Eurofound note that in many countries the figures under-represent total large scale collective redundancies due to under-reporting, but that this is less of an issue with the UK as the media tends to be quick to report planned redundancies affecting large businesses. Over the period 2002 – 2011, this data suggests that average annual redundancies from large scale collective consultation were 96,770. The pattern of large scale collective redundancies is illustrated in Chart 2.
11. Chart 3 below uses European Restructuring Monitor data to show a breakdown of large scale redundancies by sector. Manufacturing, financial services, public administration and transport and communication were amongst sectors with the highest proportions of large scale redundancies. When considered against the proportions of those in employment in each of these sectors, these same sectors are over-represented in large-scale redundancy situations across this time period.

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**Chart 2. Number of UK redundancies in 100+ category**

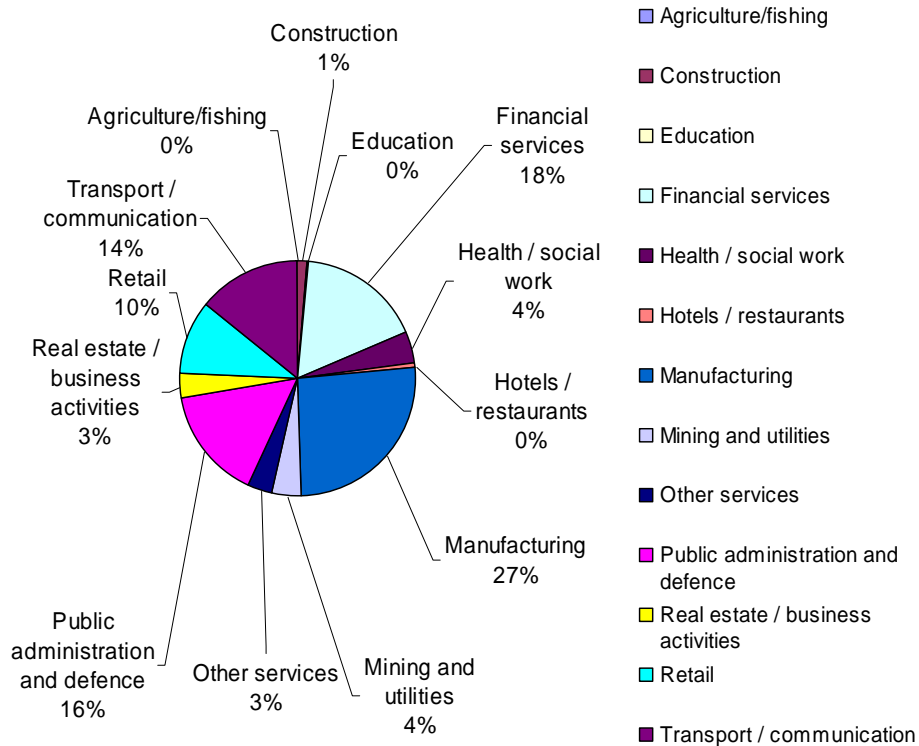


Source: European Restructuring Monitor

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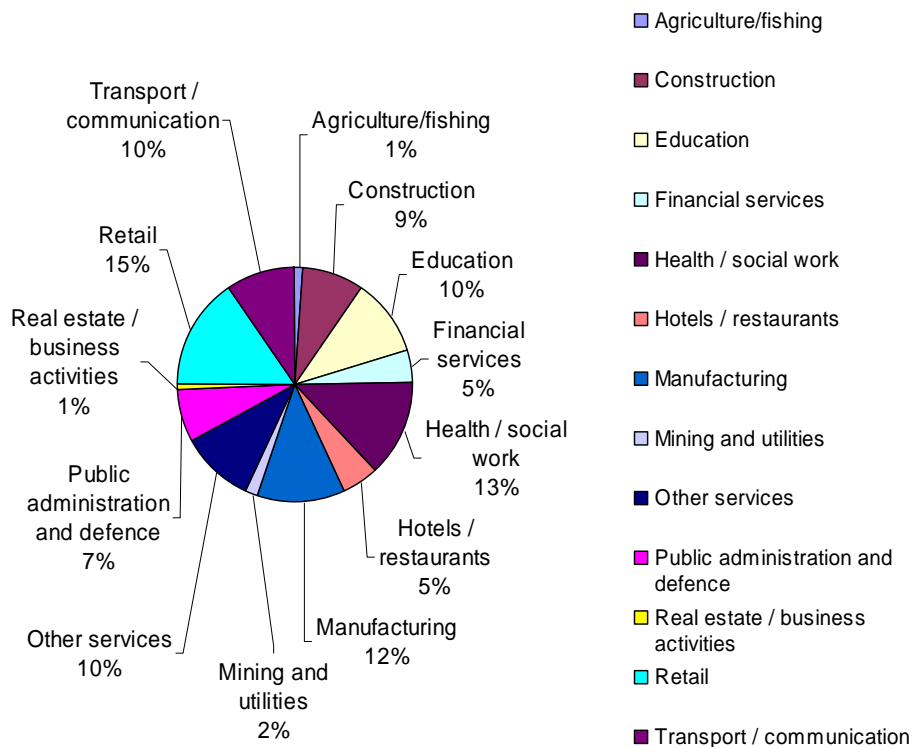


**Chart 3. Redundancies in 100+ category 2002-2011, by sector**



Source: European Restructuring Monitor

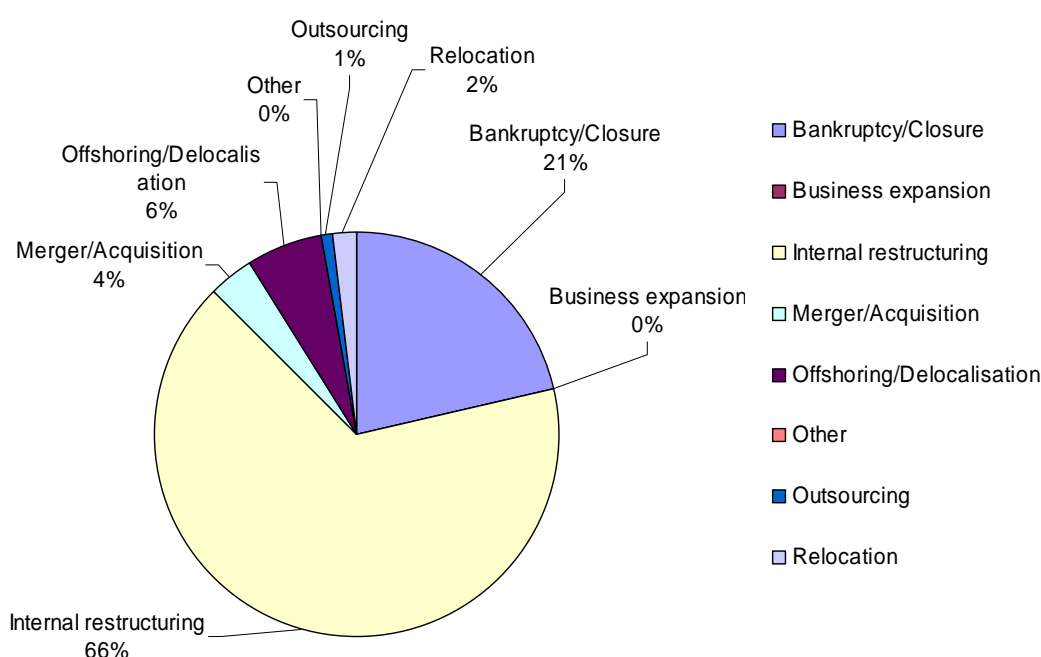
**Chart 4. Employment 2002-2011, by sector**



Source: Labour Force Survey

12. The UK has one of the most flexible labour markets in the world according to the OECD's employment protection index. However, the UK performs relatively less well on the component of that index that relates to collective redundancies and there may be room for greater flexibility.
13. The last Workplace Employment Relations Survey (conducted in 2011) looked at the number of workplaces that had reported redundancies (of any scale) in the previous 12 months. It found that 13 per cent of workplaces had reported redundancies in the previous 12 months.
14. The European Restructuring Monitor gives information on the reasons for large scale redundancies, with internal restructuring by far the most common reason, followed by bankruptcy/closure. The distribution of reasons will differ across the economic cycle, but for this reason the information is presented below as a 10-year average.

**Chart 5. Reasons for redundancies in 100+ category 2002-2011**



Source: European Restructuring Monitor

15. The last Workplace Employment Relations Survey (2011) explored the outcomes from redundancy consultations. Common answers were:
- Alternatives to redundancy or reduction in number (22%)
  - Preparing employees for redundancy (19%)
  - Strategies for redeployment (14%)
16. However, the same study also asks whether consultation led to changes in managers' original proposals. In 78 per cent of cases the answer was "no". In 10 per cent of cases there were reductions in the numbers made redundant.

**Problem under consideration**

- 17. Where an employer is proposing to dismiss 20 or more of its employees as redundant at a single establishment in a 90-day period they must consult about the redundancies with representatives of the affected employees. Where between 20 and 99 redundancies are proposed, dismissals cannot take effect until at least 30 days after the start of the consultation. Where 100 or more redundancies are proposed the minimum period before dismissals can take effect increases to 90 days. After collective redundancy consultation has concluded, and the minimum period has passed, employees have individual notice periods which need to be honoured. This means that even in possible cases where consultation would reduce to 30 days, the minimum period and notice would still apply on top of this. The process is set out in Table 2.
- 18. The UK law has been in place largely unchanged since 1975 and it implements the EU Collective Redundancies Directive. Where it goes beyond the EU Directive, the most contentious aspect of 'gold-plating' is the inclusion in the UK law of the minimum periods before dismissals can take effect. The Directive requires only that dismissals cannot take effect until 30 days after the employer has notified the Government of the planned redundancies. The review of the UK rules considers how they can be improved and whether these instances of 'gold-plating' need to be removed.

**Table 2: The collective consultation Process**

Process triggered	<p><b>Employer identifies that there is the potential for collective redundancies.</b></p> <p><b>Employer begins consultation with employee reps in good time.</b></p> <p><b>Employer notifies Government that consultation has begun.</b></p>
Consultation with a view to reaching agreement	<p><b>Possible for employer and union to complete consultation before end of minimum time period.</b></p> <p><b>If consultation genuinely complete, redundancy notices can be issued but dismissals cannot take effect until the end of the minimum period.</b></p> <p><b>The statutory period is a minimum period so it is possible for the consultation to run on longer should the employer choose.</b></p>
Day 30	<p><b>Final day of minimum time period for 20-99 redundancies</b></p>
Day 31	<p><b>Earliest that dismissals can take effect for collective redundancies involving 20-99 redundancies</b></p>
Day 90	<p><b>Final day of minimum time period for 100+ redundancies</b></p>
Day 91	<p><b>Earliest that dismissals can take effect for collective redundancies involving 100+ redundancies</b></p>

19. BIS conducted a Call for Evidence between November 2011 and January 2012 and followed this with a public consultation on proposals to change the rules between June and September 2012.
20. The Call for Evidence sought responses to questions on a number of issues but primarily focused on the impact of the 90-day minimum period before redundancies could take effect. Over 100 responses were received and they provided evidence of the operation of the collective redundancies rules in practice. Overall, the Call for Evidence showed that there is a high degree of confusion as a result of the current rules which is having a negative impact on business flexibility to restructure and is producing poor quality consultation. The lack of business flexibility is making it harder for employers to react to changing market conditions. The poor quality consultation is causing employees to engage less in the consultation and redundancy processes and is having a detrimental impact on employee morale and productivity. The higher-level, 90-day, minimum period and the lack of a clear definition of an 'establishment' are at the heart of the confusion.
21. The Call for Evidence highlighted that lack of certainty and agreed understanding about the consultation process has driven negative behaviour by both employers and employees' representatives. This has resulted in a shift away from collective consultation on substantive issues and towards a focus on tactics surrounding the consultation process itself. This leads to poorer outcomes for both employers and employees, including low morale, a drop in productivity and potentially an increased risk of business failure. Responses to the BIS consultation confirmed the problems identified by the Call for Evidence.
22. It is unclear what proportion of redundancies are accounted for by large-scale collective redundancies, however, taking the annual average total of large scale redundancies from ERM and looking at this as a proportion of annual average redundancies (600,000 according to Labour Force Survey data) suggests this is about 16 per cent.
23. It is important to note that the rules on collective redundancy consultation do not affect only those employees eventually made redundant. The pool of employees involved in the consultation will often be considerably wider and the employer will need to select those to be made redundant from that pool. In this situation most employees will delay seeking alternative employment until their personal position is known. Others, especially those with transferable skills, may be unwilling to accept this uncertainty, resulting in the company losing employees that it may have identified as important to its future successful operation. Many stakeholders we talked to in focus groups during consultation highlighted the fact that the most talented individuals did leave for alternative roles in the face of this uncertainty. The Call for Evidence and the consultation also suggested that this uncertainty causes a significant drop in morale and productivity amongst staff.
24. The Call for Evidence and consultation highlighted that the impact of the current rules was not universal. Some issues were highly sector-specific. A particular example was that the application of the rules to the termination of fixed-term contracts at the end of the contract period impacts mostly in the Higher Education sector. Clarifying the situations where the rules do or do not apply to fixed-term contracts would have a potentially beneficial effect on these sectors.
25. It is also important to consider the impact of changes to the current rules on the ability of Government to offer support to employers and employees. Currently the Government can offer support through its agencies (for example Jobcentre Plus) to help affected employers find the right employees to move forward and to help employees find alternative training or employment opportunities. It is important that the new regime continues to allow the Government to offer this support.

## Rationale for intervention

26. In May 2010, the Government made a commitment 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". The review of the collective redundancy consultation rules is one important contribution to this. Most respondents (across all respondent groups) to the consultation (which closed in September 2012) agreed that there was a problem which needed to be addressed.
27. Government intervenes in the labour market for efficiency and equity reasons. There are rules in place to cover how collective redundancies are undertaken to overcome information and market power problems which would prevail if left to the market. However, the Call for Evidence highlighted that the form of intervention could be more efficient. The current rules potentially affect the ability of businesses to operate.
28. It is important that employment law is suited to the labour market which it supports. As such, it is right that the Government should be considering changes to collective redundancy consultation rules that have been largely unchanged since 1975. The UK labour market is now more flexible and advances in IT and communications technologies have made consultation easier and faster to carry-out. Similarly, job-seekers have easier access to alternative employment or training opportunities. The balance in this time period has shifted between collective employment rights and individual employment rights, with more emphasis on the latter. This effect is documented in the Acas Research paper "Conflict At Work: The Pattern of Disputes since 1980".  
[http://www.acas.org.uk/media/pdf/f/j/Acas\\_Research\\_Conflict\\_at\\_work\\_03\\_08-accessible-version-July-2011.pdf](http://www.acas.org.uk/media/pdf/f/j/Acas_Research_Conflict_at_work_03_08-accessible-version-July-2011.pdf)
29. It is important, therefore, to address the inconsistencies in the way that the law is applied by employers and employees' representatives and to improve employer understanding of their obligations. This will help to improve the quality of consultation and will result in better outcomes for both employers and employees. The changes proposed are intended to contribute to a flexible labour market designed to help promote growth and to remove the gold-plating present in the current legislation.
30. Of the 160 responses to the Government consultation, 55% agreed with the Government's overall approach in considering a reduction in minimum periods, 37% disagreed and 8% were unsure. A majority agreed with the aim to improve the quality of consultation and to introduce improved guidance.
31. When considering Government intervention, it is important to remember that the consultation period is followed by statutory or contractual notice periods for employees selected for redundancy. The intention of this notice period, and not of the consultation period, is to allow employees to seek alternative employment and to put their affairs in order.

## Policy objective

32. The aim of the proposed policy is to support growth through a flexible labour market by creating a simple, understandable process that promotes quality consultation and can be adapted to suit the needs of the variety of redundancy situations.
33. To achieve these aims it is necessary to create a framework that reflects modern working practices and the needs of the modern labour market. We want to help employers work with their employees to ensure that they have the right workers in the right jobs at the right time.
34. This process should be underpinned by a light-touch system of Government support, through agencies such as Jobcentre Plus and the Local Enterprise Partnerships. The

Government should be in a position to offer support to employers and employees without distorting the employer's decision making process.

35. We aim to encourage good corporate behaviour through a more flexible regime that is less reliant on statutory intervention and more reliant in awareness of the benefits that good quality consultation can bring.
36. By creating an alternative legislative framework and better quality consultation the new regime will aim to:
  - allow businesses and employees' representatives the flexibility to engage in a consultation exercise that is best suited to their circumstances;
  - improve business flexibility to restructure effectively, ensuring that employers have the right people with the right skills in the right place at the right time;
  - increase the likelihood of agreement between employers and employees' representatives;
  - increase employee buy-in to the decision-making process;
  - balance the interests of employees made redundant with those that remain; and
  - reduce business burdens.

### **Description of options considered (including do nothing)**

37. There is a clear case for a change in the current regime. There are a number of ways that this change can be achieved to allow for greater flexibility but retain a strong element of employee protection.
38. The following options are not mutually exclusive, and the combined effects of some options may in some cases be different from the individual effects.
  - Option 1 - Do nothing
39. Making no change either to the legislative framework or the guidance would leave the existing complexities and inconsistencies in place. Whilst a developing set of case law on some of the current issues will help to offer some certainty to business, this is likely to be available only to those with dedicated legal advice. None of the responses to the consultation document suggested that Government should take no action at all.
  - Option 2 – Reduce the minimum period before redundancies could take effect:
40. Reducing the minimum period before redundancies can take effect would help to alleviate business concerns about a lack of flexibility expressed in the Call for Evidence, and would reduce business costs including wage costs and management time. In practice, some reduction in the time taken may be expected, but the apparent reduction in wage and management costs is tempered somewhat by the fact that many employers will continue to consult beyond this minimum period where there is an identifiable benefit to doing so, for example investigating alternative opportunities for specialist staff with skills that the employer would wish to retain. This was borne out in the Call for Evidence where responses were clear that where consultation needed to take longer, it did. 71% of respondents to the consultation were in favour of a reduction in the minimum period.
41. The option would also help employees by reducing uncertainty around their future role within an organisation. Facing redundancy is a stressful position, as many responses to the Call for Evidence highlighted.
42. There are two options available to reduce the minimum period:
  - a) Reduce it to 45 days

43. Discussions with stakeholders during the Call for Evidence suggested that most consultations reasonably conducted can be concluded in around 45 days, although there will always be differences in complexity. Reducing the period to 45 days would therefore have benefits in terms of lower wage and management costs for the employer.
44. The change would also improve certainty for the workforce by increasing the speed with which employees in the pool being consulted know whether or not they personally are going to be made redundant.
45. The change to a 45 day minimum period would require a degree of familiarisation, but that one-off cost would be far outweighed by the ongoing benefit of a less complex regime.
46. This option would mean an ongoing difference between the required consultation periods for small and large-scale redundancies (30 and 45 days respectively). However, the issue would be less acute than with a 90-day period, given that large scale redundancy situations would only require 15 more working days, the incentive to fit into the shorter period is much reduced relative to the do nothing option. This would also reduce the risk that a proportion of employers treat the time period as a maximum at the expense of the quality of the consultation.

b) Reduce it to 30 days

47. This would be a simpler option, ensuring that all collective redundancy consultations would require the same minimum period before dismissals could take effect. It is the option preferred by employers and 52% of the responses to the consultation document were in favour of 30 days.
48. Harmonising the minimum periods would mitigate the need to decide what the establishment is and allow consultation to concentrate on the substantive issues, rather than procedural issues.
49. However, consultation identified a high level of concern from unions about the wider effect of a reduction to 30 days. There is a risk that this sends a signal that Government places less weight on the importance of the consultation process – and that less responsible employers treat the time period as a maximum rather than a minimum. Because of this risk, we prefer option 2a to option 2b.

- Option 3 – Improve guidance

50. Assistance could be provided to both employers and employees by clarifying the current law through updated or improved guidance (non-statutory). This could be achieved by either updating guidance on existing channels or through creating a wholly new Code of Practice setting out the suggested process of consultation.
51. Improved guidance would provide a degree of clarity for employers and employees and would help to improve employer confidence. Better guidance would improve understanding of the point at which consultation should start, the nature of the consultation and the type of information that should be provided to underpin the consultation. This option complements option 2a and option 2b in addressing the quality of consultation and reduces the risks that could be associated with those options.
52. Whilst it is probable that improved guidance will realise some benefits if introduced independently of option 2a or option 2b, it would not achieve legal certainty nor simplify the process to improve business flexibility. It would help to explain the process and to give both employers and employees a focus for establishing good consultative practices, but would not remove the main barriers to good quality consultation.
53. There would be minimal Exchequer costs in establishing and disseminating this guidance.

- Option 4 – Fixed term appointees

54. The call for evidence identified confusion and concern about the way the end of fixed-term contracts (FTCs) are handled in collective redundancy situations. In particular, the current law suggests that the dismissal of fixed-term appointees could be classed as a redundancy which may need to be included in the count for collective redundancy consultation, even where the reason for their dismissal is the natural ending of the contract which is not renewed.
55. However a recent Employment Appeal Tribunal case (*Stirling*) has cast some doubt on this. 35 per cent of responses to the consultation considered that guidance was the right approach. But 58 per cent of responses favoured a legislative solution instead of guidance. Legislation would create certainty, removing the current belief that employers need to engage in consultation over the natural end of fixed-term contracts. It would have benefits for employers who make regular use of FTCs, especially where their use or extension is dependent on external funding or is for a specific, short-term purpose, such as maternity cover. The Higher Education sector would be a particular beneficiary.
56. While this is a regulatory option, it is intended to drive out uncertainty and is not expected to impose significant additional costs to business.



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

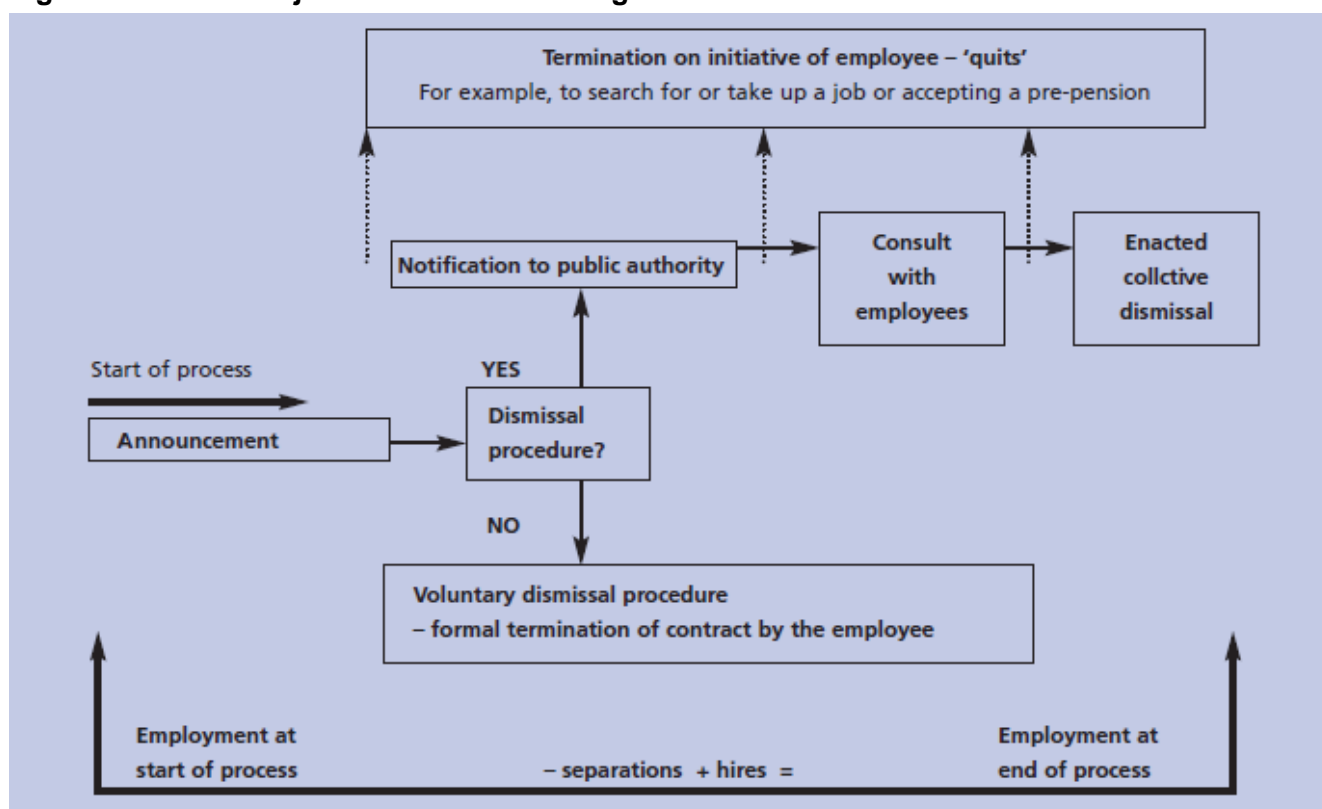
57. Detailed data on how collective redundancy consultations are conducted is limited, so BIS issued a Call for Evidence to improve understanding of how the current collective redundancy rules affect business and to gain an early understanding of what impact possible changes might have. This was then followed with a 12 week consultation on the collective redundancy rules. This IA relies on information collected in the Call for Evidence and consultation – through written responses and focus groups, together with Labour Force Survey data on redundancies and data on large scale collective redundancies from the European Restructuring Monitor.
58. European Restructuring Monitor (ERM) defines job loss at restructuring in a similar fashion to the European directive on collective redundancies, in that it refers to intended redundancies. However, the intended redundancies do not have to be reported to any public authority but rather ‘announced’ either in the media or in some other public domain. The thresholds are: at least 100 jobs or involving sites employing more than 250 people and affecting at least 10% of the workforce. Unlike the directive, however, in the ERM there is no stipulation of time within which the intended job loss has to occur<sup>1</sup>.
59. A limitation of the ERM is that, as it monitors events very early on in the dismissal process, it will capture those who depart at this initial stage of the process. It will also almost certainly overestimate the actual number of workers affected by the restructuring. We do not believe that the volume of voluntary job separations will be significant. The available evidence we have on voluntary job separations (based on ONS data) is that for the entire labour market 1.6% of employees leave their job voluntarily<sup>2</sup>. Also, evidence from consultatees indicated most employees start looking for work after the collective redundancy consultation has ended. The diagram below shows an outline of job losses during a restructuring.

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<sup>1</sup> Source: Restructuring and employment in the EU: Concepts, measurement and evidence. European Foundation for the Improvement of Living and working conditions.  
<http://www.eurofound.europa.eu/publications/htmlfiles/ef0638.htm>

<sup>2</sup> CIPD 2013 ‘Has job turnover slowed down’ [http://www.cipd.co.uk/binaries/6306%20Megatrends%20\(WEB\).pdf](http://www.cipd.co.uk/binaries/6306%20Megatrends%20(WEB).pdf)

**Figure 1. Outline of job loss at restructuring**



Source: Restructuring and employment in the EU: Concepts, measurement and evidence. European Foundation for the Improvement of Living and working conditions.

60. The ERM is a better data source to estimate the number of collective redundancies than the Labour Force Survey (LFS). Although the LFS collects information on why individuals left their last job the LFS does not identify collective redundancy situations nor does it distinguish between ‘made redundant’ and ‘took voluntary redundancy’. A major strength of the ERM is that it is based on information in the public domain. Thus, there are no issues with privacy and the identification of specific cases at the company level. We are unable to use ‘notification data’ (the HR1 form) that is supplied by businesses that plan to make large scale collective redundancies to the insolvency service because of commercial sensitivity.

61. Despite the potential for the ERM data to overestimate collective redundancies it remains the best available evidence to estimate the population group affected by proposals within this impact assessment. As the amount of overestimation in the ERM data is unknown it would be too arbitrary to adjust the data. For the purposes of this impact assessment we use unadjusted ERM data as it remains the best data source available.

62. The objective of the policy is largely qualitative, around achieving a higher quality of consultation which should lead to better outcomes for employers and employees. However, the nature of the objective and the intervention means that the impacts are also largely qualitative and very difficult to quantify. Where impacts can be quantified this is set out and explained. In the consultation, a majority of respondents stated that we had correctly identified the impact of the proposed policies.

## Monetised and non-monetised costs and benefits of each option

### Who is Affected?

63. **Employers of 100 or more people** are subject to the longer, 90-day minimum period set out in the rules around large scale redundancies if they make 100 or more people

redundant. Options 2(a) and 2(b) could reduce the amount of labour costs paid by these employers, and allow them more flexibility to adjust to changing circumstances. However, this effect may be partly offset by any output that would have been produced in many cases during an extended minimum period.

64. **Employees involved in collective consultation but not made redundant.** At least 50 per cent, and possibly up to 80 per cent of those employees subject to collective consultation are not actually made redundant. Options 2(a) and 2(b) would potentially mean earlier outcomes to consultation and if guidance is effective, improve the quality. This should reduce the negative impact on employees' morale and productivity.
65. **Employees made redundant.** Those that are made redundant as a result of a large scale collective exercise are likely to receive their redundancy notice more quickly than under the current situation, and therefore be paid for a shorter period of time by their current employer. Depending on their job search behaviour the changes will affect people differently. For some they may be able to move to a new job more quickly, for a small number of people this may cause them to need to claim job-seeker's allowance where they may previously have moved straight into alternative employment. Those that would have claimed JSA for a time anyway may do so sooner, but the evidence suggests the duration of time spent claiming JSA will be unaffected.
66. **Economy-wide.** Whilst changes in the rules will affect employers and employees involved in collective redundancy situations, the economy-wide effect may be a rise in productivity if employees move more quickly to new employment or can move on more quickly within their current employment, as the identified impact of employees being less productive while waiting the outcome of consultation should be reduced. Whilst affected employers should also see a drop in labour costs (with associated reductions in output as workers leave more quickly), these effects are both local to the firm and aggregate at the economy level.

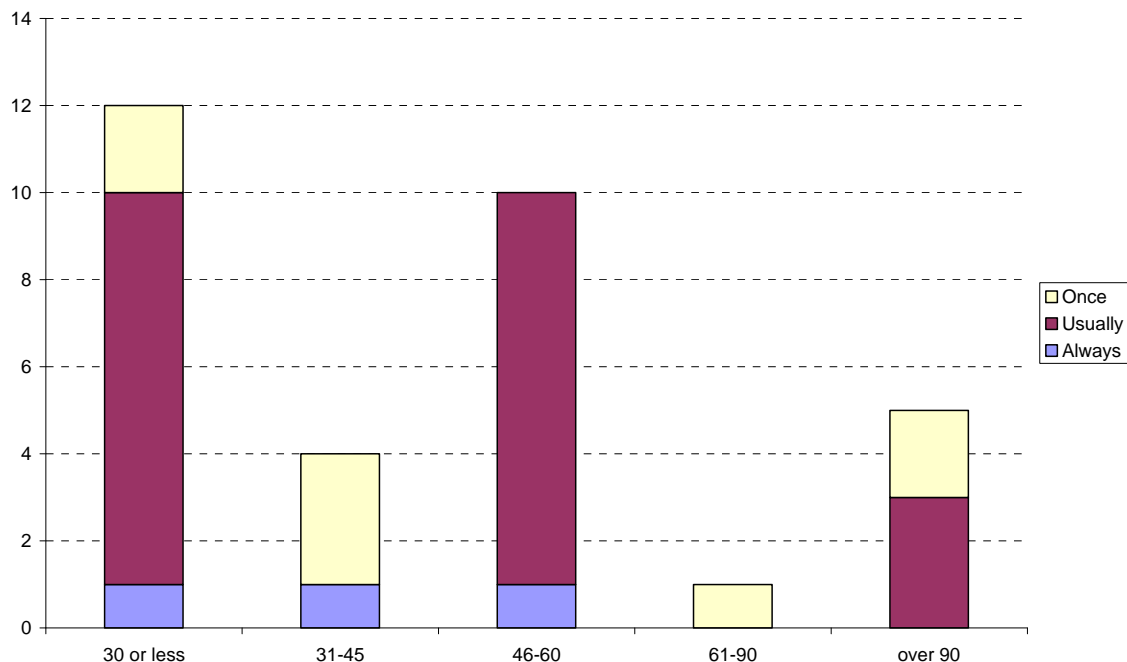
### **Option 2a, Reduce the minimum period to 45 days (preferred option)**

#### **Employers carrying out collective redundancy consultations:**

67. **Reduction in management time spent.** Many responses to the Call for Evidence noted that a reduced minimum period would save management time and therefore cost in dealing with a collective redundancy. Consultees were not directly asked about this, but the situation was less clear cut. However, the intention of the proposal is to achieve higher quality consultation through a simple, understandable process. This means that the process of consultation with staff may not take less time than it does currently in terms of management time, meetings with employees and employee representatives, just that once consultation is concluded employers do not face barriers (in terms of minimum time periods above 45 days) from going forward with their restructuring plans. On balance therefore, no cost savings are quantified for this effect, as a large reduction in management time is not anticipated.
68. **Reduction in wages and non-wage labour costs paid by employers carrying out collective redundancies as a result of the removal of the 90 day minimum period (benefit).** Consultees were asked in their experience how long it took to reach agreement in collective consultations. Not many directly answered the question and for those that did, there was little consensus, with timescales ranging from 14 days to 6 months.
69. BIS also probed this point in Focus Groups carried out as part of the government consultation. It was clear in these groups that the most popular answer for how long the process took was 30 days. Nevertheless, there were respondents who said 90, and of those thinking that 30 days was typically enough, there was also acknowledgement that on occasion, it would take longer to complete the process.

70. Discussions that had taken place with stakeholders during the Call for Evidence suggested 45 days was a reasonable length of time to successfully complete collective consultation. It is reasonable to conclude that there will be considerable reduction in the time it takes between the start of a collective consultation and the time that some redundancies take effect. This is based on the volume of responses to the Call for Evidence that cited a reduction in wage costs as an impact of reducing the minimum period, and the number of consultees, especially through focus groups, citing 30 days as typically long enough to conclude consultation.
71. In some cases, therefore, it is possible to reach agreement within 45 days or less. In these cases, the proposed change will allow redundancies to take effect 45 days earlier. This is the difference between the 90 days before dismissals can take effect under the current legislation, and the 45 days at which dismissals can take effect under the proposed legislation, **assuming that the consultation process has been completed within these 45 days.**
72. 45 days, therefore is the maximum number of days by which the period before a business can effect dismissals will be reduced as a result of the proposed change. If more than 45 days is required for agreement to be reached in consultation, this will reduce this impact of the change. If between 45 and 90 days are required, the impact will be a reduction of 90 minus the number of days required. If more than 90 days are required, the impact will be equal to zero, as the previous 90 day minimum will not have been binding.

**Chart 6. Government consultation responses – how long does it take to reach agreement for 100+ redundancies?**



Source: Business and legal responses to BIS Collective Redundancies Consultation

73. Chart 6 is drawn from business and legal responses to the BIS Consultation on Collective Redundancies, wherever these provide an indication of how long it takes to reach agreement in a consultation. These are divided into categories each covering a range of days and also by whether the consultee stated that the number given was true

always, true usually, or was a one-off example. Where a range of days is provided, the midpoint of the range was used to determine the category assigned – for example, “between 30 and 90 days” would be coded to 60 days, or the “46-60” category. Responses of “at least 30 days” or “less than 90 days” were treated as if they read “between 30 and 90 days”. Multiple responses were allowed, usually were a consultee described both the usual case as well as one-off or extreme example.

74. We base our assumption on how many days earlier dismissals can take effect following the proposed change by using the data in Chart 6. There are 32 responses in total. Of these, 16 state that agreement can be reached in 45 days or less. For these, the maximum 45 days’ reduction will take place. 5 state that over 90 days are required – implying zero days’ reduction. For those in the intermediate categories, we assume the midpoint of the category to be the number of days required. We do not use exact numbers of days as provided by each consultee because most consultees gave a range rather than a precise number. Therefore each response in the 46-60 day category implies 53 days required to reach agreement, or a (90 minus 53 equals) 37 day reduction. The response in the 61-90 category implies 75.5 days required, or a (90 minus 75.5 equals) 14.5 day reduction.

75. We calculate the weighted mean number of days’ reduction as:

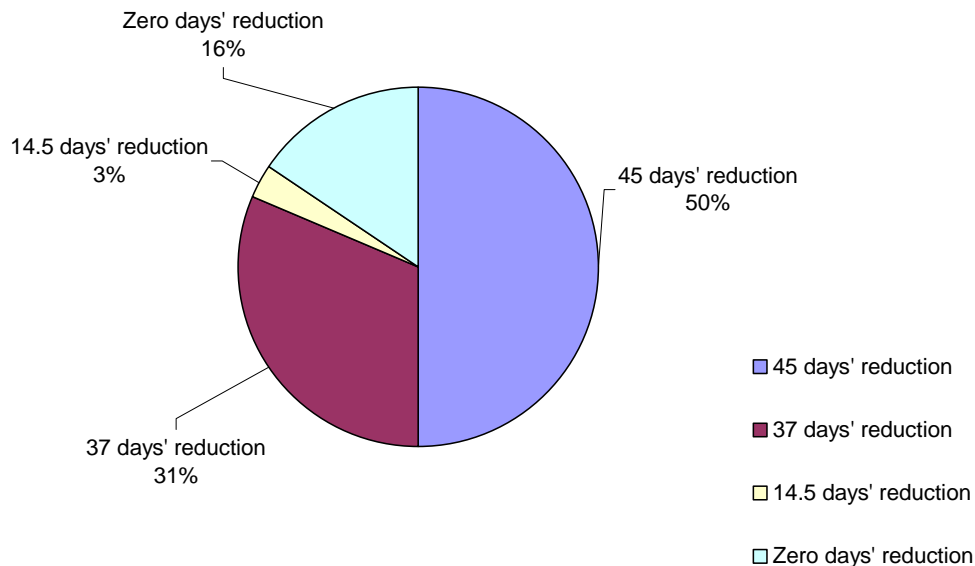
- $(16 \times 45 \text{ days' reduction} + 10 \times 37 \text{ days' reduction} + 1 \times 14.5 \text{ days' reduction} + 5 \times 0 \text{ days' reduction}) / 32 \text{ responses}$ , equals:
- 34.51 days’ reduction on average.

76. There are a number of circumstances where the employer may not dismiss employees immediately after the minimum period has elapsed. Redundancies arising from well planned structural changes such as for off-shoring, is an example where employers may not dismiss immediately after the consultation is complete. Such firms will not benefit from a reduction in the number of days at which dismissals can take place from 90 days to 45 days if they are currently dismissing staff after 90 days. The consultation did not yield any specific evidence that firms run consultations significantly in advance of the dismissal date, However a number of consultees did evidence that they would see no benefit from the changes as dismissals would not occur until after a 90 day period. The analysis of consultation responses factors in that some firms will see no benefit as they will dismiss staff after 90 days or more.

77. The chart below shows that based on the Government consultation responses we have accounted for **around 16% of collective redundancies not resulting in any labour cost savings** as a result of reducing the point at which dismissals can start. This is the best approach given the available evidence base.

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**Chart 7. Share of assumed number of days of labour costs saved by employers**



Source: BIS analysis of Government consultation

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78. From this, the methodology for monetising savings in wage and non-wage labour costs is as follows:

- (A) Number of people made redundant as a result of collective redundancy situations involving 100 or more people: 96,773 based on European Restructuring Monitor data.
- (B) We have calculated the weighted basic median weekly pay by share of large scale redundancies in each sector using data from ASHE 2012 and European Restructuring monitor at £444.74 plus 17.8 per cent non-wage labour costs (source: Eurostat<sup>3</sup>). This gives a median weekly labour cost of £523.91. We calculated a weighted median wage by share of large scale redundancy in each sector to provide a more accurate measure of wages.

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<sup>3</sup> Eurostat publishes information on labour costs. This shows that for the UK, wages and salaries make up 84.9 per cent of labour costs. (2012 provisional data on businesses with 10+ employees). Non-wage costs make up 15.1 per cent of the total, or 17.8 per cent of wage costs.

**Table 3. Estimated weighted basic median weekly wage by sector of large scale redundancies**

	Number of 100+ redundancies 2002-2011	% of redundancies	Median Weekly wage (ASHE)	Weighted wage contribution
Agriculture/fishing	789	0.1%	£300.7	£0.2
Construction	12,031	1.2%	£470.9	£5.9
Education	4,358	0.5%	£395.0	£1.8
Financial services	164,025	16.9%	£557.7	£94.5
Health / social work	42,874	4.4%	£344.3	£15.3
Hotels / restaurants	4,325	0.4%	£195.4	£0.9
Manufacturing	251,004	25.9%	£432.3	£112.1
Mining and utilities	36,228	3.7%	£574.7	£21.5
Other services	32,748	3.4%	£312.7	£10.6
Public administration and defence	149,323	15.4%	£516.5	£79.7
Real estate / business activities	33,497	3.5%	£404.6	£14.0
Retail	100,433	10.4%	£279.9	£29.0
Transport / communication	136,102	14.1%	£421.2	£59.2
<b>Total</b>	<b>967,734</b>	<b>100.0%</b>		<b>£444.74</b>

Source: ASHE 2012 and European Restructuring Monitor 2002-11

79. We have considered in this impact assessment the effect of firms trying to minimise their labour costs during a collective redundancy. For example firms may decide to reduce overtime payments (we have used basic wages which exclude overtime payments in this impact assessment). There may also be some workers who are on contracts which allow their employer to reduce the wages of workers during the collective redundancy period. These contracts could include 'zero hours'. There is no single legal definition of a zero hours contract. The term is used to describe a range of working arrangements including people directly employed by a business, but not guaranteed any hours of work (sometimes referred to as a casual contract, nil-hours contract or variable hours contract);

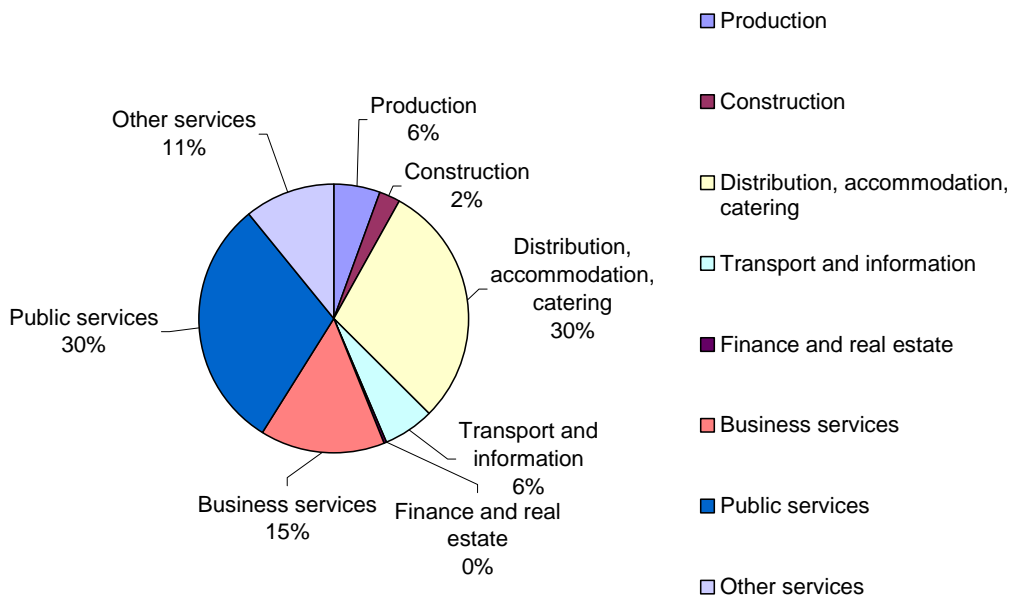
80. The Chartered Institute of Personnel Development (CIPD) estimate that around 4% of employees in the labour market are on 'zero hours' contracts. We examined the sectoral distribution of these workers based on ONS Labour Force survey results and it revealed that distribution, accommodation and catering, business services and public services account for 74.9% of workers on these contracts. However, the share of collective redundancies in these same sectors is only 19%. Based on the scale of 'zero hours' contracts and the sectoral distribution we have not adjusted the weekly wage paid to workers to account for these types of contracts.

### Box 1: Estimates of workers on 'zero hour' contracts

1. The ONS Labour Force Survey estimates the number of people engaged on zero hours contracts is 250,000 in the 4th quarter of 2012. The Labour Force Survey, interviews around 42,000 households and 100,000 people each quarter. It is the main source of labour market data for government and other analysis. It records information from the perspective of the individual and/or household, and therefore relies on the individual's awareness of their employment status and their workplace.

2. CIPD subsequently published results of a survey of employers that they undertook which estimated that over 1 million people were engaged on these contracts. They defined a zero hours contract in the survey as "an agreement between two parties that one may be asked to perform work for the other but there is no set minimum level of work or pay. The contract will provide what pay the individual will get if he or she does work and will deal with the circumstances in which work may be offered (and, possibly, turned down)". Both the Labour Force Survey and the CIPD figures are a sample, not a census, and the Labour Force Survey also relies on people self-selecting the type of contract they are engaged on.

Chart 8. Distribution of zero hours contracts by LFS broad sector 2012 Q4



Source: ONS Labour Force Survey

- (C) Time saving from removing the minimum time period for consultation (in other words how much quicker redundancies might take effect) in weeks. The assumption (as outlined above) is that this saving is 34.51 days, or 4.93 weeks
- Total labour cost savings = A \* B \* C, this is 96,773 \* £523.91 \* 4.93 = £250.0 million

81. We adjust the total labour cost savings to account for situations where a firm is facing bankruptcy or closure and employees may not be receiving full wages. It is difficult to estimate the labour cost savings for bankrupt or closure firms because of the available



evidence. Also, there are no statutory minimum periods which employees must continue to be employed for in a situation of bankruptcy or closure. The type of insolvency situation will determine what happens to the employment contract and payment of wages (more details can be found in the box below).

### **Box 2: Different types of insolvency situations**

Depending on the insolvency situation there will be different outcomes for contracts of employment and the payment of wages. Below are three examples of insolvency situations that may cover workers who are in a firm that is making collective redundancies due to bankruptcy or closure.

**1. Compulsory liquidation** - the effect of compulsory liquidation is to automatically terminate all employee contracts with immediate effect. The employee will usually have a claim for wrongful dismissal i.e. for their notice pay (unless the correct period of notice was given which is usually unlikely).

**2. Administration** - employment contracts do not automatically terminate on the appointment of an administrator.

**3. Administrative receivership** - subject to some exceptions, employees are not immediately affected by the appointment of an administrative receiver and there is no automatic termination of contracts. However, there are some exceptions e.g. where the appointment is accompanied by an immediate sale of the business.

82. Based on current available evidence there is not a direct evidence source for the labour costs incurred by firms that are bankrupt or closing. Available evidence from the 2011 Workplace Employment Relations Study (WERs) shows that 74% of private sector workplaces took some action in response to the recession. The action taken by private sector workplaces during the recession (a period where firms experienced a reduction in demand) is partly analogous to a situation where a firm is bankrupt or closing. The actions taken by private sector firms in response to the recession are presented in the table below. The table shows 39% froze or cut wages, 17% reduced paid overtime, 13% reduced agency staff, 16% reduced basic hours, 7% reduced non-wage benefits and 3% enforced unpaid leave.

**Table 4. Actions taken in response to the recent recession (%)**

	Private	Public	All
Freeze/cut in wages	39	63	42
Freeze on filling vacant posts	26	44	28
Change in the organisation of work	22	35	24
Postpone workforce expansion	21	22	21
Reduce paid overtime	17	23	18
Reduce training expenditure	14	32	16
Reduce use of agency staff	13	31	16
Reduce basic hours	16	6	15
Compulsory redundancies	14	9	14
Voluntary redundancies	5	23	7
Reduce non-wage benefits	7	7	7
Enforced unpaid leave	3	2	3
Increase use of agency staff	2	4	3
Other response	3	5	3
No action taken	26	11	24

Source: The 2011 Workplace Employment Relations Study (WERs)

83. Given the available evidence provided in WERs, the variety of insolvency situations and that there is no statutory minimum employment period for a situation of bankruptcy it is not possible to quantify the labour cost savings for bankrupt or closure situations. Within our calculations we reduce our labour cost estimates by 21% to reflect that 21% of redundancies are due to bankruptcy and closure (see Chart 5). There will be some cost savings to bankrupt or closure firms but we do not quantify in this impact assessment. Any wage savings from bankruptcy collective redundancies are not included in our labour cost savings estimate.

Adjusted total labour cost savings (after excluding bankrupt or closure situations)

84. Total labour cost savings (after adjustment) =  $0.79 \times \text{£}250.0 \text{ million} = \text{£}197.5 \text{ million}$

85. This calculation shows that relative to the current regulatory position, there may be labour cost savings for those wanting to make large scale redundancies of 100 or more people of up to **£197.5 million**.

86. **Reduction in output that would have been produced.** The *net* savings to employers will be the total labour cost savings less the output that this labour would have produced. There are two key reasons to believe that this loss of output will be lower than the reduction in labour costs (and that there would be net savings).
87. Firstly, the decision to make large scale redundancies will be taken because there is not enough value produced for the cost of this labour.
88. Secondly, whilst a collective consultation is underway, consultees in focus groups agreed with the view from the Call for Evidence that the collective consultation process itself reduces output, whilst impact on morale means that labour productivity falls and so output is lower.
89. The consultation asked what happens to regular business when large scale collective consultation is undertaken. BIS also probed the issue in focus groups. The answers suggested a lot of variation by sector and by reason. Many employers acknowledged that morale was affected by collective consultation, and that there was a significant impact on productivity which fell (this will affect all employees, not just those that eventually get made redundant). However, most felt that there was an impact on performance, and a consensus view was that although business-as-usual activity could often continue, implementing change or new innovations in ways of working would not be possible.
90. **Productivity Benefits:** A number of respondents to the Call for Evidence and consultation (through focus groups) highlighted that during collective consultation exercises the impact of that consultation can be very disruptive. It can affect staff morale, and lead to a reduction in productivity both through impact on morale and the time needed to deal effectively with the consultation. Some staff will leave to take-up other posts. In addition, collective redundancy exercises often happen due to internal restructuring or bankruptcy/closure. Focus groups also highlighted the view that changes to more productive ways of working were almost impossible to make in the midst of collective consultation. We have not monetised the impact of reducing the negative effect that consultation can have on those workers who are not in the end made redundant. Therefore, the monetised benefit of the proposed options is likely to be an underestimation.
91. Reducing the minimum period should speed up the movement of resources to more productive uses across the economy. It is not possible to quantify this impact.
92. This option would retain some specific regulation about the length of time needed before dismissals can take effect. As a result it is less likely that this option would stop entirely the reliance on procedure because a differential will still exist between proposals for 20 – 99 redundancies, and proposals for large scale (100 plus) redundancies. That said, as large scale redundancy situations would only need to require a further 15 days than those involving 20 – 99 employees the incentive to change behaviour due to the regulation is significantly reduced.
93. **Cost of lost output:** Putting a value on the output that would have been produced during a collective redundancy consultation period is difficult. The responses of staff to collective consultation vary across sectors and situations. The reasons for the collective consultation also matter.
94. In estimating the output loss we have not included workers who produce output that is greater than their labour costs. The most likely case that this will occur is in instances where workers are productive but there are other cost cutting measures such as pre-planned outsourcing or offshoring that lead to collective redundancies. Firms who decide to make UK redundancies because of outsourcing and offshoring may in these cases recover some of the value of output loss by moving output production. We have not explored this in this impact assessment as quantification of productivity and labour savings for this specific group is not possible because it would be disproportionate to do

so (this is consistent with the ‘impact assessment toolkit’)<sup>1</sup>. In addition this is a relatively small group that we consider would not be significant, as most are likely to make no savings from the change to 45 days. Chart 5 showed that only 1% of collective redundancies are due to outsourcing and 6% because of offshoring. In cases where redundancies normally arise from pre-planned structural changes such as for off-shoring, employers will have more time to plan and complete this process and are unlikely to need dismissals to take effect immediately after the minimum period ends. Since we remove this group from our considerations for labour cost we also do not include them for the purpose of considering any reduction in output, to be weighed against those labour cost savings.

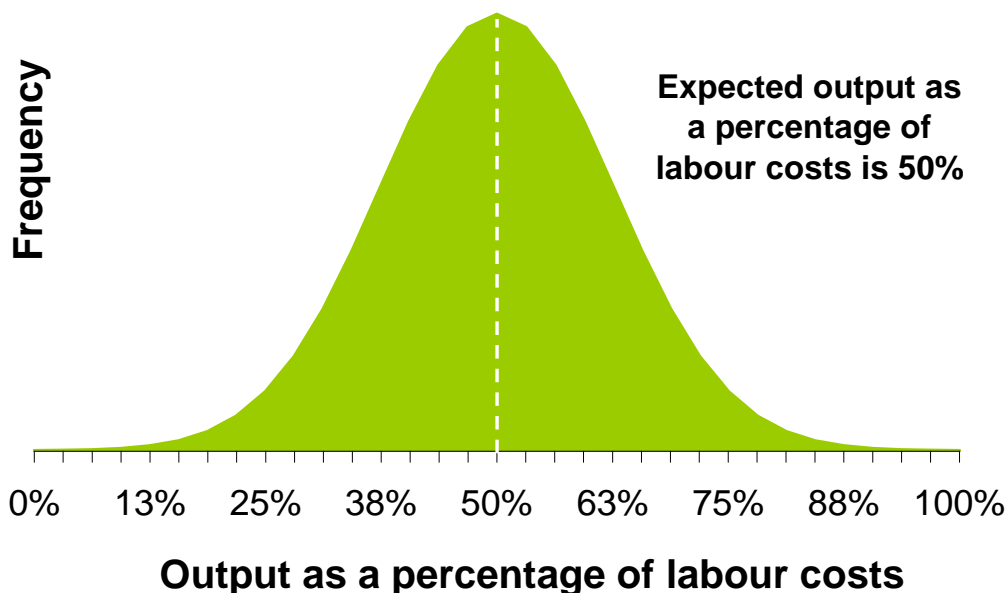
95. As illustrated in Chart 5, there are different reasons why collective redundancy situations arise. In some cases, it is because of bankruptcy or closure (21 per cent of cases). In other cases it is due to a fall in demand. In some of these situations there will be next to no output produced during collective consultation and this can in itself be the reason for proposed redundancies, in others output will be much higher.
96. We therefore begin with the assumption that in 21 per cent of cases, there will be zero output produced. In the 21 per cent of cases due to bankruptcy or closure, output will be severely affected and often reduced to zero. While some workers in these situations will continue to produce output, there will also be many workers in other types of redundancy situations who are being made redundant because their output is completely redundant – that is, zero.
97. Even beyond these 21 per cent of cases, it would still be expected that the output of workers to be made redundant is lower than the cost of their labour. For example a retail store may have more workers than is necessary to serve the number of customers it has (there may be a drop in demand which means this occurs and the retail store can’t dismiss workers until the end of the collective redundancy consultation). Some of the workers at this store will be at less than full productivity given the drop in number of customers. The degree to which the worker is below full productivity will vary. The range of productivity of workers who are in a firm where there is a collective redundancy consultation can also feasibly include full productivity (depending on their specific job role and job tasks).
98. We wish to capture the fact that not all of the workers involved in the remaining 79% of cases (those not due to bankruptcy or closure) will have been producing enough to justify their labour costs. As we expect their output to vary between the extremes of zero and 100% of labour costs, we assume that the value of their output is normally distributed between 0 and 100% of their labour costs. A normal rather than a uniform distribution has been chosen, because it was not felt to be realistic to have an equal number of workers at each level of productivity. A normal distribution describes a distribution where a few workers are at little productivity (above zero), the majority of workers to be at a productivity level greater than zero but less than full productivity, it also shows a few workers near full productivity. We reasonably assume symmetry of the normal distribution which results in an average productivity of output being 50% of labour costs. This average is less than full productivity which supports the arguments presented above which set out why on average you would expect less than full productivity of workers who are experiencing a collective redundancy.
99. **We assume that in bankruptcy and closure situations (21% of collective redundancies) output produced by workers is zero.** For the remaining 79% of collective redundancies, output that would have been produced would amount to 50% of labour costs. Figure 2 shows the derivation of this assumption. Overall, therefore, the output that would have been produced will amount to 50% of labour costs for the 79% of collective redundancy not in a bankruptcy situation.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31608/11-1112-impact-assessment-toolkit.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31608/11-1112-impact-assessment-toolkit.pdf)

100. As the total labour costs saved amounted to £197.5m, the value of output lost amounts to 50% of this, or **£98.8m per annum**. This implies that the **quantifiable annual net benefit to employers is £98.8m** (£197.5m less £98.8m)<sup>2</sup>.

**Figure 2. Assumed distribution of worker output in relation to labour costs**



Notes: The above distribution applies to the 79% of collective redundancies which are not because of bankruptcy or closure

## Employees

101. *Employees who are made redundant after a collective redundancy consultation:* It is worth noting again that this option will apply to around 96,800 employees (according to European Restructuring Monitor data), which is a very small percentage of the employee population. Those made redundant not as part of a large scale (100 people or more) exercise will be unaffected, and currently have a 30 day minimum period (for cases of 20 or more people) or no minimum period for smaller numbers of proposed redundancies. The impact on employees is that where they are in a large scale collective redundancy and they are made redundant, their redundancy situation may happen sooner.

102. *Reduction in wages received:* This would mean wages saved by employers are matched by wages lost to employees. The calculation for establishing what that reduction in wages paid by their existing employer is, is the same as that to establish the employer saving, with the exception that non-wage labour costs would not be included, this means **£167.6m less received in wages** from current employers.

103. These lost wages are the loss to the employee of no longer being with their current employer for an additional 35 days. Using the above methodology to examine consultation responses only, we estimated that collective redundancy consultation can be considered to last on average around 55 days, which would mean an average saving of around 35 days. Therefore reducing the point at which redundancies can take place from 90 days to 45 days will result in around 35 days on average in lost wages for employees (of course some businesses will have shorter consultations and save more and some will have longer consultations and so save less). However, on average, we estimated the employee potentially benefits from having an additional 35 days to spend

<sup>2</sup> Figures have been rounded to the nearest £100,000.

as they choose, whether on new employment, seeking new employment, or leisure. Therefore, in estimating the total welfare impact on employees, we have to take into account the value to each of these employees of their next best option outside of their current employer.

104. The Department for Work and Pensions' cost-benefit framework<sup>3</sup> values the lost leisure resulting from moving from not being employed to being employed at 25 per cent of earnings when in work. On this basis, if all employees who are made redundant sooner as a result of this policy spend this additional time purely as leisure, their net loss comes to 75 per cent of their wages.
105. However, it is likely that many of those made redundant will spend at least some of these extra days either in, or seeking new employment. Indeed, one of the key benefits to this policy is that enables labour to be deployed in more efficient ways more quickly. For these employees, the value of this additional time will be considerably higher than 25 per cent of their lost earnings. In some cases, a shorter minimum period will allow the employee to move to a better-paid job more quickly, incurring a net benefit.
106. We therefore expect that – similar to their output – the value of a worker's best outside option will vary within a known range, but lack clear evidence on the details of this distribution. We therefore again assume that this follows a uniform distribution – this time, between 25 per cent and 100 per cent of the value of their wages (here we assume that if they had a better outside option they would already have moved to it.) This implies that the value of a worker's best outside option will be 62.5 per cent of the wages lost, or **£104.8m**
107. This implies a quantifiable **net cost to employees** of £167.6m - £104.8m, which is equal to **£62.8m**.

### **Box 3: Indirect benefit to employers from employees best 'outside option'**

As noted above employees potentially benefit from an additional 35 days to spend as they choose, whether on new employment, seeking new employment, or leisure. For individuals who enter employment this will result in some indirect benefits for their new employer.

Indirect benefits for new employers will consist of filling vacancies that would have not been filled and filling vacancies quicker, allowing these firms to produce additional output and profits. We have not monetised this impact as there is uncertainty over the extent to which redundant employees will find new employment within the 35 days.

As this benefit is indirect it does not affect the EANCB figure.

108. *Possible reduction in time to search for new employment:* Some respondents to the Call for Evidence argued that a 90 day period does allow time for employees to look for alternative employment. During the minimum period, some individuals will actively seek alternative employment; whilst others will wait for receipt of their redundancy notice (after consultation) because at consultation stage it is often unclear which employees will actually be made redundant. BIS discussed this point further with consultees in focus groups. Employers reported that collective consultations often led to their highest calibre staff seeking and finding work elsewhere, before the end of the consultation. However, it appeared that most employees affected did not actively engage in job search due to waiting an outcome of the collective consultation.
109. For those that actively seek employment before redundancy notices are issued, they may have less time for this job search activity. The average duration of unemployment should

<sup>3</sup> Found at <http://research.dwp.gov.uk/asd/asd5/WP40.pdf> "Review of the DWP Cost Benefit Framework and how it has been applied", DWP working paper no 40, 2007.

not increase as a result of these measures. Once a collective consultation has concluded and the minimum period has passed, redundancy notices can be issued, but employees are then given their notice period. Standard notice periods vary, but the most typical lengths are one month and three months. The purpose of notice periods is to give individuals time to search for employment and sort out their financial situation. This is not the purpose of minimum periods, because at collective consultation stage in most cases individuals are not *certain* that they will be receiving a redundancy notice themselves. It is likely that at least 50 per cent of those involved in collective consultation will not actually be made redundant.

110. On the other hand, some respondents to the Call for Evidence highlighted a friction between the employees' desire to move on before the end of the consultation and their desire to receive their redundancy payout. The length of the minimum period can exacerbate this problem especially where this leads to difficult decisions with job offers that would require them to resign from their current employment before they are made redundant.
111. At any one time there are around 450,000 job vacancies (as shown by ONS Labour Market Statistics). If people do become unemployed, most leave unemployment quickly. Of those making a new Job-Seeker's Allowance (JSA) claim, over half have left JSA within 3 months, over 70 per cent have left within 6 months, most to new jobs (as shown by administrative data).
112. *Subsequent employment:* There is evidence (including a paper by Borland et al "They Get Knocked Down. Do They Get Up Again? Displaced workers in Britain and Australia") that spells of unemployment can lead to lower future earnings. However, as discussed, it is unlikely that these measures would affect this further.
113. *Employees involved in collective redundancy consultations who are not made redundant:* It is not just the employees who are made redundant who are affected by collective redundancy consultations. From the data sources we have there is uncertainty, but less than 50 per cent (and quite possibly even less than 20 per cent) of those subject to collective consultation were actually made redundant. Collective consultations will involve a pool of employees, from whom the employer will need to make decisions about who will receive a redundancy notice. All employees involved in the consultation face uncertainty and stress over whether they will have their current job going forward, and equally over the position of their friends and colleagues. As this proposal means some reduction in minimum periods, employers will be able to conclude consultation earlier and it could reduce the length of time for uncertainty.

## Exchequer

114. For the reasons set out above in paragraphs 108 – 110, we do not anticipate an impact on costs relating to job seeker's allowance (JSA). In general, collective consultations will cover many more employees than are actually made redundant, therefore although some search for alternative employment in this time, others will wait for confirmation that they are actually going to be made redundant. The proposals should not affect average duration of unemployment, therefore the amount of time spent claiming JSA should remain the same and there would be no exchequer impact.
115. There is a risk that in relying more on agreement between employers and employees to determine when consultation is complete that there may be more disputes about this, which could result in additional claims to employment tribunals. This would be anticipated in the short term. Data from Her Majesty's Courts and Tribunals Service (HMCTS) shows

that in the last financial year (2011-12) there were 8,000 claims accepted to employment tribunal for failure to inform or consult about redundancy. Many of these claims will be multiple claims (a number of individuals claiming against the same employer). This effect will be mitigated in the long-term by successful implementation of option 3 which should make employers' and employees' obligations clearer.

## **Option 2b: Reduce the minimum period to 30 days**

### **Employers**

116. *Reduction in management time spent.* As with option 2a, we do not anticipate a reduction in meetings or time spent actually consulting.
117. *Reduction in wages and non-wage labour costs paid by employers carrying out collective redundancies as a result of the removal of the 90 day minimum period. Reduction in output that would have been produced.* This option would reduce the minimum period by 15 days relative to option 2a (45 days). However, a reduction of the minimum period to 30 days would be unlikely to lead to all consultations being restricted to 30 days. This is because the circumstances of each consultation are different. The employer has to be confident that they have met the statutory requirement to consult with a view to reaching agreement. This means putting proposals to employee representatives, giving them time to respond and then showing that they have considered those responses. For some employers it will take them more than 30 days to achieve this. In addition, in some circumstances, the employer may be looking for rescue solutions - for example a management buyout, or Government assistance - and will extend the period to give time for those rescue plans to be arranged. Therefore, businesses would not necessarily want to reduce their consultation periods to 30 days in all cases.
118. Further, the introduction of a 45 day minimum period could result in a number of employers with complex organisational structures streamlining their processes so that they work to a 45 day consultation timetable in all cases. This would mean they do not need to decide how an establishment is defined in order to determine whether they meet the criteria for a 30 day minimum period (20-99 employees in a single establishment) or a 45 day minimum period (100+ employees in a single establishment). This effect may also reduce the difference in impact between options 2a and 2b.
119. The reductions in both labour costs and output, and therefore net employer benefit, are the same as option 2a because on average the current length of consultation is estimated to be greater than 45 days. Therefore reducing the minimum period at which redundancies can take place to 35 days is not expected to offer any additional impact compared to a minimum period of 45 days. **The quantifiable annual net benefit to employers is £98.8m.**
120. *Productivity Benefits:* Again it is anticipated that this option would entail productivity benefits from allowing employers to change ways of working more quickly. Given that the anticipated time saving is the same across options 2a and 2b, the productivity benefits would be similar, but are not quantified.

### **Employees**

121. As for employers, the impact on is the same as option 2a the **quantifiable net cost to employees is £62.8m.**
122. This option is likely to lead to a further shortening of the minimum period and therefore could bring forward the time when a redundancy takes effect, through earlier consultations. This may provide benefits to employees in reducing uncertainty and allowing them to seek alternative employment more quickly. It also could lead to less time in their current place of employment receiving wage payments. Similarly for employees



not facing redundancy it will decrease the period of uncertainty before their situation is known.

## **Exchequer**

123. Altering the minimum time period as in this option may lead to more challenges at employment tribunal under the redundancy - failure to inform/consult jurisdiction. While this impact is likely to be greater than under option 2a, it is likely to be a short-term impact.
124. There is the potential that further reducing the minimum period could result in employees affected by very large-scale redundancies having less access to Government support and thus finding it more difficult to find alternative training or employment opportunities. However, the Call for Evidence conducted, suggested that employers in these situations are unlikely to conduct shorter consultations and so the impact should be minimal.

## **Option 3: Guidance**

125. The guidance currently available does not set out clearly what constitutes good quality consultation. Nor does it address important issues including scope (for example when fixed-term appointees should be included in the threshold count) and the definition of an 'establishment'.
126. Improved guidance will provide a useful tool for employers and employees' representatives to allow them to gain a better understanding of the point at which consultation should start, what it should cover, how it should be conducted and when it can be deemed to have finished. It will, however, leave sufficient flexibility to allow the consultation to be tailored to the unique circumstances of the individual consultation.
127. *Certainty for Employers*: This will provide greater certainty for employers about their rights and responsibilities under the legislation. This will, in turn, allow them to conduct better quality consultation and reach better decisions. Employees will be more engaged in the process and will therefore suffer less reduction in morale and productivity.
128. *Possible improvement in quality of consultation and reduction in stress and uncertainty*: There is evidence of employers avoiding the 90-day minimum period and evidence of both parties prolonging, delaying or drawing out consultation for longer than necessary. These effects combined constrain consultation options, and union engagement to a lower level of management.
129. If a better quality consultation can be achieved with maintenance of reasonable relations on either side, then the impact on the employee is likely to be positive, with some reduction in the uncertainty and stress involved. This was an impact highlighted by some respondents to the Call for Evidence. A more constructive process should improve employee morale at a difficult time.
130. Employees would benefit from improved quality consultation as they will be better placed to find alternative employment or to understand how they fit into the organisation in the future.
131. There would be minimal costs to the Exchequer in establishing a Code of Practice. It is hoped that a Code of Practice will help to minimise the impact of legislative changes on the number of employment tribunal cases.

## **Option 4: Fixed term appointees**

132. Legislation would clarify that fixed-term contracts coming to their agreed end would not count towards triggering the need for collective consultation.
133. As employees on fixed-term contracts will already have agreed to the terms and date of the ending of their employment on an individual basis, it is unclear whether there are any benefits to employers or employees from collectively consulting when a number of such employees are coming to the end of their contracts. There is therefore unlikely to be any costs to either party of making it clear that such consultations are not required.
134. Therefore the only significant impact of this option will be the reduction in costs to management and employees arising from the uncertainty on whether consultations are necessary in such situations, as well as from any consultations that do arise from this uncertainty. It would also have some benefits similar to those resulting from better guidance on other aspects of collective redundancy law, such as improving business flexibility and reducing the impacts on morale and productivity. There would be most benefit to those employers who make regular use of fixed-term contracts, especially where their use or extension is dependent on external factors, or for specific short-term purposes.
135. There would be minimal costs to the Exchequer in clarifying the legislation.

### **Higher Education**

136. Higher Education was identified through the call for evidence and consultation as the sector most affected by the uncertainty over the requirement to collectively consult with regard to fixed-term employees. This is due to many Higher Education institutions having a high proportion of their staff under fixed-term contracts, due to external uncertainty over the demand for teaching or the availability of funding for research projects.
137. According to 2011 data from the Higher Education Statistics Authority, 60,320 out of 181,185 academics in UK institutions are on fixed term contracts, just under a third of the above total. For research staff this proportion appears to be much higher – 77% of respondents to the 2011 Careers in Research Online Survey reported that they were in a fixed-term contract.
138. Several universities mentioned in their responses to the Call for Evidence and consultation that due to the numbers of fixed-term contracts that come to an end at different times in a year, they have had to undertake collective consultations on an ongoing basis rather than as one-off exercises. They also note that in the majority of cases these consultations do not change outcomes.
139. The uncertainty over collective consultation with fixed-term employees can therefore lead to significant costs to HE institutions as things stand. It is expected that much of any direct benefits from this option would be the reduction of costs in this sector.

### **Familiarisation Costs**

140. Going through collective consultation on redundancies is a one-off event for the majority of employers. As a result they will be familiarising themselves with the process anyway each time they embark on collective consultation. This means that these proposals do not impose additional familiarisation costs relative to the status quo.

### **Wider impacts, Risks and Assumptions**

141. An equality impact assessment has been carried out and is included at Annex A. These policy proposals are not expected to impact disproportionately on any protected group.

142. The policy is not applicable to small businesses as it only applies in large scale redundancies.
143. It is possible, that some employers will not address the quality of consultation, but will simply impose an artificial timescale of 45 days for this. This could result in significant reductions to the length of some consultations over and above those envisaged and worse outcomes for employees.
144. Employers are free to dismiss their employees and re-employ them on altered terms and conditions of employment. Where this happens, they are currently required to consult as if it were a large-scale redundancy. Pursuing either option 2a or option 2b would make this easier, as it would not require 90 days' before dismissals can take effect. This could have an adverse effect on the quality of employees' continued employment, but would have a positive impact on employers' flexibility.
145. There is a further risk that a shorter minimum period could reduce the Government's ability to intervene in redundancies that could have a high social, economic or political impact. This could result in greater expense for the Exchequer due to longer-term unemployment of those affected. However, the Call for Evidence suggests that this risk is mitigated by the fact that, in the cases where Government can make a difference (for example in very large redundancies prompted by a single act such as disinvestment or a site closure), the employer tends to recognise the significance of their actions and runs either an extended consultation or offers an extended notice period. BIS consultation backed up this view.
146. As set out in Table 2, there have been concerns raised by some that the current collective redundancies regime harms international competitiveness. A possible indirect consequence of pursuing option 2a or 2b could be an improvement in international competitiveness. However, although minimum periods in the UK are longer, there are other factors which make the picture less straightforward. It is therefore unlikely that these measures would have a significant impact on the attractiveness of operating a business in the UK.
147. The impact assessment relies on data around the level of large scale redundancies. The assessment recognises there are limitations in this data, but does assume that recent historical averages continue. Large scale redundancies will tend to increase in periods of recession or economic downturn, and have been higher in recent years due to our recent recession. It is for that reason that a 10-year average has been taken, to try to limit impacts of recession.

## Sensitivity Analysis

148. Given there is some uncertainty in the amount of time that might be saved by amending the legislation on minimum periods it is important to consider how the net savings that have been calculated could be different.
149. **Time saved is less than 35 days:** The net benefits to employers in terms of reduced labour costs (offset by lost output) would fall in proportion with the number of days saved. This means for example if the time saved were 30 per cent less, the net saving to employers would also be 30 per cent less.
150. In quantifying the difference in impact between options 2a and 2b, we have assumed the same possible additional reduction in consultation times would take effect. The difference in impact between the two options is directly proportional to this assumption.
151. In addition, there is some uncertainty about how much output would have been produced by the affected employees where their redundancies take effect sooner. The central case presented (although this is believed to be conservative) assumes that output is reduced by 50% per cent. If this percentage increases, the net employer savings will increase proportionately.

### Direct costs and benefits to business calculations (following OITO methodology)

152. Consultation has confirmed that pursuing either option 2a or 2b would involve a direct net benefit to business. It would have no impact on small or micro businesses as the rules only apply where 100 or more people are proposed to be made redundant. It appears that this net benefit will be the same across those options as on average, the current length of consultation is estimated to be greater than 45 days. There is the potential to see slightly higher employer benefits (and in turn higher employee costs) in option 2a, but as noted it is not possible to quantify this difference.
153. Currently, employers are bound by regulation to wait longer than they often need to before dismissals can take effect, even though consultations may be completed much earlier. This means paying labour costs for longer than they would plan to in the way they wish to restructure their organisation.
154. Paragraphs 67 - 100 set out the calculation of annual net direct business impacts.
155. European Restructuring Monitor data shows that of large scale redundancies across the period 2002-11, 20 per cent of them were in predominantly public sector areas – public administration, education and health and social work. More recent data shows higher numbers of collective redundancy in the public sector, but we take 20 per cent, given that the current high level of public sector collective redundancies is likely to recede somewhat.
156. This means that the annual net employer benefits set out in paragraph 119 of £98.7m will need to be adjusted. 80 per cent of this figure will represent the annual net business benefit (£79.0m).
157. The **equivalent annual net benefit to business in 2009 prices is £66.4m.**

## Summary and preferred option

158. It is clearly important that employees are engaged in decisions which affect their future, and that this is done in a substantive, effective, and flexible way. A strong case was made by consultees for a combination of legislative change and improved guidance. The preferred option is therefore a combination of the non-regulatory option 3 alongside regulatory options 2b and 4. The Government believe this strikes an appropriate balance between ensuring employees are engaged in decisions about their future and allowing employers greater certainty and flexibility to take necessary steps to restructure.

<b>Table 5: Summary of Impacts</b>			
	<b>Costs</b>	<b>Benefits</b>	<b>Net Impact</b>
<b>Employers</b>	The output that employees would have produced in the additional time they worked for that employer during collective consultation (approx £98.8m)	Labour costs saved by employers due to redundancies taking place sooner (approx £197.5m)	OITO: this measure involves a regulatory out, and net benefit to employers.
<b>Employees</b>	Wages that would have been received during the longer minimum period, resulting in a net loss to employees (approx £167.6m)	Greater certainty over job situation for those subject to large-scale collective redundancies (employees made redundant and those that remain in the organisation). Most will be paid wages by alternative employers  Employees taking up best 'outside option' £104.8m.	Wages not paid from employer relative to current regulatory minimum period resulting in a net loss of approx £62.8m.
<b>Exchequer</b>	Small risk of increased tribunal claims in the short-term		Risk of minimal cost
<b>Economy-wide</b>		Resources move to more productive uses with less restriction	Likely to be positive impact on productivity but not measurable

159. In Table 5 above, it should be noted that under Employer Costs, in estimating output loss we have not included workers who produce output that is greater than their labour costs, for example where workers are productive but there are other cost cutting measures such as pre-planned outsourcing or off shoring that lead to collective redundancies (see paragraph 94). Quantification of productivity and labour saving for this specific group was felt to be disproportionate, especially given that this is a relatively small group.

160. It should also be noted that under Employer benefits that there will be circumstances where an employer does not dismiss employees immediately after the minimum period has elapsed and will therefore, not benefit from the reduction to 45 days. For example, redundancies from well planned structural changes such as for off-shoring, may plan not to begin dismissals until after a 90 day period (see paragraph 76).

## Annex A: Equality Impact Assessment

### Equality impact assessment

The Department for Business, Innovation and Skills (BIS) is subject to the public sector duties set out in the Equality Act 2010. Equality Impact Assessments are an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups. This Equality Impact Assessment takes a summary view of the equality impact of both proposals being taken forward by BIS on the rules regarding collective redundancy.

The proposals considered here are:

- Proposal 1: Reduce the minimum periods before dismissals can take effect
- Proposal 2: Improve Government guidance
- Proposal 3: Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations

The proposal's objectives are to create a simple, understandable process that promotes quality consultation and:

- allow the parties to engage in consultation that is best suited to their circumstances;
- improve business flexibility to restructure effectively;
- reduce business burdens; and
- ensure that affected employees are better equipped to re-enter the labour market after the redundancy.

The proposals are not expected to have a disproportionate impact on any protected group.

The Department for Business conducted a Call for Evidence between November 2011 and January 2012, and subsequently conducted a public consultation between June and September 2012. The responses to both the Call for Evidence and consultation did not highlight any specific equalities impact issues.

#### **Proposal 2 – Reduce the minimum periods before dismissals can take effect**

Currently, dismissals can only take effect after at least 90 days after 100 or more redundancies are proposed. In order to simplify the legislative framework, the Government proposes to reduce this to either 30 or 45 days to bring the minimum periods more in line with the minimum time period for effecting redundancies affecting 20-99 employees. The changed framework should provide for better quality consultation and better outcomes for both employers and employees.

The policy proposal is not expected to lead to a higher number of redundancies, nor is it likely greatly to reduce the time between the start of consultation and the dismissal taking effect. However, there is the potential that the proposed change will result in employees being dismissed up to 45 or 60 days earlier than is currently the case.

It is believed that this will not have an impact on the ability of employees to find alternative employment; indeed it is likely that the employees will be in a better position, emotionally, to seek alternative employment where the potential for improved consultation standards is

realised. It is possible that employees will lose out on up to 60-days pay from their current employer that they would receive under the current regime.

### **Proposal 3 – Improve Government guidance**

There is currently a lack of understanding amongst employers and employees of the law around collective redundancies. This is driving bad quality consultation that focuses too much on the process of consultation and not enough on the substantive issues at stake. In particular, confusion about the definition of an ‘establishment’ is leading some employers to break up redundancies into smaller chunks than might otherwise be the case and other employers to delay dismissals for longer than is legally necessary. Similarly employers and employees’ representatives do not always have an agreed understanding of the points at which consultation should start and end.

This confusion means that employees suffer from uncertainty about the process for redundancies and the point at which the decision as to whether they will face will redundancy will be made. It delays the start of consultation with individual employees and has a negative impact on employee morale and productivity. Employees are also uncertain about when they can or should look for alternative employment or training opportunities.

Improving the available guidance will allow the Government to offer a degree of clarity on some of the most contentious issues. This should help to improve the quality of consultation. We do not expect this to reduce the number of redundancies which take place, but we do anticipate that it will have a positive effect on the affected employees’ experience of consultation and redundancy. This should result in employees feeling more positive about the final decision and as a consequence better-equipped to seek alternative training or employment opportunities, potentially reducing the length of time that they spend in unemployment.

### **Proposal 4 - Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations**

Although it could be argued that consulting with fixed-term appointees at the end of their contracts could increase their chances of deployment, in reality employers will redeploy those appointees whom they believe are valuable to their organisations. It is not clear what additional benefit collective consultation does in these circumstances, given that appointees are fully aware of the end dates in their contract. This seems predominantly to be an issue in the Higher Education sector. Given how limited the overall impact of this change would be it is not expected to have a disproportionate impact on any protected group.

### **Characteristics of those Made Redundant**

In the remainder of this assessment we consider what is known about the characteristics of those made redundant. There are no detailed breakdowns of the characteristics of those involved in collective redundancy situations involving more than 100 people. Similarly there is no data to reflect the number of employees involved in consultations who are not subsequently made redundant. Data from the Labour Force Survey is available to show how redundancy rates (a measure of redundancies relative to the number of employees in the particular group) vary by gender and by age.

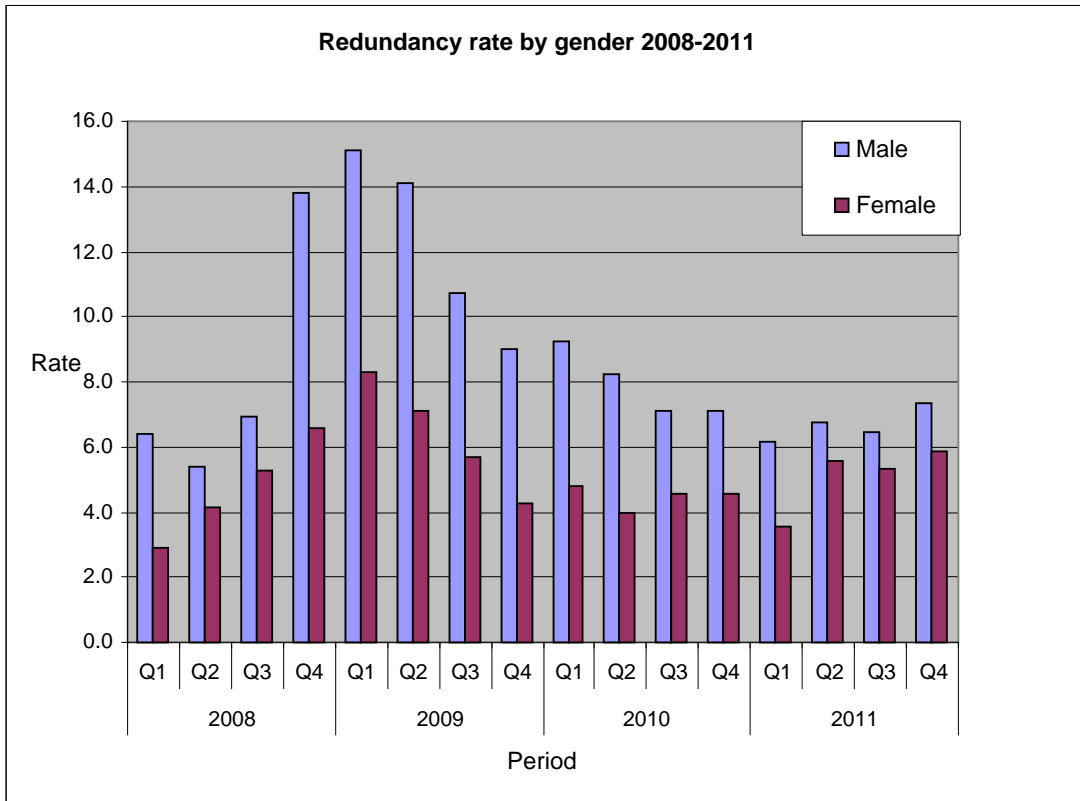
Further breakdowns by protected characteristics are limited by small sample sizes, but where available, these are discussed below.



## Gender

Chart 1 shows variation by gender, although this period covers the recent recession where redundancies disproportionately affected men. As the chart shows, in recent quarters, this gender gap has narrowed, probably due to more redundancies happening in the public sector.

**Chart 1 (Source ONS Labour Force Survey)**

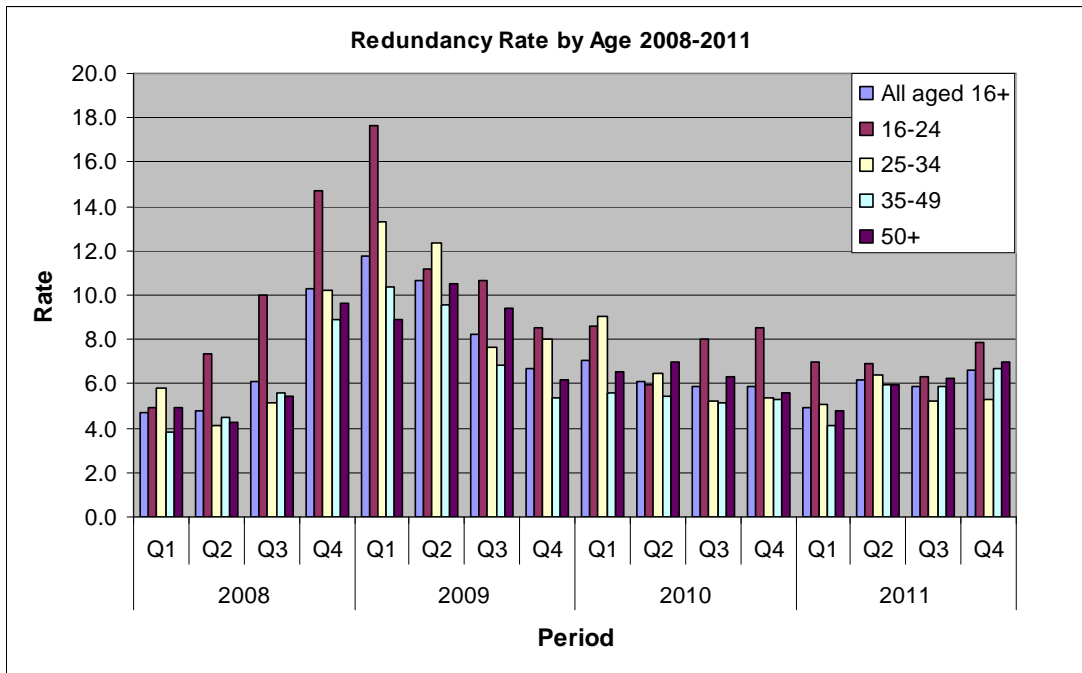


As far as this proposal is concerned it is hard to determine the gender proportions of those likely to be subject to large scale collective redundancies in the future. Further large scale redundancies in the public sector may affect women more, but manufacturing has typically also been a sector where large scale redundancies are more common. Here more men than women are employed.

## Age

Chart 2 shows redundancy rates by age. This shows that often the redundancy rate of 16 – 24 year olds is higher than the average across the working population, although the effect has been less marked in recent data.

**Chart 2**

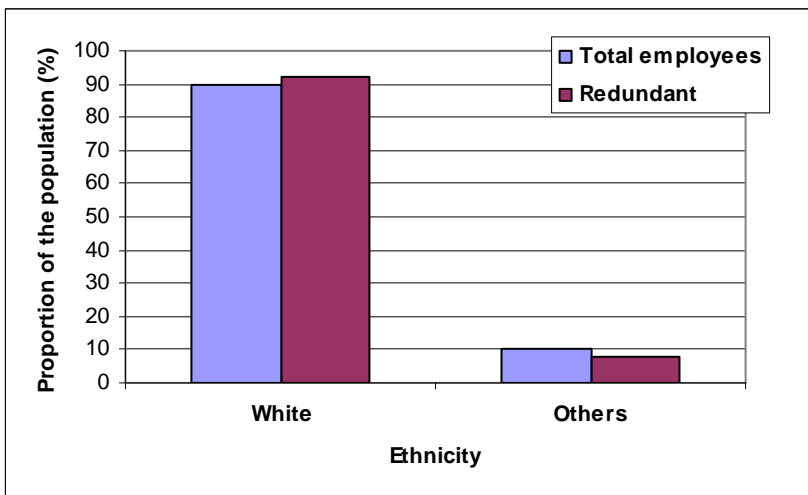


Source: Labour Force Survey

**Ethnicity**

Sample sizes do not allow us to look at a full breakdown of ethnic groups. All we can tell is that the proportion of white people amongst the population of those made redundant is slightly higher than the proportion in the employed population as a whole. For other groups this effect is the other way round.

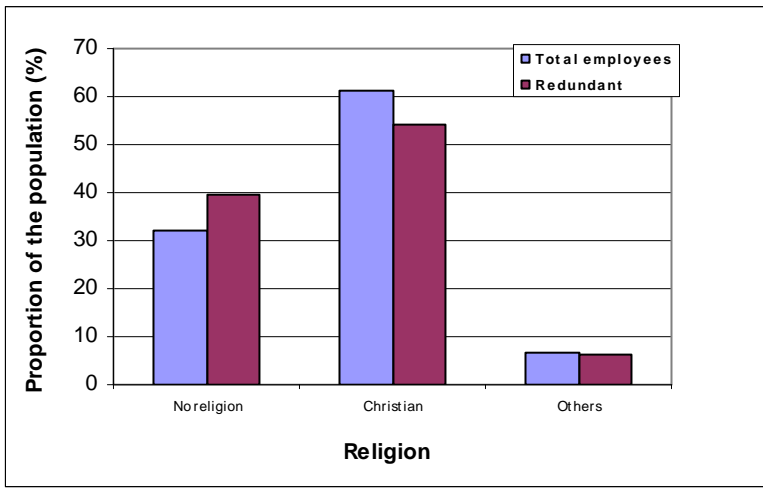
**Chart 3: Ethnicity – proportion of the working and redundant populations**



Source: Labour Force Survey

**Religion**

Similarly for religion we cannot see breakdowns by different religions, except “no religion” and “Christian”. Those with no religion are slightly over-represented in the population of those made redundant. This is the other way around for those stating they are Christian.



Source: Labour Force Survey

## Annex B: Cost and Benefit calculations

**Table B1: Costs and benefits of option 2a, reducing the minimum period to 45 days.**

**All figures in £m. Best estimates.**

Impact on business (%)	Direct impact on business	Cost or benefit	0	1	2	3	4	5	6	7	8	9	Nominal total	Present value total
		<u>Transition costs</u>												
		NONE												
		<u>Annual costs</u>												
80%	YES	Lost output	98.8	98.8	98.8	98.8	98.8	98.8	98.8	98.8	98.8	98.8	987.5	850.0
0%	NO	Lost wages	167.6	167.6	167.6	167.6	167.6	167.6	167.6	167.6	167.6	167.6	1676.0	1442.6
		<u>Annual benefits</u>												
80%	YES	Labour cost saving	197.5	197.5	197.5	197.5	197.5	197.5	197.5	197.5	197.5	197.5	1975.0	1700.0
0%	NO	Worker outside option	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8	104.8	1048.0	902.1
		<u>Totals</u>												
		Total cost	266.4	266.4	266.4	266.4	266.4	266.4	266.4	266.4	266.4	266.4		
		Total benefit	302.3	302.3	302.3	302.3	302.3	302.3	302.3	302.3	302.3	302.3		

Source: BIS estimates. For the purposes of OITO, net cost to business are presented in 2009 prices. This IA has a 2012 price base year and the EANCBS figures have been adjusted accordingly using HMT's GDP deflator. We have used the share of large scale redundancies that occur in the private sector from European Restructuring Monitor data to estimate percentage impact on business for annual costs and benefits.

## **Annex C: Post Implementation Review**

Changes made to the Collective Redundancy rules will be subject to post-implementation review.

This will look at whether the objectives of the changes have been met and whether any of the risks have been realised (or indeed whether any other unintended consequences have emerged). This will require review of information including:

- European Restructuring Monitor data on large scale collective redundancies (for example are there changes to the proportions of situations involving 100 or more employees)
- Administrative data on employment tribunal claims relating to consultation of employees in collective redundancy situations
- Feedback from business stakeholders on how the situation has changed, including work to determine changes in employer time and costs
- Feedback from employee stakeholders, including for example Jobcentre Plus, on what the impact has been on employees.