

Success at Work

March 2006

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Success at Work

Introduction

This initial Regulatory Impact Assessment (RIA) considers the impact of several of the proposals set out in the Government's policy statement, *'Success at Work: Protecting the Vulnerable, Supporting Good Employers'*, published 30 March 2006. The measures cover:

The inclusion of pensions in statutory collective bargaining

The available evidence indicates that bargaining about pensions is becoming an increasingly typical feature of voluntary agreements. The Government therefore proposes to initiate, with social partners, an examination of the evidence and case for extending the statutory procedure.

The extension of entitlement to annual leave

The Government proposes to extend the entitlement to 4 weeks' paid annual leave, making it additional to time equivalent to bank and public holidays (on a pro-rata basis for those working part-time).

Agency workers

The Government proposes to introduce a package of measures that would assist those agency workers most likely to be mistreated and vulnerable, leaving the vast majority of businesses largely unaffected.

Supporting vulnerable workers: enforcement and compliance

The Government proposes to introduce measures to support and strengthen enforcement and compliance using a risk-based approach.

Employment law simplification review

The Government intends to introduce a package of measures with the aim of reducing the regulatory burden on business. These measures will contribute to the DTI's £1 billion target for deregulatory savings over the period 2005-2010.

Where measures contained in the paper have been set-out in previous RIAs, this RIA provides a reference to the earlier assessments. In a number of cases where no previous RIA exists, this RIA sets out initial assessments of the proposed measures. Fuller assessments of each individual measure will be conducted in subsequent partial and full RIAs.

Inclusion of pensions in statutory collective bargaining

Purpose and intended effect

Objective

The Government has reviewed the available evidence on the prevalence of collective bargaining on pensions under voluntary collective bargaining agreements. The evidence indicates that discussions about pensions are becoming an increasingly important part of the bargaining and consultation exchanges between employers and trade unions. It therefore proposes to examine with social partners the evidence and case for extending the statutory procedure.

Background

There is an important wider context to this policy proposal. The Government is currently considering its response to the Pensions Commission's second report,¹ alongside submissions – including alternative proposals – made by interested consumer and private sector stakeholders. In taking forward this measure we will ensure that policy is well co-ordinated. This proposal relates only to the regulatory framework for collective bargaining; it does not favour any particular type of pension arrangement.

It is now nearly six years since the statutory recognition procedure came into force. Around 400 applications for recognition have been received by the Central Arbitration Committee (CAC) over that period. The procedure seeks to encourage voluntary agreement and this has been the outcome in a large majority of cases.

Currently, where the CAC awards recognition under the statutory procedure, the employer is required to bargain with the union on three core topics that are typical in voluntary bargaining arrangements – pay, hours and holidays. Of course, other matters can be the subject of collective bargaining on a voluntary basis.

The Government formally reviewed the statutory procedure in 2002/03. As a consequence, the statutory procedure was adapted in some respects by the Employment Relations Act 2004. The Act also established an order-making power to add pensions to the list of statutory bargaining topics.

Subsequently, the Occupational and Personal Pensions Regulations 2006 have been introduced.² This will ensure that employees who are

¹ *A New Pension Settlement for the 21st Century*, The Pensions Commission (2006).

² Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI2006/349) as amended by the Occupational and Personal Pensions (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/778).

affected members of pension schemes and/or their representatives have the opportunity to feed in their views on proposed changes to their future pensions arrangements before the decision is made. The Regulations will apply to employers with 150 or more employees from April 2006, eventually applying to those with 50 or more employees by April 2008. In working up any proposals to add pensions to statutory collective bargaining the interaction with this measure will need to be assessed.

Rationale for government intervention

Most union recognitions are the result of voluntary agreements between employers and trade unions. Of the many thousands of union recognitions in this country, under 150 have been achieved via an award under the statutory procedure. The statutory recognition procedure was deliberately designed not to undermine those voluntary arrangements and it encourages parties to resolve their differences, wherever possible, through voluntary means. In sum, the statutory procedure is meant to act as a fall-back if voluntary agreements cannot be reached. It follows that there should not be incentives which encourage trade unions to use the statutory fall-back procedure in preference to seeking or using voluntary bargaining arrangements.

In keeping with that approach, the Government decided that statutory bargaining should require employers to bargain with unions on just the 'core' negotiating topics. The 'core' topics are defined as those that are typical of voluntary bargaining. This definition ensures that statutory bargaining is not wider (and therefore more attractive to unions) than voluntary bargaining.

When the statutory procedure was developed in the late 1990s, the available data showed that only pay, hours and holidays were typically covered in voluntary bargaining.³ Using later data taken from the Workplace Employment Relations Survey 2004, it is clear that pensions are an increasingly common feature of voluntary bargaining in both the private and public sectors. WERS 2004 found that in 52% of recognised workplaces where bargaining took place, the manager reported that bargaining covered pensions. The findings showed relatively little variation by private and public sector, managers in 43% of private sector workplaces said management normally bargained about pensions, compared to 60% in the public sector.

On the strength of this new evidence, the Government proposes to initiate, with social partners, an examination of the evidence and the case for extending the statutory procedure to cover pensions. The purpose of including pensions in the topics that are subject to statutory collective bargaining is to bring the process into line with what is already typical where voluntary collective bargaining occurs. This means that

³ The 1998 Workplace Employee Relations Survey.

workers covered by statutory agreements will not be disadvantaged compared to those covered by the majority of voluntary agreements.

Consultation

The Government will consult widely with stakeholders on this proposal. DTI will work with DWP in taking this policy forward.

Options

1. Do nothing.
2. Add pensions to the statutory list of core bargaining topics, but not retrospectively change the scope of bargaining under pre-existing CAC awards of recognition. In respect of those arrangements, the recognised union would need to apply to the CAC to request the addition of pensions to the topics over which the employer must bargain.
3. Add pensions to the statutory list of core bargaining topics, with the fourth topic of pensions applying retrospectively to pre-existing recognitions awarded by the CAC.

Costs and benefits

Sectors and groups affected

Table 1 shows the number of applications to the CAC for statutory union recognition by industry (up to January 2006). If this pattern persists, manufacturing, transport and communications and other business services would likely to be more affected by the inclusion of pensions to the list of topics covered under the statutory recognition procedures.

Table 1. Number of CAC applications for union recognition by industry

| | Number of Applications | % of total |
|-----------------------------|------------------------|------------|
| Manufacturing | 193 | 46.4 |
| Transport and Communication | 92 | 22.1 |
| Other Business Services | 48 | 11.5 |
| Wholesale & Retail | 36 | 8.7 |
| Other | 14 | 3.4 |
| Finance | 13 | 3.1 |
| Other Community Services | 13 | 3.1 |
| Education | 5 | 1.2 |
| Construction | 2 | 0.5 |
| Total | 416 | 100 |

Source: Central Arbitration Committee June 2000 to 31 January 2006

Small businesses are least likely to be affected by the proposed changes. Firms with fewer than 21 workers are not covered by the statutory recognition procedure. Relatively few small businesses recognise trade

unions. The demand for statutory recognition has mostly involved firms far larger than 21 workers. Only 15% of applications to the CAC came from small firms employing up to 49 employees.

Benefits and Costs

Under options 2 and 3, the purpose of including pensions in the topics that are subject to statutory collective bargaining is to bring the process into line with what is already typical where voluntary collective bargaining occurs. This means that workers covered by statutory agreements will not be disadvantaged compared to those covered by the majority of voluntary agreements.

Benefits from including pensions on the list of topics are likely to accrue largely to workers belonging to the bargaining unit; at the end of 31 January 2006 declarations of recognition covered around 24,000 workers. Employers also benefit from any improvements to the climate of industrial relations and enhanced trust between workers and employers. Decisions on pensions may also be improved as a result of the close scrutiny and intensive dialogue which negotiation typically provides.

The quantifiable costs of this proposal are administrative only: the statutory bargaining process does not presuppose any particular bargaining outcomes. The principal costs of adding pensions to the list of topics covered by statutory collective bargaining are the opportunity costs of the extra time involved in participating in the bargaining process. As lay union representatives are entitled to time off with pay when engaging in collective bargaining, these costs are borne mostly by employers.

One straightforward assumption is that adding a fourth topic to the list will increase by one-third the time spent on collective bargaining (including preparation time). Using the illustrative assumptions in the RIA for the 1999 Employment Relations Act, this would imply an increase in time spent bargaining of 2 person-days per quarter for management and union representatives respectively. Using data on earnings from the Annual Survey of Hours and Earnings (ASHE)⁴, this would in turn imply an increase in recurring costs of £2,140 for each employer covered by a statutory recognition award.

Under option 2, the extra cost per firm would only apply to each new employer who is the subject of a new CAC award of statutory recognition. As the average number of new awards has been relatively low each year, at less than 25, then the total cost would be modest, at around £52,500 a year if future CAC awards occur at the same rate as ones in the past. There may be some additional small cost if unions with pre-existing awards successfully apply for their awards to be extended to cover pensions. Under option 3, the extra cost would apply

⁴ Using an hourly rate of pay excluding overtime for managers of £16.22 and £9.48 for employees.

retrospectively to existing statutory bargaining arrangements. By January 2006 recognition had been awarded in around 135 cases as a result of CAC applications. This would therefore imply an increase in total costs of around £289,000 at the outset and then the same ongoing costs as a result of new awards as discussed under option 2. Subsequent RIAs will aim to refine the cost/benefit analysis of the proposals.

Table 2: Summary of possible administrative costs from the introduction of pensions to statutory collective bargaining core topics (£)

| Option | One-off Cost | Recurring Cost |
|--------|--------------|----------------|
| 1 | nil | nil |
| 2 | nil | 52,500 |
| 3 | 289,000 | 52,500 |

Small Firms Impact Test

As reported above, firms with fewer than 21 workers are not covered by the statutory recognition procedure and therefore would not be affected by adding pensions to the list of topics subject to statutory collective bargaining. Where smaller firms employing 21 workers or over are subject to statutory collective bargaining, their costs may be proportionately larger than for large firms. But the demand for statutory recognition has largely involved firms far larger than 21 workers, so this is not likely to be a significant factor. The Small Business Service agrees that this proposal is likely to have limited impact upon smaller firms but we will seek more information on this assumption as part of the consultation process.

Competition assessment

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary. Extending statutory collective bargaining to include pensions will affect too few firms and workers to tangibly impact upon competition.

It is conceivable that the inclusion of statutory bargaining may have some impacts on the financial and insurance sector, but as the numbers of employees affected are very small, any sectoral impact on competition is likely to be minimal.

Enforcement, sanctions and monitoring

The recognition procedures give considerable scope to the parties to settle their differences voluntarily and implement their own arrangements. However the CAC, backed by the civil courts, has current powers to impose sanctions on either employers or unions for failures to comply with its statutory procedure or implement the CAC's recognition awards.

Extension of entitlement to annual leave

Purpose and intended effect

Objective

To extend the entitlement to 4 weeks' paid annual leave, making it additional to time equivalent to bank and public holidays (on a pro-rata basis for those working part-time).

Background

Everyone covered by the Working Time Regulations (whether part-time or full-time) is entitled to 4 weeks' paid annual leave. A weeks' leave is equivalent to an individual's working week – for example, if someone works a 5-day week, he or she is entitled to 20 days leave; for a 3-day week the entitlement is 12 days.

Currently, the leave entitlement is not additional to bank and public holidays. This has led to some companies requiring their staff to count these holidays as part of their 4 weeks' leave entitlement.

Consultation

Within government

The DTI will consult other interested departments, including the Department for Work and Pensions.

Public consultation

As a first step, the DTI will consult informally with stakeholders to gain a better understanding of the impact and number of people that will be affected by the commitment. These discussions will assist with and will inform subsequent formulation of the details of the policy and provide a better indication of the likely costs and benefits. Formal consultation will take place before any specific proposals are put before Parliament.

Options

The complex nature of working arrangements relating to bank holidays means there is a range of options for implementation.

Issues that will need to be considered as consultation and research progress include:

- The extent which time off in lieu is already granted to those who work on bank holidays
- Differential impacts on sectors and SMEs

- Options for implementation and reducing costs including phasing in the additional leave entitlement.

Costs and benefits

DTI have commissioned an independent survey to obtain the data that is required to quantify the costs of this proposal. The survey will take the form of face-to-face interviews, conducted in four waves between April and October 2006. Eight questions will be asked in each wave, to 1800 individuals. Further questions will also allow for analysis by occupation and industry. The complete survey data will be available for publication by November 2006. Quantification of the costs will be completed shortly thereafter and included in the partial RIA.

In order that the ongoing costs of this measure can be accurately monitored, a number of extra questions will be added to the Labour Force Survey in 2007. This will provide monitoring data from 2008.

Sectors and groups affected

The proposed reforms are likely to have a greater impact in some sectors than others. At this stage it is possible only to consider a very preliminary analysis of the sectors most likely to be affected; these probably include hotels and restaurants, retail and leisure industries.

Estimating the numbers affected (including by sector) is very difficult. Different industrial sectors currently offer varying contractual arrangements to staff that work on bank holidays. At the moment there is little information to indicate the current arrangements by industry and no information on how these arrangements will be affected by the new proposal. As described above, DTI is pursuing better data and will consult with stakeholders in developing the proposal.

Benefits

The ability to spend time away from the workplace is an important component of work/life balance and helps reduce stress. It is anomalous that generally the lowest paid have bank holidays included in their annual holiday entitlement. Extending the annual leave entitlement will ensure that individuals are provided with basic minimum holiday rights, bringing this disadvantaged group into line with the majority of the workforce.

Costs

Further work is in train to improve the quality and availability of data to underpin cost estimates (see under 'costs and benefits' above). This will allow quantified cost estimates to be published in Autumn 2006. The subsequent partial RIA will include these figures.

Small Firms Impact Test

We consider that smaller businesses are less likely already to offer four weeks' annual leave additional to all the bank and public holidays. It is likely, therefore, that the proposal will have a disproportionate impact on small businesses.

Our consultation will look particularly at the potential impact upon SMEs and how this might be mitigated when the proposal is implemented. We will be working closely with the Small Business Service as we develop our proposals. The subsequent partial RIA will include the results of this consultation. The extra data we are seeking will underpin our assessment of the impact of this proposal on smaller firms in greater detail.

Competition assessment

The proposals may also affect some industries to a greater extent than others. The DTI will consult fully with stakeholders, including the Small Business Service and the Office of Fair Trading, so that any potential competition issues are identified. Subsequent versions of the RIA will assess the impact on competition in greater detail.

Enforcement and sanctions

As with the current entitlement to four weeks leave, the new provision is likely to be enforced through Employment Tribunals.

Agency workers

Purpose and intended effect

Objective

The Government proposes to introduce a package of measures that would assist those agency workers most likely to be mistreated and vulnerable, leaving the vast majority of businesses (and agencies) who comply with their legal and moral requirements largely unaffected.

Measures to protect vulnerable agency workers would address:

- Provisions on charges for accommodation, transport, CV writing and other services
- Loans given to work-seekers
- Additional requirements where agencies supply drivers
- Fees payable by entertainers, models etc on the promise of work that never materialises

In addition to the above there would be a deregulatory measure to:

- Simplify information provisions on agencies supplying workers for very short-term tasks.

Background

Agency workers are exposed to a range of employer behaviours including, but not limited to:

Provisions on charges for accommodation, transport, CV writing and other services

There are a small number of agencies that mistreat vulnerable work-seekers by making offers of work conditional on paying for additional services such as accommodation and transport.

Loans given to work-seekers

Workers, particularly from overseas, are sometimes given loans to help them take up temporary employment. We are aware of instances where (often vulnerable) workers have been pressured to accept repayments deducted through their wages.

Possible additional requirements where agencies supply drivers

A number of issues have arisen in recent months relating to drivers seeking to gain employment through agencies without proper driving qualifications and seeking to work longer hours driving than is legal.

Fees payable by entertainers, models etc

A particular problem has emerged in cases where unscrupulous individuals hire a venue for a very short period, invite would-be

actors/models to attend and then engage in hard sell tactics to persuade them or their parents to pay high fees for the provision of 'services' and the promise of work.

Information provisions on agencies supplying workers for very short-term tasks

The Conduct Regulations⁵ require agencies to provide information to the worker regarding the hirer, including the date on which the assignment starts, the position the worker is to fill, the hirer's location, and the rate of pay. Similarly the agency has to provide to the hirer details of the worker, including his/her experience, qualifications and a confirmation that the worker is willing to work in this position. In some industries, e.g. catering, workers may be engaged on a number of different assignments, possibly on the same day. These information requirements represent a considerable burden on agencies supplying workers on very short-term assignments.

The requirements also present problems for the hiring company. In some cases, the hirer will be sent 500 items of information on a single day (i.e. one for each worker). There have been occasions when hirers have asked agencies not to provide this information. Agencies cannot comply with this request, as the information provision is a legal requirement.

Rationale for government intervention

In the absence of Government intervention, there is a risk that some vulnerable agency workers will continue to be mistreated as a result of certain work practices carried out by a minority of businesses and agencies who act in ways the vast majority of agencies would never emulate.

Consultation

The DTI intends to conduct a full formal consultation on these issues later in the year.

Options

1. Do nothing.
2. Introduce a package of measures to protect vulnerable agency workers. Some examples targeted at the problems identified above include:

Charges for accommodation, transport, CV writing and other services

A provision in the Conduct Regulations already makes it an offence to make an offer of a job conditional on the provision of these services. We

⁵ The Conduct of Employment Agencies and Employment Businesses Regulations 2003. <http://www.dti.gov.uk/er/agency/conduct.pdf>

could strengthen this provision by including a right of withdrawal from any service after the work-seeker had taken the job, subject to a notice period, and requiring that the worker not suffer any detriment for exercising the right to withdraw. This would protect vulnerable workers who can be put under pressure to accept unfair terms. We would explore whether it would be possible to ensure that unscrupulous agencies could not evade any such provisions (by providing the services through associated companies) without making it impossible for legitimate agencies to offer the option of services such as transport to remote areas at reasonable rates, which workers value.

Loans given to work-seekers

Currently, the Conduct Regulations require that where any loan is provided by an agency to a work-seeker to enable him or her to take up a position with a hirer, the work-seeker cannot be required to repay a greater sum than the money loaned (ie no interest).

We could strengthen this provision by preventing loan repayments being deducted from wages by the agency without the express consent of the work-seeker. We could also provide for the benefit of clarification that any loans must be provided in accordance with other legislation on loans. These measures could help prevent mistreatment of work-seekers. We would need to establish the extent to which UK agencies currently provide loans and their reasons for doing so.

Possible additional requirements where agencies supply drivers

Legitimate agencies ensure appropriate qualifications are in place before placing a worker and seek to ensure drivers working for them do not exceed their hours. To address this issue, we could make additional requirements on agencies placing drivers to make all reasonable checks in this area. We intend to explore this issue further in discussion with stakeholders and the Department of Transport and the Vehicle and Operator Services Agency, as we would not wish to place significant additional burdens on legitimate businesses. We would also need to ensure that any action would make an appreciable difference to our ability to address unscrupulous driver agencies.

Fees payable by entertainers, models etc

A provision that provided a cooling-off period, perhaps by banning the seeking or taking of fees on the day that a model or actor first met the agent would give individuals a chance to reconsider and perhaps make the practice less attractive to unscrupulous agents. We wish to ensure that this would not unduly disrupt legitimate industry practice.

Relax information provisions on agencies supplying workers for very short-term tasks.

One way forward would be for the regulations to provide a broader exemption if the information had been provided already with the terms and conditions, and where the assignment was of very short duration.

This would have significant benefits for agencies in the relevant sectors, without adverse impacts on the work-seeker or hirer.

Costs and benefits

There are around 15,000 employment agencies and employment businesses in the UK. Overall the proposals are highly targeted at those businesses and agencies that fail to comply with their moral and legal requirements and would only be expected to affect a small proportion of businesses and agencies.

Although a number of areas have been identified that would require remedial action, the intention is first to discuss these issues with industry and worker stakeholders to develop a more comprehensive picture of where, and to what extent, these practices are being exercised in the UK. Once this evidence is obtained, the Department will provide further information on cost estimates. In the interim, an overview of potential costs and benefits and how these may be distributed across groups and sectors in the economy is given below.

Those measures that seek to address charges made for accommodation etc, loans to individuals and the payment of fees in pressured circumstances in some professions should result generally in a welfare transfer from employers, agencies or loan providers back to individuals.

Furthermore the removal, or at least reduction, of these additional costs for vulnerable workers may have a positive impact in terms of labour supply. In addition to this it may result in a more flexible and efficient labour market, where vulnerable workers are not 'tied' to their employer or agency. Examples of this include cases where a worker from overseas is effectively constrained in his or her decision to supply labour because he or she cannot afford to move on until interest on a loan is repaid.

Measures to introduce additional requirements where agencies supply drivers would potentially involve additional staff time costs for these businesses. The extent to which this is the case is dependent on the details of the policy proposals and the extent to which reputable agencies already undertake these checks. A level playing field in this area would ensure that reputable agencies did not face unfair competition. There are also important health and safety issues related to this area, and a more detailed analysis of the costs and benefits would need to factor in the relative risk and associated costs of road traffic accidents (including the risk of fatalities) that might arise in the absence of such protective measures.

To the extent that it is possible to arrive at quantifiable estimates, there are likely to be benefits from this measure. The deregulatory measure to relax information provisions on agencies supplying workers for very short-term tasks would further benefit businesses and agencies. Again, more information and data is needed to arrive at a detailed costing, as well as identifying those sectors most affected. Once there is more

information available the benefits can be calculated in terms of agency and hiring business staff time that is saved.

Small Firms Impact Test

The measures discussed above are likely to have a greater impact on smaller firms, as these dominate the agency sector. The extent of this can be determined better once more information and data is available. The DTI will consult fully with the Small Business Service and small firms on the proposals. A full impact test of the effect on smaller firms will be conducted for subsequent RIAs.

Competition assessment

In the absence of more detailed data and information on the groups and sectors affected, it is not possible at this stage to conduct a full competition assessment. To the extent that these measures require a small minority of agencies to reach the same standards of performance as the majority, this could lead to competition benefits in the sense that a more level playing field is created. The DTI will consult fully with stakeholders, including the Small Business Service and the Office of Fair Trading, so that any potential competition issues are identified. Subsequent versions of the RIA will assess the impact on competition in greater detail.

Enforcement, sanctions and monitoring

Enforcement of these provisions is likely to be through the Employment Agency Standards (EAS) Inspectorate who have powers to prosecute breaches of employment agencies legislation, and to seek to prohibit unsuitable individuals from being involved in the running of agencies. Prosecution (with a fine) and prohibition (of up to 10 years) are the likely sanctions. The effectiveness of the measures will be monitored by the EAS and the results reported in the EAS Annual Report.

The section on 'Supporting vulnerable workers: enforcement and compliance' later in this document sets out proposals that aim to ensure all workers benefit from the framework of employment rights that the Government has established, support good employers who provide decent conditions, and to tackle unscrupulous employers who undercut reputable businesses and systematically mistreat workers.

Supporting vulnerable workers: enforcement and compliance

Introduction

The vast majority of employers seek to give their staff the rights to which they are entitled. However some make mistakes in doing and others, a small minority, deliberately flout the law. By doing so they drive standards down, effectively putting good employers at a competitive disadvantage or forcing them to cut corners so they do not lose out. It is often the most vulnerable workers who are worst affected, feeling they have no choice but to accept the terms on offer.

The Government believes that business needs a level playing field on which to operate. To this end it has the following policy objectives:

- ensure all workers benefit from the framework of employment rights, particularly the vulnerable
- support good employers who provide decent conditions comply with the law and train workers
- help those who want to comply but find it difficult to do so
- tackle those who undercut reputable businesses and mistreat workers

Purpose and intended effect

Objective

The Government intends to tackle these issues by:

- Supporting good employers by helping them to comply with the law
- Targeting help and advice at employers who find it difficult to comply, including the development of proposals for a possible employment standard to help employers understand and meet their basic employment law responsibilities
- Improving the efficiency of enforcement action by taking a more joined-up, intelligence led approach across Government agencies to target our compliance and enforcement activity on the basis of better risk assessment
- Carrying forward measures to make existing workplace enforcement activity more effective so that we can better target employers who break the law, including the use of illegal migrant labour or failure to pay the minimum wage
- Piloting a new approach to support vulnerable workers – reaching out to them, raising awareness and identifying gaps in enforcement

- Improving our knowledge of the numbers and nature of vulnerable workers in the United Kingdom.

Background

How to support 'good' employers

In line with the Hampton review⁶ of enforcement, we believe that the best way to support employers in complying with the law is on a risk basis through:

- **Information:** providing clear, accessible and up to date information about workplace regulation in one place. This is aimed at the whole labour market (low risk)
- **Help with compliance:** ensuring that where businesses have difficulties understanding legislation or applying it to their own circumstances, they can access help with compliance; this is aimed at those who want to comply with the law but who are at risk of getting it wrong (medium risk)
- **Enforcement:** targeting the systematic offenders and ensuring that good employers do not lose out to the unscrupulous employers who exploit vulnerable workers and undercut the good employers by breaking the law; this is aimed at those who systematically break the law

(1) Information: providing clear, accessible and up to date information about workplace regulation in one place

The 'Employing People' pages of the award-winning Businesslink.gov website⁷ meet this requirement. The pages, which attract 140 000 visitors every month, give access to all the information that government provides for employers, organised in a user-friendly format that can be tailored to the particular circumstances of the employer. We will continue to support Businesslink.gov as the recognised business portal for information about employment and workplace legislation. The launch of the new 'employee' section of the direct.gov website now offers a complementary service for employees.

In addition, the 'No-Nonsense Guide to Government rules and Regulations for Setting up your Business' provides (in hard copy) easy to follow information and advice on the key regulations that apply when a business employs people.

We want business to be confident about complying with the law. Many businesses, including those that have their own HR support function, are

⁶ http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm

⁷ <http://www.businesslink.gov.uk/>

likely to be more confident about complying with employment rights if they have access to up to date information.

Well-informed employees with access to up to date information will be more confident and able to resolve issues in the workplace.

(2) Helping business to comply: ensuring that where businesses have difficulties understanding legislation or applying it to their own circumstances, there is help for them to comply

There are a number of sources of additional help and advice for employers who want more specialised advice in complying with employment legislation, for example from HR experts in the private sector, from business representative organisations such as FSB and trade associations, and from the helplines run by Acas and other workplace regulators. Any additional action by Government will be carefully targeted to meet a genuine market need.

(2.1) Targeting help and advice on a risk basis

We think there is a case for targeting additional help and advice at sectors or parts of the labour market where the risk of failing to comply with legislation is medium to high.

The first step towards this would be improving intelligence about where the problems with complying with legislation are, so that we can take a more targeted approach. We already know about some sectors where there are difficulties, from sources such as National Minimum Wage compliance data and complaints to Citizens Advice. Better intelligence will help to identify and locate particular problem areas within sectors.

We believe we should focus on helping these sectors or problem areas comply with employment rights. As part of this work, we aim to pilot partnership working involving employers, workers, and voluntary and community agencies to test different approaches to raising awareness of employment rights and improving levels of compliance. The pilot activity will focus on areas of the labour market experiencing compliance difficulties.

(2.2) Better help and advice with compliance

Employment Standard

Early dialogue with stakeholders suggests there is interest in some form of employment standard, especially one focussed on helping SMEs with basic compliance issues. Helping more employers to comply with the law would be a significant step. Some sectors and smaller employers are seen as having more difficulty complying with legislation than others.

We will develop proposals for an employment standard that may help employers who have difficulties in complying with the law. We will develop our proposals in consultation with business users and experts,

taking account of existing standards, guidance and tools to ensure any standard meets a genuine employer need.

Effect on Employment Tribunal cases

The proposals for helping employers to comply with the law will help to raise standards of compliance in the labour market. We would expect better-targeted support to help more employers comply and reduce their risk of an Employment Tribunal case.

(3) Enforcement: targeting systematic offenders and ensuring that good employers do not lose out to unscrupulous employers who exploit vulnerable workers by breaking the law

Most employment rights are enforced by individuals attempting to resolve problems with their employers and taking cases to Employment Tribunal where this fails. Acas conciliation is a strong feature of this system. The key exceptions to this are the National Minimum Wage, Employment Agency standards and the Working Time limits, all of which are also enforced by Government agencies.

There are some concerns that the system favours those who are confident and articulate when seeking to resolve disputes and, where necessary, taking a case to an Employment Tribunal. Where their case is upheld, redress is in the form of compensation to the individual. It does not directly benefit the wider workforce. High profile cases, such as nationally reported discrimination cases, may have a wider deterrent effect on employers generally, but the system is not designed - other than through its role as a deterrent - to ensure that future abuse or mistreatment of other workers is prevented.

Targeting enforcement

Our objective is to carry forward work to improve targeting of enforcement action against illegal workplace practices, such as employing illegal migrant workers and the denial of work-place rights. This will include work such as:

- Examining practical measures to make existing information-sharing powers work more effectively
- Considering whether new powers are needed for enforcement agencies to gather and share information
- Further coordinated or joint action in 'hot spot' sectors with a high incidence of illegal migrant working, including initial campaigns to promote compliance; building on the work of the NMW compliance teams presently engaged in a pilot campaign targeting the hairdressing sector
- Exploring whether there are any significant gaps in the enforcement framework that need to be addressed to tackle businesses that

systematically fail to comply with the law and where efforts to encourage and support compliance have been unsuccessful

Rationale for government intervention

Most employment rights are only enforceable by individuals through the Employment Tribunals. If there is a problem in exercising one of these rights the employee must first seek to resolve the problem with the employer and if necessary proceed to making an employment tribunal claim. As mentioned above, only limited areas of employment law such as the National Minimum Wage are enforced by public bodies.

Certain individuals may not feel confident about exercising their rights and have difficulty raising an issue with their employer. This problem particularly affects vulnerable workers who may experience a combination of factors such as job insecurity, little support or help from family and friends, difficulty with the language, and uncertainty about legal entitlements and work permit rules.

In some cases we believe that unscrupulous employers deliberately take advantage of these insecurities to perpetuate uncertainty and intimidate employees into taking no action. These employers profit from avoiding their legal obligations and undercutting good employers.

Stakeholders representing employers and employees would like to see more help for employers who want to comply with legislation and stronger enforcement action to target unscrupulous employers.

Consultation

Government will consult on any proposals requiring legislation that may arise from the work on compliance, enforcement and supporting vulnerable workers.

Options

1. Do nothing.
2. Introduce measures to support and strengthen enforcement and compliance based on a risk-based approach.

Costs and benefits

The measures set out above are based, in many instances, on ideas or proposals that are still at an early stage of development. Hence it is only possible, and indeed appropriate, to consider cost-benefit issues in very general terms. This is presented below by risk area.

Overall the proposed set of measures would allow a better allocation of resources to deal with enforcement and compliance issues. This should result in efficiency gains.

Low risk

The provision of clear, accessible and up to date information using the online media of both the employing people pages of businesslink.org.uk and direct.gov.uk/employees should reduce compliance burdens and contribute to a better informed workforce.

Provision of information to employers in one place should result in a reduction in the amount of HR and managerial time spent becoming initially acquainted, as well as staying up to date, with employment legislation. The result should be cost savings for business. Further analysis will be carried out in follow-up RIAs to quantify the net benefits in more detail. Costs savings, including time, could be invested elsewhere.

Costs are incurred by the Exchequer for website design and maintenance plus keeping the site content up to date. The set-up costs for the employee section of direct.gov are expected to be around £600,000; the maintenance costs are likely to be minimal. When compared with the effectiveness and efficiency of the internet as a tool to distribute such information, these costs are relatively small.

A future cost-benefit analysis in subsequent RIAs would also aim to assess the knock-on effect on other services such as Acas and other helplines, as there is potential for a shift in usage from one source to another. Any cost-benefit estimates produced will need to take into account a progression path for potential take-up, with the likelihood that it may take a year or two for the service(s) to be subject to widespread usage, at which point the benefits may be fully realised.

Medium risk

Following the graduated risk-based approach to compliance, further measures are envisaged to address problems associated with the medium-risk group.

First of all there needs to be more information on those sectors where the risk of failing to comply with legislation is medium to high. Information and data from National Minimum Wage enforcement and from Citizens Advice have highlighted that some sectors encounter more problems than others⁸, but more information is required. We will gather intelligence through better usage of what exists, and in future better data capture and analysis.

The development of an employment standard should help small employers in particular reach an acceptable standard. Options for a standard range from efforts to make further improvements to the existing information, guidance and tools available to employers; through to the development of an externally accredited standard providing

⁸ Such as highly regulated sectors, sectors with a high proportion of businesses without HR support, sectors employing a high proportion of vulnerable workers.

business with independent verification that they have policies and processes which comply with the requirement of employment regulation, thereby reducing the risk non-compliance.

We will only proceed if there is a genuine demand for a voluntary standard. An accredited standard would involve accreditation costs for the businesses concerned. The employer benefits would include increased confidence about employing people, and potentially a stronger reputation in the labour market as a good employer.

There are likely to be benefits for business and the Exchequer from any reduction in the number of Employment Tribunal cases. There are around 100,000 claims each year⁹ and average costs to business per case are around £4,900 and costs to the Exchequer are around £990¹⁰. The follow-up partial RIA will conduct a more detailed costing, but will be founded on assumptions based on percentage reductions in cases per annum. For illustration, a 5% reduction in Employment Tribunal cases per year would result in a cost saving of around £25m each year to business¹¹ and annual cost savings to the Exchequer of around £5m.

Improved employment practices are likely to benefit vulnerable employees disproportionately. We will consider further the costs and benefits of an employment standard as we develop the options for how it might work.

High risk

A number of agencies enforce workplace regulation. For example, the Health and Safety Executive, Local Authorities, the Departments of Work and Pensions; Environment Food and Rural Affairs; Transport; the Home Office, plus other agencies and sectoral bodies. The aim is to have more concerted, joined-up action that would involve a more efficient use of resources to gather and share intelligence, assess risk and identify problems.

There is some high level data as to which sectors and groups are affected the most, but further information is required to get a clearer picture as to what is happening. More detailed analysis of the number of businesses likely to be affected plus further development of the policy detail is required to estimate a full cost benefit analysis in this area.

Cost to the public sector

There is likely to be a better return on investment (value for money) from targeting resources more effectively. Up-front expenditure on improving compliance and enforcement could result in longer-term gains and wider benefits. For example, as discussed above, reduction in the numbers of

⁹ Average for period FY2002-03 to 2004-05.

¹⁰ Figures calculated from SETA (2003).

¹¹ NB: this follows the assumption that in 75% (SETA 2003) of claims the employer is successful.

Employment Tribunal cases will result in costs savings, while joined up enforcement should lead to more efficiencies and avoid duplication.

Small Firms Impact Test

In many cases the proposed measures for improving compliance and targeting enforcement are likely to benefit small businesses, through easy access to guidance and increased confidence in compliance with the law. The DTI will work closely with the Small Business Service and small firms to help maximise these benefits. A full impact test will be conducted in subsequent RIAs.

Competition assessment

Some of the measures in this initial RIA may impact across sectors differentially. Generally, compliant businesses should stand to gain from having a more level playing field, with non-compliant employers being targeted more effectively. The DTI will consult fully with stakeholders, including the Small Business Service and the Office of Fair Trading, so that any potential competition issues are identified. The full RIA will consider the competition impacts across sectors in greater detail.

Employment law simplification review

Purpose and intended effect

Objective

In line with the Government's Better Regulation Agenda, the DTI aims to reduce the regulatory burden of employment law on business. The Government intends to bring forward a number of simplification proposals that will contribute to this overall objective by reducing the administrative burdens placed on firms, while ensuring the rights of employees are protected. With the aid of stakeholders the Government has identified a number of specific areas of employment law to review. In addition, over the coming year, the DTI will bring forward proposals on any other areas of employment law where there is scope for simplification to be achieved. These measures will contribute to the DTI's £1 billion target for deregulatory savings over the period 2005-2010, helping to deliver a 25% reduction in administrative burdens.

Background

In November 2005 the DTI issued a Draft Simplification Plan¹² to reduce the regulatory burden on business. The measures discussed in *'Success at Work: Protecting the Vulnerable, Supporting Good Employers'* draw on the proposals made in this plan. Some of these proposals are already well developed, notably the simplification of maternity leave and pay arrangements, which has been detailed in the Work and Families Bill and its draft secondary regulations¹³, and a number of measures to simplify the Statutory Redundancy Payments scheme, which are outlined in the Age Discrimination Bill. Other proposals remain in their early stages, but represent commitments by the Department to review its regulations with a view to simplification. The Department will also consult with stakeholders and a panel of practitioners over the coming year to seek to identify and bring forward proposals on any other areas of employment law where there is scope for simplification to be achieved.

Rationale for government intervention

Areas already identified for review:

Maternity leave and pay:

The Government has previously announced a package of measures to simplify the maternity leave and pay arrangements. The impact of these

¹² For details of the DTI's departmental plans, see "Better Regulation: Draft Simplification Plan", November 2005.

¹³ http://www.dti.gov.uk/er/work_families_regs_jan2006.pdf

changes is assessed in the associated Maternity and Adoption Leave Regulations RIA¹⁴.

During consultation on the Work and Families Bill, stakeholders argued that the rules governing maternity leave and Statutory Maternity Pay (SMP) should be made more consistent. To ensure that both businesses and individuals can easily understand their rights and responsibilities under family friendly law, we will simplify the guidance on maternity leave and pay. Once the measures in the Work and Families Bill have been introduced, we will consider the case for further simplification of the way in which employers administer SMP.

Redundancy review

Business groups have expressed concerns that elements of the statutory redundancy scheme are confusing. The forthcoming age regulations will make a number of simplifications, including removing the lower and upper age limits for qualifying service; removing the “age taper” for workers aged 64.¹⁵; and revoking the Redundancy Payments Pensions Regulations 1965 SI 1965/1932, which have now fallen into disuse. These changes have been assessed in previous RIAs.¹⁶

In addition, the Government will consider how we can simplify the scheme in other ways that do not reduce worker entitlements, or increase business costs, and look to produce sharpened guidance that focuses on the majority of cases facing business and workers. Work on the review will begin shortly.

Review of dispute resolution procedures

When the Employment Act 2002 (Dispute Resolution) Regulations came into force in October 2004, the Government committed itself to a full review of the regulations two years hence. Since then, a number of stakeholders have expressed concerns that the existing procedures impose too heavy a compliance burden on employers and do not provide adequate access to justice for employees. These concerns will be considered in the forthcoming review and simplifications made to the regulations where appropriate. A further aim of the review is to reduce the amount of employment cases going forward to tribunal.

¹⁴ http://www.dti.gov.uk/er/work_families_regs_jan2006.pdf

¹⁵ The current formula for statutory redundancy payments is as follows: to qualify for statutory redundancy payments, employees have to have completed two years' continuous service. For each complete year of continuous service between the ages of 18 and 21, employees receive half a week's pay. For each complete year of continuous service between the ages of 22 and 40, employees receive one week's pay. For each complete year of continuous service between the ages of 41 and 65 employees receive 1½ weeks' pay. However, if employees are over 64, the total amount of the payment received is reduced. There is a cap of twenty years on reckonable service.

¹⁶ <http://www.dti.gov.uk/er/equality/statutoryredundancypay.pdf>

Simplification of the law on employment particulars

We will simplify where possible the law on employment particulars – the statement all new employees have to be given – and make it easier for employers to comply when there is a change to employment regulations which might mean revised employment particulars have to be provided.

Consult on the right to time off

We will consult on replacing the right to time off for certain public duties with a right to have requests for such time off seriously considered, building on the success of the right to request for parents of young children (now being extended to carers).

Project on increasing UK employers' confidence in employing people

A new project will be undertaken with the Small Business Service and other organisations to increase UK employers' confidence in employing people. We will consult employers, trades unions, lawyers and HR experts to identify requirements that are difficult to understand or cause confusion; and rationalise regulation, improve guidance, publicise existing free advice and reduce administrative burdens.

Consultation

Within government

The DTI will consult fully with other Departments and with the Small Business Service on any proposals that arise from the simplification measures set out in this RIA.

Public consultation

The DTI will consult fully on any proposals that arise from the simplification measures set out in this RIA.

Costs and benefits

This section discusses the costs and benefits of the areas already identified for review. The costs and benefits of other simplification proposals will be outlined when they have been proposed.

Maternity leave and pay:

The impact of the previously announced package of measures to simplify the maternity leave and pay arrangements was assessed in the associated Maternity and Adoption Leave Regulations RIA¹⁷. The aim of any further simplification of the guidance in this area and of the way in which employers administer SMP will be to help businesses and individuals more easily understand their rights and responsibilities

¹⁷ http://www.dti.gov.uk/er/work_families_regs_jan2006.pdf

under family friendly law. Any further simplification should therefore have net benefits, which will be assessed fully in subsequent RIAs.

Redundancy Review

Any further simplification of the methodology for calculating redundancy payments, or any sharpened guidance stemming from the Redundancy Review is likely to lead to benefits to employers in the time they spend on calculating payments for their employees. Any simplifications will ensure that the overall benefits to workers will not be reduced. Subsequent RIAs will provide a full assessment of the costs and benefits.

Review of dispute resolution procedures

Any simplification of dispute resolution procedures will be enacted on the principle that it should not impose any further costs on employers or employees, but only benefits in reduction of the administrative burden. The review aims to reduce the number of employment cases going forward to tribunal, which would also reduce costs. The DTI will quantify any proposals as they arise from the review.

Employment standard

The Government will develop proposals for a new employment standard that would help firms understand and meet their minimum employment law responsibilities, including looking at its value for money as a way of reducing disputes going to tribunal. This proposal is discussed in greater detail in the earlier Enforcement and Compliance section in the RIA.

Employment particulars

Any simplification of the law on employment particulars should result in administrative savings to firms from complying with the law. The DTI will quantify any proposals in subsequent RIAs when proposals have been more fully developed.

The right to time off

The costs and benefits of replacing the right to time off for certain public duties with a right to have requests for such time off seriously considered are difficult to quantify at this stage. One possible benefit to firms may come in the form of increased flexibility in planning their staffing requirements. Subsequent RIAs will quantify any proposals when they are more fully developed.

Increasing UK employers' confidence in employing people

The aim of any proposals that arise from the project to increase UK employers' confidence in employing people is to identify requirements that are difficult to understand or cause confusion; and rationalise regulation, improve guidance, publicise existing free advice and reduce administrative burdens. As such, any proposals that arise should result in cost savings to firms in terms of administrative time, and also the

possibility that the efficiency of the UK labour market will be further improved. At this stage it is too early to quantify any proposals; subsequent RIAs will assess policy options in detail.

Small Firms Impact Test

The DTI will consult fully with the Small Business Service and small firms on all simplification proposals. A full impact test of the various simplification proposals will be conducted in subsequent RIAs.

Maternity leave and pay: during the Work and Families consultation, representatives of small firms consistently argued that any administrative complexities in the calculation and payment of statutory payments affected them disproportionately. Any measures that ease this administrative burden, therefore, would impact more on smaller firms, and in particular those that have no designated HR function.

Redundancy: changes to the redundancy regulations will affect all firms. Small workplaces are much less likely to say that they have made redundancies in the last year, however, so it is likely that proportionally fewer small employers will be affected by any changes to the legislation.¹⁸

Review of dispute resolution procedures: an assessment of the impact on small firms will be conducted where necessary as more detailed policy proposals arise.

Employment particulars: the administrative costs from following the law on employment particulars may currently fall more heavily on small firms, so they are likely to benefit from any simplification of the law.

The right to time off: any proposals replacing the right to time off for certain public duties with a right to have requests for such time off seriously considered may affect small firms more than larger firms, as smaller firms typically have less flexibility in their ability to allocate staff to tasks.

Increasing UK employers' confidence in employing people: any proposals that arise from the project to increase UK employers' confidence in employing people will be subject to a small firms' impact test in subsequent RIAs.

Competition assessment

The DTI will consult fully with stakeholders, including the Small Business Service and the Office of Fair Trading, on any potential competition issues arising from any of the simplification proposals. The full RIA will consider the competition impacts across sectors in greater detail.

¹⁸ Source: Tables 32 and 17 of IFF Research (unpublished) *Employers' Redundancy Practices* Department of Trade and Industry. Of workplaces with 5-24 and 25-99 employees, 4 and 16 %, respectively, said that they had made redundancies in the last 12 months, compared with 37 and 50 % for those with 100-499 and 500 and over employees, respectively.

Maternity leave and pay

Any proposed simplification measures to help employers with the administration of statutory payments should not have a negative impact on competition. The measures will be more beneficial to some firms, who have a higher proportion of female employees. However, it will not affect market structure. The measures will also not form a barrier to entry for new firms and will not affect firms' production decisions.

Redundancy Review

The proposals will apply to all firms. Applying a competition filter suggests that there will be negligible impact on competition, although it is worth noting that manufacturing firms have the highest share of redundancies, meaning that this sector could be affected substantially more than others.

Other simplification proposals

Competition assessments will be conducted where necessary as more detailed policy proposals arise.

Enforcement, sanctions and monitoring

The section on 'Supporting vulnerable workers: enforcement and compliance' earlier in this document sets out proposals that aim to ensure all workers benefit from the framework of employment rights that the Government has established, support good employers who provide decent conditions, and to tackle the element who undercut decent businesses and systematically abuse workers.

Maternity leave and pay

Under existing maternity leave legislation employees who believe their rights have been infringed may seek redress through a statutory dispute resolution mechanism and ultimately through an employment tribunal. A tribunal can award an employee compensation if the employer does not comply with the legislation, or if the employee suffers a detriment or is dismissed for taking maternity leave or for being pregnant. Employees who believe an employer's decision about a statutory payment is wrong are able to appeal to HMRC.

Redundancy Review

Enforcement for redundancy payments will continue to be through the Employment Tribunal system.

Contact Details

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