

<b>Title:</b> Workplace harassment: legal protections under the Equality Act 2010 <b>IA No:</b> <b>RPC Reference No:</b> RPC-GEO-5093(1) <b>Lead department or agency:</b> Government Equalities Office (GEO), Cabinet Office <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 7/10/2021			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary Legislation			
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Fit for purpose
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**Cost of Preferred (or more likely) Option (2019 prices, 2020 present value)**

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£31.1m	-£44.8m	£4.6m	23.2m

**What is the problem under consideration? Why is government action or intervention necessary?**  
The Equality Act 2010 ('the Equality Act') sets out clear protections against harassment in the workplace, making employers legally liable for the harassment of their staff in the workplace, subject to certain conditions. In 2019 GEO consulted on a potential new duty, protections from third party harassment, protections for volunteers and interns, and employment tribunal time limits, to understand the issue, receiving 133 technical responses. This demonstrated that despite these protections, rates of workplace sexual harassment continue to be unacceptably high, that employers are not taking sufficient steps to protect their staff, and that employees experiencing harassment may face barriers to justice, for example time limits in the tribunal system. The Government response commits to a number of legislative measures which will provide further protections to staff and motivate employers to take all appropriate action to prevent it.

- What are the policy objectives of the action or intervention and the intended effects?**
- To ensure that employers take 'all reasonable steps' to protect their staff from workplace harassment, including by third parties.
  - To ensure that employers are aware of what 'all reasonable steps' require of them.
  - To ensure that Employment Tribunal time limits do not present a barrier to justice in cases under the Equality Act 2010.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
Option 1 – Do nothing.  
  
Option 2 – New package of legislative measures. This includes: a preventative duty on employers and third party harassment protections. Government also committed to keep extending employment tribunal time limits under review. It also contains the introduction of a statutory code of practice and government guidance. Each of these options is intended to tackle a different part of the problem, they are not alternatives to each other.

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> NA		<b>Non-traded:</b> NA
<b>Will the policy be reviewed?</b> It will be reviewed <b>If applicable, set review date:</b> / +5 years				

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

A handwritten signature in blue ink, appearing to read "Glyndwr Iwan".

Signed by the responsible Minister: \_\_\_\_\_

Date: 25 November 2021

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Do nothing – do not respond to the consultation with legislation.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2023	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best: 0
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>	
Low	0		0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised costs by ‘main affected groups’</b> The key monetised annual recurring cost to private businesses is from compensation, settlement and legal costs that result from the number of cases brought to Employment Tribunals. Please note compensation and settlement costs are a transfer to individuals from business.					
<b>Other key non-monetised costs by ‘main affected groups’</b> N/A					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>	
Low	0		0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised benefits by ‘main affected groups’</b> The key monetised benefit of these measures is the compensation pay-outs to individuals whose claim is successful and settlement pay-outs to individuals whose case is privately settled.					
<b>Other key non-monetised benefits by ‘main affected groups’</b> There are currently protections for individuals against sexual harassment in the workplace but as set out in the ‘problem under consideration’ section there are gaps.					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	3.5

We have accurate evidence about the number of harassment and discrimination cases and their associated costs.

### BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: 0</b>	<b>Benefits: 0</b>	<b>Net: 0</b>	
			0

## Summary: Analysis & Evidence

## Policy Option 2

**Description:** Extend legal protections under the Equality Act. This includes: a preventative duty on employers; third party harassment protections; and looking closely at extending employment tribunal time limits. It also contains the intervention of introducing a code of practice. Each of these options is intended to tackle a different part of the problem, they are not alternatives to each other.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2023	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -135.4	High: -13.8	Best: -34.4

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	+18.1	1	+0.7	+24.0
High	+37.4		+18.9	+137.0
Best Estimate	+27.4		+2.6	+49.6

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

The key monetised annual recurring cost to private businesses is from the legal costs that result from a possible increase in the number of cases brought to Employment Tribunals as a result of changes to workplace protections<sup>1</sup>. All businesses are in scope of these regulations, as such we expect businesses to incur costs from familiarisation with legislative changes and updating HR policies.

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

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

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	+0.2	+1.5

<sup>1</sup> Note: there are three different elements to the legislative package proposed. The preventative duty to employers and third party harassment protections have limited impact, while the extension to Employment Tribunal Time limits, if introduced, will drive the increase in cases and compensation.

<b>High</b>	0		+1.2	<b>+10.2</b>
<b>Best Estimate</b>	0		+3.1	<b>+15.2</b>

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

The key monetised benefit is the compensation pay-outs to individuals whose claim is successful and settlement payouts to individuals whose case is privately settled. This is a transfer from businesses to individuals. It has not been possible to monetise other benefits (such as reducing staff turnover, sickness absences and increased productivity) from the expansion of protections under the Equality Act due to a lack of evidence in this area.

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

It is likely this option would produce the most benefits to individuals and society, however it is not possible to monetise these due to a lack of evidence. Non-monetised benefits include employees feeling safer at work, individuals being able to submit a claim within a longer time limit and organisations who are seen to deal strongly with sexual harassment are likely to get a boost to their reputation, which will help to attract, customers, clients and talent.

**Key assumptions/sensitivities/risks**

**Discount rate (%)**

3.5

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

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: 5.1</b>	<b>Benefits: 0</b>	<b>Net: 5.1</b>	
			23.2

# Evidence Base

## 1 Problem under consideration

The Government is committed to tackling harassment in all its forms, both at work and outside it. Harassment has been against the law for decades and strong, clear laws against it are set out in the Equality Act 2010. However, even though these laws are in place, recent reports, kick started by the #metoo movement, have shown that there is still a real, worrying problem with sexual harassment.<sup>2</sup>

Outside of the workplace, the recent review by Ofsted into sexual abuse in schools and colleges published in June 2021 demonstrated that sexual harassment is a routine part of life for schoolchildren and as such they don't see any point in challenging or reporting it.<sup>3</sup> As individuals move from the education system into jobs, their assumptions that sexual harassment is a normal part of life are likely to bleed into their working practices and those of their organisations.

We want everybody to feel safe at work so they can succeed and thrive, so we looked at whether the laws on harassment in the workplace are operating effectively. Current legislation for the measures we will be committing to is set out below.

It is also worth noting, that although the consultation was driven by a focus on sexual harassment, harassment related to any protected characteristic (apart from pregnancy and maternity, and marriage and civil partnership) is also prohibited under the Equality Act, and the third party harassment protections and any employment tribunal time limit extension will apply to all forms of harassment.

### Employer duty:

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

However, despite the fact that there is such a clear legal position on this issue there is significant evidence to suggest that workplace sexual harassment remains widespread. The Government's own sexual harassment survey found that 29% of those in employment reported having experienced some form of sexual harassment in their workplace or work-related environment in the last 12 months. This suggests that employers are not taking adequate steps to prevent harassment from happening. Potential explanations for this are that employers are unaware of their legal responsibility; that they are indifferent to the risk of failing to comply with the law; or that they do not know how to prevent sexual harassment effectively.

A common criticism is that the law's current formulation – which makes employers legally liable if they *fail to act*, rather than simply requiring them *to act* – creates complacency among employers and is in part to blame for poor compliance. Several stakeholders, including the Equality and Human Rights Commission (EHRC) and Women and Equalities Select Committee (WESC), proposed the introduction of a duty requiring employers to prevent sexual harassment in their workplace.

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<sup>2</sup> Women and Equalities Committee, 2018. *Evidence submitted to WESC inquiry into sexual harassment in the workplace.* (available [here](#)).

<sup>3</sup><https://www.gov.uk/government/publications/review-of-sexual-abuse-in-schools-and-colleges/review-of-sexual-abuse-in-schools-and-colleges>

Within the public questionnaire part of our consultation, respondents were asked whether the law should require employers to take proactive steps to protect their staff from sexual harassment, of which 96% said 'yes'. Additionally, 60% of consultation respondents thought a new duty would prompt employers to prioritise preventing harassment. A common theme in written responses was the belief that the duty would have the benefit of ensuring more of a focus on prevention, and raising awareness of expectations on employers.

#### Third party harassment:

Whilst the law is clear that employers can be vicariously liable for harassment carried out by their employees, employer liability for failing to prevent the harassment of their staff by third parties - for example customers or clients – is less clear cut. The Government is clear that employers have a responsibility to take reasonable steps to protect their staff from third party harassment where they know, or ought to know, that their staff are at risk. But the legal landscape on this issue is complex and we wish to ensure that any victims of third party harassment can be confident that they are protected by the law if their employer has not taken reasonable steps to protect them, and that they are able to take legal action if they so wish.

Section 40 of the Equality Act 2010, as originally enacted, made employers liable for harassment of their employees by a third party, in certain conditions. However, in 2013, the explicit third party harassment protections in section 40 were repealed. The provisions were thought to be confusing and unnecessary, and at the time of review the provisions were only known to have resulted in two Employment Tribunal rulings since their introduction in 2008. Significant criticism was also made of the protection's design, which required two occasions of known harassment to have occurred before liability was triggered - known as the 'three strikes' rule.

Until 2018 it was thought that the Equality Act continued to provide protection in cases of third party harassment, under section 26, with the benefit that reliance on this part of the Act meant there was no requirement for 'three strikes'.

However, case law in 2018 clarified the legal position: in May 2018 the Court of Appeal ruled in the case of *Unite the Union v Nailard*<sup>4</sup> that the 2013 repeal of parts of section 40 meant that the Equality Act could no longer be considered to provide any protection in cases of third party harassment (albeit that employers remain liable if any failure to act on their part, following a complaint of harassment, is related to an employee's protected characteristic).

In light of the *Nailard* ruling, the WESC, EHRC and other stakeholders have recommended that the Government strengthen explicit legal protections against third party harassment to give unequivocal clarity on this question.

In light of case law on this matter, the consultation proposed to introduce explicit legal protections against third party harassment in the workplace. The consultation questions then focussed on options for the design of these protections.

#### Employment tribunals:

The standard time limit for bringing a claim to an Employment Tribunal, throughout both employment and equality law, is three months from the date of the act complained of. There are some exceptions – such as for cases relating to equal pay disputes – but the majority of cases brought to an Employment Tribunal will be subject to a three-month time limit.

Concerns have been expressed that three months is too short a period for bringing an Equality Act claim to an Employment Tribunal and that this may be creating a barrier to justice. The

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<sup>4</sup> [Unite the Union v Nailard \[2018\] EWCA Civ 1203](#)

argument for singling out Equality Act claims under the jurisdiction of the Employment Tribunal, and not other areas of employment law, is that these incidents can be particularly traumatic and take longer to come to terms with on an emotional level.

Of the 100 consultation respondents, 59% thought the current three-month time limit was too short. The most common reasons were: that people miss the limit as they are dealing with the trauma caused by harassment; and that the limit is incompatible with the length of internal grievance procedures. Many of the 37% who felt that the current limit was adequate were employers or from the legal sector.

Once someone has identified an act as unlawful, and decided that they wish to take formal action, their first step will be to engage their organisation's internal grievance process. If the internal process is unsuccessful, they may then seek legal advice before progressing further; this step could be further delayed if the individual made an application for legal aid and was waiting for a decision before taking further action. Or, if they choose to represent themselves, it may take them longer to navigate the legal formalities for bringing a case than if they had access to a qualified lawyer.

## **2 Rationale for intervention**

The consultation responses made it clear that more needed to be done if we were to get all employers to take positive and proactive steps to reduce workplace sexual harassment. They made it abundantly clear that this is a problem that still persists; and that if we wish to see not only women, but anyone who finds themselves in a disadvantaged position, succeed and thrive in the workplace then action must be taken. Harassment is not a problem that isolates itself to a single group; its harm also extends beyond those it affects directly, permeating the whole organisation and shaping how employees feel about it, their colleagues, and themselves. Without tackling this pervasive issue, it is simply impossible to establish the culture of respect, which is the foundation of achieving workplace equality.

Government intervention in this area will impact all employers, since they will all be covered by the new duty, and could be held liable under explicit third party protections. The effect this will have will vary depending on the size of the employer, and whether they are already taking steps in relation to workplace sexual harassment. However, given that employers will be expected to take what is termed as "reasonable steps" the impact these measures will have will be proportionate to the size of the organisation. We would expect that the measure on third party protections will have a greater impact on those sectors or organisations which require higher levels of interaction with customers or clients, for example the hospitality sector. However, since all employers should already be taking steps to address sexual harassment, regardless of the perpetrator, this impact should be minimal.

It is crucial that the government sets out clear expectations of employers to ensure that they treat this issue with the seriousness required. While the #metoo revelations and subsequent media focus has prompted some businesses and sectors to act, it is clear that further intervention is required in order to see a real step-change as attention on this matter wanes. While we recognise that legislation in isolation is not the answer, as part of a wider package of support for employers, it has the potential to be transformative; pushing previously reluctant employers to reconsider the risks of failing to act, and the consequences for their organisation.

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

Though the amount of evidence and data available in this field is relatively limited we have used the most reliable, and recent evidence where available. Further information about the evidence used and its limitations are detailed throughout the IA.



Costs and benefits have been monetised where possible and where appropriate. There are further benefits that could potentially be monetised but have not been at this stage due to lack of evidence. Furthermore, it is unlikely that the time spent to monetise these additional benefits is proportionate to the problem under consideration.

## **4 Description of options considered**

### **Option 1: Do nothing**

Do nothing – do not respond to the consultation with legislation.

### **Option 2: Extend legal protections under the Equality Act**

Option 2 includes: a preventative duty on employers; third party harassment protections; and looking closely at extending employment tribunal time limits. It also contains the intervention of introducing a statutory code of practice. Each of these options is intended to tackle a different part of the problem, they are not alternatives to each other.

#### ***Third party harassment protections***

While the current law is clear that employers can be held liable for harassment carried out by their employees, it is less clear cut when it comes to harassment of staff by third parties (e.g. customers or clients). Provisions within the Equality Act 2010 that had protected employees from third party harassment were reviewed in 2012 and were found to have been confused and little used. They were repealed through the Enterprise and Regulatory Reform Act 2013 as it was considered that other, broader legal protections already covered situations of third party harassment. However, in May 2018 the Court of Appeal ruled in the case of *Unite the Union v Nailard* that the 2013 repeal meant that the Equality Act could no longer be considered to provide protection in cases of third party harassment. We therefore propose that new protections are introduced to make employers explicitly liable if they fail to protect their employees from third party harassment.

#### ***A preventative duty on employers***

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

#### ***Extending Employment Tribunal time limits***

The standard time limit for bringing a claim to an Employment Tribunal under employment and equality law is three months, with some exceptions. Respondents to the consultation were clear that this acts as a significant barrier to justice, particularly in cases of sexual harassment and pregnancy and maternity discrimination. They also raised concerns about the effectiveness of the current process for granting extensions for out of time claims.

It is clear that taking this step could be incredibly beneficial. However, we also recognise that the pandemic has put additional pressure on the entire courts and tribunal service, particularly the employment tribunal service, and that restoring its existing levels of service needs to be the priority before additional loading is added. We are therefore looking closely at extending the limit.

We believe, should an extension be introduced, a new limit of 6 months would be the most appropriate course of action, striking an appropriate balance of ensuring full access to justice for

those looking to bring cases, while minimising the potential negative impact on smaller enterprises. We have therefore based our analysis for this measure on a six month extension.

**Note:** Other non-legislative options including a Government communications campaign or a standalone code of practice were considered but decided against due to concerns, raised within consultation responses and discussions with stakeholders, that these would be wholly ineffective in isolation, and therefore haven't been fully costed in this impact assessment.

## 5 Policy objective

The primary policy objective is to ensure that we have a legal framework covering harassment in the workplace that is effective, and which suitably incentivises employers to take action to prevent harassment. Our secondary objective is to ensure that individuals are provided with the protections and access to justice they require, in order for them to adequately hold employers to account when breaches of Equality Act protections occur.

Each of the proposed legislative interventions has different intended outcomes, and so will hopefully result in a different set of changes which, combined, will achieve the policy objective:

- The preventative duty on employers aims to ensure that employers take appropriate steps to protect staff from harassment in the workplace, with the impetus being that the EHRC and individuals will now be able to take enforcement action if they fail to do so. We expect the outcome of this to be that employers will be more proactive in tackling harassment, and instead of focussing purely on how they manage incidents when they happen, will also start considering and implementing changes that can help prevent them from occurring. It should also help to prompt those employers who have not considered their responsibilities under the existing legal framework, to look more seriously at this matter and take appropriate action.
- The introduction of third party harassment protections aims to protect staff from harassment by third parties (e.g. customers or clients). Establishing explicit protections will provide clarity for both employers and employees, and will ensure that employers also pay due attention to the risk of harassment by third parties when designing and implementing any preventative strategies.
- Extending Employment Tribunal time limits would ensure that the limit does not act as a barrier to justice in cases relating to the Equality Act. Our aim would be to ensure that those who want to bring a case under the Equality Act are not deterred at the first step, by having missed the deadline. Given that we are aware that individuals in these circumstances often need more time to process their experiences before accessing legal remedies, a longer limit would give them the opportunity to do that.
- Our aim would also be to ensure that, as far as possible, the time limit allows for the completion of internal grievance procedures. This would give employers and employees sufficient time to try and reach a satisfactory resolution internally, rather than having to trigger legal proceedings as a result of the limit while the process is likely to be ongoing.

While difficult to measure, we will be able to get an indication of the success of these interventions by seeing if there is a renewed focus on the issue by employers and employer organisations, as well as lobby groups and unions. We intend to work with Acas to try and identify what quantitative or qualitative data they may be able to provide us in relation to employees and employers seeking advice, as well as having regular discussions with employer organisations. It would be hard to identify a suitable indicator in relation to employment tribunals, while we may be able to speculate on the number of cases brought following the introduction of third party protections; measuring the impact of extending the time limit is more

difficult. This is because, at this stage, we cannot predict what impact the extension will have on litigation behaviours.

With all of these measures it is difficult to identify how we can clearly show the impact. For example, the employer duty should lead to a reduction of cases by prompting organisations to prioritise prevention, however an increased focus on this issue could lead to more people bringing cases who may not have done so previously. Furthermore, an increase in the number of employment tribunal cases, if the change in the time limit is introduced, could point towards people taking advantage of the new limit, similarly a decrease in cases could show people are using the extension to successfully find resolutions through internal grievance procedures.

Likewise, organisations anecdotally informing us that they are seeing an increase in incidents being reported internally could show that they are not acting on the new preventative duty, or it could point to them taking steps which make people feel more able to report. Without knowing more about what is driving this data, we cannot easily infer whether it has been prompted by our interventions, or whether it is a positive outcome.

Therefore, selecting metrics that will categorically show the impact of these interventions will continue to pose problems, given that the data currently collected does not accurately reflect motivations or circumstances. The only consistent data we have on workplace sexual harassment is the record of how many cases are brought to employment tribunals. Regular data is not captured showing the real prevalence, and studies by third parties which do look to do this are often conducted once, showing only a snapshot and frequently using differing methodologies. However, we will ensure that we monitor the number of sexual harassment based tribunal cases being brought, and work with Acas to try and ascertain how many employers are accessing advice. Should we identify any changes post-implementation, we will then have to do a more qualitative investigation to understand whether the change in behaviour can be considered a positive impact of our interventions.

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

Our preferred option is option 2, which will require implementation through primary legislation, when a suitable legislative vehicle is identified.

The interventions contained in option 2 will act as a suitable prompt to employers, pushing them to consider whether they are taking sufficient steps to prevent sexual harassment in the workplace and encouraging them to take action that will address it, to the benefit of all employees. Similarly, the introduction of protections from third party harassment will provide clarity, and ensure that the legal framework is truly effective as regards these instances. Finally, if we do extend the time limit for Equality Act based cases in the future, it will ensure that individuals are able to access justice through the employment tribunal system, where the three month limit may have previously acted as a barrier to them taking legal action.

We do not expect that a suitable legislative vehicle to introduce these measures will be available until the next parliamentary session. Taking into consideration the time it will take to prepare a Bill and pass all legislative stages, we therefore anticipate that the employer duty and third party harassment measures will come into force in 2024. This should provide all stakeholders with ample time to prepare for any changes they need to make ahead of implementation.

The measures contained within this package will be enforced both by the EHRC through their enforcement mechanisms, and individuals via the employment tribunal system. As regards the introduction of extended time limits, if this is introduced, we will work with both the Ministry of Justice and the Department for Business, Energy, and Industrial Strategy to ensure we take all

the steps required to successfully implement this change. In the long term, this will be a matter for the employment tribunal service to manage.

The extended timetable for implementation allows sufficient time to engage stakeholders, and consider potential implications issues ahead of time, so that resolutions and mitigations can be put in place beforehand; and ensure a smooth implementation.

### **Other options that were considered as part of the consultation response**

The 2019 consultation also asked: whether, in practice, there are any interns who are not currently covered by equality protections in the workplace and what the right balance is between the flexibility of volunteering and equality protections for volunteers. The Government expects organisations to protect volunteers and interns from discrimination, harassment and victimisation, and we know that many organisations do this as a matter of course.

It is our assessment that it is clear that interns with a contract of employment are already covered by the protections in the Equality Act; similarly, where an intern does not have a contract or is unpaid, in most cases they would still be classed as a worker, and therefore also covered.

However, the consultation explained that the Act's workplace protections are explicitly linked to employment status and as such they do not cover volunteers. The consultation set out to gather evidence on whether it would be appropriate to extend these protections to volunteers. Our conclusion is that given the wide range of types of volunteering from informal, including volunteering at a school fundraising event to the more formal, such as providing administrative support to a charity, there would be difficulties in implementing a blanket arrangement.

When asked about the potential negative consequences of expanding protections to volunteers, 50% of respondents felt that the introduction of legislative protections would have negative impacts: this rose to 75% across the voluntary sector organisations who responded. 34% of respondents to this question raised issues around the increased administrative burden on charities, with particular concerns around the impact on small organisations and on volunteer managers. It was pointed out by several respondents that the compliance burden would often fall on volunteers. As such we are not taking action in regards to volunteers and interns.

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

### **7.1 Examination of costs**

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

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

Compensation and settlement costs are included as indirect costs to businesses. These will only occur if employers have failed to comply with the proposed legislation and therefore are not included as a direct cost to businesses. The EANDCB should only include costs that are incurred as a result of complying with the new measures; which if employers have done, they

would be able to successfully defend any claims and would not be required to pay to settle cases or provide compensation.

Additional costs to business arise from the proposed additional compensation which could be paid to employees as a result of a breach of employers' duty to protect them against sexual harassment. While the policy intent is that the duty in itself drives down the base rate of sexual harassment, when employers take action it may encourage more employees to come forward and bring tribunal cases, which might increase *claims*, as opposed to sexual harassment. Again, these are included as indirect costs only as they should not arise as a result of the legislation and have not been included in the EANDCB.

**Table 1: Summary of 'additional' costs examined for each policy option**

	Legislative policy options	Costs			
		Direct cost to businesses		Additional costs that only apply if businesses do not comply with the new legislation	
		Familiarisation	Legal & defence costs	Compensation and settlement costs	Additional compensation (above current legal requirements)
<b>Option 1: Do nothing</b>					
<b>Option 2: Extend legal protections under the Equality Act</b>	Introduce third party protections	X	X	X	
	Preventative duty on employers	X	X	X	X
	Extend ET limits by 3 months	X	X	X	

Changes to workplace protections will increase costs to the public sector from increased costs to HM Courts and Tribunal Service. GEO are working with MoJ and BEIS to assess the overall impact of these protections on public expenditure. We believe that it is sensible to keep these under review, given that the costs may be substantially different by the time these proposals are closer to being introduced. Once we have been able to assess the impact we will update this assessment with any additional evidence.

### 7.1.1 Cost of defending a tribunal case to an employer

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

The average time spent defending an Employment Tribunal case is taken from the Survey of Employment Tribunal Applications (SETA) 2018 as 22 days for directors/senior officials and 6

days for other staff.<sup>5</sup> This is the most recent available evidence; figures are in line with the 2002 and 2007 surveys and are not expected to have changed significantly. Median hourly wages for chief executives and senior officials<sup>6</sup>, and other staff (assumed HR managers and directors) is taken from ASHE 2020 as £40.71 and £24.82 respectively.<sup>7</sup> A 21.61% non-wage uplift has been applied to these figures (details about the uplift are found in section 7.4.1).

The average cost of advice and representation for an Employment Tribunal case is taken from SETA 2018 as £2,400 (80% of employers paid for representation, and the average cost of representation was £3,000, we therefore calculate a weighted average;  $80\% \times £3,000 = £2,400$ ), and bring forward to 2019/20 prices. The overall average cost to an employer of an Employment Tribunal case is summarised below.

**Table 2: Cost to business of defending an Employment Tribunal case (2019/20 prices)**

	Cost per case (£)
Time spent on case by 'directors/senior officials'	£8,713
Time spent on case by 'other staff' (assumed HR managers and directors)	£1,690
Advice and representation	£2,766
<b>Total</b>	<b>£13,170</b>

Note: assumed an 8 hour work day  
Source: SETA 2018, ASHE 2020

### 7.1.2 Settlements and compensation costs

The average compensation awarded in a discrimination tribunal case over the period 2015/16 to 2017/18 was £11,753<sup>8</sup>. It is assumed that compensation costs will be incurred by employers for cases which are successful at tribunal only. These costs are applied to the number of expected successful cases.

The average settlement value in a discrimination tribunal case is estimated using SETA 2018 as £5,000<sup>9</sup>. It is assumed that settlement costs will be incurred by employers for cases which are privately settled. These costs are applied to the number of expected privately settled cases.

## 7.2 Examination of benefits

The key monetised benefit of these measures is the compensation pay-outs to individuals whose claim is successful and settlement pay-outs to individuals whose case is privately settled. This benefit is present with the current legislation. Equally, the measures are likely to mean lower litigation costs, insurance premiums and time spent on cases for business. We have been unable to monetise this at present due to lack of evidence. Furthermore, it is unlikely that the

<sup>5</sup> BEIS, 2020. Findings from the Survey of Employment Tribunal Applications 2018. Table 6.10 (available [here](#))

<sup>6</sup> SOC code 1115 used for directors/senior officials, SOC code 1135 used for HR manager and directors

<sup>7</sup> ONS, 2020. Annual Survey of Hours and Earnings 2020, Table 14.6.

<sup>8</sup> MoJ, 2018. Employment Tribunal and Employment Appeal Tribunal Tables 2017 to 2018, Table E2. (available [here](#)). Note: this is calculated as a 3 year average of compensation for each discrimination jurisdiction 2015/16 – 2017/18. Equality Act related jurisdictions include: Disability; Race; Sex; Religious belief; Sexual orientation; Age; and Maternity/pregnancy discrimination.

<sup>9</sup> BEIS, 2020. Findings from the Survey of Employment Tribunal Applications 2018. (available [here](#))

time spent to monetise these additional benefits is proportionate to the problem under consideration.

Additionally, there are also other benefits from businesses and other organisations changing their practices to prevent and address sexual harassment. These are likely to include a lower staff turnover, where staff may have left due to sexual harassment or failure to prevent it. It could also potentially lead to a reduction in absenteeism and sickness absence. This is because staff members experiencing harassment at work are likely to take time off due to stress or other mental-health issues as a result. And finally, it could lead to increased productivity for businesses due to staff members working in a better/safer working environment. However, due to a lack of evidence in this area these benefits are difficult to quantify and as such have not been monetised in this assessment. They also are dependent on individual organisations and their circumstances.

There are also a range of non-monetised benefits from these measures around employee wellbeing. Employees will feel safer and possibly happier at work if employers are seen to be taking necessary steps to protect them against harassment in the workplace, which will have a likely positive impact on team cohesion. Furthermore, organisations who are seen to deal strongly with sexual harassment are likely to get a boost to their reputation, which will help to attract customers, clients and talent.

### 7.3 Costs for option 1: do nothing

We have examined the costs associated with Option 1 based on the number of existing harassment and discrimination cases as £158.4m per annum. The calculations are provided in the tables below.

**Table 3: Number of discrimination cases**

	Number of cases
All private sector cases	10,454
Successful at hearing (3% <sup>10</sup> )	314
Privately settled (30% <sup>11</sup> )	3,136

**Table 4: Costs of discrimination cases**

	Costs
Defending a case	£137.7m
Compensation	£3.7m
Settlement	£15.7m
Total	£157.0m

<sup>10</sup> MoJ, 2019. *Tribunal Statistics Quarterly: January to March 2019*

<sup>11</sup> BEIS, 2020. *Findings from the Survey of Employment Tribunal Applications 2018*.



**Table 5: Number of sexual harassment cases**

	Number of cases
All private sector cases	92
Successful at hearing (1% <sup>12</sup> )	1
Privately settled (30% <sup>13</sup> )	28

**Table 6: Costs of sexual harassment cases**

	Costs
Defending a case	£1.2m
Compensation	£0.0m
Settlement	£0.1m
Total	£1.4m

## 7.4 Costs for option 2: Extend legal protections under the Equality Act

All costs for Option 2 are presented as ‘additional’ costs in comparison to the baseline costs presented in Option 1.

### 7.4.1 Familiarisation costs

We have assumed 100% of businesses will have familiarisation costs. We have also produced low, best and high estimates, based on the uncertainty around how much time will be needed for familiarisation.

We anticipate that familiarisation will include the time spent reading guidance on the new measures, likely from the Equality and Human Rights Commission, or HR or sector bodies; in order to understand the legal implications and next steps. Familiarisation may also include them refreshing their understanding of existing policies in the organisation, in order to assess whether they need to be adjusted in light of the changes to liability. In order to estimate the time required for familiarisation we have looked at the EHRC technical guidance on sexual harassment and harassment at work<sup>14</sup> and used sections 4 and 5 as a proxy for our guidance. This is approximately 13,000 words long which takes the average reader around 43 minutes<sup>15</sup> to read. To account for firms also refreshing their understanding of existing policies and assessing whether they need to be adjusted, we assume it takes firms 1 hour to familiarise themselves with the legislation.

It is assumed that HR managers and directors of medium and large firms will need to familiarise themselves with the changes to the law brought about by third party protections, preventative

<sup>12</sup> MoJ, 2019. Tribunal Statistics Quarterly: January to March 2019, Table ET\_3. (available [here](#))

<sup>13</sup> BEIS, 2014. Findings from the Survey of Employment Tribunal Applications 2013. Research Series no. 177, Table 5.2. (available [here](#))

<sup>14</sup> Equality and Human Rights Commission, 2020. Sexual harassment and harassment at work technical guidance (available [here](#)).

<sup>15</sup> Based on the average person reading 300 words per minute.



duty and extended time limits, if this goes ahead, and this is assumed to be a one-off cost. It is understood that familiarisation means reaching the point where HR professionals are aware of the legislative change and understand how it will impact their organisation. 1 hour is assumed to be needed for HR managers and directors to consider the impact of the changes on the organisation and their employees. This includes time to consider how this impacts their current HR policies.

It is assumed that owners (i.e. managers, directors and senior officials) of small and micro firms will need to familiarise themselves with the changes to the law as they are unlikely to have HR managers and directors to do this for the firm. This is assumed to require 0.75 hours, as we assume it will not take small and micro businesses as long to understand the implications, or to plan any further steps they might need to take. This is because the smaller workforce means they are more likely to be familiar with the roles people are doing and where the liability could be more of an issue.

There were 1.4m private sector businesses with employees in Great Britain in 2020, 43,975 of these are medium and large sized businesses and 1,368,770 of these are small and micro sized businesses<sup>16</sup> The median hourly wage of HR managers and directors and Directors and senior officials has been taken from the Annual Survey of Hours and Earnings (ASHE) 2020 as £24.82 and £20.89, respectively.<sup>17</sup> Non-wage costs are taken from the Eurostat Labour Cost Survey 2016.<sup>18</sup> Wage costs are estimated at 82.23% of labour costs in the UK (all sectors). The inverse of this figure,  $((100/82.23) - 1) = 21.61\%$ , provides the uplift rate required to calculate total hourly labour costs.

**Figure 7: One-off familiarisation costs for HR managers and directors of medium and large businesses**

	Total private sector businesses (GB)	Median hourly rate for 'HR managers and directors'	Non-wage costs uplift rate	Time taken (hours)	Total estimated familiarisation cost for 'HR managers and directors'
<b>Low</b>	43,975	£24.82	21.61%	0.5 hours	£0.7m
<b>Best</b>				1 hour	£1.3m
<b>High</b>				2 hours	£2.7m

**Figure 8: One-off familiarisation costs for Managers, directors and senior officials of small and micro businesses**

	Total private sector businesses (GB)	Median hourly rate for 'Managers, directors and	Non-wage costs uplift rate	Time taken (hours)	Total estimated familiarisation cost for
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<sup>16</sup> BEIS, 2020. Business Population Statistics, Table A

<sup>17</sup> ONS, 2020. Annual Survey of Hours and Earnings 2020, Table 14.6. (available [here](#))

<sup>18</sup> Eurostat, 2016. Structure of labour cost by NACE Rev. 2 activity - % of total cost, LCS surveys 2008, 2012 and 2016. (available [here](#)).

		senior officials'			'Managers, directors and senior officials'
Low	1,368,770	£420.89	21.61%	0.5 hours	£17.4m
Best				0.75 hours	£26.1m
High				1 hour	£34.8m

Source: Business Population Estimates 2020, ONS 2020, Eurostat 2016

**Figure 9: Total estimated familiarisation cost**

	Total estimated familiarisation cost
Low	£18.1m
Best	£27.4m
High	£37.4m

#### 7.4.2 Introduction of third party harassment provisions

For the three years between 2016/17 and 2018/19 there was an average of 24,055 discrimination complaints relating to the Equality Act brought to Employment Tribunal (ET) per annum (not including Equal Pay which is out of scope of any of the changes under consideration).<sup>19</sup> This includes claims which are based on more than one jurisdictional complaint (for example, sex and age discrimination). To estimate the number of individual discrimination claims, it is necessary to adjust this figure by the average number of jurisdictional complaints per claim over the same period (1.61). Therefore, the estimated number of individual discrimination cases expected at tribunal per annum is 14,934<sup>20</sup>.

The number of cases appeared to increase in 2018/19 following the removal of tribunal fees in 2017. There is uncertainty around how caseload will change in the longer term, following the removal of tribunal fees. We have based our best estimate calculations on an average number of cases for the three years 2016/17 – 2018/19 (an increase of 0.01%), however it is possible overall case numbers will increase in the years ahead.

In line with the 2012 Impact Assessment of removing third party provisions<sup>21</sup>, we assume that the provisions could result in an increase in the annual number of discrimination cases accepted at Employment Tribunal by 0-0.4%. We have used this assumption to estimate possible costs for the low and high scenarios. We are only aware of two cases brought on these grounds while

<sup>19</sup> MoJ, 2019. Tribunal Statistics Quarterly: January to March 2019, Table ET\_1.

<sup>20</sup> 24,055 / 1.61 ≈ 14,934

<sup>21</sup> Home Office (GEO), 2012. Review of third party harassment provisions.

the provisions were in place from 2008 to 2013.<sup>22</sup> Therefore, we use 1 case per year as our best estimate of the number of cases which may be brought on these grounds in the future.

Using breakdowns by sector of respondents to discrimination cases from SETA 2018<sup>23</sup> Table 10 sets out the number of expected cases per annum by sector of employer. This is the most recent available evidence, with the figures in line with 2012 findings.

**Table 10: Total number of discrimination and third party cases, by sector**

	Total discrimination cases		Third party harassment cases		
	Percentage of cases	Number of cases	Low	Best	High
<b>Percentage of cases</b>			0	0.01%	0.4%
<b>Private sector</b>	70%	10,454	0	1	42
<b>Public sector</b>	17%	2,539	0	0	10
<b>Voluntary sector</b>	12%	1,792	0	0	7
<b>Total</b>	100%	14,934	0	1	60

Source: SETA 2018, GEO estimates

Between 2016/17 and 2018/19, an average of 3% of discrimination tribunal cases related to the Equality Act (excluding Equal Pay) were successful at hearing, and an average of 46% were unsuccessful at hearing, withdrawn, dismissed or struck out<sup>24</sup>. SETA 2018 estimated that 30% of discrimination cases were privately settled<sup>25</sup>. Table 11 shows the number of third party harassment cases expected to be brought against private businesses by expected outcome.

**Table 11: Estimated 'additional' number of third party harassment cases per annum, by outcome**

	Percentage of cases	Number of cases		
		Low	Best	High
<b>Successfully defended by an employer</b>	46%	0	0	19
<b>Successful at hearing</b>	3%	0	0	1
<b>Privately settled</b>	30%	0	0	13

<sup>22</sup> Blake v Pashun Care Homes Ltd [2011] EqLR 1293 in the employment tribunal, and Gloucestershire Primary Care Trust v Sesay UKEAT/0004/13/MC (12 June 2013) in the EAT.

<sup>23</sup> BEIS, 2020. Findings from the Survey of Employment Tribunal Applications 2018.

<sup>24</sup> MoJ, 2019. Tribunal Statistics Quarterly: January to March 2019

<sup>25</sup> BEIS, 2020. Findings from the Survey of Employment Tribunal Applications 2018.

Source: Tribunal statistics, SETA 2018, GEO estimates

To calculate the annual cost to businesses of additional Employment Tribunal cases that might result from third party protections, we estimate the average cost of **successfully defending** a case. The total annual cost to private business is summarised below.

We also estimate the average compensation cost and average settlement costs, but these are included as indirect costs to businesses and are not summarised below.

**Table 12: Net present value of annual costs to business of third party harassment provisions**

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Low</b>	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m
<b>Best</b>	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m
<b>High</b>	£0.3m	£0.2m	£0.2m	£0.2m	£0.2m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m

As a result of the uncertainty about what will happen to the number of cases going forward, we have conducted sensitivity analysis to show the impact of an increase or decrease in case numbers (see [Annex 1](#) for further detail). Using the three year average figure, our best estimate (0.01% increase in cases) suggests that there will be 1 additional private case per year that will involve an additional cost of £13,170 per annum. If we assume that the number of cases successfully defended by an employer will decrease (by 24.1% based on the decrease in case number experienced between 2009/10 and 2010/11, the second largest year-on-year decrease observed in the data) then we will see a reduction in case numbers by around 1200 per year, and will reduce costs by £15.2m per annum. If we assume that the number of cases successfully defended by an employer will increase (by 26.9% based on the increase in the number of cases between 2015/16 and 2016/17, the second largest year-on-year increase observed in the data) then we will see an increase in case numbers by around 2300 per year, and will increase costs by £17.0m per annum.

It is important to note however that the estimated number of individual discrimination cases expected at tribunal per annum is volatile and dependent on a number of varying factors. In addition to this, we do not have any robust evidence to suggest whether the introduction of third-party harassment provisions will increase or decrease case numbers.

### 7.4.3 A preventative duty on employers

#### Estimating number of sexual harassment cases

The Government does not currently collect data on the prevalence of sexual harassment in the workplace, and data on Employment Tribunals does not allow cases involving allegations of sexual harassment to be easily identified. Therefore, the number of sexual harassment claims is estimated by searching the Employment Tribunal Decisions database. Between 2017 and 2020, there was an average of 92 tribunal cases per year recorded on the database which referred to “sexual harassment”.

There is not expected to be an increase in the number of sexual harassment cases brought to tribunal as a result of the preventative duty, as the aim of the duty is to make it clearer to businesses what proactive steps are required to comply with the law. However, for the purposes of estimating possible costs, we assume a 5% decrease in sexual harassment cases for our low

estimate and a 50% increase in cases for our high estimate. There is uncertainty around these figures due to a lack of evidence, but it is likely that any increase in cases would be smaller than the high estimate. When employers take action, it may encourage more employees to come forward and bring tribunal cases, conversely the action employers take may create a decrease in harassment incidents, and thus less cases being brought. Table 13 sets out the number of expected sexual harassment cases per annum by sector of employer.

**Table 13: Total number of sexual harassment cases, by sector**

	Total sexual harassment cases		Estimated 'additional' sexual harassment cases		
	Percentage of cases	Number of cases	Low	Best	High
<b>Percentage of cases</b>			-5%	0	+50%
<b>Private sector</b>	70%	64	-3	0	+32
<b>Public sector</b>	17%	16	-1	0	+8
<b>Voluntary sector</b>	12%	11	-1	0	+6
<b>Total</b>	100%	92	-5	0	+46

Source: SETA 2018, Employment Tribunal Decisions, GEO estimates

It is assumed that the proportion of sexual harassment cases that would be successful at hearing is equivalent for all sex discrimination cases, taken from Tribunal Statistics as 1% and the proportion of those unsuccessful, dismissed, withdrawn or struck out as 38% on average between 2016/17 and 2018/19<sup>26</sup> (note: we use sex discrimination here as it is the jurisdiction under which sexual harassment falls). SETA 2018 estimates that 30% of discrimination Employment Tribunal cases are privately settled.<sup>27</sup>

**Table 14: Estimated number of 'additional' sexual harassment cases, by outcome**

	Percentage of cases	Number of cases		
		Low	Best	High
<b>Successfully defended by an employer</b>	38%	1	0	12
<b>Successful at hearing</b>	1%	0	0	0
<b>Privately settled</b>	30%	1	0	10

<sup>26</sup> MoJ, 2019. *Tribunal Statistics Quarterly: January to March 2019, Table ET\_3.* (available [here](#))

<sup>27</sup> BEIS, 2014. *Findings from the Survey of Employment Tribunal Applications 2013. Research Series no. 177, Table 5.2.* (available [here](#))

**Cost of ‘additional’ compensation**

The cost of additional compensation that employers could have to pay for breaching their duty to protect employees against sexual harassment is estimated using average weekly gross pay from ASHE 202027. This has been forecast to 2029 using CPI inflation (OBR)<sup>28</sup>.

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

**Table 15: Additional compensation costs (per case)**

	Average weekly gross pay		Percentage of cases		Average weekly gross pay (weighted)	Estimated compensation cost at 13 weeks' pay
	Male	Female	Male	Female		
2023	£593	£413	40%	60%	£485	£6,309
2024	£604	£421			£494	£6,428
2025	£616	£429			£504	£6,552
2026	£628	£438			£514	£6,683
2027	£641	£447			£524	£6,817
2028	£654	£456			£535	£6,953
2029	£667	£465			£546	£7,092
2030	£680	£474			£556	£7,234
2031	£694	£485			£568	£7,379
2032	£708	£493			£579	£7,527

<sup>28</sup> OBR inflation forecasts, (available [here](#))

<sup>29</sup> Comres, 2017. BBC – Sexual Harassment In The Workplace. (available [here](#))

To calculate the annual cost to businesses of a preventative duty on employers, we estimate the average cost of **successfully defending** a case only. The total annual cost to private business is summarised below.

We also estimate the average compensation cost, average settlement costs and the ‘additional’ compensation costs, but these are included as indirect costs to businesses and are not summarised below.

**Table 16: Net present value of ‘additional’ compensation costs from sexual harassment cases**

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Low</b>	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m
<b>Best</b>	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m	£0.0m
<b>High</b>	£0.2m	£0.2m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.1m	£0.0m	£0.0m

#### 7.4.4 Extending Employment Tribunal time limits

The Women and Equalities Committee (WESC) report on Sexual Harassment in the workplace suggested that current limits pose a barrier to individuals making a claim.<sup>30</sup> While this does not give an estimate for the number of cases that might be expected, it does provide anecdotal evidence that the number of cases is expected to increase, if the time limit is extended. The consultation sought evidence to test this assumption, however case numbers were not raised by respondents and as such we have not gathered additional evidence through the consultation. However, having consulted with stakeholders it is our assessment that it will be very difficult to predict the potential increase of cases due to extending the time limit. Whilst the additional time may lead to more cases being brought, this could be offset by the additional time that will be available to resolve a claim internally, before it reaches a tribunal.

To estimate the number of additional cases we might expect to see under an extended time limit, we use data on the number of extensions awarded by Employment Tribunals relating to the Equality Act with a 3 month time limit.<sup>31</sup> The Ministry of Justice has no internal data or research on the number of cases that might have resulted in a claim had the time limit not been in place.<sup>32</sup> It is assumed that the number of additional cases from extending the time limit is equal to the current number of extensions awarded.

In the period April to June 2018, 34 extensions were awarded by Employment Tribunals in cases related to the Equality Act (not including Equal Pay, which has a longer time limit).<sup>33</sup> This represents nearly 1% of total complaints over the same period. This percentage is applied to the 17 average number of claims made under the Equality Act per annum (14,934) to give an estimate for the number of cases we might expect to be over the limit per year. This provides a

<sup>30</sup> House of Commons: Women and Equalities committee, 2018. *Sexual harassment in the workplace*. (available [here](#))

<sup>31</sup> MoJ, 2018. *Employment Tribunal Out of Time Claims – Provisional Management Information as at 30 June 2018, Table 2*. (available [here](#))

<sup>32</sup> MoJ, 2018. *Letter to Chair of Women and Equalities Committee: Employment Tribunal: Time Limits For Pregnancy And Maternity Discrimination Claims*. (available [here](#))

<sup>33</sup> MoJ, 2018. *Employment Tribunal Out of Time Claims – Provisional Management Information as at 30 June 2018, Table 2*. (available [here](#)). Note, Equality Act related jurisdictions include: Disability; Race; Sex; Religious belief; Sexual orientation; Age discrimination; and Maternity/pregnancy discrimination.



low estimate for the number of cases we might expect if the limit were extended, as it does not include cases that might be brought if the time limit were extended.

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

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

	Percentage of cases	Number of cases	Number of additional cases		
			Low	Best	High
<b>Percentage of cases</b>			0.8%	3.1%	5.4%
<b>Private sector</b>	70%	10,454	84	324	565
<b>Public sector</b>	17%	2,539	20	79	137
<b>Voluntary sector</b>	12%	1,792	14	56	97
<b>Total</b>	100%	14,934	119	463	806

Source: SETA 2018, GEO estimates

To estimate the costs to employers of these additional cases, it is assumed that these cases would have the same success rate as existing cases (3%) and the same rate of unsuccessful, dismissed, struck out or withdrawn cases (46%).

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

	Percentage of cases	Number of cases (private)		
		Low	Best	High
<b>Successfully defended by an employer</b>	46%	39	149	260
<b>Successful at hearing</b>	3%	3	10	17
<b>Privately settled</b>	30%	30	100	170

Source: Tribunal statistics, SETA 2018, GEO estimates

The total annual cost to private business from extending Employment Tribunal time limits is set out below. To do so we estimate the average cost of **successfully defending** a case only.



We also estimate the average compensation cost and average settlement costs, but these are included as indirect costs to businesses and are not summarised below.

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

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Low</b>	£0.5m	£0.5m	£0.5m	£0.4m	£0.4m	£0.3m	£0.3m	£0.2m	£0.1m	£0.1m
<b>Best</b>	£2.0m	£1.9m	£1.8m	£1.6m	£1.4m	£1.2m	£1.0m	£0.7m	£0.6m	£0.4m
<b>High</b>	£3.4m	£3.3m	£3.1m	£2.8m	£2.4m	£2.0m	£1.7m	£1.3m	£1.0m	£0.7m

#### 7.4.5 Net present value

Figure 20 below presents the summary of the PV benefits, PV costs and NPV of option 2 compared to the baseline of option 1.

All the figures below are using our ‘best estimates’.

**Figure 20: Net present value summary**

Present Value	Option 2 (presented as ‘additional’ to baseline)
Compensation pay-outs to individuals	+£15.2m
<b>Total PV Benefits</b>	<b>+£15.2m</b>
Familiarisation costs (one-off)	+£27.4m
Direct costs to businesses from the introduction of third party harassment provisions	-
Direct costs to businesses from the introduction of a preventative duty on employers	-
Direct costs to businesses from the extending Employment Tribunal time limits	+£16.9m
Indirect costs to business through compensation and settlement costs	+£5.3m
<b>Total PV Costs</b>	<b>+£49.6m</b>
<b>NPV</b>	<b>-£34.4m</b>

There are further potential benefits associated option 2 that are either non-monetisable not easily monetised, which include:

- Lower staff turnover, where staff may have left due to sexual harassment or failure to prevent it.
- Reduction in absenteeism and sickness absence. This is because staff members experiencing harassment at work are likely to take time off due to stress or other mental-health issues as a result.
- Increased productivity for businesses due to staff members working in a better/safer working environment.
- Employees will feel safer and possibly happier at work if employers are seen to be taking necessary steps to protect them against harassment in the workplace, which will have a likely positive impact on team cohesion.
- Organisations who are seen to deal strongly with sexual harassment are likely to get a boost to their reputation, which will help to attract customers, clients and talent.

Our preferred option is option 2. Extend legal protections under the Equality Act. This includes: a preventative duty on employers; third party harassment protections; and looking closely at extending employment tribunal time limits. It also contains the non-legislative intervention of introducing a code of practice and producing government guidance. Each of these options is intended to tackle a different part of the problem, they are not alternatives to each other.

This option is our preferred because:

- The consultation responses made it clear that more needed to be done if we were to get all employers to take positive and proactive steps to reduce workplace sexual harassment. The introduction of new legislation is an essential step towards tackling a pervasive issue and establishing a culture of respect, which is the foundation of achieving workplace equality.
- The preferred option presents additional costs compared to the status quo, specifically £49.6m across 10 years. When taking into consideration the existing costs in the field of workplace harassment (£1,363.5m across 10 years) this is not a large cost increase.
- Furthermore, as outlined above option 2 presents additional monetised benefits through compensation payouts to individuals as well as non-monetised benefits. These include lower staff turnover, reduction in absenteeism and increased productivity which will all benefit the businesses themselves. As well as employees feeling safe and happier at work, which though intangible is crucial in achieving workplace equality.

## 8 Risks and assumptions

**Table 22 Assumptions Log**

Area	Assumption(s)
Cost of defending a tribunal case to an employee	<ul style="list-style-type: none"> <li>• The cost of advice and representation is incurred by employers for all successful cases brought to a tribunal.</li> </ul>
Settlement and compensation costs	<ul style="list-style-type: none"> <li>• It is assumed that compensation costs will be incurred by employers for cases which are successful at tribunal only, and are therefore indirect costs.</li> <li>• It is assumed that settlement costs will be incurred by employers for cases which are privately settled, and again are indirect costs to businesses.</li> </ul>
Familiarisation costs	<ul style="list-style-type: none"> <li>• We have assumed 100% of businesses will have familiarisation costs.</li> <li>• It is assumed familiarisation includes the time spent reading guidance on the new measures, likely from the</li> </ul>

	<p>Equality and Human Rights Commission, or HR or sector bodies; in order to understand the legal implications and next steps. Familiarisation may also include them refreshing their understanding of existing policies in the organisation, in order to assess whether they need to be adjusted in light of the changes to liability</p> <ul style="list-style-type: none"> <li>• It is assumed that employers will consider the impact of all changes together, reducing the total amount of time required for all the changes.</li> <li>• For HR managers of medium and large firms this will take 1 hour, while it will take 0.75 hours for owners of small and micro businesses.</li> </ul>
Introduction of third party harassment provisions	<ul style="list-style-type: none"> <li>• In line with the 2012 Impact Assessment of removing third party provisions, we assume that the provisions would result in an increase in the annual number of discrimination cases accepted at Employment Tribunal by 0-0.4%</li> </ul>
Preventative duty on employers	<ul style="list-style-type: none"> <li>• There is not expected to be an increase in the number of sexual harassment cases brought to tribunal as a result of the preventative duty, as the aim of the duty is to make it clearer to businesses what proactive steps are required to comply with the law. However, for the purposes of estimating possible costs, we assume a 5% decrease in sexual harassment cases for our low estimate and a 50% increase in cases for our high estimate. There is uncertainty around these figures due to a lack of evidence, but it is likely that any increase in cases would be smaller than the high estimate.</li> <li>• It is assumed that the proportion of sexual harassment cases that would be successful at hearing is equivalent for all sex discrimination cases, taken from Tribunal Statistics as 1% on average between 2016/17 and 2018/19.</li> </ul>
Extending Employment Tribunal time limits	<ul style="list-style-type: none"> <li>• It is assumed that the number of additional cases from extending the time limit is equal to the current number of extensions awarded. In the period January to March 2018, data was collected on extensions awarded in cases related to pregnancy and maternity cases only. The total number of extensions was 21, over 5% of total claims over the same period. This percentage is applied to the total number of claims and this is used for our high estimate.</li> </ul>

**Table 23 Risks**

Variable	Risk/Uncertainty	Impact	Mitigation(s)
Familiarisation Cost	<b>Medium:</b> The number of businesses, assumed staff costs and time taken to	<b>Medium:</b> SMEs make up a large proportion of businesses, so if they	We have used low/best/high estimates to account for uncertainty in the

	familiarise with the legislation are key sensitivities covering a sizable proportion of costs.	are expected to spend more/less time familiarising with the policy, this would have a relatively large impact on the total NPV.	numbers and expected time spent on familiarisation.  We have included both HR managers and directors as well as all managers, directors and senior officials in the familiarisation process. It is likely that in smaller businesses this is unlikely to be the case.
Additional sexual harassment cases from a preventative duty	<b>Medium:</b> There is uncertainty around expected changes to the number of sexual harassment cases as a result of the duty. When employers take action, it may encourage more employees to come forward and bring tribunal cases, conversely the action employers take may create a decrease in harassment incidents, and thus less cases being brought.	<b>Low:</b> If these estimates are higher/lower the total NPV of the changes to protections will also be higher/lower. However, even if we were to assume a much higher increase in cases, this would have a minimal effect on costs.	A cautious estimate of a 50% increase in cases is used, but we would expect a smaller change.
Additional compensation costs	<b>Low:</b> 13 weeks' pay might be an overestimation as this would be the maximum amount payable.	<b>Low:</b> This is a conservative estimate which has a minimal effect on costs due to small numbers.	Use of a conservative estimate. We expect the amount payable to be less and any effect of a change will be minimal.
Additional cases from extending time limits	<b>Medium:</b> Our estimates are based on existing applications for extensions, and do not reflect cases that might arise with an extended time limit.	<b>Medium:</b> A large variation in this value would have a relatively large impact on total NPV.	Whilst the extended time limit may lead to an increase in cases this could be offset by more cases being resolved internally before they reach tribunal.
Overall impact of these protections on public expenditure	<b>Medium:</b> We do not currently have any evidence to show the impact on public expenditure.	<b>Medium:</b> The only element that will impact public expenditure is the extension of Employment Tribunal time limits. Whilst there will be more cases due to the extension, it also gives more time for cases for be resolved before reaching tribunal so the impact is uncertain.	We will work with MOJ and other government departments to assess the overall impact on public expenditure. Once we have been able to assess the impact we will update this assessment with any additional evidence.

## 9 Impact on small and micro businesses

Of 22.3m employees in the private sector<sup>34</sup> in the UK, around 17% and 18% are employed by micro and small businesses respectively. Therefore, applying exemption for small and micro businesses would go against the objectives of the policy by leaving over a third of employees unprotected from harassment to the same extent as employees in larger businesses.

All employees, regardless of what size of organisation they work for, should be protected from harassment and therefore we do not feel it is appropriate to exempt SMBs from these new measures. Legally employers are already liable for incidents of harassment in their work place and as such should already be taking action to protect their employees. The Government will be asking the Equality and Human Rights Commission to produce a statutory code of practice to enable a clearer understanding of the laws and the preventative steps employers should be taking, which will help businesses of all sizes. GEO will also be producing its own guidance setting out practical actions employers can take.

Even though small and micro businesses account for the majority of businesses affected by the proposed legislation, the impact of the legislation is expected to be larger for medium/large businesses. This is mainly due to the fact that:

- familiarisation is expected to take more time and therefore cost more for larger firms,
- larger firms have more employees and there is therefore more scope for larger number of harassment cases, and
- larger firms are more likely to pay for Employment Tribunal advice and representation than smaller firms and therefore experience a larger cost burden as a result of the time limit extension.

### Familiarisation for small and micro businesses

Small and micro businesses make up around 15% and 82% of businesses with employees<sup>35</sup> in the UK, respectively. Therefore, one-off transition costs are expected to fall mostly on small and micro businesses. However, our best estimates suggest that it will cost £30 per medium/large business to familiarise themselves with the new legislation, while it will cost only £19 for small and micro businesses.

In order to calculate our estimates, we have assumed that in small and micro businesses it will be the job of the owner (manager, director and senior officials used as a proxy) to familiarise themselves with the legislation as they are unlikely to have a HR manager, while larger businesses will. We have assumed it will take less time (0.75 hours) for small and micro businesses to familiarise themselves with the legislation compared to larger firms (1 hour). We assume it will not take small and micro businesses as long to understand the implications, or to plan any further steps they might need to take. This is because the smaller workforce means they are more likely to be familiar with the roles people are doing and where the liability could be more of an issue.

### Examination of costs for small and micro businesses

The costs of the legislation are largely based on the cost of defending a tribunal case to an employer. In the main body of analysis, it is assumed that all costs are experienced the same for all businesses. However, the Survey of Employment Tribunals Applications<sup>36</sup> suggests that smaller firms are less likely to pay for advice and representation than larger firms:

- 80% of businesses with 250+ employees pay for representation.

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<sup>34</sup> Excluding sole proprietorships and partnerships with self-employed owner-managers

<sup>35</sup> BEIS, 20110. *Business Population Statistics*. (available [here](#))

<sup>36</sup> BEIS, 2020. *Findings from the Survey of Employment Tribunal Applications 2018*. Table 3.25 (available [here](#))

- 66% of firms with 50-249 employees pay for representation.
- 70% of firms with 25-49 employees pay for representation.
- 69% of firms with less than 25 employees pay for representation.

As a result, the cost implications of extending Employment Tribunal time limits for small and micro businesses is likely to be less than estimated in the main body of analysis as they are less likely to pay for representation and/or the employees themselves are potentially more likely to either forgo representation or seek free advice.

## **10 Wider impacts (consider the impacts of your proposals)**

A Public Sector Equality Duty assessment has been completed for these proposals, with the assumption that we will continue to monitor the situation, and update the assessment in light of any new evidence.

We will ensure that we review the original assessment ahead of the introduction of legislation on these measures.

## **11 A summary of the potential trade implications of measure**

Not applicable.

## **12 Monitoring and Evaluation**

In regards to third party harassment, as this legislative change is being made to restore existing policy intent, we do not propose to keep this measure under review.

In regards to the proactive employer duty and tribunal time limit extensions, our primary outcome measure is the number of cases of workplace sexual harassment. We will monitor this through two main sources - Employment Tribunal data and Acas Management Information.

Data on employment tribunals is already collected which covers the number of claims by type, and how they progress through the system. This will not only provide us with insight on the impact of extending the time limit, but will also enable us to track the numbers bringing forward claims on third party harassment, and failure to meet the preventative duty. By monitoring case numbers, alongside how these cases are resolved, and content of any subsequent decisions; we will be able to evaluate how people are using the new provisions. For example, we would anticipate that applications for extensions may decrease, as claimants will now benefit from an additional three months. Employment tribunal statistics are published on gov.uk on a quarterly basis by the Ministry of Justice.

We will also work with Acas to try and identify what quantitative or qualitative data they may be able to provide us in relation to employees and employers seeking advice on the new protections, and the impact they have on the early conciliation process. This will help us to get a more realistic understanding of the scale of the impact the measures have had, since many cases will not reach the formal tribunal stage.

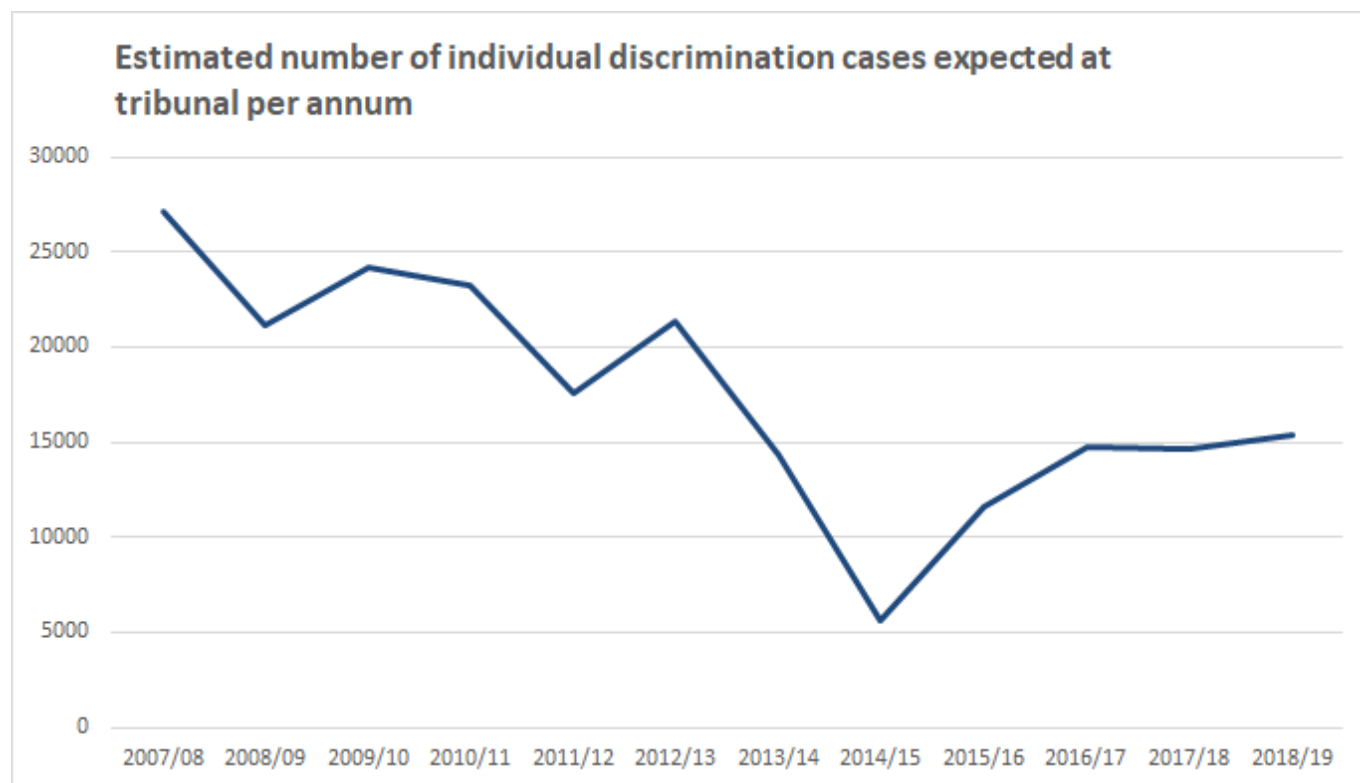
As outlined in the policy objectives section of this assessment we want to change behaviours: employees feel protected and employers are motivated to act. As such, it will be difficult to infer what the impact has been by looking at the data alone in this area, as these interventions could trigger a myriad of responses on the part of employers and employees and the data could easily be misinterpreted without understanding the motivations behind any behaviour change. For example, it is not possible to say with certainty that an increase in Tribunal cases means success or failure - it may reflect increased levels of underlying sexual harassment at work, or may reflect that employees now have a more effective route to challenge harassment (or longer

to bring claims). As such, we can't apply quasi-experimental approaches like difference-in-differences, or interpret pre-post results simply.

Therefore, we will combine monitoring of the data above, with qualitative engagement with employers and stakeholders. The process evaluation will include discussion with employers, employer bodies and stakeholders who work with and represent victims of sexual harassment to understand i) how the measures are being enacted and ii) any issues that need attention or clarification from government iii) any factor that help us to better interpret quantitative data set out above. We would look to publish an initial report around 1 year after the introduction of the duty combining the quantitative data on Tribunals and conciliation with employer and stakeholder feedback, together forming an assessment of how the regulations are working in practice.

## Annex 1 - Third Party Harassment Sensitivity Analysis

The estimated number of individual discrimination cases expected at tribunal per annum is volatile, as shown in the figure below. As a result, it is difficult to robustly estimate the change in the number of cases per annum. But the sensitivity analysis uses the second largest variations to model a realistic variation in case numbers (+26.9% in 2016/17 and -24.1% in 2010/11).



The impact on the number of cases is shown below.

	Total discrimination cases		Third party harassment cases		
	Percentage of cases	Number of cases	Low	Best (main analysis)	High
<b>Percentage of cases</b>			-24.1%	0.01%	26.90%
<b>Private sector</b>	70%	10,454	-2519	1	2812
<b>Public sector</b>	17%	2,539	-612	0	683
<b>Voluntary sector</b>	12%	1,792	-432	0	482
<b>Total</b>	100%	14,934	-3599	1	4017

The table below shows the estimated 'additional' number of third party harassment cases per annum, by outcome.



	Percentage of cases	Number of cases		
		Low	Best (main analysis)	High
<b>Successfully defended by an employer</b>	46%	-1159	0	1294
<b>Successful at hearing</b>	3%	-76	0	84
<b>Privately settled</b>	30%	-756	0	844

The resulting direct costs to businesses per annum are shown in the table below.

Costs	Low	Best (main analysis)	High
<b>Defending a case (all private cases)</b>	-£33.1m	£13,800	£37.0m
<b>Defending a case (successful cases)</b>	-£15.3m	£6,333	£17.0m