

Title: Holiday Pay and Entitlement reforms in relation to Retained European Union Law IA No: DBT-001(IAF) – 23 - CMMR RPC Reference No: RPC-DBT-5305(1) Lead department or agency: Department for Business and Trade Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 01/11/2023			
	Stage: Final Stage			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: lm.correspondence@businessandtrade.gov.uk				

Summary: Intervention and Options	RPC Opinion: Green
------------------------------------------	---------------------------

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
£m -50.2	£m 699.7	£m -81.3	Qualifying provision

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

Paid holiday entitlement is a key health and safety right, enabling workers to have paid time off work to rest and recover. The legislation governing holiday entitlement and holiday pay has become complex, and in some cases, can be challenging for employers to follow. There is a risk that it may not be fully achieving its original intention, for instance for those workers who have irregular working patterns. The complex rules around holiday accrual and the calculation of pay is one of the areas identified where changes to legislation may make it simpler for employers and workers to understand. Further, the Government wishes to revise the law following the July 2022 Harpur Trust v Brazel Supreme Court ruling 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 proposals do not seek to remove fundamental rights but instead remove unnecessary bureaucracy in the way those rights operate. The intended outcomes of the intervention are:

- Simplify the legislation on holiday pay and entitlement to provide clarity for employers and so that workers receive the paid annual leave they are entitled to.
- Reduce the bureaucracy and administrative burden of calculating holiday pay and entitlement to allow business to benefit, partly from the additional freedoms we have after leaving the European Union.
- Reform the legislation following the Harpur Trust vs Brazel Supreme Court judgment to ensure the statutory amount that all workers receive is equitable and proportionate to the hours they work.

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, which would leave annual leave entitlement and pay law unchanged in practice from the current situation.
- Option 1: (i) Legislate to introduce an accruals method for calculation of statutory leave entitlement for irregular hours workers and part-year workers (to be defined in law) (ii) Legislate to enable employers to use a rolled-up holiday pay approach for irregular hours workers and part-year workers. (iii) Remove the Working Time (Coronavirus) (Amendment) Regulations 2020. (iv) Introduce a 52-week reference period to calculate annual leave accrued whilst on sick leave or other statutory leave for irregular hours and part-year workers. A legislative approach is necessary to achieve the policy objectives.

Will the policy be reviewed? This policy will not be reviewed. **If applicable, set review date:** N/A

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 Kevin Hollinrake MP, Minister for Enterprise, Markets and Small Business


 Date: 11/10/2023

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce accruals and rolled-up holiday pay method for irregular hours and part year workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2024	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -1774.7	High: 1645.9	Best Estimate: -64.4*
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)	
Low	Optional		49.7	491.9	
High	Optional		248.4	2202.2	
Best Estimate	64.4		149.0	1347.1	
Description and scale of key monetised costs by ‘main affected groups’					
<p>Adjusting to the changes will impose costs on businesses. The Government estimates that employers will face one-off familiarisation costs of £12.6 million and one-off implementation costs of £51.7 million (of which £23.3m is for providing updated written statements, £4.8 million for updating written statement templates, £22.7m from updates to payroll and HR systems, and £0.9m from HR staff familiarising themselves with new software functionality). In addition, since the Government is revising the law in light of the Harpur Trust v Brazel Supreme Court ruling to ensure holiday pay and entitlement received by workers is proportionate to the time they spend working, there will be a transfer from irregular hours and part-year workers to employers of such workers (i.e., a reduction in annual leave entitlement and pay). We estimate that in the medium to long-run this would be to be between £50 million and £248 million (mid-point: £149 million) per year. This assumes complete compliance with the current laws on holiday entitlement and pay. In reality, in the near term, there is likely to be some non-compliance in relation to the recent Harpur vs Brazel ruling, so the estimated transfer (from those workers covered) will be lower.</p>					
Other key non-monetised costs by ‘main affected groups’					
<p>Employers with irregular hours and part-year workers using rolled-up holiday pay will pay holiday pay rates at current rates of pay rather than the weekly average of the past 52 weeks that the worker worked in. This should mean an increase in the hourly wage rate that holiday pay is paid at for these workers. There are also potential costs to workers from moving to an accruals system of building up too much leave at the end of the leave year if they are unable to carry it over. Additionally, rolled-up holiday pay may also act as a disincentive to workers to take leave, although other safeguards remain in place.</p>					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)	
Low	Optional		49.7	427.6	
High	Optional		284.4	2137.9	
Best Estimate	n/a		149.0	1282.7	
Description and scale of key monetised benefits by ‘main affected groups’					
<p>As noted above, in the medium-to-long term, there will be an annual transfer to employers from irregular hours and part-year workers of between £50 million and £248 million (mid-point £149 million) from the move to an accruals approach (only a partial estimate as data is not available for some irregular hours workers). This is a benefit for employers of these workers.</p>					
Other key non-monetised benefits by ‘main affected groups’					
<p>Employers will benefit from reduced administrative costs due to the simplification of the calculations for annual leave entitlement and pay through the introduction of the accruals and rolled-up holiday approaches for irregular hours workers and part-year workers. If employers benefitted by 40 minutes saving a year on average they would cover the estimated transition costs of the proposed reforms, and therefore any greater time savings and the policy would be net positive. Irregular hours workers moved to rolled-up holiday pay would benefit from getting holiday pay at current pay rates. Rolled-up holiday pay and accruals of entitlement should improve employer compliance (due to the simplified processes) benefitting affected workers who should get what they are entitled to. Businesses should benefit from a more level-playing field.</p>					
Key assumptions/sensitivities/risks			Discount rate (%)	3.5%	
<p>There is no readily available data on holiday pay. In our estimate of workers in scope we have utilised the available data on annual leave entitlement from the Labour Force Survey, but we have made assumptions (explained in the man document) given the policy specifics and the difficulty in precisely matching these to the available data. Therefore, there is uncertainty about the numbers of workers and employers in scope and impacts on holiday pay. Based on consultation responses we expect there would be administrative savings for businesses from the reforms, from the simplification of calculating leave (accruals and rolled-up holiday pay approaches), but the data are not available to reasonably monetise this. As a result, we have included a break-even analysis compared to the transition costs. These potential administrative savings are not included within the negative NPV estimate (*) – however, if affected employers on average saved 40 minutes a year, we estimate that the policy would be net beneficial.</p>					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: -406.5
Costs: 6.9	Benefits: 111.1	Net: -104.2	

Contents

Evidence Base and Policy Options	5
Policy background	5
Problem under consideration	6
Rationale for intervention.....	8
Description of options considered	11
Policy objective.....	15
Policy Options	15
Impact Analysis	17
Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)	17
Monetised and non-monetised costs and benefits of each option (including administrative burden).....	17
Summary of costs and benefits	17
Detailed breakdown of costs and benefits	19
Risks and assumptions.....	31
Impact on small and micro businesses.....	32
Wider impacts.....	34
Distributional impacts	34
Public Sector Equalities Duty (PSED) Assessment.....	34
Monitoring and Evaluation	36
Annexes.....	37

Evidence Base and Policy Options

Policy background

1. The Retained EU Law (Revocation and Reform) Act 2023 (the “2023 Act”) offers an opportunity to reflect on retained EU employment law and to provide clarity on complex holiday pay and entitlement legislation to make it simpler for employers and workers to understand. The proposals do not seek to remove fundamental rights, but instead remove unnecessary bureaucracy in the way those rights operate.
2. Employment law is reserved for England, Wales and Scotland. It is a devolved matter in Northern Ireland. The main pieces of legislation that govern holiday pay and entitlement for workers in Great Britain are the Working Time Regulations 1998 (the “Working Time Regulations”) and the Employment Rights Act 1996 (the “ERA”). As the Working Time Regulations implement the EU’s Working Time Directive¹, they are considered retained EU law and are in scope of the 2023 Act. There is also a significant body of domestic and retained EU case law in this area. The 2023 Act will remove the interpretative effects of the EU case law.
3. This section provides a brief overview of the current law on holiday entitlement and holiday pay.

Holiday Entitlement

4. Almost all workers are entitled to 5.6 weeks of paid annual leave each year; this includes agency workers, workers with irregular hours and workers on zero-hours contracts. Part-time workers receive the same 5.6 weeks of annual leave that a full-time worker receives, but as a part-time worker has a shorter working week, a week will be a shorter period of time than a full-time worker, and therefore their annual leave entitlement is prorated. This leave entitlement is broadly granted under the Working Time Regulations, although workers in some sectors are covered by other regulations.
5. Holiday entitlement in the Working Time Regulations is split into two allocations:
 - i. 4 weeks under regulation 13, which implemented the leave required by the EU’s Working Time Directive; and
 - ii. 1.6 weeks under regulation 13A, which is additional leave above the EU minimum requirements.
6. Although regulation 13 leave was originally derived from EU legislation, it currently remains part of domestic employment law following the UK’s exit from the EU.
7. 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, mirror the calendar year (1st January to 31st December) or the financial year (1st April to 31st March).
8. The Working Time Regulations set out which holiday can be carried into the next leave year, and which cannot:
 - i. Regulation 13 grants 4 weeks of holiday that cannot be carried forward under usual circumstances.
 - ii. 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.

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

9. Emergency temporary legislation was brought in during the pandemic to allow workers to carry over up to 4 weeks of the Regulation 13 leave into the following two leave years if they were unable to take it in the leave year to which it related due to the effects of coronavirus².
10. 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.
11. In July 2022, the Supreme Court handed down its judgment in the case of Harpur Trust v Brazel³. 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 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 52-week 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 year⁴.

Holiday Pay

12. The Working Time Regulations and sections 221-224 of the ERA set out how to calculate a worker's holiday pay. The overarching principle is that holiday pay should reflect a week's pay for a week's leave.
13. A week's pay is straightforward to calculate for a worker with normal working hours. Under the ERA, a "week's pay" for a worker with no normal working hours is calculated as an average of the weekly remuneration over a 52-week reference period. A week's pay for a worker with normal working hours will be their basic pay and will not generally include commissions, bonuses, or overtime (unless it is guaranteed overtime) payments.
14. However European case law required additional payments to be made in relation to the regulation 13 leave. The four weeks of regulation 13 leave is to be paid at the worker's "normal remuneration", which means that it is generally held to include bonuses and commission. However, the 1.6 weeks of regulation 13A leave is only required to be paid at the worker's basic rate of pay as set out in the ERA.
15. European case law also requires workers to be given the opportunity to take their statutory holiday entitlement; and 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.

Problem under consideration

16. When the Working Time Regulations came into force in 1998, most workers in the UK were on typical working patterns with a set number of days of a fixed length. The labour market has changed significantly in the following two decades, with the number of workers who have irregular hours increasing to more than 5 million⁵. This increase in so-called 'atypical' work and

² The Working Time (Coronavirus) (Amendment) Regulations 2020: <https://www.legislation.gov.uk/uksi/2020/365/made>

³ Harpur Trust v Brazel (2022): <https://www.supremecourt.uk/cases/docs/uksc-2019-0209-judgment.pdf>

⁴ For example, an irregular hours worker on a term-time contract could provide work in 36 weeks in the past 52 weeks to their employer at an average of 12 hours a week, totally 432 hours. They also worked an average of 11 hours a week in the last 16 weeks in which they worked in the 52 weeks prior to that. This gives average hours worked per week of 11.7 hours across the last 52 weeks they actually worked. Multiplying by 5.6 weeks of statutory leave entitlement, would give the annual leave entitlement of 65.5 hours. A full-year part-time worker doing 432 hours in a year (2 days of about 4 hours 40 minutes each) would get 11.2 days of paid annual leave, equivalent to about 52.1 hours.

⁵ DBT estimate from Labour Force Survey data.

the emergence of the gig economy⁶ means that the legislation governing holiday pay and entitlement does not fully align with the current realities experienced by employers and workers.

Rolled-up Holiday Pay

17. Much of the complexity of holiday pay comes from aligning it to the pay that a worker - primarily irregular hours and part-year workers - would have received if they had been at work instead of on holiday. Allowing holiday pay to be paid as an enhancement to an irregular hour or part-year worker's pay at the time that the worker performed work, instead of when they are on holiday, would ensure that the worker's holiday pay was as closely aligned to the pay that they would have received as possible. This is known as **rolled-up holiday pay**.
18. Rolled-up holiday pay is currently unlawful following a 2006 ECJ ruling⁷, due to concerns that workers may not be incentivised to take leave as they could earn more holiday pay by staying at work.
19. In the EU, workers are entitled to a minimum of four weeks paid annual leave excluding bank holidays. This cannot be replaced by a payment in lieu unless the employment contract has ended before the worker has used all their leave entitlement⁸. The 2006 ECJ judgment was that the holiday pay received is intended to enable the worker to take the leave they are entitled to. It was considered that Article 7 of the Working Time Directive required that remuneration must be maintained for the duration of the leave period; "during that leave, the worker is, as regards remuneration, put in a position comparable to periods of work". Rolled-up holiday pay, considered akin to a payment in lieu in the judgment, could therefore disincentivise workers from taking their entitlement because they would not receive pay while on leave.
20. Despite this, it is alleged that rolled-up holiday is already used in the recruitment sector to calculate holiday pay for workers on irregular hours or zero-hours contracts, or those who regularly move to new work with different hirers.

Holiday Entitlement for part-year & irregular hour workers

21. Following the Supreme Court judgment in *Harpur Trust v Brazel*, 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. Some agency workers may also be affected by this judgment depending on their contractual arrangements. The Government estimates that between 115,000 and 466,000 part-year and irregular hours workers will receive more holiday entitlement because of the judgement⁹.
22. 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 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, who would be entitled to a full 5.6 weeks of leave.
23. 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.

⁶ There are a number of possible definitions of the gig economy. For example, the following working definition was developed for the purposes of BEIS-commissioned research published in 2018: "The gig economy involves the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment by task basis." This is not generally expected to be a complete, up-to-date definition.

⁷ Joined cases of *C. D. Robinson-Steele v R. D. Retail Services Ltd (C-131/04)*, *Michael Jason Clarke v Frank Staddon Ltd and J. C. Caulfield & Others v Hanson Clay Products Ltd (C-257/04)*

⁸ https://europa.eu/youreurope/business/human-resources/working-hours-holiday-leave/working-hours/index_en.htm

⁹ 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).

However, for specific employers who rely on a large number of part-year workers, the change in costs overall could be more significant, and the impact would depend on their ability to take on these extra costs.

24. In addition, notwithstanding the additional complexities following that judgment, the Government recognises that the existing legislation on calculating holiday entitlement is complicated, particularly for irregular hours workers and for agency workers due to their complex contractual arrangements. It can be more administratively demanding for employers to have to calculate holiday pay and entitlement based on 52 weeks-worth of data. This could involve manual calculations on spreadsheets as payroll systems may not hold this historical data.
25. Currently under regulation 15A workers accrue 1/12th of their annual leave entitlement each month until the end of their first year of employment. For regular hours workers who know their hours this is straightforward, and they will continue to accrue annual leave in their first year of employment as they do now. However, this method is challenging for workers with no normal working hours and a better method for workers with irregular hours or who work part-year would be to allow the calculation of annual leave entitlement as 12.07% of the hours worked in a pay period in the first year of employment and beyond. The 12.07% is obtained by dividing 5.6 (the statutory amount of annual leave in a leave year) by 46.4 (the amount of weeks work in a leave year for a full-year worker – that is 52-5.6).

The Working Time (Coronavirus) (Amendment) Regulations 2020

26. The Working Time (Coronavirus) (Amendment) Regulations 2020 were introduced in March 2020 as emergency legislation to prevent workers from losing annual leave entitlement if they were unable to take it in the leave year which is became due, because of the effects of coronavirus. They amended the Working Time Regulations to allow workers to carry over up to 4 weeks of regulation 13 leave into the following 2 leave years if it was not reasonably practicable for a worker to take this leave in the year to which related. As the specific and atypical conditions applying to work in the UK during many parts of 2020 and 2021 have now returned to a more normal setting, workers should be able to utilise all or most of their annual leave during the relevant leave year and should no longer find that they are unable to take it in their current leave year. As the purpose of paid annual leave entitlement is to give workers a break from the pressures of work, it is important that leave is predominantly taken within the leave year it is allocated.

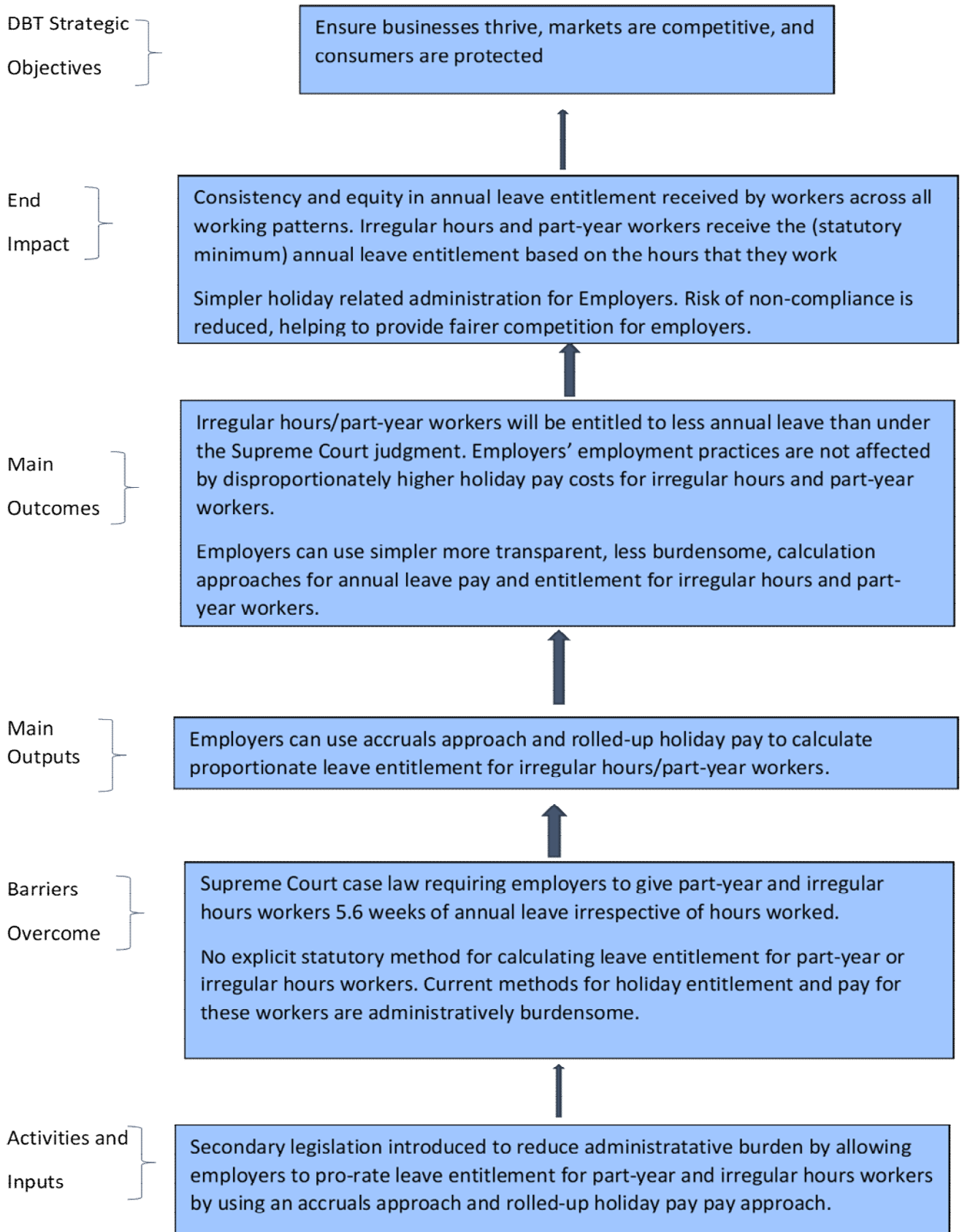
Rationale for intervention

27. Paid holiday entitlement is a key health and safety right. It is important that workers have time off work to rest and recover, and that they are paid for this time. Over time, the legislation governing holiday entitlement and holiday pay has become complex and, in some cases, can be challenging for employers to follow. This has been reflected widely by business through ongoing stakeholder engagement. There is a risk that in certain circumstances it may not be fully achieving its original intention.
28. The proposed reforms seek to reduce the administrative burden of compliance on business through increasing clarity. Rules that are easier to follow and understand will also increase the likelihood of workers getting their entitlement to paid annual leave.
29. There is published evidence¹⁰ that suggests atypical and irregular hours workers are more likely to miss out on their annual leave entitlement. It is therefore important to provide clarity on the leave that workers are entitled to, and the associated holiday pay. By clearly setting out a simple approach to how annual leave entitlement and pay can be calculated for irregular hours and atypical workers, adapted to employer's pay systems, it should be easier for employers to comply with the legal requirements, and workers to identify if they are receiving their correct entitlement. This should improve the fairness of competition in the UK through reducing non-compliance.

¹⁰ For example, [Enforce for good - Resolution Foundation \(2023\)](#)

30. The reforms provide greater certainty for irregular hours workers who are at risk of not receiving the correct holiday entitlement due to the complex legislative position. The Supreme Court judgment in the Harpur Trust vs Brazel case resulted in part-year workers getting different pro-rata amounts of leave (in days or hours) than other workers who work similar hours over the year but with a different work pattern. Tackling this anomaly will help bring more consistency to worker rights on holiday entitlement.
31. The Working Time (Coronavirus) (Amendment) Regulations 2020, which were introduced in March 2020 as emergency legislation to allow workers to carry over leave they were unable to take due to the effects of coronavirus, will be removed as they are no longer needed. Workers will predominantly take their leave entitlement in the relevant leave year, as the Working Time Regulations intended. Workers will still be able to carry over some of their annual leave if an agreement exists with their employer.
32. Figure 1 below lays out the expected theory of change for the reforms to holiday entitlement and pay.

Figure 1: Theory of Change



Description of options considered

33. Two consultations have been carried out on proposals for holiday pay and entitlement reform this year. The first, *Calculating holiday entitlement for part-year and irregular hours workers*¹¹, ran from 12th January to 9th March. The second, *Retained EU Employment Law Reforms*¹², ran from 12th May to 7th July. The government's response to these consultations is published here.

<https://www.gov.uk/government/consultations/retained-eu-employment-law-reforms>

34. The first consultation proposed three main policies:

- a. The introduction of a 52-week reference period to calculate annual leave entitlement for part-year and irregular hours workers.
- b. For irregular hours workers whose working hours don't fit a regular day, half-day or shift pattern it was proposed that a flat-average working day would be calculated to define how much time a day's leave would account for.
- c. For agency workers, and for irregular workers in their first year of employment, an accruals method would be introduced where hours worked in the month are multiplied by 12.07% (if workers are getting the statutory minimum of 5.6 weeks annual leave) to obtain the annual leave entitlement accrued in the month.

35. The second consultation proposed several further changes:

- a. Combining the 4 weeks annual leave set out in Regulation 13 and the 1.6 weeks in Regulation 13A of the Working Time Regulations into one set of 5.6 weeks of statutory annual leave entitlement. The question of having a single statutory pay rate for holiday pay was also consulted on.
- b. Removal of the Working Time (Coronavirus) (Amendment) Regulations 2020, which were introduced in March 2020 as emergency legislation to allow workers to carry over the 4 weeks leave under Regulation 13 if they were unable to take it due to the effects of coronavirus.
- c. The introduction of the option for employers to use rolled-up holiday pay to pay holiday pay for all workers.
- d. The improvement of guidance and tools (such as the holiday calculator) to help clarify the requirements of the paid annual leave regulations.

36. The first consultation asked a number of questions primarily around creating a statutory reference period for annual leave entitlement for irregular hours and part-year workers.

- a. 910 respondents answered the question on whether the employer currently collected the information needed to calculate annual leave entitlement based on a 52-week reference period. 92% of responses were from employers, with 7% from employees. Most respondents (67%) said that they currently collected the information needed, with 21% saying their current information was insufficient.
- b. There were 1,007 responses to the question on whether a holiday entitlement reference period for irregular hours and part-year workers should include weeks without work. Again, respondents were predominantly employers. 70% of respondents agreed or strongly agreed, with 22% disagreeing or strongly disagreeing. Those agreeing thought this approach would create a level playing field and be fair.

¹¹ [Calculating holiday entitlement for part-year and irregular hours workers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/calculating-holiday-entitlement-for-part-year-and-irregular-hours-workers)

¹² [Retained EU employment law reforms - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/retained-eu-employment-law-reforms)

- c. The question on whether a fixed reference period for holiday entitlement would be easier to use than a rolling reference period received 1,000 responses, again predominantly from employers. 62% of respondents agreed overall that the fixed reference period would make it easier, with 23% disagreeing overall. Those agreeing thought that it would be simpler to administer and more transparent for workers.
- d. There was a broad theme among respondents that using a 12.07% accruals method was fairer and administratively simpler than a 52-week reference period. However, a large number of respondents who held this information expressed concern around the administrative burden this would create and stated the subsequent need for additional resources. Stakeholders also responded that a 52-week reference period would present issues for workers whose hours differed year on year and for workers in their first year of employment. A common theme amongst responses was employers find it difficult and complex to calculate holiday entitlement and that a simplified approach would help to make things fair and simple.
- e. There were 1,008 responses to the question asking if the fairest way to calculate leave entitlement for irregular hours workers in their first year with their employer was to base the calculation on hours worked in the month and allocate the leave at the end of the month. 83% of respondents agreed. Most felt it would be easier for workers to understand and simple to administer. Responses to the second consultation also raised the issue that for employers and workers who had a different pay period (such as daily or weekly) it would more straightforward and transparent to calculate leave accrued in the pay period.
- f. There were 952 responses to the question on whether annual leave entitlement for agency workers should be calculated as 12.07% of hours worked in the month. 78% of respondents agreed. It was felt that this approach would make leave entitlement more straightforward to calculate and make it more transparent for workers and employers. Again, it was felt that it could be improved by aligning to pay periods rather than on a monthly basis. Stakeholders felt that the approach could beneficially be used for all irregular hours workers.

37. The second consultation contained a number of questions relating to holiday pay and entitlement.

- a. The question on creating a single statutory leave entitlement received 934 responses. The majority (72%) were from employees, with 20% from employers. This distribution was broadly reflected in the responses to all the holiday pay questions. 65% of respondents disagreed (including strongly disagreed) that a single statutory annual leave entitlement would make it easier to calculate holiday pay and would reduce administrative burden to business. 17% of respondents agreed or strongly agreed with the question. The primary concerns with creating a single entitlement were that it could reduce workers' rights, leading to reduced entitlement and holiday pay. There were also some respondents who were content with the current regulations. Some respondents suggested that there could be some administrative benefits, while others suggested the current position wasn't burdensome.
- b. The three questions on holiday pay rates (what rates employers paid at, what rates workers were paid at, what rate holiday pay should be paid at) received 577,899 and 1,002 responses respectively.
 - i. 49% of employers responding said they paid all annual leave at normal pay rates (including certain types of overtime, commission and bonuses) whereas 7% said they paid at the current legal requirements of 4 weeks at normal pay and 1.6 weeks at basic pay rates. 44% said they did not know, had an alternative rate or did not respond.
 - ii. 57% of workers responding said they received all their annual leave pay at normal pay rates, while 10% said they receive 4 weeks leave at normal pay rates and 1.6

weeks at basic pay rates. 34% said they did not know, had an alternative rate or did not respond.

- iii. 70% of respondents felt that all annual leave should be paid at normal pay rates, while 7% felt that all annual leave should be paid at basic pay rates. 24% didn't know, didn't respond or had an alternative view, such as maintaining the current legal requirements.
 - iv. Many respondents felt that paying all annual leave at normal pay rates would be easier to calculate and would not negatively impact workers. However, some were concerned that moving the statutory requirement to all leave being paid at normal pay rates would result in unnecessary burden and costs to business.
- c. There was a follow up question about calculating annual leave entitlement for workers in their first year with their employer as 12.07% of hours worked each pay period. There were 862 responses. 13% of respondents were in favour, while 58% were opposed. There were concerns about potentially weakening workers' holiday entitlement, while some flagged that the first year of entitlement did not reflect those who weren't full-time, permanent workers. However, others felt that the proposed method would help irregular hours workers and bring the regulations into line with what happens in practice.
 - d. There were 936 responses to the question about removing the Working Time (Coronavirus) (Amendment) Regulations 2020. 42% were in favour while 40% were opposed. For those opposed there were risks of unintended consequences, such as workers losing annual leave they were entitled to. Some pointed out that covid was still present and causing sickness, including long covid. Some employers argued that it was important that sufficient notice of any changes were given to ensure that workers could use their leave without disrupting the employer's business. Where a large amount of leave had been built up, employers were concerned about the costs of paying off large amounts of accrued leave.
 - e. The question on whether rolled-up holiday pay should be introduced for all workers received 969 responses. 45% of respondents felt it shouldn't be introduced, with 12% in favour. The question on whether existing payroll systems would be able to calculate rolled-up holiday pay received 875 responses. 17% of respondents thought yes, while 24% responded no, while most respondents didn't know. The primary concerns raised were the potential to negatively impact holiday entitlement, and the view that rolled-up holiday pay was not suitable for typical workers (such as permanent workers paid according to their contracted hours). Some respondents felt that their pay systems could easily calculate rolled-up holiday pay but using a 52-week reference period would be more challenging.

38. The responses to the two consultations have helped to re-frame the proposed reforms of annual leave pay and entitlement. These were the outcomes:

- a. **The Government will not proceed with introducing a single holiday entitlement of 5.6 weeks at this time, with a single pay rate for holiday pay.**
 - i. This decision was based on evidence from the consultation about the potential impacts on workers and employers of introducing a single holiday entitlement of 5.6 weeks to be paid at a single pay rate. Given difficult current economic circumstances for many employers and households it was decided not to change the rates of holiday pay: 4 weeks at "normal pay" rates, 1.6 weeks at "basic pay" rates. As introducing a single rate for holiday pay would be the main benefit of creating a single annual leave entitlement, this policy proposal as a whole will not be introduced in this tranche of reforms. However, taking account of current case law, the government will define what is included within "normal pay" to provide clarity to employers and workers.
 - ii. As noted above, the ERA requires that workers whose pay varies reflecting variable working hours should have their holiday pay based on their average pay

rate over a 52 week period (including additions to basic pay), so that there is no real difference between the rate of pay for the 4 weeks of European leave under regulation 13 and the rate of pay of the additional 1.6 weeks under regulation 13A of the Working Time Regulations. The proposed reforms will maintain that requirement for the holiday pay for all of the 5.6 weeks of leave to be based on all elements of remuneration which are received, regardless of whether an employer continues to pay by reference to the average pay over 52 weeks, or to use the new method of rolled up holiday pay, which will help to ensure administrative simplicity.

- b. **The Government will introduce an accruals method to calculate annual leave entitlement for irregular hours and part-year workers in their first year and beyond, as 12.07%¹³ of their hours worked in each pay period.**
- i. This reflects feedback that while most workers are paid monthly, some have different pay periods – and for these workers calculating accrued leave on a monthly basis would involve additional administration.
 - ii. **The Government will not introduce a 52-week reference period to calculate annual leave entitlement for irregular hours or part-year workers.** Responses to the first consultation indicated that such a reference period was burdensome to administer and complex for workers to understand. The consultation responses indicated that employers generally preferred the accruals approach and it had been widely used prior to the *Harpur Trust vs Brazel* Supreme Court judgment. **As the 52-week reference period for entitlement will not be introduced other dependent issues such as fixed or rolling reference period and the length of an average working day will not need to be legislated on.** As with other elements of holiday pay and entitlement, employers may choose to provide more generous contractual terms and give workers a greater annual leave entitlement up front.
- c. **The Government will remove the Working Time (Coronavirus) (Amendment) Regulations 2020 so that from 1st January 2024 workers can no longer accrue covid carry over leave.**
- i. As some workers may still have some accrued covid carry-over leave to use up, they will be able to do so up to 31st March 2024. If a worker leaves their employer prior to this date, and has some covid related carried over leave remaining, they would be entitled to receive payment in lieu for this leave. Workers would still be able to carry over 1.6 weeks of leave under Regulation 13A if they have an agreement in place with their employer.
- d. **The Government will regulate to allow employers to use a rolled-up holiday pay method for irregular hours workers and part-year workers.**
- i. For workers on contracted hours respondents indicated that there would be additional complexity for employers in using rolled-up holiday pay and it would create more uncertainty for these workers and greater disincentives to take leave.
 - ii. The Government recognises concerns that rolled-up holiday pay could disincentivise irregular hours workers from taking leave or encourage them to work longer hours. However, it believes that existing safeguards will sufficiently mitigate against this risk. These safeguards include that employers are already expected to encourage and provide opportunity for workers to take leave – evidence from stakeholders suggests at least some employers are doing this. Furthermore, there is a safeguard in the 48-hour working week, meaning a worker cannot work more than 48 hours a week on average, (normally averaged over 17 weeks) unless they choose to “opt out”.
- e. **The Government will provide guidance to reflect the changes in the annual leave entitlement and pay law**

¹³ This percentage is based on the statutory annual leave entitlement of 5.6 weeks a year. That is, for 46.4 weeks worked in a year a worker gets 5.6 weeks paid annual leave. 5.6 divided by 46.4 is 12.07% rounded to 2 decimal places.

- i. It will further clarify matters such as what is included in “normal pay” (see ‘normal remuneration’, above), and the definition of an irregular hours worker or part-year worker (which will also be defined in legislation).
- ii. However, the Government is clear that non-regulatory improvements alone, such as improved guidance would not have provided the administrative simplification and greater transparency on entitlement and holiday pay calculations, especially for atypical or irregular hours workers. Legislative reform is necessary to set out the introduction of the accruals method, and to enable employers to use rolled-up holiday pay. It is also necessary to ensure that part-year and irregular hours workers affected by the Supreme Court judgment are entitled to annual leave and the related holiday pay in proportion to hours worked during the leave year.

Policy objective

39. The right to paid annual leave is key to ensuring that workers remain rested to protect their health and safety. Workers who miss out on the holiday pay they are entitled to may not be able to afford to take time off work. Now that we have left the EU, we have the opportunity to simplify the legislation on annual leave by introducing an additional method for calculating holiday pay (used in some instances already according to anecdotal evidence) and we also want to simplify the legislation for calculating annual leave entitlement for irregular hours workers.
40. The policies assessed in this Impact Assessment have three key objectives:
 - a. simplify the legislation on holiday pay and entitlement to provide clarity for employers and so that workers receive the paid annual leave they are entitled to; and
 - b. reduce the bureaucracy and administrative burden of calculating holiday pay and entitlement on employers to allow business to benefit, partly from the additional freedoms we have from leaving the EU; and
 - c. 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.
41. The outcomes should be that it will be easier for employers to use regular payroll data to calculate leave entitlement and holiday pay for irregular hours workers, and it will be clearer for workers to know if they are getting the leave and holiday pay they are entitled to.
42. The indicators of success would be reduced working time annual leave employment tribunal claims and early conciliation notifications, and improved data on workers receiving the correct annual leave entitlement in data collected on the Annual Survey of Hours and Earnings and the Labour Force Survey and other data sources.

Policy Options

43. The final policy options proposed are summarised below:
 - Option 0: the ‘Do Nothing’¹⁴, which would carry forward employment law on annual leave entitlement as it stands now. This would involve no change in the experience of employers and workers.
 - Option 1: This option involves a number of legislative changes to tackle issues of complexity, potential unfairness and lack of clarity in current holiday pay and entitlement law:

¹⁴ Some legislation is required to ensure that aspects of employment law related to annual leave entitlement and pay remain unchanged from the current situation, but these are not covered here as they should not cause change from the current situation. This is consistent with guidance from the Better Regulation Executive on the choice of counterfactual for amending retained EU law.

- a. Employers will be able to pay their irregular hours and part-year workers rolled-up holiday pay, calculated as 12.07%¹⁵ of their pay received for work done in a pay period.
 - b. Employers should calculate their irregular hours and part-year workers' annual leave entitlement using an accruals approach: for the statutory entitlement, it would be 12.07% of hours worked in the pay period.
 - c. Irregular hours and part-year workers in their first year of employment with their employer should similarly have their annual leave entitlement calculated using the accruals approach described above.
 - d. The Government will remove the Working Time (Coronavirus) (Amendment) Regulations 2020 so that from 1st January 2024 workers can no longer accrue covid related carry over leave. This should help ensure annual leave is primarily taken in the relevant leave year, after the temporary additional allowance for carry over leave for workers due to the pandemic.
 - e. The components of pay which are to be included when calculating holiday pay for the four weeks of regulation 13 leave, currently largely based on case law, will be set out in the legislation, as will be the definition of irregular hours workers and part-year workers, to provide clarity to employers and workers. Specifically:
 - i. A worker will be defined as an irregular hours worker, in relation to a leave year, if the number of paid hours that they will work in each pay period during the term of their contract in that year is, under the terms of their contract, wholly or mostly variable;
 - ii. A worker will be defined as a part-year worker, in relation to a leave year, if, under the terms of their contract, they are required to work only part of that year and there are periods within that year (during the term of the contract) of at least a week which they are not required to work and for which they are not paid.
44. The proposed changes will be introduced as secondary legislation and are expected to commence on 1st January 2024, although the changes regarding irregular hours and part-year workers will apply to leave years commencing from 1 April 2024 onwards.
45. Paid annual leave entitlement law will continue to be enforced via individual enforcement through the employment tribunal system.

¹⁵ This is related to the Statutory amount of 5.6 weeks leave annual leave entitlement, if an employer offers more leave entitlement, the percentage will reflect that amount.

Impact Analysis

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

46. This impact assessment quantifies and monetises the impact of Option 1 against the counterfactual ('Option 0') where possible. However, there are limits in the available data around the number of irregular hours workers, the time taken to administer various payroll and leave recording and a lack of information on holiday pay. To avoid additional complexity which would have little overall effect, some assumptions that reduce complexity have been used. Where detailed analysis is set out, the reasons for the approach and the evidence used are explained.

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

47. We assess impacts 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, all costs on the coversheet of this Impact Assessment are given in 2019 prices and this Impact Assessment uses 2020 as the present value calculation. The costs and benefits throughout the remainder of the Impact Assessment, including the summary sheet for Option 1, uses 2022 as the price base year and 2024 as the present value calculation, as this is when the policy is expected to be implemented.

Summary of costs and benefits

48. We estimate the impact of all employers (plus employment businesses, lawyers and HR staff within HR businesses) familiarising themselves briefly with the proposed reforms. In addition, those employers with workers affected by the changes (irregular hours workers and part-year workers) would spend additional time familiarising with the reforms. The total estimated familiarisation cost is £12.6 million, of which £12.5 million is to the private sector.

49. We identify that there are transition costs for affected employers in the following areas:

- Providing revised written statements at a total cost of £23.3 million, of which £19.1 million is to the private sector.
- Updating written statement templates for future workers at a cost of £4.8 million, of which £4.7 million is to the private sector.
- Updating payroll and HR systems and familiarising with the updates at a cost of £23.6 million, of which £23.2 million is to the private sector.

50. We identify that there will be ongoing costs and benefits, including a transfer from workers to employers:

- We provide a partial estimate of the impact of moving away from the Calendar Year approach required under the Harpur Trust vs Brazel Supreme Court judgment to an approach such as the accruals method.
- This is a transfer from part-year and irregular hours workers to employers of such workers (i.e. a reduction in leave entitlement for those workers to ensure that holiday pay and entitlement received by workers is proportionate to the time they spend working).
- We estimate an annual transfer to employers from these workers of between £50 million and £248 million, with a midpoint of £149 million.
- We are unable to estimate the impact on shift workers with variable shifts, so the estimated figures provided cover agency workers, zero hours contract workers and term-time workers.
- In addition, we have limited evidence on the level of compliance with the Supreme Court judgment. Our estimate assumes complete compliance, i.e. that all workers are receiving the higher entitlement. However, in reality, it is likely that compliance with the judgement is significantly lower, since it takes employers time to find out and understand the impact,

or to update their leave systems. This suggests the true impact, and size of this transfer, is lower than we have estimated, at least in the short-run.

- This covered in more detail in paragraphs 93 to 98.

51. The NPV for the first 10 years of the policy is -£50.2 million, with a business NPV of £699.7 million and an annual equivalent net cost to business (EANDCB) of -£81.3 million. This reflects that administrative burden of employers adapting to the new approach to calculating holiday pay and leave, as well as the transfer to employers of irregular hours and part-year workers.

52. However, this does not include the potential admin savings from a simplified approach to calculating holiday entitlement and pay. As shown in our breakeven analysis (see paragraph 129 onwards), if the average employer of irregular hours or atypical workers more than 40 minutes a year, then the proposals will be net beneficial for the UK.

53. There are some impacts that we have not been able to monetise and therefore are not included in our NPV or EANDCB:

- As noted above, the potentially substantial reduction in administrative burden from moving to an accruals and rolled-up holiday approach. Many respondents on the employer side to the recent consultations suggested that the 52-week reference period approach was administratively complex and burdensome, and that the methods contained in the proposed reforms are much simpler to understand and implement.
- The simplification of the calculation of annual leave entitlement for irregular-hours and part-year workers should improve employer compliance with the law on paid annual leave entitlement. This would make the competitive environment fairer for compliant employers and benefit affected workers who would be more likely to get the paid leave they are entitled to.
- Where employers choose to use rolled-up holiday pay, where the holiday pay will be paid at the worker's current pay rates, is likely to result in the average pay rate for holiday pay over the leave year to be higher (as nominal pay rates for workers are likely to rise in the year). Depending on other factors, this could lead to a transfer to irregular hours and part-year workers in higher holiday pay.
- Workers whose leave is calculated using an accruals method may find it difficult to take the leave accrued, especially if they accrue a large amount of leave at the end of the leave year.
- Workers on rolled-up holiday pay may be disincentivised from taking leave, as they receive holiday pay when they work.

Table 1: Summary of monetised costs and benefits

Costs	Amount (£m)
One-off costs	
Familiarisation with policy	12.6
Transition costs	
Amending written statements for current workers	23.3
Amending written statement templates	4.8
Updating holiday entitlement and pay systems	22.7
Familiarising with systems changes	0.9
Total Costs	64.4
Annual ongoing transfer	
Reduction in irregular hours and part-years workers to employers in reduced holiday pay due to the move to leave entitlement based on accruals related to hours worked	149.0

Summary costs (2019 prices, 2020 present value)	
Net Social Present value (over 10 year appraisal period)	-50.2
Equivalent Annual Net Direct Cost to Business (EANDCB)	-81.3

Detailed breakdown of costs and benefits

One-off costs

Familiarisation

54. Since holiday pay is a right that affects all workers, we anticipate that all employers would engage in some degree of familiarisation with the changes to the legislation. For employers that pay workers according to contracted hours, it is likely that the familiarisation would be brief, to check the definitions of normal regular pay and irregular hours workers and be aware of the removal of additional entitlement for covid related carry-over leave. The former should reflect current case law, and assuming employers are compliant would therefore not require these employers to change their systems: statutory requirements on annual leave pay remain at normal pay rates for 4 of the 5.6 weeks entitlement, with 1.6 weeks at basic pay rates. The definition of irregular hours workers will cover workers who are paid based on hours actually worked, as well as agency workers who will generally not have contracted hours covering a full year. Part-year workers will also be defined in legislation.
55. As most of the proposed reforms relate to annual leave entitlement and pay for irregular hours and part-year workers, we expect employers of these workers to require additional, more thorough, familiarisation.
56. Therefore, we have monetised:
- a. A basic familiarisation for all employers
 - b. Additional familiarisation for employers of irregular hours and part-year workers
57. Overall, familiarisation costs (basic plus additional) are estimated at £12.65 million, of which we estimate £12.54 million are costs for the private sector and £0.11 million are for the public sector¹⁶.

Basic familiarisation

58. For the basic familiarisation by all employers, we estimate that an HR director or manager for medium and large employers or an 'other manager or proprietor' for micro and small employers would take an average of 10 minutes to familiarise themselves with the proposed changes (i.e. the definitions and headline changes to determine whether the proposed regulations would require any action). This is in line with the estimated familiarisation time for proposed reforms to flexible working regulations, where the reforms were relatively small¹⁷.
59. Hourly labour costs for these roles are estimated as the median hourly wage excluding overtime¹⁸ uprated by 17.9% to reflect non-wage labour costs as a percentage of wages¹⁹. Employer numbers are taken from the DBT Business Population Estimates 2022²⁰.
60. We also expect that employment lawyers and employment law firms, employment businesses and HR bureaus and consultants would need to familiarise themselves with the legislation. While this will involve some double counting as many of these organisations will be employers, some will be individual professionals or businesses without employees. The method for estimating these numbers is set out in Annex A.

¹⁶ Based on the Business Population Estimates split between Government and the private and third sectors.

¹⁷ This is in line with the estimate for familiarisation time for the proposals to reform Flexible Working Regulations – where small changes to the current regulations are proposed [Employment Relations \(Flexible Working\) Bill publications - Parliamentary Bills - UK Parliament](#)

¹⁸ Annual Survey of Hours and Earnings 2022

¹⁹ [Index of Labour Costs per Hour, UK - Office for National Statistics \(ons.gov.uk\)](#) for Q4 2019 to Q3 2020 (the last 4 quarters available)

²⁰ [Business population estimates - GOV.UK \(www.gov.uk\)](#)

61. This provides the following estimates of basic familiarisation costs:

Table 2: basic familiarisation costs for employers

Employer size	Number of employers	Hourly labour cost (£)	Familiarisation cost (nearest £000)
Micro	1,197,485	18.86	3,764,000
Small	226,061	28.85	1,087,000
50-249 employees	40,340	28.99	195,000
250-499 employees	4,905	28.99	24,000
500+ employees	5,395	28.99	26,000
HR bureau/ consultancy	3,010	22.30	11,000
Employment businesses	10,940	28.99	53,000
Employment lawyers/ firms	13,900	30.82	71,000
Total			5,231,000

Additional familiarisation

62. For employers who have some workers covered by the new definition of irregular hours workers or part-year workers, we estimate the familiarisation time to include an additional 30 minutes to take account of the additional policy reforms that affect methods for calculating annual leave entitlement and pay for irregular hours workers.

63. Several previous impact assessments making changes of similar complexity, which have been green-rated by the RPC, have also estimated a 30-minute familiarisation time. These include the introduction of the National Living Wage in 2016 ²¹ and extending the right to a written statement to 'dependent contractors' (non-employee workers) ²². 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. While employment law can be complex, 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 clear methods of calculating the amount of statutory annual leave and the pay an irregular hour or part-year worker is entitled to. Therefore, we judge the 30-minute assumption to be appropriate in this IA.

64. As well as the HR bureaus and consultancies, employment lawyers and firms and employment businesses described above, we need to estimate the number of employers who employ irregular hours or part-year workers. The method for this estimation is set out in Annex B.

65. Our best estimate of additional familiarisation costs, based on a further 30 minutes familiarisation, are set out in the table below.

Table 3: Additional familiarisation costs for employers

Employer size	Number of employers	Hourly labour cost (£)	Familiarisation cost (nearest £000)
Micro	388,129	18.86	3,660,000
Small	184,877	28.85	2,667,000
50-249 employees	37,037	28.99	537,000
250-499 employees	4,747	28.99	69,000
500+ employees	5,244	28.99	76,000

²¹ https://www.legislation.gov.uk/ukia/2016/3/pdfs/ukia_20160003_en.pdf

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701010/extending-right-to-written-statement-non-employee-workers-ia.pdf

HR bureau/ consultancy	3,010	22.30	34,000
Employment businesses	10,940	28.99	159,000
Employment lawyers/ firms	13,900	30.82	214,000
Total			7,415,000

Non-monetised familiarisation

66. The terms and conditions of irregular hours and part-year workers may change due to these reforms. Current workers should be informed of these changes, and whilst they are not required to familiarise themselves with the changes, many may choose to do so to know what they should be entitled to and how the new method works. This would create an additional familiarisation burden on those workers.
67. We have not monetised this impact as it is unclear what proportion of workers would familiarize themselves and to what extent. For example, there is anecdotal evidence that many workers, especially irregular hours or atypical workers, do not get the paid annual leave entitlement they are entitled to, suggesting not all affected workers are familiar with the current regulations.

One-off transition costs

68. We expect that employers who employ irregular hours or part-year workers would potentially need or would choose to make changes to their systems for calculating and recording holiday pay and entitlement.
69. They would also potentially need to provide existing workers affected with a revised written statement of terms and conditions and amend any written statement templates they have. They would also potentially need to provide the worker with information on annual leave accrued or the rolled-up holiday pay paid each pay period, for example by providing the extra information on their payslips.

Revising existing written statements

70. Generally, for most workers there will not be any changes to terms and conditions resulting from these reforms. However, there will likely be changes to the terms and conditions of irregular hours workers and part-year workers. Where an employer's annual leave entitlement and pay systems are already compliant with the proposed new regulations they would not need to change, so would be unlikely to require new written statements. However, we take a conservative approach in identifying the number of workers who might potentially be affected by including all irregular hours workers and part-year who get the current statutory requirement.
71. The impact assessment for extending the right to a written statement to 'dependent contractors' (non-employee workers)²³ estimates it would take an employer 10-minutes to add or amend up to seven terms and conditions into a written statement. This was based on a 2008 survey conducted by ORC on behalf of the Department for Business, Enterprise and Regulatory Reform to explore the admin burden of complying with key employment law obligations. We estimate that it would take a similar amount of time for employers to provide an amended written statement covering changes to methods for calculating holiday pay and entitlement to workers. This is likely to be at the high end of time taken if employers are able to use automated process to reduce the extent to which the task has to be done manually for each employee (though that would require the changes to be the same for groups of workers with the same employer).
72. Using the 2nd Quarter 2022 Labour Force Survey (LFS) dataset and taking account of where an individual may be in more than one group, we estimate that there are around 5,066,000 agency,

²³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701010/extending-right-to-written-statement-non-employee-workers-ia.pdf

casual, seasonal, zero hours contract, term-time and irregular shift workers. These estimates are further explained in Annex C.

73. As with familiarisation costs, we assume that the person completing this task varies by business size but we assume it would generally be at the level of ‘other managers and proprietors’, corporate manager or HR manager that conducts this task (in line with the familiarisation cost estimates). On grounds of proportionality, we have not tried to allocate the affected workers by size of employer. However, we have used a weighted average of the median labour cost of the managers carrying out the task in the calculation, based on proportion of employees in each size band from the business population estimates.

74. Our estimated cost of employers providing revised written statements is:

Number of workers affected (5,066,000) x average median hourly labour cost (£27.56) x time taken per written statement in hours (0.167 approximately) = £23.27 million.

75. Based on the distribution of workers set out in the 2022 Business Population Estimates, we estimate that around £19.1 million of this cost would be to private and third sector employers and £4.2 million to public sector employers

Amending written statement templates

76. The proposed changes to calculating annual leave entitlement will mean some employers need to change their employment contract templates. Taking a conservative approach, we assume that all employers in GB with irregular hours and part-year workers will change their relevant contract templates, as employers of these workers are also more likely to choose to use rolled-up holiday pay. Amending templates will mean that future written statements will reflect the up-to-date position. This is likely to be a high estimate, as we expect that some employers will already have a system in place that will be at least compliant with the proposed regulatory requirements and may not need or wish to change their approach. Also, to what extent amending templates and providing revised written statements to existing workers overlaps, maybe reducing the overall cost, is unclear.

77. 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 will likely vary by employer size. This reflects the approach used in the Confidentiality Clauses consultation impact assessment²⁴, where the proposals required employers to include specific information on the limitations of confidentiality clauses into written statements and settlement agreements.

78. The estimated total cost of amending written statement templates is £4.8 million, split between £4.7 million to the private sector and £0.1 million to the public sector. This is based on estimates of employers of irregular hours and part-year workers by sector. The method of estimation is explained in Annex D and the results broken down in Table 4 below.

Table 4: Cost of amending written statement templates

Organisations	Number affected	Hourly labour costs	Hours taken to update	Estimated cost (nearest £000)
Small employers	86,892	1	28.99	2,519,000
50-249 worker employers	27,037	1	28.99	784,000
250-499 worker employers	4,747	2	28.99	275,000
500+ worker employers	5,244	2	28.99	304,000
HR businesses	2,292	2	28.99	133,000

²⁴ 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

Employment Law businesses	10,940	1	28.99	317,000
Employment businesses	7,858	2	30.82	484,000
Total				4,817,000

Amending payroll and HR systems

79. Although the exact nature of holiday record systems varies from business to business and would likely be specific to the size and type of business, the industry and nature of work, we assume all businesses are currently compliant. As such, they should already have systems in place that reflect the legal requirement to provide at least the statutory amount of paid annual leave (pro rata for part-time workers).
80. However, the proposed changes to holiday and pay entitlement would have the following implications for payroll and HR systems:
- i. For employers with irregular hours or part year workers, including those in their first year with their employer, an accruals system based on 12.07% of hours worked (for statutory entitlement) in the pay-period should be used to calculate leave entitlement. This would involve a new, but simple calculation on information the employer would already need to ensure the worker was paid correctly (i.e., hours worked in the pay period). For these workers, whose pay relates to hours actually worked in the pay period, the hours worked figure should currently be included on pay slips²⁵.
 - ii. Similarly, irregular hours and part-year workers could have their holiday pay calculated and paid as rolled-up holiday pay. This would be at 12.07% of the normal pay received in the pay period for statutory holiday pay (or average hourly normal pay rate in the pay period multiplied by the annual leave entitlement accrued in the pay period). This information on the amount paid in the pay period would need to be made available to the worker either on payslips or on accessible online HR systems, which again should be a simple change.
 - iii. Annual leave and annual leave pay for irregular hours workers when they are on family related leave (such as maternity leave) or sick leave will be calculated using a 52-week reference period. However, employers should already have systems in place to cover this because the law currently requires a 52-week reference period to calculate holiday pay for irregular hours.
81. Following the Harpur Trust vs Brazel Supreme Court judgement, employers should have moved to a calendar year method to calculate leave entitlement for part-year workers²⁶. This approach is inconsistent with the move to accruals, which essentially links annual leave entitlement in the leave year to hours worked in the leave year for irregular hours and part-year workers. This is explained in Figure 2 below.
82. 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, at least in part (as their systems should include a reference period calculation for entitlement and pay). However, evidence gathered from consultation responses suggests that many employers have instead used accruals approaches, and some have used rolled-up holiday pay in specific circumstances. Where this is the case, the systems may already meet the requirements from the proposed changes. Therefore, this assumption overestimates the extent to which employers will need to update their systems. As a result, the related costs to business for setting up/upgrading holiday recording systems will be an overestimate.
83. We expect these simple changes to HR and/or payroll systems would be made concurrently and therefore a single time burden assumption is made to cover all the changes. This assumption

²⁵ [The Employment Rights Act 1996 \(Itemised Pay Statement\) \(Amendment\) Order 2018 \(legislation.gov.uk\)](#)

²⁶ This is essentially applying 5.6 weeks to the average weekly hours worked in a reference period (52-weeks) only counting weeks where work took place.

varies depending on the systems employers have in place, and whether the updates are outsourced or in-house, or the HR and payroll are outsourced or not.

Figure 2: Comparison of accruals and 'calendar year' methods

According to the Harpur Trust vs Brazel Supreme Court Judgment, the Calendar Method involves taking all the hours worked in weeks where work was provided in the reference period (52 weeks). Average weekly holiday pay is then calculated based on the holiday pay rate multiplied by the number of hours worked, divided by the weeks in the reference period. Holiday pay for the year would then be this average weekly pay amount multiplied by 5.6, which is the annual statutory amount of holiday entitlement in weeks.

For example, a worker works 39 weeks in the leave year, providing 832 work hours at an average wage rate of £12.20. It will be necessary to use data for a further 13 weeks where work took place in the previous year, in which a further 276 hours were worked, in order to meet the 52 week (in which the worker provided work) requirement for the reference period.

The holiday pay calculation would be $(832+276)/52 \times £12.20 \times 5.6 = £1,456$.

On the other hand, the accruals method takes the hours worked in the leave year and multiplies that by the average wage rate and multiplies by 12.07%. This 12.07% figure is calculated from $5.6/46.4$ – the statutory amount of annual leave divided by the worked weeks in the year for a full-year worker.

Taking the same worker, the calculation would be:

$$832 \times 12.20 \times 0.1207 = £1,225$$

The essential difference is that the 'Calendar Year' method does not take into account weeks not worked in the leave year in the calculation of hours worked, while the accruals method does take into account weeks not worked (excluding weeks of annual leave). So the former has a higher number of hours in annual paid leave entitlement, which are disproportionately high relative to their hours worked in the leave year (compared to full-year part-time workers, for instance).

In the example above, paid annual leave in hours would be 119.3 under the Calendar Year approach and 100.4 under the accrual approach.

84. 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.

85. This broadly reflects the approach taken in the impact assessment on payslip reform²⁷. In the case where they have a payroll system without holiday entitlement/pay functionality, we expect them to have a bespoke system for annual leave entitlement and pay.

86. The estimated total one-off cost of updating holiday systems and familiarising with the updates comes to £23.6 million (see Tables 5 and 6 below). Based on the estimated split between private and public sector according to the Business Population Estimates, around £23.2 million of these costs fall to the private sector.

²⁷ https://www.legislation.gov.uk/ukia/2018/32/pdfs/ukia_20180032_en.pdf

87. The assumptions underpinning this estimate are detailed and justified in Annex E and summarised in Table 5 below.

Table 5: Estimated costs of updating HR systems/holiday functionality in payroll systems

Size/type of employer	Estimated number updating systems	Time taken (hours)	Hourly labour cost	Total cost (nearest £000)
Micro	388,129	0.167	18.86	1,220,000
Small	68,778	8	29.42	16,188,000
50-249 workers	13,779	8	29.42	3,243,000
250-499 workers	1,766	8	29.42	416,000
500+ workers	1,951	8	29.42	459,000
Software providers	107	8	27.91	24,000
HR businesses	958	8	29.42	225,000
Employment businesses	4,070	8	29.42	958,000
Total				22,733,000

Familiarisation with updated systems

88. We also assume that all small or larger employers with affected workers carrying out in-house payroll, and HR companies and employment businesses would have to familiarise themselves with the updates. This should be relatively minor as they involve applying percentages to what should be regular payroll input data.

89. As noted above, the method for calculating accrued annual leave entitlement and pay for irregular hours and part-year workers when on sick leave or family related leave may be more complex as it involves a 52-week reference period. However, for calculating holiday pay, this is the current regulated method for irregular hours workers, and for entitlement, it is the currently required method following the Harpur Trust vs Brazel Supreme Court ruling. Therefore, this should not require additional familiarisation.

90. We therefore estimate that for all affected employers it would take 15 minutes of an HR officer's time at £16.49 labour cost to familiarise themselves with these changes to the system. Estimated familiarisation costs are shown in Table 6 below.

Table 6: Estimated costs of familiarising with updated software

Size/type of employer	Estimated number updating systems	Time taken (hours)	Hourly labour cost	Total cost (nearest £000)
Small	164,541	0.25	16.49	678,000
'50-249 workers	32,963	0.25	16.49	136,000
'250-499 workers	4,225	0.25	16.49	17,000
500+ workers	4,802	0.25	16.49	20,000
HR businesses	9,737	0.25	16.49	40,000
Employment businesses	2,292	0.25	16.49	9,000
Total				900,000

Potential one-off cost to workers

91. As stated above, the Government will remove the Working Time (Coronavirus) (Amendment) Regulations 2020 so that from 1st January 2024 workers can no longer accrue covid carry over leave. However, as some workers may still have some accrued covid carry-over leave to use up, they will be able to do so up to 31st March 2024. There is the potential for some workers to still

have some accrued covid carry-over leave which they will not be able to use in the first three months of 2024. We do not have any information on the amount of carry-over leave workers have, or the specific carry-over leave that could have been accrued for covid related reasons. While some concerns were raised in consultation responses, we did not get any quantitative evidence from the consultation to enable us to estimate any impacts. However, given that the economy will have run without pandemic related restrictions for well over two years by the end of 2023, it would be expected that workers would have largely reduced any (additional) leave carried-over from 2020 and 2021, and employers would have planned for them to do so. We therefore expect that any cost to workers from not being able to take their remaining covid related carried-over leave by 31st March would be low, albeit we cannot quantify this.

Ongoing costs and benefits

Moving from a 52-week reference period to accruals and rolled-up holiday pay

92. The Harpur Trust vs Brazel Supreme Court judgment meant that 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. The calculation should be based on a Calendar Year Approach. This is essentially applying 5.6 weeks to the average weekly hours worked in a reference period (52-weeks) only counting weeks where work took place. Part-year workers, including zero-hours contract workers, may also be entitled to more holiday entitlement (under the Calendar Year Approach) following the judgment as they may have unpaid weeks without work in the leave year (excluding any leave). Agency workers on employment contracts where they get paid between assignments or remain with the same employer on the same contract (employment business or umbrella company) as they move between assignments may also have benefitted.

Transfer from workers to employers due to moving to rolled-up holiday pay/accruals

93. By moving to an accrual system, irregular hours and part-year workers would not get holiday entitlement based on average weekly hours in the past 52 weeks in which they had worked. Instead, they would get an additional 12.07% of the hours worked in the pay period as annual leave entitlement. Holiday pay for affected workers would be calculated by applying the relevant pay rate to the holiday entitlement accrued. Since under the Calendar Year approach, part year workers were entitled to proportionally more leave than under the accrual approach (see Figure 2), this will represent a transfer from those workers to employers (i.e., less statutory leave entitlement).

94. Due to data limitations, it is difficult to estimate the extent of the transfer to employers from workers. We cannot make a robust assumption about the exact entitlement employers will give workers once we move away from a calendar year approach. However, we have used the available data to give a proxy estimate of the potential impact. Essentially, this estimates the inverse of the proposed change – i.e., the benefit in entitlement that these workers would have obtained following the Supreme Court judgment and the move to a 'Calendar Year' approach.

95. We look at usual weekly paid hours worked for agency, term-time and zero hours contract workers who say they are permanent workers or such workers with tenure with their employer of over a year using the 4th quarter 2021 LFS dataset, which is before the Supreme Court judgment. We have estimated leave for that period entitlement using the Calendar Year approach²⁸ and compared to the annual holiday entitlement these workers said they received. Where our estimate of expected leave under the Calendar Year approach was higher than the given entitlement, we multiplied the additional hours by the hourly pay rate for these workers. Our low estimate assumes bank holidays were included in leave entitlement, while our high estimate assumes bank holidays were excluded.

96. We do not know to what extent employers are compliant with the Supreme Court judgment, though our estimate assumes 100% compliance (i.e. all employers have moved to the Calendar Year approach). In reality, it is likely that compliance is currently much lower, as it takes employers time

²⁸ This takes usual hours worked in the week and multiplies by 5.6 or 4 if assumed bank holidays are included in paid annual leave entitlement to get an estimate of hours leave entitlement based on the Calendar Year approach.

to find out and understand the impact, or to update their leave systems. This suggests our approach is an overestimate, and the real impact of moving to an accruals approach may be a lot lower.

97. Alternatively, this can be interpreted as the impact over the medium-to-longer term, whereby all employers in the counterfactual eventually did move to a Calendar Year approach as per the Supreme Court judgement. Again, it follows that the immediate impact will be lower. However, for simplicity and the absence of better evidence on compliance, we assume the impact materialises in full in year one.

98. Furthermore, it should also be noted that the LFS does not provide holiday entitlement figures that can be linked to shift workers, so it is not possible to estimate any possible transfer from irregular shift workers to their employers from the proposed changes. We estimate that variable shift workers account for slightly under half of total irregular hours and part-year workers, suggesting the transfer could be significantly larger.

99. Overall, we estimate an annual transfer to employers of between £50 million and £248 million, with a central (midpoint) estimate of £149 million. For our central estimate, £111 million is to private sector employers and £38 million to public sector employers.

Table 7: Estimated transfer to employers from introduction of accruals method for holiday entitlement for irregular hours and part-year workers (not including variable shift workers)

	Low estimate	High estimate	Mid-point
Increase in annual holiday pay	£50 million	£248 million	£149 million

Other impacts on workers

100. Apart from this transfer from workers to employers as leave entitlement is made proportionate to hours worked for part-year and irregular hours workers, there are other potential costs and benefits for irregular hours and part-year workers generally. These are explained below in turn.

Improved compliance – more workers receiving paid annual leave entitlement

- As noted above, irregular hours workers are more likely to not receive their paid leave entitlement than other workers. 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 pay.²⁹ Atypical workers³⁰ were also significantly less likely to know where to go for advice on their holiday rights
- The simplification of the calculation of leave entitlement and holiday pay – as well as the payment of holiday pay with wages for hours worked for irregular hours workers should make it easier for employers to ensure these workers get the annual leave and holiday pay they are entitled to. As the leave entitlement accrued and holiday pay amounts earned in the pay period would have to be made available to workers, on payslips or through accessible HR systems etc, it should be easier for the worker to check that they have accrued the leave and received the holiday pay they are entitled to. It is expected the proposed reforms will lead to improved compliance, and fairer competition among employers, but we are unable to predict the extent to which this will occur.

Possible higher pay rate using rolled-up holiday pay

- Irregular hours workers are also likely to benefit from receiving holiday pay at their current rate of pay if they are moved onto rolled-up holiday pay. The current method for calculating

²⁹ <https://www.gov.uk/government/publications/holiday-pay-survey>

³⁰ Here atypical workers are defined as those not on full-time or part-time permanent contracts.

holiday pay for irregular hours workers involves averaging the pay received over a 52-week reference period. This would produce a lower rate than their current pay rate if the worker had received a pay rise during the reference period, for instance because of an increase in the National Minimum Wage. This reform may bring the holiday pay for irregular hours and part-year workers more in line with the intention of reflecting the normal pay workers receive when they work, if employers choose to use rolled-up holiday pay. While it is difficult to monetise as we don't have data available on working patterns for irregular hours workers over multiple years, the ONS Average Weekly Earnings data³¹ shows that since 2001 there was only three months (April 2020 to June 2020) where average regular pay did not increase on a year-on-year basis.

Some workers accruing leave may not be able to use it all in leave year

- On the other hand, using an accruals method for irregular hours and part-year workers may create difficulties for these workers in using up their accrued leave within the leave year. For instance, if the leave year was the calendar year, and the worker worked additional hours over the Christmas period, they would likely find it difficult to use up the leave earned over this period within the leave year. The employer could agree with the worker that they had the right to carry over some leave accrued into the next leave year. However, the worker would not have a statutory right to carry over the leave automatically without their employer's agreement, so long as the employer has given the worker the opportunity to take their leave.
- However, the accruals method does ensure that the leave accrued reflects the work done in the leave year. If an irregular hours worker's work pattern changes from one year to the next, then their accrued leave would reflect their current work pattern rather than their historic work pattern. Like full-year part-time workers, their accrued leave would be the 5.6 weeks statutory annual leave pro-rated to the hours they work in the year.

Rolled-up holiday pay may disincentivise workers from taking leave

- For some irregular hours workers, the use of rolled-up holiday may be beneficial because they are on a short-term contract during which they are not supposed to take leave – such as stewarding for events or working at summer camps. However, for others, rolled-up holiday pay could disincentivise them from taking leave as they will earn more holiday pay if they work, and will not receive holiday pay when they take leave. This would be more likely to affect workers who are less well paid or who lack savings or other financial resources. Potentially there may be a cost to these workers in not getting the rest from work that they need over the year.
- However, this should be mitigated by the need for employers to let workers know that they have leave to use up in the leave year and should abide by the regulations on working time.
- In addition, the existence of a 28-day cap on statutory annual leave entitlement may mitigate against workers doing an excess number of paid hours in any leave year, as once they had accrued the equivalent of 28 days annual leave, they would not be entitled to further paid annual leave under the statutory requirements. As generally irregular hours and part-year workers should not reach the 28-day entitlement (as it requires full-time work, 5 days a week over a full year – 46.4 weeks of work) this shouldn't be a significant problem if employers do not have full-time full year workers on irregular hours contracts.

Impacts on employers

101. As explained in paragraphs 93 to 98, employers would benefit from the potential reduction in leave entitlement and holiday pay for irregular hours and part-year workers, which we estimate in the long-term would be between £50 million and £248 million a year, not including variable shift workers.

³¹ [EARN01: Average weekly earnings - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/earnings)

102. Employers should also benefit from the administrative simplicity of the accruals and rolled-up holiday pay approach. This should make it easier to understand and apply, both reducing administrative costs and potentially reducing non-compliance and therefore providing a level playing field for already compliant businesses.
103. Because rolled-up holiday pay involves paying holiday pay at current pay rates rather than an average for the last 52 weeks in which the worker worked, the employer choosing to use this method is likely to be paying holiday pay at a slightly higher hourly rate. Other factors such as hours worked and the distribution of hours at basic and premium rates etc would also influence the extent to which the employer would pay more overall.
104. The consultation responses included plenty from employers suggesting that the 52-week reference period approach was burdensome, requiring at least some employers to carry out manual calculations on the historic payroll data. There was a high level of support for moving to an accruals approach based on 12.07% of hours worked or pay. This suggests that the proposed reforms will enable more straightforward, automated leave and holiday pay calculations thereby reducing burden for employers (and reducing complexity in the calculations required). It will also enable greater transparency and clarity on annual leave entitlement and holiday pay for employers and irregular-hours and part-year workers.
105. We are not able to monetise these potential savings from reduced burden due to data limitations. Namely, we do not have data on the comparable times for employers to carry out the 52-week reference period calculations or the proposed accruals calculations, and would no doubt be linked to a number of factors, for instance; the extent of automation, the frequency of calculations required and the number of affected workers at each employer. However, given employers were highly supportive of the proposals at consultation, we expect that the admin burdens will outweigh the additional costs from higher holiday pay for irregular hours workers under a accruals approach. This is explored further in as the break-even analysis section below, where we have conducted illustrative analysis to show the positive potential of the policy reforms.

Break-even analysis on admin savings

106. In order to assess the potential benefit of the policy, we have estimated the potential break-even point for the amount of employer's time saved from simplifying holiday pay rules, against the burdens from introducing these changes. We provide a worked example in Figure 3 below for clarity:

Figure 3: Illustrative example of break-even analysis calculation

If the total annual cost to all businesses is £100,000 and we estimate that 1,000 businesses are affected, then we expect the cost to each business to be £100 per year ($100,000/1,000$).

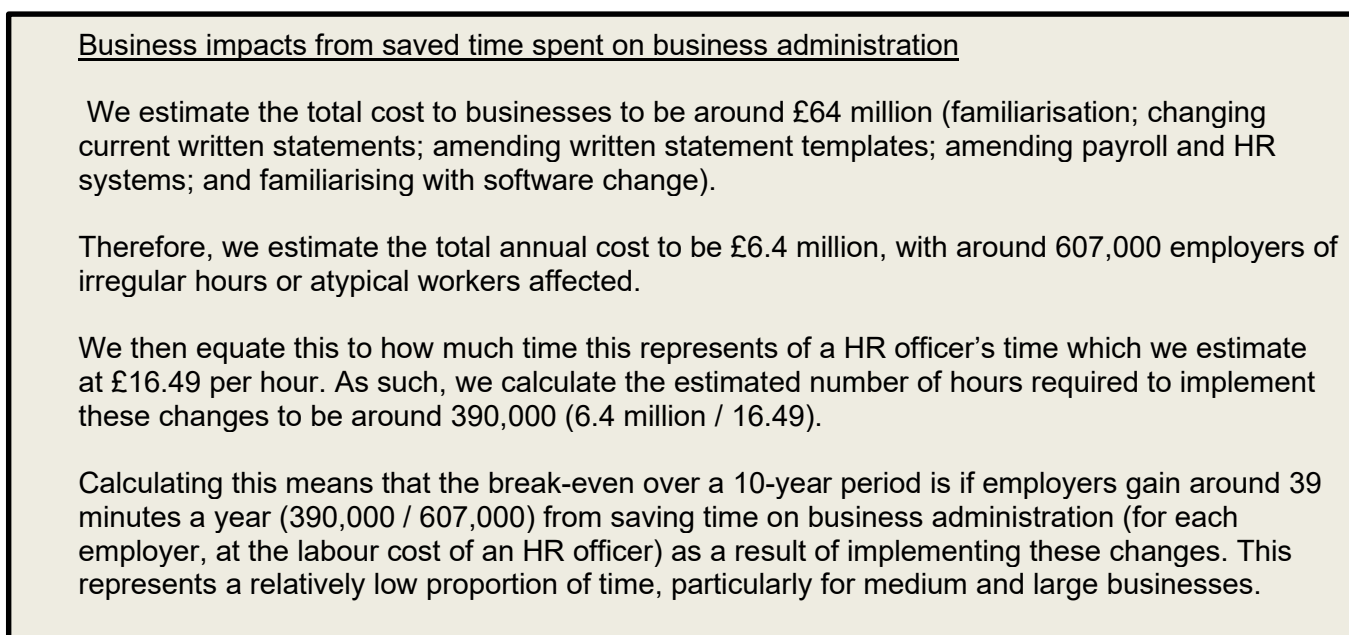
We then equate this to how much time this represents of a HR worker's time whom for example, earns £10 per hour.

So, the policy proposal has to reduce the administration of each business by 10 hours per year ($100/10=10$) for a business to have 'broken even' by implementing the changes; any reduction in administration time over 10 hrs would then mean saved business money (time).

107. Given the lack of evidence to quantify the saving for business for holiday pay reforms, we use this simple model to assess the likelihood the policy will break-even. That is, that the average annual cost of the policy change and the required hours to implement such changes are less than the potential benefit from saving time spent on business administration.
108. We exclude software companies and employment law firms on the basis that they only benefit from having fit for purpose products to calculate holiday entitlement and holiday pay, rather than also benefitting from any time savings.

109. We assume that it is employers of irregular hours and part-year workers who would benefit from saving time spent on business administration. We only count those employers who carry out payroll in-house as potentially those outsourcing payroll aren't benefitting from reduced burden.
110. Additionally, we assume the time saved for each employer is representative of a HR officer's time, except for micro employers when it is considered representative of the manager or proprietor's time. We consider that these workers would be doing most of the payroll/HR administrative work.
111. Because we assess costs and benefits over a 10-year appraisal period (as per Green Book guidance), we take the annual cost (of familiarisation and transition) to be one tenth of the total cost to business. This is because the transition costs to business are expected to be one-off costs, which would likely be incurred within the first year of the policy being implemented. We do not include the potential estimated transfers as only some employers would be affected by them, and the estimate for the transfer to employers is only a partial estimate. We assume high compliance because it will be in employers' best interest, due to the potential savings in administrative time. We demonstrate these calculations in Figure 4 below.

Figure 4: Break-even analysis of administrative time savings



Illustrative savings from lower tribunal claims

112. There could also potentially be a reduction in employment tribunal claims if the simplification and reduced burden of calculating holiday pay and annual leave entitlement leads to increased compliance from employers, or the increased transparency reduces the number of workers perceiving a detriment in their holiday pay and/or entitlement.
113. In 2021 there were around 20,369 employment tribunal claims relating to annual leave sections of the Working Time Regulations. We do not know the specific reasons for these claims so cannot say whether they are related to the reforms proposed here.
114. We can estimate the unit cost of an employer dealing with a claim or individual bringing a claim (without including any financial flows from settlements or awards) by utilising data from the Survey of Employment Tribunals Applications (SETA) (2018)³² updated by inflation. Applying this to the number of Working Time Annual Leave jurisdictional complaints for 2021 provides an estimate of the cost of bringing or defending these claims. This is summarised in Table 8 below.

³² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899048/survey-employment-tribunal-applications-2018-findings.pdf

Table 8: Estimated administrative and legal costs of bringing and defending annual leave employment tribunal claims

Employer/claimant	Unit cost of claim admini (including legal costs)	Number of annual leave jurisdictional complaints in 2021	Estimated total cost (£million)
Employer	£5,600	20,369	£114.1
Claimant	£2,400	20,369	£48.9

115. Due to a lack of available data and evidence, we are not able to estimate an expected reduction in employment tribunal claims as a result of implementing these policy reforms. However, we provide illustrative analysis to show the potential savings to employers and claimants if there were to be a reduction in the number of employment tribunal claims made.
116. This shows that a 5% reduction in claims due to better compliance with annual leave entitlement and pay regulation would reduce the burden of going to a tribunal to employers by around £6m a year, and claimants by around £2m a year.
117. The results are shown in the Table 9 below. Note that these figures are not included in the NPV given their illustrative nature.

Table 9: Illustrative benefits for employers and workers from potential reduced employment tribunal claims due to greater administrative simplicity and transparency of the accruals and rolled-up holiday pay approaches

Employer/claimant	0% reduction in claims	5% reduction in claims	10% reduction in claims	15% reduction in claims
Employer	£0.0	£5.7m	£11.4m	£17.1m
Claimant	£0.0	£2.4m	£4.9m	£7.3m

Risks and assumptions

118. The evidence base for current business practise on holiday pay, and exactly which workers are will be in scope of these is incomplete. The following paragraphs highlight the key limitations and how these could affect out analysis.
119. Firstly, is difficult to precisely estimate the number of irregular hours and part-year workers. 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, but this is only a proxy. For part-year workers, we have used those whose work pattern is self-defined as term-time, excluding those teaching professionals who are likely to be on full-year contracts and regular hours, and not on part-year or term-time contracts. Our estimates should therefore be considered within the constraints of the data on the relevant workers.
120. It is also difficult to precisely estimate the number of employers that have irregular hours or part-year workers. We have based our estimate on data sources which ask employers about employment of some of these groups, but there is uncertainty around this, shown by the variation between our high and low percentages for employers with relevant workers for these proposed reforms. 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. This could mean there is a small amount of double counting between these numbers and those generated from the Business Population Estimates.
121. We have assumed that employers have digitised daily hours data for irregular hours workers because it would facilitate calculations for payroll, and generally facilitate business operations for employers using workers on irregular hours. This is likely, as employers, including micros, whose workers are covered by PAYE would need to provide real-time pay information to HMRC using qualifying software. However, it is a possibility that some employers, more likely micro businesses,

do not have all the information digitised, especially the historic data needed for 52-week reference periods as currently required and may find the calculations more costly than estimated.

122. Finally, it is not straightforward to estimate impacts on holiday entitlement and pay for a couple of reasons. Generally working time information is in weekly hours, but holiday entitlement data is in days. Secondly, while the holiday entitlement question asks for annual leave entitlement excluding bank holidays (which probably is most relevant for most workers) there will be some workers who do not get bank holidays as leave, so might have the full statutory amount of leave excluding bank holidays. This creates uncertainty around the transfers due to the move from the 'Calendar Year' to an accruals approach, which is reflected in the high and low ranges.

Impact on small and micro businesses

123. The policy proposals would require compliance from all those small, medium and micro businesses employing irregular hours or part-year workers. Whilst there are a greater number of small, micro and medium businesses than large in Great Britain but we do not expect the impacts to be disproportionate for these employers. This is because the introduction of rolled-up holiday pay is an enabling reform, so employers would only choose to use it when it benefits them to do so. As discussed below, the policy objective overall is to reduce the burden of administering holiday entitlement and pay for irregular hours and part year workers, so the potential impacts are expected to be positive overall for business, including micro, small and medium sized employers. Nevertheless, in the following paragraphs we look to breakdown impacts by employer size where possible.

124. There are three areas that make up the majority of the costs and benefits:

- a. The annual transfer in holiday pay to employers from the use of an accruals approach for irregular hours and part-year workers
- b. The estimated transition costs of updating systems and
- c. The estimated transition costs of providing revised written statements.

125. As noted above, it is not straightforward to estimate the size of the transfer in holiday pay. It is also not straightforward to identify the size of enterprise a worker is employed by from the LFS, as the information relates to size of workplace (based on number of workers) rather than organisation. While most organisations are single establishment, many larger employers are multi-establishment, including some smaller workplaces. However, we estimate that the distribution of irregular hours and term-time workers by workplace size, then apply this to the estimated total of such workers who would receive revised written statements, then estimate the average number of such workers for each affected employer by employer size. This is set out in Table 10 below.

Table 10: Estimate of impacts of issuing new written statements by size of workplace

Workplace Size	Micro	Small	Medium	Large	Total
Percentage of total workers receiving revised written statements	17.6%	27.6%	33.7%	20.7%	100.0%
Estimated number of workers receiving written statements (millions)	0.9	1.4	1.7	1.0	5.1
Average number of such workers per employer affected	2	8	40	200	

126. This indicates that at the individual employer level, then the number of workers who may need revised written statements increases with the size of employer. On the basis of our estimate that would mean that individually large employers would have a higher estimated transition cost than micro small and medium sized employers (including those with 250 to 499 workers). It is possible that automating the updating of written statements for workers on the same terms could reduce the larger burden for the bigger employers (including SMEs). However, there is no evidence that on an individual basis micro, small or medium employers would be disproportionately affected.

127. Looking at updating software, we assume the same updating costs for small, medium and large employers. This is based on the available data, and the assumption that they are likely to be using similar payroll and HR software available on the market. These systems are likely to have similar data inputs and enable similar calculations and output functionality. The cost of updating of systems is therefore likely to be similar for each employer. It is possible that smaller employers might not have the same internal access to staff with the skills to easily adapt their systems. However, it is likely that similar subscription systems at similar prices (often charged according to the number of workers the employer is using the system for). Therefore, potentially if a smaller employer does not have access to affordable IT skills it could switch to similar subscription at a similar cost.
128. For micro employers, free payroll software can be used to provide HMRC with real time information, whereas larger or medium businesses would use paid for software (or their own compliant bespoke software). We have assumed that micro business' holiday information is spreadsheet-based (as apart from HMRC they might not need automated HR systems given the relatively few workers per employer). Once the spreadsheet has the relevant data for the worker (which would already be needed to ensure the worker is paid correctly for work done and the HMRC PAYE data are correct) it would be simple to amend the spreadsheets to reflect the proposed reforms which would largely be applied to data for the most recent pay period. As discussed previously, one of the policy objectives is to reduce the bureaucracy and administrative burden of calculating holiday pay and entitlement on employers. Once the systems are amended to reflect the reforms all affected employers are expected to find the new approach less burdensome. Therefore overall, we do not expect the transition costs or familiarisation costs to disproportionately affect micro or small businesses.
129. The transfer to employers from workers in reduced paid annual leave entitlement due to the move to an accruals system from a 'Calendar Year' approach when calculating leave entitlement for part-year and irregular hours workers with tenure with their employer of over a year or permanent status has the following impacts by size of employer:
- The data suggests that most of these term-time and irregular hours workers³³ (excluding variable shift workers) affected work for SMEs, primarily medium sized employers.
 - The average transfer (benefit) would be bigger per worker for medium sized employers, with the estimates more closely grouped for small, micro and large employers.

Table 11: Estimated (partial) impact of transfer to employers of move to accruals method for part-year and irregular hours workers by employer size

Employer size	Workers affected	reduction in holiday pay (£m)	Average reduction per worker (£)
Micro	43,000	19	442
Small	72,000	32	442
Medium	125,000	75	599
Large	50,000	23	456
Total	291,000	149	512

130. There is therefore no evidence that this transfer would disproportionately (negatively) affect SMEs. Small and micro employers who benefit from this policy will benefit by a similar amount per worker as large employers. The policy is designed to move to the proportionate allocation of leave entitlement for affected irregular hours and part-year workers which was in line with available guidance prior to the Harpur Trust vs Brazel Supreme Court judgment.
131. Finally, exempting smaller businesses from these reforms would create different statutory requirements for irregular hours or part-year workers depending on the size of employer, with possibly negative unintended consequences for SMEs. It would also undermine the policy objective to simplify the approach to calculating annual leave entitlement and pay.

³³ The analysis is based on people who say they have an agreed term-time working arrangement, and those who are agency, zero hours, seasonal or casual workers who have worked more than a year with their employer or are permanent workers

Wider impacts

132. The proposed reforms aim to bring in more straightforward and less administratively burdensome methods of calculating annual leave entitlement and pay. These methods and definitions provided in legislation should increase transparency for employers and workers, and should help employers comply with the law relating to holiday entitlement and pay. This should benefit workers, especially more vulnerable workers, in that they will be more likely to get the annual leave and pay they are entitled to.
133. It should also help make the competition in markets fairer for already compliant employers, who will be less likely to face unfair competition from non-compliant employers. We have not attempted to quantify these impacts.

Distributional impacts

134. The reforms provide employers with the option to use rolled-up holiday pay for irregular hours and part-year workers. As discussed above, this may disincentivise workers who receive rolled-up holiday pay from taking annual leave. They will not receive pay when they are on leave under this system and will receive their holiday pay as 12.07% of their pay for work done in addition to that pay when they work. This disincentivising effect may be bigger for workers without financial resources such as savings, or those facing financial pressure. Longer term, if these workers do not get breaks from work to recuperate it could have negative impacts on their wellbeing. The risks are partly mitigated by the limits to working time included in the Working Time Regulations, and the requirement for employers to make sure workers are aware that they need to use their leave entitlement in the leave year.
135. The move to accruals based annual leave entitlement for irregular hours and part-year workers will also potentially have distributional impacts on those workers who lose out; those who have weeks of unpaid non-work (excluding weeks of annual leave) in the leave year. Such workers are much more likely to be on a below median hourly pay rate, and therefore be more affected by the reduction in holiday pay. As noted above, although the impact assessment assumes that all employers are compliant with the current law, it is quite likely that some employers had not yet changed their holiday systems to reflect the Harpur Trust vs Brazel Supreme Court judgment, so our estimates of the size of the transfer to employers from affected workers is uncertain. However, where it does arise, this cost to workers is more likely to land on the lower paid.

Public Sector Equalities Duty (PSED) Assessment

136. The Equality Act 2010 protects against unlawful discrimination based on the following protected characteristics:
 - a. Age
 - b. Disability
 - c. Gender reassignment
 - d. Marriage and civil partnership
 - e. Pregnancy and maternity
 - f. Race
 - g. Religion or belief
 - h. Sex and sexual orientation
137. The Department for Business and Trade 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:
 - a. Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
 - b. Advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - c. Foster good relations between people who share a protected characteristic and those who do not.

138. 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. We will continue to have regard to the aims of the public sector equality duties and, make the following assessment of the proposals against each of the three aims.
139. The proposed reforms are 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 be affected by the proposed reforms than other individuals.
140. The policy will disproportionately affect workers who have a lot of carried over covid related leave remaining and irregular hours and part-year workers who will have their annual leave entitlement calculated using an accrual approach and have their holiday pay calculated and paid using a rolled-up holiday pay method. As suggested above, the policy reforms are aimed at improving clarity, simplicity and compliance, helping ensure the affected atypical workers get the holiday pay they are entitled to. However, they are also reforming how irregular hours and part-year workers paid annual leave entitlement is calculated so it is proportionate to the hours they work in the leave year, rather than the more preferential approach compared to other workers currently in place following the Harpur trust vs Brazel Supreme Court judgment.
141. We do not have any information on which workers may have a lot of covid related carried over leave remaining. Given that covid related working restrictions have been lifted since mid 2021, we assume most of this carried over leave has been used in the subsequent years. However, mitigation has been provided by allowing such leave to be used up to the end of March 2024. The purpose of the reform in this area is to remove temporary legislation and return to a system where paid annual leave is primarily taken in the leave year it relates to.
142. We have looked at the 2nd quarter 2022 Labour Force Survey data to check whether the workers likely to be covered by the policy reforms, irregular hours (including variable shift) or part-year workers, are disproportionately likely to be within one of the groups with protected characteristics. We have tested for gender, disability, age, ethnicity and religion based on the available demographic variables within the quarterly LFS.
143. Overall, the data suggests that irregular hours (including variable shift) and term-time workers are significantly more likely to be:
- a. Women - 55% of affected workers, compared to just under 50% of workers overall.
 - b. Disabled as defined by the Equality Act 2010 - just under 19% of affected workers compared to around 16% of workers overall.
 - c. Aged 16 to 24 - over 21% of affected workers, compared to 13% of workers overall.
 - d. Of non-white ethnicity - 20% of affected workers, compared to around 15% of workers overall.
 - e. Christian, or of a non-Christian faith - 45% and 11% respectively of affected workers compared to 43% and 9% respectively of workers overall.
144. It is also important to focus on irregular hours (including variable shift) and term-time workers who will be affected by the move to the accruals method from the Calendar Year method as they will receive paid annual leave entitlement in proportion to hours worked in the year rather than on a more preferential basis. Using the same dataset, the figures suggest that this group of workers are more likely (compared to workers overall) to be:
- a. Disabled as defined by the Equality Act 2010 – 18.1%, compared to 16.4% overall.
 - b. Aged 16 to 24 – 18.5% compared to 12.6% overall.
 - c. Of non-white ethnicity - 19%, compared to around 15% overall.
 - d. Christian, or of a non-Christian faith - 44% and 11% respectively, compared to 43% and 9% respectively of workers overall.

145. In summary, some protected groups (e.g. women and disabled workers) are more likely to be directly affected by these policy reforms. These groups will disproportionately benefit from the benefits from simplifying the calculation of annual leave entitlement, increasing the likelihood that they get the annual leave and pay they are entitled to, but are also likely to be more exposed to the risks (e.g. being disincentivised from taking leave). As noted above, some protected groups are disproportionately represented in the group of workers who will get a reduced paid holiday entitlement under the accruals method compared to their entitlement under the 'Calendar Year' method, but this change is aimed at making their entitlement proportionate with other workers' paid holiday entitlement.

Trade implications of measure

146. As set out in the Better Regulation Framework guidance, all Impact Assessments must consider whether the policy measures are likely to impact on international trade and investment.

147. The Government is committed to maintaining high levels of protection for labour and social standards. The Government made commitments throughout the passage through Parliament of the Retained EU Law (Revocation and Reform) Act 2023 regarding upholding workers' rights and complying with the UK's international obligations in relation to those rights.

148. These proposals do not seek to remove rights, but instead remove unnecessary bureaucracy in the way those rights operate. The reforms encourage greater compliance by intending to simplify existing rules and make enforcement easier, as well as creating a more level-playing field for employers. Employers are already legally required to provide statutory leave entitlement under regulation 13 and 13A and should be paying their workers the correct amount of paid holiday. As a result, we do not foresee any effects on the UK's ability to trade or provide services overseas.

Environmental impacts

149. Consideration has been given to the Environmental Principles Policy Statement and there is not thought to be any relevant impact as a result of this policy.

Monitoring and Evaluation

150. Since this legislation is made under the under the Retained EU Law (Revocation and Reform) Act 2023, there is no statutory obligation to undertake a post-implementation review of this policy. However, the Government will continue to monitor compliance with the employment rights framework, including holiday pay and entitlement, in order to inform evidence-based policymaking.

151. The key success criteria for this policy are to:

- a. Simplify the legislation on holiday pay and entitlement to provide clarity for employers and so that workers receive the paid annual leave they are entitled to.
- b. Reduce the bureaucracy and administrative burden of calculating holiday pay and entitlement to allow business to benefit, partly from the additional freedoms we have after leaving the European Union.
- c. Reform the legislation following the Harpur Trust vs Brazel Supreme Court judgment to ensure the statutory amount that all workers receive is equitable and proportionate to the hours they work.

152. As appropriate, we will use existing data used in the Impact Assessment, such as the Annual Survey of Hours and Earnings and Labour Force Survey, to monitor holiday pay issues for workers. There will also be continued monitoring of other regular sources of data on employment rights issues (e.g. Employment Tribunal data) to identify if any specific problems have arisen, as well as ongoing engagement with stakeholders.

153. If proportionate, we will explore obtaining regular monitoring data on the specific policy area that would provide accurate measures of compliance and non-compliance.

Annexes

Annex A – Basic Familiarisation Assumptions

154. In paragraphs 60 to 65, we estimate basic familiarisation costs for HR consultants, employment businesses and employment lawyers and law firms. This annex explains how we have estimated the number of these businesses that will be affected.
155. 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 incur a cost to familiarise themselves with the change in policy. Analysis of the Annual Population Survey shows that in January-December 2022, within SIC 78.3 there were around 3,010 HR professionals (managers or directors/HR officers). We estimate that these 3,010 individuals would familiarise themselves with the legislation, at an average hourly labour cost of £22.30.
156. Employment businesses (SIC 78.2) are responsible for work-finding services for temporary agency workers, and responsible for ensuring they are paid for getting work done. There were around 10,940 employment businesses in operation according to the latest Annual Business Survey for 2021. We assume an HR director or manager would familiarise themselves for these businesses, at an hourly cost of £28.99.
157. We expect there to also be costs to employment lawyers as they familiarise themselves with changes to legislation, especially as some employment law firms provide free written statement templates. To estimate the number of employment lawyers, we have searched the Law Society database of organisations that specialise in employment law in England and Wales, and employment law firms from the Law Society of Scotland, of which there are around a combined 7,900. We recognise that there is unlikely to be just one employment law 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 6,000. As such, we estimate there to be an approximate total of 13,900 employment law firms and lawyers specialising in employment law in the UK. This is a conservative approach as there will be some overlap between the count of law firms and the count of employment lawyers.

Annex B - Additional Familiarisation Assumptions

158. In paragraphs 62 to 65, we estimate additional familiarisation costs for all employers of irregular hours and part-year workers. This annex explains our approach to identifying these employers.
159. There is no precise data on the number of employers that have irregular hours and/or part-year workers so we have estimated the number as follows:
- a. For micro businesses:
 - i. We use the Longitudinal Small Business Survey 2021 (LSBS)³⁴ 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 21% of workers (around 5.1 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 18%. For those with

³⁴ See: <https://www.gov.uk/government/collections/small-business-survey-reports#2021>

2 to 4 workers the probability of having at least one of these workers is 45%, while for those with 5 to 9 workers we estimate that 75% would have at least one of these workers³⁵.

- b. For small, medium sized employers (50 to 249 and 250 to 499 employees) and large employers:
 - i. For the low estimates, we use estimates from the 2018 Management and Wellbeing Practices Survey of the percentage of employers who employ any shift workers, zero hours contract workers or temporary workers³⁶. This will include some employers who only employ regular hours workers as not all shift workers for instance will have irregular working patterns.
 - ii. For the high estimates, we assume 100% of these sizes of employees would employ at least one of these types of worker.

160. We take the mid-point between the low and high estimates to get a more realistic estimate of employers with irregular hours or part-year workers who will need to familiarise themselves with the policy (see Table A1 below). That is: 17% for 1 employee organisations, 30% for those with 2 to 4 workers, 45% for those with 5 to 9 workers, 82% for small employers (10 to 49 workers), 92% for medium sized employers (50 to 249 workers), 97% for employers with 250-499 workers and for large sized employers (500+ workers). These are likely to high estimates (i.e. are likely to overstate the costs) since irregular hours or part-year workers are likely to be concentrated in certain industries or employers with specific business models.

Table A1: Estimated percentages of employers who have workers whose annual leave entitlement and pay calculations could change under Option 1

Percentage of companies affected	Best Estimate	High	Low
Micro			
1 employee	17%	18%	16%
2 to 4 employees	30%	45%	16%
5 to 9 employees	45%	75%	16%
Small	82%	100%	64%
50 to 249 employees	92%	100%	84%
250-499 employees	97%	100%	94%
500+ employees	97%	100%	94%

Annex C – Estimate of number of affected workers

161. This annex explains the approach to calculating the number of casual, seasonal, zero hours contract, term-time and irregular shift workers.

162. Using the LFS 2nd quarter 2022 data, we estimate how many paid workers (that is excluding self-employed) are agency workers or casual workers or seasonal workers in their first or second jobs, and how many are zero hours contract workers in their main job (excluding any double counting) to get a total estimated number for irregular hours workers.

³⁵ This method estimates the probability of different sized micro employers having a qualifying worker – based on around 80% of micro workplace workers not qualifying – such that the calculation for those with 2-4 workers is: $1 - (0.805^2/3 + 0.805^3/3 + 0.805^4/3)$. A similar approach is used for the micros with 5 to 9 workers.

³⁶ DBT estimates calculated from the Management and Wellbeing Practices Survey.

163. We then estimate how many workers are term-time workers in their main job (to get a part-year estimate). Here we exclude most of the education professionals (SOC 20 2311 to 2316) as we understand their paid work including leave covers the whole year.
- a. We then combine these categories, removing any double counting to come to a total of 2,724,000.
 - b. We then estimate whether a worker works variable shifts, excluding those who are already covered as irregular hours or part-year workers. As the shift work questions are only asked in Q2 of the LFS, we then uprate this figure to reflect total employee numbers. This produces an estimate of 2,341,000 variable shift workers.
 - c. Combined, the total estimate is 5,066,000 irregular hours or part-year workers (to the nearest 1,000).

Annex D – Estimating written statement costs

164. Paragraphs 76 to 78 show our estimated cost for employers amending written statement templates. The methodology is explained below.

Micro businesses and those without internal HR resource

165. Evidence from Startups³⁷, the independent small business advice platform, suggests that micro businesses will either use free templates or have an outsourced HR or legal advisor. Micro employers are not likely in most cases to have substantial staff turnover as most micro employers have 4 or less workers so would not generally expect to deal with new workers on a regular basis. Therefore, it seems likely most micro businesses would use the available up-to-date templates as and when a new worker joins.
166. This evidence also suggests that many small employers and some medium sized employers may not have enough 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 an HR consultancy or Employment Law advisor, we assume that the advisor businesses will bear the costs of having up-to-date templates. The cost of updating the free templates, primarily provided by similar organisations, will be borne by the providers. It should be noted that Acas provides free written statement templates³⁸ so micro employers would not need to go to commercial organisations to access free templates if they did not want to.
167. 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.

Smaller and medium businesses with internal HR resource

168. For businesses that have a dedicated internal HR resource and therefore won't use free templates, we assume an amendment time of 1 hour of a HR manager's time for small and 50-249 worker employers is needed to amend the templates. This is extended to 2 hours of time for larger employers, HR consultancies and employment law firms. This is the same time as estimated in the Confidentiality Clauses Impact Assessment. We believe this is consistent with the 10 minutes estimate for changing an existing written statement being carried out on average over more than one document (templates/handbooks).
169. The estimate of whether an employer has its own HR resource is based on DBT analysis of the Survey of Employment Tribunal Applications 2018³⁹ (SETA). The business size categories

³⁷ <https://startups.co.uk/people/management/small-business-hr-outsourcing/>

³⁸ [Templates for written statements | Acas](#)

³⁹ Survey of Employment Tribunal Applications (2018). Available from: <https://www.gov.uk/government/publications/survey-of-employment-tribunal-applications-2018> Table 2.6

for SETA do not have a perfect match for our definition of “small employer” and do not match the business category sizes in the Business Population Estimates (BPE) 2022. Therefore, we have applied the SETA percentage 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. On this basis, for small employers we assume that 47% have dedicated HR resource, while the percentage for 50-249 worker employers is 73%.

170. We conservatively assume that all employers with 250 workers or more 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.

HR companies and employment law businesses

171. In the UK we estimate that there are 7,858 employment law firms in GB⁴⁰ and 2,292 HR consultancies⁴¹. 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. In addition, umbrella companies that employ temporary agency workers that employment businesses provide work finding services are included within the HR business count.

172. The costs of updating templates for these employers will be borne by the employment law firms and HR consultancies. We assume that similar to larger employers, these firms would need on average 2 hour to amend their templates (as they may have to update a wider range of templates, similar to a larger employer). 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.

Employment businesses

173. 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, 1 hour, 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 10,940 employment businesses, applying the hourly labour cost of an HR Director of £28.99 (uplifted for non-wage labour costs).

Annex E - Amending payroll and HR systems

174. Paragraphs 79 to 87 describe the costs imposed on employers from amending their payroll and HR systems in response to these reforms. This annex explains the underpinning assumptions that inform that estimate.

Micro employers

175. If businesses decide to administer payroll themselves HMRC requires businesses to use payroll software and provide options on their website⁴². 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 and are 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.

⁴⁰ 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.

⁴¹ This was estimated using data from the Annual Business Survey (2021) Available from: <https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/datasets/uknonfinancialbusinesseseconomyannualbusinessurveysectionsas>

⁴² <https://www.gov.uk/payroll-software/free-software>

176. We assume that micro businesses have access to data about a worker's hours worked and holiday taken in the pay period as they are required for payroll. They will need to make a simple calculation – applying 12.07% to the hours worked in the pay period to calculate entitlement, and 12.07% to the pay received for work in the pay period to calculate rolled-up holiday pay, if they choose to pay using the rolled-up holiday pay method. In addition, the employer would need to bring forward the available accrued leave at the end of the previous pay period, add the new entitlement for the new pay period, and deduct any leave taken in this pay period to give a new accrued leave total. For accrual during sick leave or family related leave, the employer will need 52 weeks of hours worked data, and 52 weeks of pay data (for weeks where the worker worked). As noted above, they should already have the records available, and could already have the data in a suitable format to enable simple formulas to be applied. For micro employers, there is a maximum of 9 workers for which such spreadsheets would need to be in place. Assuming each additional spreadsheet was similarly arranged, it would be very quick to copy formulae across. Overall, we expect introduction of basic calculations into these spreadsheets to take on average 10 minutes of time⁴³ for an 'other manager or proprietor' at a median hourly labour cost of £18.86.

177. It should be noted that we have assumed all micro employers with irregular hours workers follow this approach. However, some micro businesses may use paid payroll software which already has this functionality, as some paid-for payroll software is marketed towards micro businesses. Likewise, may also contract out HR processes to an HR consultant. Both would reduce the cost to business compared to our calculation. However, we do not have evidence to allow us to adjust these costs accordingly.

178. We estimate that 388,129 micro employers employ irregular hours or part-year workers. Therefore, the estimated cost of updating systems for micro employers is:

$$388,129 \times 18.86 \times 0.167 = \text{£}1.22 \text{ million}$$

Small, medium and large businesses

179. 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.

180. In a random sample of paid-software available on the HMRC website, we found that 60% 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 software that offers better quality functionality at a competitive price). As set out in the impact assessment on payroll reform⁴⁴, 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.

181. We assume that those employers with paid-for payroll software without holiday functionality and those with bespoke systems would need to update their systems in-house to reflect the proposed changes. Using the methodology from the One-Sided Flexibility Consultation Impact Assessment⁴⁵, we estimate that it would take 8 hours of an internal IT manager's time at an hourly labour cost of £29.42 to update the systems and carry out quality assurance. Again, some employers may have

⁴³ This is based on the need to do around four basic calculations (if using both accruals and rolled-up holiday pay) for each affected worker, and some basic checks. Most micro employers have one-to four workers so on average it is not likely that they will have many affected workers. We assume that most micro employers would have at least basic familiarisation with spreadsheets.

⁴⁴ https://www.legislation.gov.uk/ukia/2018/32/pdfs/ukia_20180032_en.pdf

⁴⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822675/One-Sided_Flexibility_Consultation_Stage_Impact_Assessment.pdf

subscriptions to HR software where their payroll software doesn't provide holiday functionality, so it is likely that this is an overestimate.

182. For employers with paid-for payroll software with holiday functionality, we would expect the software provider to update the software. We'd expect it would similarly take 8 hours of a software programmer/developer's time at an hourly labour cost of £27.91. There were 179 payroll software packages listed by HMRC for real-time PAYE data provision, of which an estimated 60% or 107, provided holiday functionality.

183. We would assume all employers affected would need to familiarise themselves with the relatively simple updates to the software/systems. This is covered in the systems familiarisation section below.

Employment businesses and HR companies

184. Employment businesses and HR companies would also need to update their systems as they provide HR and payroll to agency workers, while some HR companies provide outsourced HR and payroll. As above, we estimate that there are 10,940 employment businesses, of which 11% outsource all payroll and HR, and 89% carry out these functions in-house, of which 3% use bespoke software and a further 35% use paid-for payroll software without holiday functionality.

185. We estimate that there are 2,292 HR companies, of which all carry out in-house HR/payroll, with 3% having bespoke software and a further 60% having paid-for software without holiday functionality.

186. For these organisations we assume that it would take 8 hours of an IT manager's time at an hourly labour cost of £29.42.