

Title: Proposal to simplify Holiday Pay and Entitlement Consultation IA No: BEIS070(C)-22-LM RPC Reference No: Lead department or agency: BEIS Other departments or agencies:	Impact Assessment (IA)			
	Date: 09/12/2022			
	Stage: Development/Options			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
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Summary: Intervention and Options RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£57.8m	£974.9m	-£113.3m	Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?
 Since the introduction of the Working Time Regulations in 1998, the number of workers who have irregular working patterns has increased to more than 4.7 million, and many of these workers are missing out on their holiday entitlement. Over time, holiday legislation has become complex and, in some cases, can be challenging for employers to follow; there is a risk that in certain circumstances it may not be fully achieving its original intention. Further, in July 2022 the Supreme Court ruled that part-year workers are now entitled to a larger holiday entitlement than part-time workers who work the same total number of hours across the year. Government is keen to address this disparity to ensure that holiday pay and entitlement received by workers is proportionate to the time they spend working.

What are the policy objectives of the action or intervention and the intended effects?
 The proposed reform to holiday entitlement legislation seeks to provide clarity for employers on calculating statutory holiday entitlement and address the current imbalance in paid holiday entitlement, to ensure that the statutory amount that all workers receive is equitable and proportionate to the hours they work. The consultation proposal will address the disparity between the calculation of holiday entitlement received by part-year workers and workers on irregular hours following the recent Supreme Court judgment in Harpur Trust v Brazel and the pro-rated entitlement received by part-time workers.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0: The 'do nothing'/status quo option involves no change to current requirements on employers for calculating holiday entitlement for workers with irregular hours and part-year workers, following the 2022 Supreme Court judgment. Part-year and irregular hours workers will continue to receive 5.6 weeks of annual statutory holiday entitlement calculated using a 52-week entitlement reference period, excluding the weeks without work.
 The below policy option has been considered, in addition to Option 0:

- **Option 1:** Introduce a fixed 52-week reference period to calculate statutory holiday entitlement for part-year and irregular hours workers. This reference period will include weeks without work
- For irregular hours workers who work irregular hours that don't fit a regular full-day, half-day or shift pattern, the government proposes to use a flat average working day to calculate how much time a day's leave would account for.
- An accruals method to calculate statutory holiday entitlement for agency workers would be introduced, and be prescribed for irregular hours workers in their first year with their employer

Option 1 is the preferred option but is subject to change after consultation.

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

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

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introducing a fixed 52-week reference period to calculate holiday entitlement for part-year and irregular hours workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	NPV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -£57.8m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	57.8	118.9	1081.2

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

The Government estimates that employers will face a total cost from Option 1 of £72 million, with £61 million falling on the private sector. This includes familiarisation costs of £8.3 million, plus several one-off costs from a change in their payroll systems (£20.4 million), amending current irregular workers contracts (£26 million), changing contract templates to include their new terms of employment (£2.1 million) and changing systems to calculate how many hours are in a day's leave (£15.8 million). Term-time workers and other irregular hours workers will lose an estimated £149 million annually, as the holiday pay calculation is made proportionate to that for other workers.

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

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	118.9	1023.4

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

The Government estimates that employers of irregular hours and part-year workers will benefit from an annual saving of £50m-£250m, best estimate £149 million, as a result of workers' holiday entitlement being calculated proportionately.

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

Irregular hours and part-year workers will benefit from having improved clarity on their holiday entitlement, allowing these workers to know when they are not receiving their full entitlement. Employing businesses will also benefit from the greater clarity in legislation, which will help avoid accidental non-compliance and will reduce the financial burden of increased holiday pay for these workers following the Supreme Court ruling. This should help those working irregular hours and part-year workers receive the paid holiday they are entitled to.

Key assumptions/sensitivities/risks

Discount rate

3.5%

The key assumption relates to the number of irregular hours and part-year workers in the labour market. Another key assumption is that all businesses with irregular hours workers and/or part-year workers will need to spend time familiarising themselves with the reforms and amending contracts, when some businesses may already be using a 52-week reference period (including weeks not worked) to calculate entitlement. A fixed reference period risks a worker's holiday entitlement not being indicative of the hours they are currently working when they actually take holiday.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	
5.6	118.9	-113.3	-566.3

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Evidence Base

Background

1. The main pieces of legislation that govern holiday entitlement and pay for workers are the Working Time Regulations 1998 and the Employment Rights Act 1996. There is also a significant body of case law.
2. Almost all workers are entitled to 5.6 weeks of paid annual leave each year. This leave entitlement is broadly granted under the Working Time Regulations 1998 (WTR), although workers in some sectors are covered by other regulations; for example, workers in civil aviation are covered by the Civil Aviation (Working Time) Regulations 2004. This consultation focuses primarily on the holiday entitlement derived from the Working Time Regulations 1998.
3. Holiday entitlement in the WTR is split into two allocations: 4 weeks under regulation 13, which implemented the leave required by the EU's Working Time Directive¹; and 1.6 weeks under regulation 13A, which is above the EU minimum requirements. Although regulation 13 leave was originally derived from European legislation, it remains part of domestic employment law following the UK's exit from the EU.
4. Whilst a worker is employed, they continue to count as a worker under the WTR, and so continue to accrue holiday. This means workers in employment will continue to accrue holiday even if they are not working any hours. For example, workers who are on maternity, paternity or parental leave continue to accrue holiday entitlement that they can take when they later return to work.
5. Holiday entitlements are split into leave years. This can be defined by an agreement between workers and employers, such as the employment contract, and could, for example, be a calendar year (1st January to 31st December) or a financial year (1st April to 31st March). If there is no relevant agreement between the worker and the employer, WTR regulation 13(3) states that a worker's leave year starts on the date on which their employment begins and every subsequent anniversary of that date.
6. Although employers have some discretion over when their staff take holiday, for example to ensure business continuity, they must not prevent workers from taking holiday altogether, and must allow workers to take holiday before the entitlement to it expires.
7. The WTR set out which holiday can be carried into the next leave year, and which cannot. Regulation 13 grants 4 weeks of holiday that cannot be carried forward under usual circumstances. Regulation 13A grants a further 1.6 weeks that may be carried into the next leave year if a relevant agreement between a worker and their employer provides for it to do so. If a worker clearly chooses not to use their entitlement to annual leave prior to it expiring, they lose the entitlement.
8. There are some exceptions to leave expiring. For example, case law has established that a worker who is unable to take holiday due to sickness or maternity leave would be entitled to carry it into a future leave year, to then be taken when they returned to work.

¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

Similarly, workers who were unable to take holiday due to the coronavirus could carry over the 4 weeks of holiday granted under regulation 13 into the next two leave years.

9. The WTR and sections 221-224 of the Employment Rights Act 1996² lay out how to calculate a worker's holiday pay. The overarching principle is that holiday pay should reflect a worker's usual rate of pay for periods of actual work.
10. Where a worker has a constant rate of pay, they should receive the same pay they would have received if they had been at work. If a worker has variable pay, their holiday pay is calculated based on an average from their earnings in a 52-week reference period. This reference period was increased from 12-weeks on 6th April 2020 to make workers' holiday pay fairer by better reflecting seasonal changes in pay and working hours. Whether a worker has normal working hours or not will dictate which weeks are included in the reference period. To aid employers and workers in calculating the correct holiday pay, the Government has produced detailed guidance available on GOV.UK.³
11. Recent case law has considered what must be included in holiday pay calculations. Where holiday pay had previously been calculated based on regular pay that workers received, it should include all components that form "usual pay", including regular overtime, regular commission, and regular bonuses. For example, in 2014 the Employment Appeal Tribunal ruled that regular overtime that employees were required to work by their employer should be factored into a worker's holiday pay.⁴ This case law reaffirms the principle that, for the regulation 13 leave derived from EU law at least, holiday pay should be reflective of the pay that would have been earned if the worker was at work and working.
12. Workers must also be given the opportunity to take their statutory holiday entitlement – employers cannot generally buy it back or replace holiday with financial compensation if the worker remains in continuing employment. This is known as payment in lieu and is only lawful where a worker leaves their employment. When a worker leaves employment, they must be paid for any untaken statutory holiday that they have accrued. This is the only situation in which payment in lieu of statutory holiday is permitted.
13. In July 2022, the Supreme Court handed down its judgment in the case of Harpur Trust v Brazel⁵. This case concerned the calculation of holiday pay and entitlement of a permanent part-year worker on a zero-hours contract. The Court held that the correct interpretation of the Working Time Regulations 1998 is that holiday entitlement for part-year workers should not be pro-rated so that it is proportionate to the amount of work that they actually perform each year. Part-year workers are entitled to 5.6 weeks of statutory annual leave calculated using a holiday entitlement reference period to determine their average weekly pay, ignoring any weeks in which they did not work. As a result of this judgment, part-year workers are now entitled to a larger holiday entitlement than part-time workers who work the same total number of hours across the year.

² <https://www.legislation.gov.uk/ukpga/1996/18/contents>

³ <https://www.gov.uk/Government/publications/calculating-holiday-pay-for-workers-without-fixed-hours-or-pay>

⁴ Bear Scotland Ltd v Fulton [2014] UKEATS/0047/13

⁵ <https://www.supremecourt.uk/cases/docs/uksc-2019-0209-judgment.pdf>

Problem under consideration and rationale for intervention

14. Since the introduction of the Working Time Regulations, the number of workers who have irregular hours or are on term-time contracts has increased to more than 5.3 million⁶. Following the Supreme Court judgment in *Harpur Trust v Brazel*, permanent part-year workers are entitled to a larger annual holiday entitlement than part-time workers who work the same number of hours across the year. Workers with irregular hours, including zero-hours contract workers, may also be entitled to more holiday entitlement following the judgment if they are on permanent contracts as they may fall within the 'part-year worker' definition. The Government estimates that between 320,000 and 500,000 permanent term-time and zero-hours contract workers will receive more holiday entitlement⁶. We have provided a detailed breakdown in **Annex B** of the methodology for calculating the number of workers in scope. Approximately 36% of these are workers in the education sector, such as teaching assistants who are employed on part-year contracts.
15. Some agency workers may also be affected by this judgment if they have contracts of employment with employment businesses or umbrella companies. Government analysis⁶ estimates that there are between 80,000 and 200,000 permanent agency workers who may receive more holiday entitlement under this judgment. We are looking to understand how entitlement is currently calculated for agency workers and how the consultation proposal of introducing a holiday entitlement reference period for part-year and irregular hours workers may be implemented.
16. The Government understands that for most employers of part-year workers, the increase in holiday pay following the judgment will not be a significant amount per worker, particularly for term-time workers in the education sector such as teaching assistants who are likely to work for over 60% of the year. Workers on permanent contracts who only work for a few weeks each year will receive the largest increase in holiday pay disproportionate to their hours worked. The Supreme Court judgment included the example of an exam invigilator on a permanent contract who only works for a few weeks each year, but works 40 hours in each of those weeks. However, we expect the numbers of these workers to be low, but would like to understand this better through the consultation.
17. Without the proposed reform, for most employers of part-year and irregular hours workers the effects on paid holiday entitlement following the judgment would not be significant per worker. It is therefore unlikely to influence the use of part-year or irregular hours workers, either making such contracts generally less attractive to employers or more attractive to workers. For specific employers who rely on a large number of such workers, then potentially the change in costs could be more significant, and the impact would depend on their ability to take on these extra costs.
18. The Government recognises that the existing legislation on calculating holiday entitlement is complicated, notwithstanding the additional complexities following the judgment, particularly for agency workers due to their complex contractual arrangements. This consultation proposes to introduce a holiday entitlement reference period to address the disparity in statutory holiday entitlement between part-time and part-year workers. This will ensure that holiday pay and entitlement received by irregular hours and part-year workers is proportionate to the time they spend working and that employers are not unduly burdened by increased holiday pay requirements following the Supreme Court judgment.

⁶ Analysis from BEIS of Labour Force Survey April -June 2022 data; it covers workers on a zero-hours contract in their main job, agency workers, casual workers, term-time and those working shifts who say their hours tend to vary (with efforts made to remove any double counting).

Theory of change

19. **Context:** following the Supreme Court's judgment in *Harpur Trust v Brazel* [2022] UKSC 21, part-year and irregular hours workers are entitled to a full 5.6 weeks of paid statutory annual leave which cannot be pro-rated based on the proportion of the year or hours that they work. WTR was drafted in 1998; not reflective of current working practices and working patterns; no clarity in WTRs as drafted on how to calculate holiday entitlement for part-year workers.
20. **Rationale for intervention:** following the judgment, between 320,000 – 500,000 permanent term-time and zero-hours contract workers and between 80,000 – 200,000 agency workers may be entitled to increased holiday pay, at an annual cost of employers of between £50m – £250m.

BEIS Strategic Objectives

Making the UK a great place to work and do business

End Impact

Consistency and equity in annual leave entitlement received by workers across all working patterns. Employers have a level playing field.

Irregular hours and part-year workers receive the statutory minimum annual leave entitlement based on the hours that they work.

Main Outcomes

Employers retain part-year and irregular hours workers. Employers' employment practices are not affected by disproportionately higher holiday pay costs for irregular hours and part-year workers

Affected workers will be entitled to less annual leave than under the Supreme Court judgment

Main Outputs

Employers can use holiday entitlement reference period to calculate proportionate leave entitlement for irregular hours/part-year workers

Barriers

Overcome

Supreme Court case law requiring employers to give part-year and irregular hours workers 5.6 weeks of annual leave irrespective of hours worked

No explicit statutory method for calculating leave entitlement for part-year or irregular hours workers

Activities and Inputs

Secondary legislation introduced to allow employers to pro-rate leave entitlement for part-year and irregular hours workers by using a holiday entitlement reference period

Policy objective

21. The Government is keen to address the disparity arising from the Supreme Court judgment to ensure that holiday pay and entitlement received by workers is proportionate to the time they spend working. The consultation seeks to understand the implications of the judgment on different sectors including agency workers who have complex contractual arrangements, and how the consultation proposal of introducing a holiday entitlement reference period for part-year and irregular hours workers may be implemented. The Government wants to ensure that any changes considered do not adversely impact existing holiday pay and entitlement legislation.
22. The policy assessed in this Impact Assessment has two key objectives:
 - a. Address the current imbalance in paid holiday entitlement to ensure that the statutory amount that part-year and irregular hours workers receive is equitable and proportionate to the hours they work; and
 - b. Provide clarity for employers on calculating holiday entitlement for their part-year and irregular hours workers.
23. There is one policy option provided. It offers the clearest way of meeting the two key objectives set out above. That is, one method for calculating annual leave entitlement for irregular hours and part-year workers, based on a 52-week reference period (in line with the recent holiday pay policy), or an accruals approach if in their first year with their employer – or if they are an agency worker. The 52-week reference period will provide a figure for leave entitlement for the year ahead. It will ensure that pro-rata for hours worked in the year, employers will not be required to statutorily provide more paid leave to irregular hours and part-year workers than to regular part-time or full-time workers. The legislation focuses on paid holiday entitlement for a leave year. The purpose is to make sure that the worker is able to take sufficient breaks from work during the year, to limit the risk of negative health impacts from overwork. Therefore the policy proposal is based on a 52-week reference period – to ensure irregular hours workers get a proportionate paid leave entitlement for the hours they work in a full year. The accruals approach will ensure that the workers covered will get at least the statutory leave entitlement earned through the hours they have worked.
24. As discussed below, within the 52-week holiday entitlement reference period option there are considerations of whether the reference period should be fixed or rolling, and where relevant, how to set the length of a leave day.
25. Clarity for employers and workers should help employers to ensure that the workers affected get the correct amount of paid annual leave. It should help workers to know what (minimum) paid annual leave they should be entitled to and help reduce non-compliance in the allocation of paid leave to irregular hours and part-year workers.
26. Non-regulatory approaches will not achieve the key policy objectives. One of these key objectives is to reform the current legal position following the Harpur Trust v Brazel Supreme Court judgment. If the change isn't introduced through legislation, the existing interpretation of the law from the Supreme Court will remain in place, and part-year and irregular hours workers will potentially be entitled to more paid annual leave per hour worked than regular hours workers.

Description of options considered

27. The consultation seeks stakeholder views on a preferred measure, which is considered within this Impact Assessment. At this stage, the Government is seeking stakeholder views and evidence towards Option 0 and Option 1. We assess Option 1 (preferred

option) against the counterfactual of a “do nothing” scenario, where the existing practice prevails.

a. **Option 0: “Do Nothing”**

b. **Option 1 (preferred option):** Introducing a 52-week reference period including weeks without work, to calculate holiday entitlement for workers who work irregular hours and part-year workers. The consultation also asks whether the 52-week reference period for holiday entitlement should be a fixed rather than a rolling reference period. With a fixed reference period, a worker’s holiday entitlement would be calculated at the beginning of the leave year based on the hours worked in the previous 52 weeks, rather than varying each week if a rolling 52-week reference period was used. For irregular hours workers whose daily hours do not fit into a pattern of full-days, half-days or shifts, the government suggests using a flat average working day to determine how much time a day’s leave would account for. When a worker took a day off, they would use up the number of leave hours equivalent to an average working day over the reference period, rather than taking off the average hours worked for specific days of the week which would be burdensome for business to calculate. Workers’ entitlement to paid annual leave starts to build up as soon as the worker starts the job. To provide clarity in the calculation of leave entitlement in the first year with an employer for part-year and irregular hours workers, and for agency workers (whose assignments with hiring businesses are predominantly less than a year) the consultation suggests using an accruals approach. This is similar to that for the 52-week reference period but involves multiplying the hours worked in the past month by 12.07%. Employers would have the discretion to allow the worker to take paid leave early on the basis of expected future hours worked.

28. We are specifically consulting on variables within the policy, including the fixed reference period and flat average working day, which will impact the total cost incurred by business. Once the detail of the policy is clarified, we will provide revised estimates in any Impact Assessment that sits alongside final proposals. The estimate provided within this Impact Assessment should therefore be treated as illustrative. Figures used as definitions do not and should not presuppose findings received from the consultation and are provided here only to illustrate the possible magnitude of costs to businesses from the proposed policy.

Option 0 – “Do Nothing”

29. The regulations in their current form would continue to apply. Currently, following the Supreme Court’s judgment in *Harpur Trust v Brazel*, part-year and irregular hours workers are entitled to 5.6 weeks of annual holiday. Their holiday entitlement should be calculated using a reference period of 52 weeks, excluding the weeks in which they did not work. This can result in holiday entitlement and associated holiday pay that is not reflective of the hours they have worked.

Option 1 (preferred option): Introducing a reference period to calculate holiday entitlement

30. Option 1 would introduce a 52-week reference period including the weeks without work, to calculate holiday entitlement for part-year workers and workers with irregular hours, including zero-hours contract workers and agency workers, through an affirmative statutory instrument.

31. This would require employers to calculate the total hours worked in the previous 52 weeks (the reference period), including those weeks without work, and multiply the total hours by 12.07% to give the total annual statutory holiday entitlement in hours (12.07% is the proportion of the year taken up by statutory annual leave). Part-year and irregular hours workers would still receive 5.6 weeks of annual leave entitlement, but as each week would be based on an average of their total hours worked over the preceding 52 weeks, their leave entitlement would be proportionate to the amount of time they had actually worked. This would bring their entitlement in line with the annual leave received by part-time workers who work the same total number of hours per year; they receive pro-rated leave due to working fewer hours each week across the full year.
32. The reference period would include weeks without work in calculating the average hours worked over the previous 52 weeks, so that holiday entitlement would be directly proportionate to the amount of work performed by workers.
33. The reference period would be fixed at the start of each annual leave year, rather than being an unfixed or rolling reference period.
34. For workers who work irregular hours within the day that don't fit a regular full-day, half-day or shift pattern, employers would calculate a flat average working day to work out how much time a day's leave would account for.
35. Workers in their first year of work and agency workers on a contract for services who were on assignment would accrue holiday entitlement at the end of each month based on the hours they had worked in that month (12.07% of the hours they had worked in the month).
36. Options 1 aims to cover workers with irregular hours and part-year workers working in all sectors of Great Britain. The policy aims to provide clarity on calculating holiday entitlement for employers and address the inequitable outcome of the judgment on holiday entitlement calculation. This option is not specifically designed to advance equality of opportunity between people who share a protected characteristic and others; however, it is possible that individuals with a protected characteristic are more likely to work irregular hours than other individuals, so the policy proposals might have an indirect disproportionate impact on such individuals.
37. The challenges outlined above only apply to workers who have irregular hours and part-year workers, and so the Government proposes that the holiday entitlement reference period would only apply to these groups of workers. The Government welcomes views on the operation and scope of this option.

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

Focus of this Impact Assessment

38. This Impact Assessment provides stakeholders with our current estimates of the costs and benefits of the proposed policy option, outlined in the accompanying consultation document. We will continue to build upon our evidence base ahead of a Final Stage Impact Assessment. Therefore, at this stage, estimates of costs, benefits and

companies impacted should be considered indicative. We would welcome stakeholder feedback on our current estimates.

39. We assess costs over a ten-year appraisal period and present our estimates in terms of present value costs for this period for business (NPV) and equivalent annualised net direct costs to business (EANDCB). As per current regulatory guidance, this Impact Assessment uses 2019 prices discounted to 2020 as the base year for the present value calculation and EANDCB⁷.
40. The Final Stage Impact Assessment will be subject to full Regulatory Policy Committee scrutiny.

Benefits

Option 1 (preferred option): Introducing a reference period to calculate holiday entitlement for part-year and irregular hours workers

Workers:

41. Part-year and irregular hours workers are entitled to statutory holiday entitlement. Yet despite this, the legislation is not explicit on how holiday entitlement for workers with irregular hours should be calculated⁸ leaving them with little clarity as to what they are entitled to. A survey from 2019 found that 30% of workers thought not knowing how many days paid holiday they were entitled to was a barrier to receiving holiday pay⁹. Atypical workers¹⁰ were also significantly less likely to know where to go for advice on their holiday rights.
42. The intention of Option 1 (preferred option) is to provide part-year and irregular hours workers with clear guidelines to calculate their annual leave entitlement.
43. As inroads have been made to improve the clarity around holiday pay calculation in recent years with the introduction of the 52-week holiday pay reference period for workers with irregular hours, and following the Supreme Court judgment, it makes sense to legislate to introduce a calculation to determine how much holiday they are entitled to.
44. It is difficult to estimate the benefits from this policy. While we can broadly estimate that there is a large number of workers who do not get their minimum holiday entitlement, we do not have any data on the amount of holiday pay received. While we know that there were around 20,369 employment tribunal claims relating to annual leave sections of the Working Time Regulations in 2021, we don't know whether they relate to the leave or pay elements of annual leave entitlement. We also have no information about whether the workers bringing claims worked irregular hours. Therefore, we are not able to monetise these benefits.

⁷ See: <https://www.gov.uk/government/collections/impact-assessments-guidance-for-government-departments>

⁸ <https://www.gov.uk/calculate-your-holiday-entitlement/y/irregular-hours/full-year>

⁹ <https://www.gov.uk/government/publications/holiday-pay-survey>

¹⁰ Here atypical workers are defined as those not on full-time or part-time permanent contracts.

45. It should be noted that some irregular hours workers who have weeks where they are not working because they don't have work allocated (or are not contracted to work in those weeks – like term time workers) will see their statutory holiday entitlement be reduced so that it is proportionate to the hours worked in the reference year. This is covered below.

Employers:

46. This lack of clarity also adversely affects employers. As a result, part-year workers are now entitled to a larger annual holiday entitlement than part-time workers who work the same number of hours across the year. This will have large costs for a number of employers who have until now been pro-rating this entitlement.

47. We envisage that this policy will clarify the holiday entitlement calculation for irregular hours and part-year workers. It should make compliance more straightforward reducing the occurrence of accidental non-compliance leading to 'unfair' Employment Tribunals. It may enable some administrative benefits by having a single approach for calculating annual entitlement for irregular hours and part-year workers.

48. Based on our estimates that 320,000 – 500,000 permanent term-time and zero-hours contract workers and 80,000 – 200,000 agency workers are in scope of the judgment, we estimate Option 1 would net save businesses between £50m and £250m in the first year that they increase holiday pay for workers in scope of the judgment, and up to £250m thereafter each year. This estimate is based on the number of workers in scope of the judgment and the difference between their previous (pre-judgment) and current (post-judgment) holiday entitlement. We have provided a detailed breakdown in **Annex B** of the methodology for calculating the number of workers in scope.

49. In summary, we take the difference in each affected worker's holiday entitlement and multiply this difference by their hourly pay, to calculate the (monetised) saving of receiving more holiday entitlement. However, this saving may not be entirely attributed to the judgment, as it includes required increases in holiday pay where employers may have been non-compliant (based on our estimates using the Labour Force Survey data) before the SC judgment.

50. Our best estimate therefore is taking the mid-point of the above ranges. As such, we estimate a net saving for businesses of £150m each year. This is presented in **Table 1** below.

Table 1: Economic transfer from workers to businesses

Type of worker affected	Number of workers affected		
	Low	Central (mid-point)	High
Permanent term-time and ZHC	320,000	410,000	500,000
Permanent agency	78,000	140,000	200,000
Total	£50,000,000	£150,000,000	£250,000,000

51. Because this saving represents an economic transfer (a re-allocation of existing resources) from workers to business, the net impact on the overall NPSV is zero.

Costs

52. To estimate the costs of this policy, we need to understand the number of businesses who will be affected by this change and the unit time costs of the change.

53. Specifically for the time costs of any changes within businesses, there will be individuals with different professions that will incur a time cost. We cost this at the opportunity cost of their time valued using the median hourly pay rate (excluding overtime) from the Annual Survey of Hourly Earnings (ASHE) in 2022¹¹. As such, the costs to business of introducing Option 1 (preferred option) will differ depending on the specific individuals involved in ensuring compliance.

54. We uplift these hourly costs by 17.9% to cover non-wage labour costs (based on the latest 12 months data from the ONS Index of Labour Costs per Hour¹²).

55. For simplicity, we outline the affected professions and the associated time cost in **Table 2** below, which will be referred to throughout our analysis.

Table 2: Professions affected by policy change and associated time cost

Profession	Median hourly wage rate, £	Uplift level for non-wage labour costs	Uplifted median hourly wage rate, £
Corporate manager/director	24.47	17.9%	28.86
HR manager	24.59		29.00
HR officer	13.99		16.50
Software developer	23.67		27.92
IT specialist manager	24.95		29.43
Solicitors and lawyers	26.14		30.83

Ongoing costs to workers

56. As covered in **Table 1** of the **Benefits** section, policy Option 1 (preferred option) creates a transfer from workers to businesses. This relates to the proposed inclusion of weeks with no work (excluding those used for leave) in the 52-week reference period (or monthly reference period for first year workers) for calculating holiday entitlement. This would change from the current position as set out in the Harpur Trust v Brazel case. Whilst businesses are estimated to net save £150m, and up to £150m each year thereafter, we expect an equivalent net loss to affected workers in terms of any additional holiday entitlement they received post-judgment of the Harpur Trust v Brazel case.

¹¹ See Table 14.6a: [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14](#) - Office for National Statistics (ons.gov.uk)

¹² [Index of Labour Costs per Hour, UK](#) - Office for National Statistics (ons.gov.uk)

One-off familiarisation costs

57. We assume all employers with irregular hours or part-year workers will need to familiarise themselves with the proposals. There is no precise data on the number of employers that have irregular hours or part-year workers, so we have estimated the number as follows:
- a) We assume that all large businesses in the UK will familiarise themselves with the changes.
 - b) For micro, small, and medium businesses:
 - i) We use the Longitudinal Small Business Survey 2021 (LSBS)¹³ results for whether a business has any temporary or casual staff as a lower bound for the percentage of businesses that will need to familiarise themselves with the changes.
 - ii) Other workers apart from those covered in (i) will work variable hours, so we estimate a high point of employers that might employ workers on variable hours. Here we look at the proportion of irregular hours, term-time or variable shift workers in the Labour Force Survey (2nd quarter, 2022), by size of workplace. In total this came to around 19% of workers (around 5.3 million), fluctuating around this percentage for different sizes of workplace. For micro employers with 1 worker, the probability of this being a variable hours worker is 15%. For those with 2 to 4 workers the probability of having a variable hours worker is 36%, while for those with 5 to 9 workers we estimate that 66% would have an irregular hours worker (the methodology is set out in Annex C). For those with 10 or more workers we assume the probability of having a variable hours worker is 100% for our high estimate.
 - iii) We take the mid-point between the low and high estimates to get a more realistic estimate of employers with permanent irregular hours workers who will need to familiarise themselves with the policy (see table below). That is: 16% for 1 employee organisations (this is the estimate from the Small Business Survey, as the LFS estimate is very similar), 27% for those with 2 to 4 workers, 41% for those with 5 to 9 workers, 63% for small employers (10 to 49 workers), 67% for medium sized employers (50 to 249 workers), and 100% for large sized employers (250+ workers). These may be high estimates, especially if irregular hours workers are concentrated in certain industries or employers with specific business models.

Type of business affected by Option 1 (preferred option)	Percentage of companies affected by Option 1 (preferred option)		
	Best Estimate	High	Low
1 employee (micro)	16%	16%	15%
2 to 4 employees (micro)	27%	38%	16%
5 to 9 employees (micro)	41%	67%	16%
Small	63%	100%	26%
Medium	67%	100%	34%
Large	100%	100%	100%

¹³ See: <https://www.gov.uk/government/collections/small-business-survey-reports#2021>

58. We believe that 30 minutes familiarisation time for the preferred Option 1 (preferred option) is a reasonable assumption based on our experience of the familiarisation impact of previous employment regulation changes. For example, several previous impact assessments making similar sorts of changes assumed a 30-minute familiarisation time. These include the introduction of the National Living Wage in 2016¹⁴ and extending the right to a written statement to 'dependent contractors' (non-employee workers)¹⁵. As with the latter, which had more than one element to the overall policy, while employers with irregular hours workers or part-year workers will need to familiarise themselves with the proposed reforms, only some will be required to enact certain parts of Option 1 (preferred option) where relevant. While employment law can be complex (as for instance the statutory requirement is split between two different regulations) the basic statutory requirement is for workers to get 5.6 weeks of paid annual leave (with part-time workers getting fewer days proportionate to hours or days worked in the week). This policy proposal is essentially about setting a clear method of calculating the amount of statutory annual leave an irregular hours or part-year worker is entitled to.
59. Evidence from a 2008 business survey conducted by ORC, on behalf of BEIS, to explore the admin burden of complying with key employment law obligations also supports this assumption.
60. In practice, the amount of time spent by employers familiarising themselves with the changes will vary. However, we consider 30 minutes to be sufficient time for an employer to read and consider any the proposed policy change.
61. The type of employee that would conduct the task of familiarisation will also vary depending on the size of the business. Smaller employers are less likely to have dedicated HR staff, so it would be a corporate director/manager that would familiarise themselves. For a larger employer, it could be a payroll or HR manager that conducts this task. Familiarisation costs are calculated as the opportunity cost of the time it takes a business to read about and understand the change.

Familiarisation calculation

62. The one-off familiarisation cost to the affected businesses is compiled and calculated in **Table 3**.

Private sector businesses and non-profit businesses

63. According to data from the BEIS Business Population Estimates¹⁶, at the start of 2022 there were around 1.4 million private sector employers and around 75,000 non-profit employers¹⁷ with one or more employees in Great Britain.
64. However, as mentioned above, only employers of irregular hours workers or part-year workers will be affected by these changes, for which we have generated best estimates

¹⁴ https://www.legislation.gov.uk/ukia/2016/3/pdfs/ukia_20160003_en.pdf

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701010/extending-right-to-written-statement-non-employee-workers-ia.pdf

¹⁶ See Table 1 and Table 2 <https://www.gov.uk/government/statistics/business-population-estimates-2022>

¹⁷ For non-profit and government organisations with 0 or 1 employees, we have based our estimates of the number with 1 employee on the number of employees in these organisations

of the proportion affected. We apply these proportions to the total number of private sector and non-profit employers to estimate the number of businesses affected.

65. This gives us a total estimated cost of familiarisation for private sector employing businesses of £7.8million for Option 1 (preferred option). For our best estimate calculations see **Annex C**.

Central and local government organisations

66. Central and local government organisations that are employers will also need to familiarise themselves with the changes. BEIS Business Population Estimates indicate that at the start of 2022, there were around 12,000 central and local government businesses with one or more employees in Great Britain. We use the same assumptions about wage rates as above for these businesses.
67. Again as mentioned above, only employers of irregular hours workers or part-year workers will be affected by these changes, for which we have generated best estimates of the proportion affected. We apply these proportions to the total number of central and local government organisations to estimate the number of businesses affected.
68. This gives us a total estimated cost of familiarisation for central and local government of £80,000 for Option 1 (preferred option).

HR Companies

69. Approximately 11% of companies employ bureaus and HR consultancies to produce their payroll for them (see IT Costs calculations below). Some also provide written statement templates. These HR companies will also incur an opportunity cost to familiarise themselves with the change in policy. Evidence from the Annual Business Survey suggests that there are 2,809 HR companies and 20,000 individuals¹⁸ working in this sector. However, not all of these will be HR professionals and need to familiarise themselves with changes to Employment Regulation. Analysis of the APS survey shows that in January-December 2021, 35% of workers within SIC 78.3 were HR professionals.
70. Hence, we estimate that there are around 7,100 HR managers/officers within HR bureaus and consultancies that will need to familiarise themselves. Using the same assumptions as above, 30 minutes to familiarise at a cost of £29.00 (median hourly wage including labour cost uplift) amounts to a total cost of £100,000 to HR consultancies/Payroll Bureaus.

Employment Lawyers

71. We expect there to also be costs to employment lawyers as they familiarise themselves with changes to legislation. Some employment law firms provide free written statement templates. We estimate there to be approximately 14,000 employment law firms specialising in employment law in the UK. This estimate comes from the search of the Law Society database of organisations that specialise in employment law, and employment law firms from the Law Society of Scotland, of which there are around combined 8,031¹⁹. We recognise that there is unlikely to be just one employment law

¹⁸ Due to changes in the collected data in the Annual Business Survey, the most recent (2021) ABS dataset does not include 'Total employment - average during the year' data. Therefore, we use the 2020 ABS dataset figure, which is 20,000 HR company employees (individuals).

¹⁹ Search of Law Society database of organisations with employment law specialism - England and Wales – Scotland - 13/10/2022
<https://solicitors.lawsociety.org.uk>

specialist per firm, and therefore we also include in this estimation the number of members of the Employment Lawyers Association, of which there are around 6,000²⁰.

72. Using the same method as above, we assume that it will take an employment lawyer 30 minutes to familiarise themselves with the change in legislation at a median wage of £30.83 an hour (median hourly salary of a legal professional £26.14 (ASHE 2022) uplifted by 17.9% for non-wage labour costs). We estimate the familiarisation cost to employment lawyers to be £220,000.

Employment businesses

73. Employment businesses (SIC 78.2) are responsible for employment of temporary agency workers, along with umbrella companies who are classed as HR companies in SIC 78.3. While we would expect employment businesses to largely feature in the above estimate of employers with irregular hours workers, we are specifically referring to them as organisations who would need to familiarise themselves with these proposed changes due to their potential interest in a fixed 52-week reference period.
74. Using data from the Annual Business Survey, there are 10,765 employers involved in temporary employment agency activities (SIC 78.2). Applying the same method used for medium and large businesses, we estimate the one-off familiarisation cost to employment businesses to be £160,000.

Summary of familiarisation cost to business

75. The total familiarisation costs to employers are estimated to be around £8.3 million. Of this, around £8.3 million will be to the private sector and around £80,000 (1%) to the public sector. This will likely include some double counting as some HR businesses and employment law businesses are likely to employ irregular hours workers.

Table 3: Estimated familiarisation cost to affected businesses

Description of business affected	Number of businesses affected	0.5 hours of an office manager's, HR manager's or legal professional's time	Total cost
Micro	360,000	£14.43	£5,200,000
Small	150,000	£14.43	£2,100,000
Medium	28,000	£14.50	£400,000
Large	11,000	£14.50	£150,000
HR consultancy/bureau businesses	7,100	£14.50	£100,000
Employment lawyers	14,000	£15.42	£220,000
Employment businesses	11,000	£14.50	£160,000
Total			£8,300,000

Note: Totals may not sum due to rounding to 2 significant figures.

²⁰ See <https://www.elaweb.org.uk/membership>

One – off transition costs

Costs of amending current contracts

76. Amending the contracts for the current irregular hours workers and part-year workers and notifying them of the change will create a cost based on the number of irregular hours workers in the UK. We estimate that there are around 5.3 million irregular hours and term-time workers in the UK. This is based on a BEIS analysis of the Labour Force Survey (Q2 2021), and covers agency workers, casual workers, seasonal workers, those on zero-hours contracts in their main job and shift workers whose hours vary. We also estimate that an average of 10 minutes of a HR manager or corporate manager's time is needed to notify and amend the contract of each employee affected. Our estimate of 10 minutes is based on the time used to amend a written statement used in the written statement impact assessment (see above), which based its estimate on an ORC study.
77. The written statement impact assessment uses the 10-minute estimate as the basis for adding up to seven new simple requirements into a written statement. Option 1 (preferred option) includes several amendments, such as moving to a 52-week reference period (or monthly accruals for workers in their first year) and how the length of an annual leave day will be calculated.
78. We expect that whilst some irregular hours workers will wish to discuss the contract changes in depth, we assume that a detailed discussion will not be required with each worker to explain the changes to their contract. We also note that there will be economies of scale in amending worker contracts in those businesses that employ more than one irregular hours worker or part-year worker, because the changes are uniform for each of those workers and larger group discussions on how the changes will affect the workers may also be possible. Whilst 10 minutes is a short amount of time, we assume that it is reasonable when averaging time taken across all current irregular hours and part-year workers.
79. As with familiarisation costs, we assume that the person completing this task varies by business size but that it will generally be a general manager or payroll or HR manager that conducts this task. We have used an average of the cost of the time of a general manager and payroll/HR manager in the calculation in **Table 4**.
80. This gives us a total estimated cost of £26 million for amending the current contracts of the estimated 5.3 million irregular hours workers.
81. BEIS analysis of the Labour Force Survey (LFS) found that 61% of irregular hours workers are based in the private and non-profit sectors. Therefore, the estimated cost to business of amending current employment contracts would be around £15.8 million, while the cost to public sector employers would be £10.1 million (39%).

Table 4: Estimated cost of amending the written statement of an individual worker

Irregular hours workers	10 minutes of corporate director manager/HR manager time	Total cost
3,300,000 (private)	£4.83	£16,000,000
2,100,000 (public)	£4.83	£10,000,000
Total		£26,000,000

Note: totals may not sum due to rounding to 2 significant figures.

Cost of amending templates of future contracts

Option 1 (preferred option)

- 82. Similar to the amendment of current contracts, we expect that businesses’ contract templates for irregular hours and part-year workers will need to be amended to reflect the new legislation. This will ensure that when an employer takes on a new worker, their employment contract or written statement will reflect the latest legal position.
- 83. Our estimate for template amendment costs assumes that all employing businesses in the UK who employ irregular hours and part-year workers will need to change their relevant contract templates (those for irregular hours and part-year workers).
- 84. We expect employers will use a variety of methods to update their future contracts. These include using free online templates, outsourcing to HR consultancies or Employment Lawyers, and internal HR departments amending their own contracts. This reflects the approach used in the Confidentiality Clauses consultation impact assessment²¹, where the proposals required employers to include specific information on the limitations of confidentiality clauses into written statements and settlement agreements.

Micro Employers

- 85. For costs to micro employers, we utilise the methodology from the Confidentiality Clauses Impact Assessment. Evidence from Startups²², the independent small business advice platform, suggests that micro businesses will either use free templates or have an outsourced HR or legal advisor. This evidence also suggests that many small employers and some medium sized employers may not have sufficient numbers of workers to warrant an internal HR resource (though it will depend on the specific HR needs of the organisation) and may get better value for money from external support. If they do use a HR consultancy or Employment Law advisor, we assume that the advisor businesses will bear the costs.

²¹ Confidentiality Clauses Consultation Impact Assessment. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796807/confidentiality_clauses_Impact_Assessment.pdf

²² [HR outsourcing: Should I outsource HR for my small business? \(startups.co.uk\)](https://startups.co.uk/hr-outsourcing-should-i-outsource-hr-for-my-small-business/)

86. The cost of updating the free templates, primarily provided by similar organisations, will be borne by the providers. We therefore assume that there will be no additional cost to Micro business of amending contracts for future workers. The estimated costs to HR consultancies and employment lawyers are costed below.

Small and medium employers

87. For the businesses that have a dedicated HR resource (using estimates from the Non-Disclosure Agreement (NDA) Impact Assessment) we assume a similar amendment time of 30 minutes of a HR manager's time for small and medium employers, and 1 hour of time for large employers, HR consultancies and employment law firms is needed to amend the templates. This is about half the time estimated in the Confidentiality Clauses Impact Assessment, because here we consider contract/written statement templates related to irregular hours work (plus related staff handbooks), and not all written statement templates (e.g., those for full-time workers) or settlement agreement templates. It essentially reflects the 10 minutes estimate for changing an existing written statement being carried out on average over more than one document (templates/handbooks).
88. This impact assessment moves on slightly from the consultation version of the Confidentiality Clauses impact assessment. The estimate of whether an employer has its own HR resource is based on BEIS analysis of the Survey of Employment Tribunal Applications 2018²³, where we estimated that 47% of small employers (10 to 49 employees) and 73% of medium (50 to 249 employees) and all large (250 or more employees) employers will have their own in-house HR professional or department, as they are likely to have workforces which will require greater HR input. For micro employers (1 to 9 employees), most small employers (10 to 49 employees) and some medium employers we considered that they will not have their own in-house HR resource.
89. The business size categories for the Survey of Employment Tribunal Applications (SETA) 2018 do not have a perfect match for our definition of "small employer" and also do not match the business category sizes in the Business Population Estimates (BPE) 2021. Therefore, we have applied the SETA percentage (of 47%) from the closest matching size category (25-49 employees) to the BPE definition of small employers (10-49 employees). We believe this is a conservative approximation as companies with more employees are more likely to have a dedicated HR department.
90. This gives us an estimated cost of £1.3 million for amending the templates for future irregular hours and part-year workers for small and medium employers.

Large employers

91. As stated above, we assume that all large employers have their own HR department (this is closely in line with SETA 2018, which found that 98% of those going through a single employment tribunal claim said they had their own HR).
92. We estimate that the cost to large employers will be approximately £0.3 million.

²³ Survey of Employment Tribunal Applications (2018). Available from: <https://www.gov.uk/government/publications/survey-of-employment-tribunal-applications-2018> Table 2.6

HR companies and employment law firms

93. In the UK, we estimate that there are 8,031 employment law firms in Great Britain²⁴ and 2,809 HR consultancies²⁵. We assume that the micro companies not using free templates, and small, medium, and large businesses without an internal HR department will utilise these services to amend their employment contracts. Also, these firms provide many of the free templates.
94. Therefore, the costs of updating templates for these employers will be borne by the employment law firms and HR consultancies. We assume that similar to large employers, these firms would need on average 1 hour to amend their templates for irregular hours and part-year workers (as they may have to update more than one or two generic templates). The costs would be based on hourly labour cost of an HR manager or director for HR consultancies and a legal professional for employment law firms.
95. We estimate the cost to HR consultancies and Employment Law Firms to be £0.33 million.

Employment businesses

96. Employment businesses, who along with umbrella companies are responsible for employment of temporary agency workers, would need to update their templates and other documents. We would expect that generally this would take a similar amount of time, 30 minutes, as a small or medium sized business, as their basic terms are likely to be fairly similar. As stated above, we estimate that there are 10,765 employment businesses, applying the hourly labour cost for 30 minutes of a HR Director's time (£14.50).
97. We estimate the cost to employment businesses of updating employment contract templates to be £0.16 million.

Summary – costs to business of updating templates

98. In summary, we estimate the total costs of amending future contracts for the introduction of a 52-week holiday entitlement reference period and/or accruals based approach to be £2.1 million. Around 3% of these costs are attributable to public sector employers (£50,000), with the remaining £2.1 million to the private and non-profit sectors.

²⁴ This was calculated using information from the Law Society of organisations with employment law specialism in England and Wales, and information of employment law specialists from the Law Society of Scotland.

²⁵ This was estimated using data from the Annual Business Survey (2019) Available from: <https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/datasets/uknonfinancialbusinesseseconomyannualbusinesssurveysections>

Table 5: Estimated cost of updating templates for employers

Description of business affected	Number of businesses affected	0.5 hours or 1 hour of HR manager's time	Total cost
Small employers	69,000	£14.50	£1,000,000
Medium employers	20,000	£14.50	£290,000
Large employers	11,000	£29.00	£310,000
HR consultancies	2,800	£29.00	£81,000
Employment law firms	8,000	£30.83	£250,000
Employment businesses	11,000	£14.50	£160,000
Total			£2,100,000

Note: totals may not sum due to rounding to 2 significant figures.

One-off Costs: Setting up/upgrading holiday recording systems

Option 1 (preferred option)

99. As employers are currently required to record and hold working hour data for 2 years due to Working Time Regulations, the requirement to use a 52-week holiday entitlement reference period (or monthly reference period for workers in their first year) does not mean that businesses are required to record or store additional data. There is already a requirement for employers to provide hours worked on payslips where the worker's pay varies according to the hours worked. Hence, payroll systems providing payslip function would need to have hours worked data for these workers (who would include irregular hours and part-year workers). Or more simply, businesses already collect and hold this data but they will need to ensure that the data is held in a format that reflects a 52-week reference period. Therefore, we expect the IT cost to businesses for Option 1 (preferred option) will be the cost of incorporating this formatted data into their respective holiday systems, and applying the specific calculation approach.
100. At present, employers should already be using a 52-week reference period for calculating holiday pay for irregular hours workers as per current legislation, but may be using a 12 or 13 week reference period, or an accruals approach to calculate leave entitlement for irregular hours workers, if they have not updated their approach following the Supreme Court judgment. Data on the number of businesses that are compliant post-Supreme Court judgment is not available. Because of this, we assume that all employers who employ irregular hours workers and part-year workers will need to amend their systems or have them amended but note that this will be an overestimate. As a result, the related costs to business for setting up/upgrading holiday recording systems will be an overestimate.
101. We expect that businesses will fall into four major categories on how they handle holiday administration:
- a) they have their own bespoke payroll and holiday systems;
 - b) they use payroll software;
 - c) they outsource payroll;
 - d) they calculate entitlement manually.

102. This broadly reflects the approach taken in the impact assessment on payslip reform²⁶. In the case where they have a payroll system without holiday entitlement/pay functionality, we expect them to calculate this manually.

Setting up holiday recording systems

Micro Businesses

103. If businesses decide to administer payroll themselves HMRC requires businesses to use payroll software and provide options on their website²⁷. Micro businesses are eligible for free payroll software, and therefore we assume that they do not use bespoke software as it is more costly. Of the free software Micro businesses are eligible for (HMRC recognised), none provide holiday entitlement and pay calculations as a free feature. Therefore, we assume that micro businesses calculate this manually, using spreadsheet software.

104. We assume that micro businesses have access to data about a worker's weekly hours worked and weekly holiday taken as they are required for payroll. They will need to make a simple calculation (totalling the worker's paid hours over 52 weeks (or month for those in their first year) and applying a ratio) to work out holiday entitlement. This is similar but not necessarily the same as the holiday pay calculation (which also uses a 52-week reference period). For workers in their first year with the employer, the accruals calculation would just be based on hours worked in the past month. We expect this to take on average 10 minutes of a corporate director/managers time, at a median hourly wage of £24.47 and a non-wage labour uplift cost of 17.9% (£28.86).

105. We estimate the total adjustment costs to private sector and non-profit micro businesses to be £1.7 million and £7,000 to micro public sector employers.

106. It should be noted that at this stage we have assumed all micro employers with irregular hours workers follow this approach. However, some micro businesses may use paid payroll software which has more functionality, and some paid-for payroll software is marketed towards micro businesses. Some may also contract out HR processes to an HR consultant.

107. In the consultation there is a question of whether to use a fixed 52-week reference period for entitlement. Although this is not fully decided on for Option 1 (preferred option), we assume that employers currently calculate what leave a worker is entitled to and has taken at a given point in time – either in real time (if their system allows), at fixed intervals or when workers request annual leave. We do not expect there to be any additional administrative burden on top of adjustments to calculations described above.

Small, medium, and large businesses

108. According to the HMRC website, businesses can operate PAYE by either: paying a payroll provider to do it for them or do it themselves using an HMRC approved (or other suitable) payroll software. Unlike micro businesses, the HMRC site implies that small, medium, and large businesses are not eligible for free software and must pay for their payroll system or pay a bureau to calculate it for them.

109. In a small random sample of paid-software available on the HMRC website, we found that 60%²⁸ had some holiday functionality. We have applied this rate to the industry as a whole and assumed equal market share (while it is likely that market share will favour

²⁶ https://www.legislation.gov.uk/ukia/2018/32/pdfs/ukia_20180032_en.pdf

²⁷ <https://www.gov.uk/payroll-software/free-software>

²⁸ Sample of 10 payroll products. 6 were found to have holiday functionality, 4 did not.

software that offers better quality functionality at a competitive price). Using similar methodology to the Extending the Right to Receive a Payslip Impact Assessment, survey data from the Chartered Institute of Payroll Professionals (CIPP) found that 89% of companies with 10+ employees (small, medium, and large companies) do their payroll inhouse. Of this 89%, 97% use paid-for payroll software and just 3% use bespoke payroll software. We assume that the other 11% outsource their payroll to bureaus.

110. Our best estimate suggests that there are 4,900 small, medium, and large employers with bespoke software that will be affected by the policy change. We expect there are 4,800 private and non-profit companies and around 100 central and local government bodies that have bespoke software and will update their system in response to the policy change. Using the methodology from the One-Sided Flexibility Consultation Impact Assessment, we estimate that updating bespoke software will take 8 hours of an IT managers time to update, at a median hourly wage of £24.95, and with a 17.9% non-wage uplift a labour cost of £29.43.

Summary - one-off IT adjustment cost to employers with bespoke software

111. In summary, we estimate the total costs of one-off IT adjustment cost to affected employers with bespoke software to be £2.9 million. Around 1% of these costs are attributable to local and central government (£30,000), with £2.9 million to the private and non-profit sectors (small-large employers), but the majority to micro employers (£1.7 million).

Table 6: Estimated one-off IT adjustment cost to employers with bespoke software

Description of business affected	Number of businesses affected	10 minutes of a corporate director/manager's time or 8 hours of an IT technician's time	Total cost
Micro employers	360,000	£4.81	£1,700,000
Small employers	3,900	£235.43	£920,000
Medium employers	740	£235.43	£170,000
Large employers	280	£235.43	£66,000
Total			£2,900,000

Note: Totals may not sum due to rounding to 2 significant figures.

Upgrading holiday recording systems

Software Companies

112. For payroll software companies that provide subscription software there is an opportunity cost of updating their software. On the HMRC website, we found 179 unique software products, of which we predict that around 107 have annual leave capabilities. We assume that all software companies with holiday functionality will update their software in light of new regulation to ensure product is able to meet the new statutory requirements on holiday entitlement.

113. Following a similar methodology to updating bespoke software, we assume that it takes 8 hours of a software developers time to update their product at a median wage of

£23.67, so around £223 total. Uplifting these wage costs by 17.9% to cover non-wage labour costs gives an estimated cost to software companies with holiday functionality of approximately £24,000. We assume that those without holiday functionality already would not update their products in reaction to new regulation.

Table 7: Estimated one-off software development cost to software companies

Description of entity affected	Number of Unique Software Products with Holiday Functions	Average cost of 8 hours of a Software Developers time	Total cost
Software companies	107	£223.35	£24,000

Note: Totals may not sum due to rounding to 2 significant figures.

Small, medium, and large businesses

114. If businesses are spread evenly as customers among payroll software companies, then we expect that 40% of those with paid-for payroll software do not have holiday functionality. In this case, we expect these companies to pay to upgrade their systems in a similar manner to those with bespoke software. As in **Table 8**, the labour cost of 8 hours work by an IT specialist manager is an estimated £235, after being uplifted for non-wage labour costs (17.9%).

115. The total number of private sector and non-profit businesses with irregular hours and part-year workers using software without holiday functionality is estimated at 62,400 and upgrading their systems would incur an estimated total update cost of £14.7 million, which is around 98% of the total cost to small, medium and large businesses.

116. We expect this to be a conservative estimate as the software companies with holiday pay and entitlement functionality may be more likely to have greater market share. Alternatively, some software companies provide HR software in a suite of products including payroll software so employers using these products may get the HR software updated by the software company.

117. For central and local government, the total number of businesses with irregular hours and part-year workers, using software without holiday functionality is estimated to be around 1,300. Upgrading their systems would incur an estimated total update cost of £300,000, which is around 2% of the total cost to small medium and large businesses.

118. This is a conservative estimate as we expect the true number of businesses likely to be impacted in much lower than our best estimate. Evidence from the CIPP Payslips Survey suggests that the change in reference period for holiday pay from 12 weeks to 52 weeks only impacted 38% of businesses. Those not impacted were employers paying staff on a fixed basis. Others stated that they already used the 52-week reference period for holiday pay. We expect that, as the 52-week reference period is now the standard holiday pay calculation, there will be many irregular hours workers whose employer already calculates their holiday entitlement using a 52-week reference period.

HR Companies/Payroll Bureaus

119. Using evidence from the Annual Business Survey (2021), we found that there were 2,809 HR businesses. We make a conservative assumption that all these HR companies are providing a payroll service. We then apply the percentages from the CIPP survey: 3% of those doing payroll in-house use bespoke software, with 97% using paid-for payroll software. We assume that HR companies do not outsource their payroll to a rival HR company. For these 97%, we assume 60% use payroll software that includes a holiday function option (based on a small random sample of HMRC recognised payroll software). This means that around 42% (1,174) of HR companies (those using bespoke software or paid-for payroll software without holiday functionality) will need to update any software they use to calculate holiday entitlement for their clients to adjust to the change in policy.
120. Assuming it takes 8 hours for an IT specialist manager to upgrade payroll systems in-line with the new policy at a cost of £29.43 (median wage including 17.9% non-wage labour cost uplift). This amounts to a cost of £0.28 million to HR consultancies.

Employment Businesses

121. Employment businesses, where they are providing payroll services to the temporary agency workers on their books, would also need to use updated software to reflect the proposed accruals based approach. As above, we assume 11% outsource (for instance to HR companies), and of the 89% doing payroll in-house 3% use bespoke software, and 97% use paid-for software (of which 60% provides annual leave functionality). Therefore, around 37% of employment businesses would use bespoke payroll or paid-for software without holiday functionality. These businesses would need to update their software to enable the accruals approach for holiday entitlement. We assume this would take 8 hours of an IT manager's time at £235.
122. We estimate that the cost to employment businesses of updating their software would total £0.94 million.

Summary of one-off IT adjustment costs to business

123. We estimate that the total one-off IT adjustment cost to businesses using software without holiday functionality is £16 million, as calculated in **Table 8**.

Table 8: Estimated one-off IT adjustment cost to businesses using software without holiday functionality

Description of business affected	Number of businesses affected	8 hours of an IT specialist manager's time	Total cost
Small employers	51,000	£235.43	£12,000,000
Medium employers	9,600	£235.43	£2,300,000
Large employers	3,600	£235.43	£860,000
HR companies/payroll bureaus	1,200	£235.43	£280,000
Employment businesses	4,000	£235.43	£940,000
Total			£16,000,000

Note: Totals may not sum due to rounding to 2 significant figures.

Familiarising with Software Change

124. For employers that conduct payroll inhouse and therefore use bespoke software or paid payroll software (with or without holiday functionality) there are likely to be adjustment costs, because the HR representative must familiarise themselves with the changes to the software. The changes should be fairly small and focused on the annual leave section of payroll or HR software.
125. We assume this will take a HR representative 15 minutes to adjust to the change in their software system. This is because the HR representative will already be familiar with the software, and the change should be small, and similar to the approach used for the 52-week holiday pay reference period. This equates to one quarter of a median hourly wage plus a non-wage labour cost uplift (17.9%).
126. We estimate the total adjustment cost to business to be £1.3 million. Of these costs, around 2% are attributable to the public sector and the remaining 98% to the private and non-profit sectors.
127. There would also be familiarisation for HR managers at HR companies, and at employment businesses doing payroll in-house. We estimate this to be around 2,800 HR companies and 9,600 employment businesses. As above, we assume 15 minutes time, at a labour cost of £7.25. This gives a total familiarisation cost to HR companies of £20,000, and £69,000 to employment businesses.

Summary of software familiarisation cost to business

128. We estimate that the total familiarisation cost to employers of moving to a fixed 52-week reference period is £1.3 million, as calculated in **Table 9**.

Table 9: Estimated software familiarisation cost to businesses with inhouse payroll

Description of business affected	Number of businesses affected	15 minutes of a HR representative's time	Total cost
Small employers	130,000	£7.25	£940,000
Medium employers	25,000	£7.25	£180,000
Large employers	9,400	£7.25	£68,000
HR companies/payroll bureaus	2,800	£7.25	£20,000
Employment businesses	9,600	£7.25	£69,000
Total			£1,300,000

Note: Totals may not sum due to rounding to 2 significant figures.

Summary of costs to business for setting up/upgrading holiday recording system

129. We estimate that the total IT cost to employers of moving to a fixed 52-week holiday entitlement reference period to be £20.4 million. Of this, we estimate that around £0.4 million (2%) of these costs go to the public sector, while around £20 million go to the private and non-profit sectors.

Table 10: Summary of estimated costs to business for setting up/upgrading holiday system records

One-off IT adjustment costs	Total cost
Businesses using bespoke software	£2,900,000
Software companies developing software	£24,000
Businesses using software without holiday functionality	£16,000,000
Familiarisation	£1,300,000
Total	£20,000,000

Note: Totals may not sum due to rounding to 2 significant figures.

130. We will seek further evidence during the consultation period on how businesses currently conduct holiday entitlement calculations for their part-year and irregular hours workers to produce a better estimate of the burden to business.

Calculating a day of entitlement taken

131. For irregular hours and part-year workers whose hours vary day to day and week to week, the Government suggests two options to determine how much time a day's leave would account for:

- a) The **first method** is to use the reference period to calculate the average working hours in a working day. When a worker took a day off, it would use the number of hours in this average working day.
- b) The **second method** would be to calculate the average hours worked for specific days. For example, to work out the amount of holiday it would take to have a Monday off from work, employers would calculate the average hours that a worker worked each Monday in the reference period. This would be expected to be more burdensome than using a simple flat average but makes it more likely that workers would get holiday entitlement that more accurately reflects 5.6 weeks off work. It would avoid the incentives to take or not take leave on specific days mentioned above.

132. This is needed so that an annual leave entitlement calculated in hours can be fairly translated into days where there is no straightforward way of doing so. While the overall amount of paid annual leave in hours wouldn't be affected, the number of days this was spread over could be unfairly set too low or too high. For most irregular hours workers, while their hours worked may vary week to week, they are still likely to work in a daily structure of full-days, half-days or fixed shifts, and therefore it would be relatively

straightforward for employers and workers to know how much annual leave time they were using.

133. We assume that the need to specifically calculate how many hours a day's leave should account for would only affect workers with completely irregular working patterns where daily working hours would not fit these standard patterns. Therefore, in this estimate we consider only those on zero-hours contracts who may be more subject to fluctuating daily hours of work. We derive this estimate from the Management and Wellbeing Practices Survey²⁹ which found that 10.7% of micro businesses (5 to 9 employees), 13.9% of small businesses, 29.1% of medium businesses and 21.6% of large businesses employ zero-hour contract workers. While it is possible that other types of workers might work non-structured variable daily hours, some zero-hours contract workers may also work structured daily hours.
134. In addition to the IT costs relating to the change in how entitlement is calculated, we also expect that businesses will need to adjust their systems to determine how many hours are used when a day's annual leave is taken. The assumptions remain the same as above, however are instead only costed on companies that employ zero-hours contract workers, and the companies that calculate payroll for these companies. We will be consulting with stakeholders on the preferred method to calculate this, however, for the purposes of this impact assessment we expect the cost to business to be the same regardless of which method is chosen. This is because it is possible to instantly copy the formula for the average hours for Monday to create averages for the other working days.
135. We are assuming that employers have the information digitised to facilitate the data such as hours worked and pay needed for payroll systems and payslips for irregular hours workers, and probably to facilitate the organisation of work within the organisation (who is working when, for how long). If employers do not have the data digitised, then the costs would be more significant (and probably more burdensome when calculating averages for each day).
136. Employers need to keep working time records in order to calculate holiday pay. For irregular hours workers whose pay varies according to the time worked, employers need to include these hours on payslips. These information requirements, and the need for employers to know who is working when and how many hours they have worked (at which pay rate if it varies, for instance for unsociable hours) mean that employers should have the data required to cover the 52-week reference period. We will test this assumption through the consultation.

Micro Businesses

137. Currently, daily hours worked data is not required for payroll systems or real-time PAYE information (generally a week would be the shortest pay-period for workers). Therefore, we assume that micro businesses calculate this manually using tools such as Excel. For irregular hours workers, we assume that the data required for these calculations – hours worked per day – are already digitised in spreadsheets to facilitate the data needed for payroll and payslips (wages, relevant taxes and hours worked).

²⁹ The results of this survey are not yet published.

138. Micro businesses would then have to calculate the relevant average (the average number of hours worked in a day within the reference period, or the average number of hours worked on specific days in the reference period). This could be done with a simple formula that could be copied. We expect this to take 10 minutes of an office managers time on average³⁰, at a median hourly wage of £24.47 and a labour uplift cost of 17.9%. We estimate that 191,000 micro organisations employ zero-hours contract workers and would need to calculate the amount of entitlement taken for a given day. The total adjustment cost comes to £0.9 million.

139. Of the £0.9 million, around 96% falls on the private and not-for-profit sectors.

Small, medium, and large businesses

140. We assume for the purposes of this Impact Assessment that these businesses have access to information on the number of days worked in a week, the hours worked in a week, and the number of hours worked on specific days as these are likely to be displayed on rotas to inform irregular hours workers when they are due to work.

141. This data, however, is not required for payroll and we therefore assume that each company that calculates their payroll in-house will be required to update their systems to reflect either of these proposed methods if they are carried forward post-consultation.

142. We estimate that there are around 54,000 private and non-profit small, medium, and large businesses, and approximately 4,500 central and local government bodies that will need to update their systems to reflect this change.

143. Using the same methodology as updating bespoke software, we assume that updating their respective holiday entitlement systems will take 8 hours of an IT manager's time at a median hourly wage of £29.43 (including non-wage labour cost uplift).

144. We estimate that this policy change will incur a cost of around £12.7 million to private sector and non-profit businesses, and around £1.1 million to central and local government employers that conduct their payroll inhouse.

Software Companies

145. We assume that all software companies with holiday functionality (107 products) will update their software in light of new regulation to remain a viable product for businesses that employ irregular hours workers. While they may not develop the software to hold daily hours worked per worker on irregular hours (zero-hours contract) – they might need to allow input of the daily average times in order to allow the used and remaining annual leave to be calculated.

146. Following a similar methodology to updating bespoke software, we assume that it takes 8 hours of a software developers time to update their product at a median wage of £23.67. Uplifting these costs by 17.9% to cover non-wage labour costs gives an estimated cost to software companies with holiday functionality of approximately £24,000. We assume that those without holiday functionality already would not update their products in reaction to new regulation.

³⁰ This may vary depending on how many workers the employer has to make the calculation for, from one up to nine – though it would be expected that few micros would have nine employees all working variable daily hours.

HR Companies/Payroll Bureaus

147. Using the same methodology as the Right to Receive a Payslip Impact Assessment, we assume that for the 11% that outsource their payroll use a payroll or HR consultancy. Evidence from the annual business survey shows that in 2021, there were around 2,800 HR businesses. We assume, similarly to small, medium, and large businesses, that as this information is not currently required for PAYE software, HR companies must seek this information on workers' days worked from their clients and update their systems to reflect changes in the policy. Assuming it takes 8 hours for an IT technician to upgrade payroll systems in-line with the new policy at a cost of £29.43 (median hourly wage including non-wage labour cost uplift).
148. This amounts to a cost of £0.66 million to HR consultancies of updating their IT systems.

Familiarising with Software Change

149. For employers that do payroll inhouse and therefore use bespoke software or use paid payroll software (with or without holiday functionality), there are likely to be adjustment costs, whereby the HR representative must familiarise themselves with the changes to the software.
150. We assume this will take a HR representative 15 minutes to familiarise themselves with the change in their software system. As above, we expect users are familiar with the systems, and the additional functionality is expected to be relatively minor and in accordance with the rest of the system's operations. These estimated costs are summarised in **Table 12**. We estimate this will affect around 54,000 private and non-profit sector businesses and around 4,500 public sector employers. At a median hourly wage of an HR manager plus labour cost uplift (£28.86), we estimate the total adjustment cost to be £0.42 million.
151. HR companies will also need to familiarise themselves with the software change. For 2,800 businesses, the cost is 15 minutes of an HR manager's time at an hourly labour cost of £29.00. We estimate this familiarisation cost to be £20,000.
152. The total cost of familiarising with the introduction of daily average hours worked calculations into payroll or annual leave software is around £0.44 million.

Summary of transition IT costs for daily average calculations

153. The estimated total cost of changing IT systems and familiarising with these new systems to calculate average hours worked in a day is £15.8 million, of which £14.7 million (92.8%) are costs to private and non-profit businesses, and £1.1 million (7.2%) are costs to central and local government.

Table 11: Estimated cost of amending IT to calculate average hours in a day

Description of business affected	Number of businesses affected	10 minutes of an office manager's time or 8 hours of an IT technician's time	Total cost
Micro employers	190,000	£4.81	£920,000
Small employers with inhouse payroll	40,000	£235.43	£9,500,000
Medium employers with inhouse payroll	14,000	£235.43	£3,300,000
Large employers with inhouse payroll	4,000	£235.43	£950,000
Software companies with holiday functionality in payroll software	110	£223.35	£24,000
HR companies	2,800	£235.43	£660,000
Total			£15,000,000

Note: Totals may not sum due to rounding to 2 significant figures.

Table 12: Estimated familiarisation cost of amending IT to calculate average hours in a day

Description of business affected	Number of businesses affected	15 minutes of an HR manager's time	Total cost
Small employers with inhouse payroll	40,000	£7.25	£290,000
Medium employers with inhouse payroll	14,000	£7.25	£100,000
Large employers with inhouse payroll	4,000	£7.25	£29,000
HR companies	2,800	£7.25	£20,000
Total			£440,000

Note: Totals may not sum due to rounding to 2 significant figures.

Summary of transitional IT Costs

154. We estimate in total that the IT costs of Option 1 (preferred option) equates to £36.3 million. This is comprised of £20.4 million for adjusting to change to a 52-week entitlement reference period, and a further £15.8 million for employers who may need to calculate how many hours of entitlement are used for one day of annual leave. Of this, around £34.8 million is the cost to the private and non-profit sectors, and around £1.5 million is the cost to public sector employers.

155. For calculating how many hours of entitlement are to be used for a days' leave, we have limited data on the burden this would impose on businesses. We will seek further evidence in the consultation from stakeholders on which method is best, and the data to which they have access, to generate a more proportional cost estimate.

Ongoing annual costs (non-monetised)

Fixed reference 52-week reference period for holiday entitlement

156. A fixed reference period would mean that the annual leave entitlement for the current leave year was determined by the average weekly hours worked in the previous year (52-week reference period).

157. Leave systems should be kept up-to-date reflecting changes in leave entitlement when leave is taken, for instance.

158. This option might lead to some costs to employers and to individuals where there is significant variation in hours worked year-on-year:

- a. A fixed reference period could lead to a worker whose hours fall substantially having a higher paid leave entitlement proportionate to the hours worked in the current leave year, at a cost to the employer (though the worker may seek alternative work if they are not earning sufficient money from the work). If their working hours rise in their current leave year, then the worker would get less paid leave pro-rata to the hours currently being worked in the leave year – benefitting the employer (though there may be costs if the worker's health is affected).

159. We are not able to monetise these costs due to a lack of information on how many irregular hours workers and part-year workers have significant variation in working hours year-on-year.

Summary of monetised costs

Option 1 (preferred option)

160. As shown in **Table 13**, the Government estimates that employers will face a total cost from Option 1 (preferred option) of £72.5 million and total benefit of £1.5 billion over a 10 year appraisal period, with an EANDCB of -113.3. This includes familiarisation costs of £8.3 million, plus several one-off costs from a change in their payroll systems (£20.4 million), amending current irregular hours and part-year workers' contracts (£26 million), changing contract templates to include their new terms of employment (£2.1 million) and changing systems to calculate how many hours are in a day's leave (£15.8 million). Of this total cost, approximately £61 million falls on private sector and non-profit businesses and £12 million falls on central and local government.

Table 13: Summary of estimated costs and benefits

Description of cost/benefit	Total, £m
Economic transfer from workers to businesses (annual)	1492.1
Transitional (one year) cost to employers:	
Familiarisation	8.3
One-off changes in payroll systems	20.4
Amending current irregular workers contracts	25.9
Changing contract templates to include their new terms of employment	2.1
Changing systems to calculate day's leave	15.8
NPV, 10 years (2019 prices)	-57.8
EANDCB, £m (2019 prices)	-113.3

Note: Totals may not sum due to rounding to 1 decimal point.

Summary of costs and benefits

Option 1 (preferred option) (preferred option): Introducing a reference period to calculate holiday entitlement

	Impact
Workers	<ul style="list-style-type: none"> • Matching the length of the holiday entitlement reference period to the current holiday pay reference period (52 weeks) should help irregular hours and part-year workers by providing greater structure and clarity on their holiday entitlement. The improved clarity will allow irregular hours and part-year workers to challenge employers when they believe they are not receiving their full entitlement. • There is a cost to irregular hours and part-year workers who do not work every week (excluding weeks not worked due to leave). This is to make paid leave entitlement for these workers proportionate to full-year workers. We estimate that this annual cost is around £149 million in lost paid leave.
Employers	<ul style="list-style-type: none"> • We expect that matching the length of the holiday entitlement reference period to the current holiday pay reference period would simplify the holiday pay/entitlement calculation for irregular hours workers, which would lower the administrative burden on employers and reduce the number of tribunals caused by unintentional non-compliance. • Compliant employers could benefit from a fairer competitive market if employers currently non-compliant are able to become compliant due to the clarification of the law. • We estimate that Option 1 would net save businesses between £50m and £250m in the first year that they increase holiday pay for workers in scope of the judgment, and up to £250m thereafter in every subsequent year. This saving may not be entirely attributed to the judgment, as it includes required increases in holiday pay where employers were non-compliant before the SC judgment. • We also estimate businesses will face a total cost from Option 1 (preferred option) of £72.5 million. Employers will face includes familiarisation costs of £8.3 million, plus several one-off costs from a change in their payroll systems (£20.4 million), amending current irregular workers contracts (£26 million), changing contract templates to include their new terms of employment (£2.1 million) and changing systems to calculate how many hours are in a day's leave (£15.8 million). • Of this total cost, approximately £61 million falls on private sector and non-profit businesses and £12 million falls on central and local government organisations. • This is the estimated cost of transition, as we assume once the calculations are in place there will be no ongoing administrative cost resulting from the changes: employers currently need to keep their annual leave systems up-to-

	date, so they and their workers know how much leave is available in the leave year.
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Risks and assumptions

161. It is difficult to precisely estimate the number of irregular hours workers and part-year workers for who it may be appropriate to calculate holiday entitlement using this approach. We have tried to focus on specific groups such as zero-hours contract workers, agency workers, casual workers, seasonal workers and shift workers who say their hours vary. This should exclude most regular hours workers whose hours may vary through working flexitime, or concentrated hours, or unpaid overtime etc.
162. It is also difficult to precisely estimate the number of employers that will need to utilise the 52-week reference period. We have tried to take a conservative estimate here by taking a mid-point between, generally (except for the smaller micros) all employers and the percentage of employers who use temporary or casual workers. We have also specifically costed for groups of businesses (HR companies, employment law firms, employment businesses) who are likely to be required to take some action if the legislation is changed. This could mean there is a small amount of double counting between these numbers and those generated from the Business Population Estimates.
163. We have assumed that employers have digitised daily hours data; because it would facilitate calculations for payroll, and generally facilitate business operations for employers using workers on irregular hours. However, it is a possibility that some employers, more likely micro businesses, do not have this information digitised, and may find doing so more costly than estimated.

Enforcement

164. As currently, annual leave entitlement for part-year and irregular hours workers would continue to be enforced by individuals through the employment tribunal system. If employers did not provide at least the statutorily required amount of paid leave entitlement under the proposed calculation method individuals would be able to bring a claim for redress against the employer.

Impact on small, medium and micro businesses

165. Using our estimate of irregular hours workers in the LFS there is no evidence to suggest that small, medium and micro businesses have significantly more or less irregular hours workers as a proportion than larger businesses. However, it is likely that a lower proportion of micro businesses than small, medium or large businesses have any irregular hours workers.
166. HMRC rules suggest that micro businesses can use free payroll software to provide them with real time information, whereas larger businesses would use paid for software (or their own compliant bespoke software). We have assumed that micro business holiday information is spreadsheet based and that amending these to reflect proposed changes would be less costly than familiarising themselves with changes to paid for software – or paying for changes to the software. Similarly individual micro and small businesses will spend less time providing new written statements (as they have fewer workers) and are more likely to not have their own written statement templates to

update. Therefore, overall, we do not expect the proposed changes to disproportionately affect micro or small businesses.

167. We are asking questions in the consultation to better understand the impact of the regulations and the policy proposal on small, medium and micro businesses and will expand our assessment of this in the final stage Impact Assessment.

Wider impacts

168. The potential impacts on productivity should be positive. Rules that are easier to follow and understand will also increase the likelihood of workers getting their entitlement to paid annual leave. The right to paid annual leave is key to ensuring that workers remain rested and productive, with 83% of typical workers and 73% of atypical workers saying they felt more productive because of taking holiday³¹.

169. We do not anticipate the proposed policy will have an impact on competition. Holiday pay remains a small part of a worker's overall remuneration. The proposed change is unlikely to reduce paid leave entitlement substantially for most irregular hours workers. For instance, those in school education on term-time contracts there are 39 term weeks in a year – compared to 46.4 working weeks for a regular hours worker in a year. All workers are entitled to a statutory 5.6 weeks (pro-rata) of paid annual leave a year, so all employers need to have systems in place to administer that entitlement. While employers with irregular hours workers may face a relatively small cost to introduce the proposed calculation method, they could benefit from a small reduction in the amount of paid holiday owed to these workers. Given that for most employers the changes would not be significant relevant to overall costs it is unlikely to substantially impact competition.

170. We have undertaken an Equalities Impact Assessment which can be found in **Annex A**. We will continue to develop this at the final stage Impact Assessment and would welcome views from stakeholders on potential impacts on the protected characteristics

Monitoring and Evaluation

171. We would intend to evaluate the policy within 5 years of its commencement. The evaluation would involve looking at specific research data, such as quantitative survey data, to help inform those aspects of the policy change that aren't easy to capture from existing sources. It would also involve consultation and evidence gathering from stakeholders, and examining sources of data that might indicate whether there are issues with the policy – such as correspondence, calls to the Acas Helpline and early conciliation and employment tribunal claims data (though the latter two in themselves won't shed light on whether holiday entitlement for irregular hours workers is the subject of the claim).

172. We will look at the existing data used in the impact assessment and other relevant data sources (such as the Annual Survey of Hours and Earnings) to broadly monitor holiday pay issues for irregular hours workers. There will also be continued monitoring of regular sources of data flagging up potential employment rights issues (like those set out in the paragraph above), to identify if any specific problems have arisen.

³¹ <https://www.gov.uk/government/publications/holiday-pay-survey>

173. We will investigate whether it is possible to obtain regular monitoring data on the specific policy area that would provide accurate measures of compliance and non-compliance.

ANNEX A

Equalities Impact Assessment

Equality Analysis

174. The Equality Act 2010 protects against unlawful discrimination based on the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex and sexual orientation

175. The Department for Business, Energy and Industrial Strategy is subject to the public sector equality duties set out in the Equality Act 2010. It requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

176. An equality analysis is 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.

177. Option 1 (preferred option) aims to cover individuals defined as 'irregular workers' working in all sectors and regions of the United Kingdom. The policy aims to protect irregular workers and employers from accidental non-compliance by providing clarity on holiday entitlement and pay. The policy option is aimed at all irregular workers and is not specifically designed to advance equality of opportunity between people who share a protected characteristic and others, or tackling any discrimination being experienced by individuals who share a protected characteristic. However, it is possible that individuals with a protected characteristic are more likely to work irregular hours than other individuals, so the policy proposals might have an indirect disproportionate impact on such individuals. As suggested above, the policy proposals are aimed at improving clarity and helping ensure irregular hours workers get the paid leave they are entitled to.

178. We have estimated irregular workers by protected characteristic using the Labour Force Survey (LFS). We have used these estimates to assess whether individuals with particular characteristics (age, sex, ethnicity, religion and disability) are disproportionately represented among irregular hours workers which covers different groups, including zero-hours contract workers, agency workers, casual workers, seasonal workers, and shift workers with variable hours. Option 1 (preferred option) covers all irregular hours workers.

179. We will continue to have regard to the aims of the public sector equality duties and, at this stage, make the following assessment of the proposals against each of the three aims.

Option 1 (preferred option)

Aim one: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act

180. Analysis of the Labour Force Survey suggests that there are around 4.7 million workers in the UK that have irregular working patterns, who could have their holiday entitlement calculated using the holiday entitlement reference period proposed in Option 1.

181. We anticipate that there will be negative impacts on some people with protected characteristics who may have benefitted from the additional holiday pay and entitlement granted under the Supreme Court judgment. As this policy aims to address the inequitable nature of the judgment due to its favourable outcome for permanent part-year and zero-hours contract workers, we consider that Option 1 is proportionate to introduce a consistent approach to calculating holiday entitlement reflective of actual time spent working.

182. We have considered whether this policy could indirectly discriminate on the basis of a worker with a protected characteristic being more likely to be a part-year worker or zero-hours contract worker. For the purpose of this equalities analysis, we have used 'term-time' workers instead of 'part-year' workers, as that category of worker is not identifiable in the data sources.

183. BEIS analysis of the Labour Force Survey estimates that between 320,000 – 500,000 permanent term-time and zero-hours contract workers will receive more holiday entitlement and holiday pay as a result of the SC judgment, including between 80,000 – 200,000 workers in the education sector. Affected part-year and zero-hours contract workers are also heavily concentrated in the accommodation and food services sector and in the health and social work sector.

184. We find that the following protected characteristics groups are disproportionately represented among term-time and zero-hours contract workers:

- **Sex** – female workers are significantly more likely to be both term-time and zero-hours contract workers (83% of term time workers are female; 61% of zero-hours contract workers are female).

- **Age** – term-time workers are disproportionately older (35 and over), whilst zero-hours contract workers are either disproportionately younger or 65 and over.
- **Ethnicity** – White workers are more likely to be term-time workers, whereas non-White ethnic groups are more likely to be on zero-hours contracts.
- **Religion** – Christian workers are more likely to be term-time workers, whereas non-Christian religious workers are more likely to be zero-hours contract workers.

185. Option 1 will apply to all irregular hours workers, including agency workers and workers undertaking casual or shift work, in addition to term-time and zero-hours contract workers. BEIS analysis also suggests that there are between 80,000 – 200,000 agency workers that may receive more holiday entitlement under the new ruling, although it is unclear whether the judgment applies to agency workers when not assignment.

186. We find that the following protected characteristics groups are disproportionately represented among irregular hours workers:

- **Age** – young workers (16–24-year-olds) and older workers (65 and over) are more likely to be irregular hours workers. 30.8% of 16–24-year-olds are irregular hours workers, and 17.3% of those over the age of 65.
- **Ethnicity** – workers from a non-white ethnic background (19.6%) are more likely to be irregular hours workers than workers from white backgrounds. With 19.6% of ethnic minorities being irregular hours workers, compared to 13.6% of white workers.
- Those with a **disability** (as defined by the Equality Act 2010) – according to our estimates, around 15.4% of disabled workers are irregular hours workers compared to 13.9% of workers without a disability.
- **Religion** – workers from a non-Christian religion are more likely to be irregular hours workers (17.8%) than workers who are non-religious (13.2%), or from a Christian denomination (14.6%).

Aim two: Advance equality of opportunity between people who share a protected characteristic and those who do not

187. The policy intent is to ensure that workers with irregular hours know and are given the holiday entitlement that they deserve, proportionate to the hours they have worked. We have considered the make-up of workers who have irregular hours above and specifically the make-up of part-year and zero-hours contract workers who may have their entitlement reduced as this policy overturns the inequitable method of entitlement calculation set out in the recent caselaw.

188. Despite the intended reduction in holiday pay for certain groups with protected characteristics, this policy will address the current imbalance in paid holiday entitlement to ensure that the statutory amount that workers receive is equitable and proportionate to the hours they work. Codifying the holiday entitlement reference period in secondary

legislation will provide employers with a clear and consistent method for calculating holiday entitlement for all workers with irregular hours.

Aim three: foster good relations between people who share a protected characteristic and those who do not

189. This policy will alter the way that holiday entitlement is calculated for all part-year and irregular hours workers, regardless of whether they have one or more protected characteristics. Whilst workers with regular hours are not expected to benefit from these policies, the result should be that irregular hours workers receive paid holiday entitlement in line with the wider workforce, including part-year workers who will receive pro-rated annual leave.

190. Our actions are not aimed at tackling prejudice and promoting understanding between different groups. We therefore expect to have a neutral impact in this area.

ANNEX B

Best estimate for the number of workers who will receive more holiday entitlement post-Supreme Court judgment

Number of workers affected

- a) Our best estimate for the number of workers affected by Harpur Trust v Brazel is derived from the 2021 Labour Force Survey (LFS). Our estimate of the number potentially impacted specifically focuses on those saying they were permanent term-time, zero-hours contract, or agency workers. In summary, we take the difference in each affected worker's holiday entitlement and multiply this difference by their hourly pay, to calculate the (monetised) increase of receiving more holiday entitlement.
- b) To do this we compare an estimate of the potential annual holiday entitlement they should be allocated, based on the basic weekly hours the worker usually works. The estimate is essentially basic usual weekly hours multiplied by 4 (if bank holidays are likely to be included in the worker's leave entitlement) or 5.6 (if bank holidays are not likely to be included).
- c) We then convert the worker's given annual holiday entitlement from days into hours (using estimated average hours per work day for each worker). The given holiday entitlement is excluding bank holidays, so we need to take account of whether the worker is likely to get bank holidays as paid leave when estimating their potential entitlement from weekly hours worked. The estimate of workers who might receive more paid holiday entitlement as a result of the Supreme Court ruling is based on the number who have higher expected holiday entitlement hours compared to given holiday entitlement hours³².

Type of permanent worker	Low estimate (based on 20 days)	High estimate (based on 28 days)
Term-time and ZHC	320,000	500,000
Agency	78,000	200,000

Note: Totals are rounded to 2 S.F

For this estimate, we exclude individuals who said they had zero holiday entitlement, as if this is true then their employers were non-compliant and most of the estimated holiday pay owed would be due to non-compliance, rather than because of the Supreme Court judgment.

ANNEX C

Best estimates for the number of businesses affected by the introduction of Option 1 (preferred option)

Number of businesses affected

- i) Our best estimate for the number of businesses affected by the introduction of Option 1 (preferred option) is the midpoint of our low and high estimates, which is then applied to Business Population Estimates. A breakdown of the best, low and high estimates are as follows:

³² As the holiday entitlement questions are only asked in the 4th quarter each year, there are no imputed values so the numbers who received less holiday entitlement than expected based on usual weekly hours are uprated to reflect the numbers of permanent ZHC, term-time and agency workers in the population.

Affected Companies (Option 1 (preferred option))

Percentage of companies affected by Option 1 (preferred option)	Best Estimate	High	Low
Micro			
1 employee	16%	16%	15%
2 to 4 employees	27%	38%	16%
5 to 9 employees	41%	67%	16%
Small	63%	100%	26%
Medium	67%	100%	34%
Large	100%	100%	100%

- ii) Our low estimate for the number of irregular workers for micro, small and medium businesses is mainly derived from the Longitudinal Small Business Survey (LSBS). The LSBS asks ‘How many of those working for the business are temporary or casual staff?’. The low estimate uses the inverse of the percentage that answered ‘None’. The LSBS does not contain for large businesses. Therefore, for large businesses we use an assumed conservative low estimate of 100%. We assume that large businesses have the capacity to employ irregular hours workers and would adapt to any changes in employment legislation. For employers with 1 employee, the LBS estimate and the estimate based on the LFS are very close, but the LBS is slightly higher, so we’ve reversed the high-low order.
- iii) Our high estimate is derived from analysis of the LFS (Q2, 2022) to determine the probability that a worker works irregular hours. The analysis found that 15% of variable hours workers worked for micro business. We then estimate the probability of a worker working for different sized businesses (by employee) using the definitions available from the Business Population Estimates. Assuming equal distribution of variable hours workers across micro employers, the probability that a micro business with one employee employs a variable hours worker is calculated as:

$$1 - \left(\frac{(0.85)^1}{1} \right) = 15\%$$

- iv) For micro businesses with 2 to 4 employees, the probability of there being at least one variable hours worker is calculated as:

$$1 - \left(\frac{(0.85)^2}{3} + \frac{(0.85)^3}{3} + \frac{(0.85)^4}{3} \right) = 38\%$$

- v) As similar approach is used to estimate the proportion of employers with 5 to 9 employees who have an irregular hours worker (67%).
- vi) As the number of employees within the business increases, the probability of at least one of the workers working variable hours tends to 100%. Hence, as a high estimate, we assume that there is a 100% probability all other employers have workers on variable hours. This is a conservative estimate because, as previously mentioned, this is likely to include workers doing unpaid overtime, flexi-time, annualised hours, compressed hours or small

amounts of paid overtime. Many of these would be unlikely to need to diverge from the annual leave approach for regular hours workers.