

# The Employment Relations Bill:

## Regulatory Impact Assessment

Department of Trade and Industry  
February 1999

## EMPLOYMENT RELATIONS BILL - REGULATORY IMPACT ASSESSMENT

### 1. TITLE

1. This Regulatory Impact Assessment (RIA) assesses the impact of measures included in the Employment Relations Bill, hereafter referred to as “the Bill”. The measures in this Bill were foreshadowed in the *Fairness at Work* White Paper (Cm 3968) published on 21st May 1998, hereafter referred to as the “White Paper”.

### 2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

#### Objectives

2. The Government wishes to:

- promote a flexible labour market in which organisations and individuals are able to adapt to changing economic and personal circumstances - which requires an underpinning of decent minimum standards so that changes in the workplace can be based on trust and co-operation;
- establish a framework of law for employment relations - that will last for this Parliament and endure beyond;
- support families by broadening the choices available to people, and enabling more to combine work with caring responsibilities if they wish.

3. The Bill therefore presents a package of measures which, taken together, are intended to contribute to the improvement of employment relations across the economy, stimulating a more co-operative approach, and thus contributing to enhanced economic performance. The measures will, in addition, help people to achieve a better balance between work and family life, with wider long term social benefits.

#### Purpose

4. The purpose of the measures is to:

- set out a new statutory procedure for the recognition of trade unions;
- promote family-friendly employment practices (by setting out new basic rights for maternity and parental leave, and time off for family or domestic emergencies, to be supplemented by regulations);
- provide new rights for individuals at work,

#### Description of measures

5. The main elements of the Bill relevant to this RIA are:

##### Trade Union & Collective rights

- to establish a framework to allow *Trade Union Recognition* to be achieved by voluntary agreement, and where that is not achieved a Statutory Procedure that will apply to organisations employing more than 20 employees, and which allows for:
  - a ballot of workers (with twin tests of a simple majority and least 40% of those eligible to vote)
  - or an automatic route where more than 50% of workers in the bargaining unit are union members.
- *Dismissal of strikers* - it will be automatically unfair to dismiss those taking part in lawfully organised industrial action for eight weeks; thereafter dismissal will be fair if the employer has taken all reasonable procedural steps to try to resolve the dispute.
- to make *discrimination by omission* on grounds of union membership or non-membership unlawful in same way as discrimination by positive act.

- Abolition of the Commissioner for the Rights of Trade Union Members (CRTUM) and the Commissioner for the Protection Against Unlawful Industrial Action (CPAUIA), and extension of the Certification Officer's powers.

#### Family friendly policies

- extension of *maternity leave* to eighteen weeks so that it is aligned with maternity pay;
- *Extended Maternity Leave* after one year's service, as opposed to two years at present;
- simplification of notice arrangements for maternity leave, thus helping women and their employers and reducing the scope for misunderstandings and disputes;
- parents (including those with adopted children) are to be entitled to three months unpaid *parental leave* subject to their being in a job for more than a year;
- *contracts of employment* to continue during parental leave and extended maternity absence unless expressly terminated;
- employees to return to their own jobs, or, if necessary, to suitable alternatives, after parental leave, so that parental leave is treated in the same way as additional maternity leave;
- reasonable *time off for family or domestic emergencies*;
- protection against dismissal or detriment for exercising rights to *parental leave* or *time off for family or domestic emergencies*;
- implementation of the EU *Part-Time Work Directive* and ensure equal pay for part time workers.

#### Disciplinary and grievance hearings

- Where a firm (of any size) has disciplinary and grievance procedures, employees to have the *right to be accompanied* by a fellow employee or a trade union official in disciplinary hearings and grievance hearings about serious issues.

#### Individual rights

- *The limit on unfair dismissal compensation*: will be increased to £50,000 and linked henceforth to changes in the Retail Prices Index;
- limits on the amount of a week's pay for the purposes of tribunal awards and for *redundancy payments* will be increased in line with the Retail Price Index; as will other tribunal awards and guarantee payments;
- *Additional and special awards*: will be consolidated into a single new additional award. The new award will have a minimum limit of 26 weeks' pay (£5,720) and a maximum of 52 weeks' pay (£11,440);
- *waivers in fixed term contracts*: it will no longer be possible for employers to ask employees on fixed-term contracts of one year or more to waive the right to complain of unfair dismissal if the contract is not renewed. However, it will continue to be possible to waive redundancy rights;
- *extension of employment rights*: there will be an Order-making power to extend some or all existing employment rights to categories of workers not currently covered. Full public consultation will be carried out in due course on detailed proposals, before the power is exercised.

6. Most of the measures clarify, slightly modify or add to existing legislation,<sup>1</sup> the main exceptions being the new trade union recognition procedures and the introduction of a right to parental leave.

7. The proposals on parental leave, time off for family or domestic emergencies and part time workers include measures which will implement the requirements of the Directives adopted and implemented by the members of the European Community under the Social Chapter protocol.

8. As nearly all of the measures in the Bill will ensure that benefits and rights currently available to most employees become universal, few employers will be affected. The measure which will involve most widespread change to current practices, will be the introduction of the parental leave entitlement. The implementation of this measure will affect nearly all employers over time.

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<sup>1</sup> Trade Union and Labour Relations (Consolidation) Act 1992 & Employment Rights Act 1996.

### 3. EXPECTED BENEFITS

9. The measures in this Bill are expected to bring widespread benefits to workers and their families, and thus to the economy, society and employers.

#### *Workers and their families*

10. It is possible to estimate the number of workers who stand to gain from some of the individual measures in the Bill (see calculations in the Annex) but the total number of beneficiaries is much wider and hard to assess. Benefits come not just to those people who exercise their new rights - who may be relatively small in number - but to the much greater number who have the added protection (for instance the knowledge that they could be accompanied should they be involved in disciplinary procedures, or that awards will fully compensate for economic loss), or the even wider workforce whose employers already provide them with entitlements but now know that their entitlements do not depend on which employer they happen to be with. The provision of statutory minimum standards thus creates a greater sense of security across the workforce as a whole.

11. As an example of this last point, although the overwhelming majority of employees are able to take time off work to deal with family or domestic emergencies, establishing it in legislation sends an important re-assuring message to people thinking about re-entering (or leaving) the labour market and who might be concerned about the potential difficulties that would create. It thus contributes to the Government's Welfare to Work strategy. Similarly, although fewer than 40,000 of women are expected to make use of the extra maternity entitlements there are millions of women who know that they have rights to extra leave should they become pregnant.

12. As already noted, the measure which will involve the greatest change in current employment will be the introduction of an entitlement to parental leave. That aside, the measures provide a statutory underpinning for benefits and practices that are already very widespread.

13. The measures also provide a support for family life by broadening the choices available to people, and enabling more to combine work with caring responsibilities if they wish. The extension of maternity leave will mean that more mothers will not have to choose between giving up their job or returning to work earlier than they would have wished, and as a result more are likely to be able to continue with their careers and preserve their long term earnings potential.

#### *Economy and Society*

14. By helping individuals in this way it generates benefits both economic and social:

- The Bill will establish a framework of minimum standards underpinning the Government's policy of promoting a flexible labour market, based on effective partnership at work. A greater degree of trust and better communications will make it easier for employers to adapt to change, thus contributing to a more productive economy. Knowledge that standards will be at least the minimum across the economy will remove disincentives to labour mobility, and ease recruitment.
- The measures in the Bill will lead to an increase in participation rates, and effective labour supply:
  - The extension of rights to Additional Maternity Leave will have a strong positive effect on the participation rate of mothers.
  - With a framework of minimum standards people may see work as more rewarding. Although many of the entitlements set out in this Bill are already provided by most employers this legislation gives people certainty. If entitlements are at an employer's discretion or are not widely known about it some people could be deterred from entering the labour market (e.g. those who feel they would need to take time off for family or domestic emergencies), while others may be reluctant to leave their current employer.
- On the social front, if families are able to achieve a better balance between work and home, children will be better able to get a good start in life, and it reduces the risks of social costs associated with family breakdown.

## *Employers*

15. Across the economy, employers have shown that establishing decent standards is consistent with, and can contribute to, competitive business. As the Government's recently published Competitiveness White Paper<sup>2</sup> highlighted, a key feature of our top performing companies is a culture which promotes partnership, fairness and trust and creates the right conditions for business success. The Bill will establish a framework of minimum standards underpinning the Government's policy of promoting a flexible labour market, based on effective partnership at work. A greater degree of trust and better communications will make it easier for employers and employees to adapt to change, thus contributing to a more productive economy.

16. The main reason for introducing parental leave is to help individuals to balance work and home life. However, there should be economic benefits to the economy and to individual employers through reduced staff turnover, improved commitment, leading to improved labour productivity; whilst an increase in the effective labour supply eases recruitment.

17. Minimum standards of this kind also address market failures. At present employers who offer parental leave face a problem arising from "adverse selection": the people most likely to take advantage of parental leave will apply for jobs in firms that offer it. The costs in firms that offered such facilities could therefore be disproportionate, and may deter some from offering it. Legislation will help overcome this lack of co-ordination in the market.

### **Quantifying benefits**

18. Most of these benefits (whether to individuals or employers) are not quantifiable. They affect the **quality** of working life and of family life, and the quality of co-operation in the workplace. These qualitative improvements are expected to produce, in their turn, improvements in terms of productivity and economic performance; but those effects are long term and the product of a combination of measures.

19. One or two individual measures will produce more easily quantifiable savings by reducing administrative costs. For example the simplification of maternity rights is expected to reduce administrative burdens on businesses - which has been welcomed by employers. But these quantifiable benefits are insignificant in relation to the qualitative benefits expected to follow from the proposals.

### **Gender impact**

20. Together these measures (particularly on maternity leave, parental leave, and rights to emergency time off) should enable more women to combine work and family responsibilities. This should have longer term benefits for the position of mothers in the labour market. It is assumed that initially women may benefit most from the provisions such as parental leave. In the longer term it may lead to a better balance of parental roles. If fathers are able to take more responsibility for family matters it will strengthen families and allow women to further strengthen their position in the labour market.

## **4. COMPLIANCE COSTS FOR EMPLOYERS**

### **i) Summary of total compliance costs**

21. The Annex presents estimates of the number of people likely to be affected by each proposal, along with an estimate of the consequent compliance costs (and other costs). The estimates are based on assumptions using available survey evidence - these assumptions are set out with the calculations. Some of the measures in the Bill refer to events that are rare, and the events are very different from one another, so costs cannot be realistically estimated (for instance dismissal of strikers).

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<sup>2</sup> DTI (1998) *Our Competitive Future: Building the Knowledge Driven Economy* Cm 4176 - December

## Recurring costs

22. The table below shows those elements of the Bill for which there are likely to be significant recurring compliance costs for employers - adding up to about **£60 million**. The main costs arise from the provisions for parental leave.

**Table 1: Summary of main recurring compliance costs**

| Measure  | Estimate (£ million) |
|--|----------------------|
| <b>Trade union and collective rights</b>             |                      |
| Trade union recognition *                            | 5.9                  |
| <b>Family friendly policies</b>                      |                      |
| Ordinary Maternity Leave (18 weeks)                  | 1.8                  |
| Wider entitlement to Additional Maternity Leave      | 14.0                 |
| Parental leave                                       | 28.8                 |
| Right to time off for family or domestic emergencies | 6.9                  |
| <b>Disciplinary and grievance hearings</b>           |                      |
| Right to be accompanied in dispute or grievance      | 2.3                  |
| <b>TOTAL</b>   | <b>£59.7 million</b> |

All in 1998 prices, all GB

\* Based on levels after three years' build up. Note that this is a gross cost. Net costs, allowing for displacement of other forms of consultation and wage setting, will be lower.

23. There are other measures in the Bill for which there are no compliance costs or where compliance costs are thought to be negligible - mostly because few employers will have to change their practices. These are listed in the table below:

**Table 2. Measures with no significant compliance cost**

| Measures   | Comment                                  |
|--|--|
| Unlawful to discriminate against trade union members by omission | Few instances                            |
| Raising the limit on compensation for unfair dismissal           | Affects only the non complying employers |
| Indexation of awards and statutory payments                      | Same result achieved by annual reviews   |
| Removal of waivers for unfair dismissal in fixed term contracts  | Few instances                            |

24. As few of the costs identified will affect the average employer it is not meaningful to express the total costs as a cost per employer or per employee, aside from parental leave. The £28.8 million for parental leave is equivalent to **£1.70 per employee per year**.

## Non-recurring costs

25. None of the proposed measures will require employers to set up new systems so non-recurring costs are low. The only non-recurring cost of any size comes from the process of going through trade union recognition procedures. The costs relating to trade union recognition in the table above refer to the costs of regular consultation and negotiation with a recognised trade union. But there will also be the one-off cost of going through recognition procedures. It is estimated that about 500 organisations will go through recognition procedures, up from the current 100 organisations that use ACAS each year. With an estimated average cost of **£4,370 per organisation**, that gives a total cost of around **£1.7 million per year**.

## ii) Which sectors will be affected ?

26. The measures proposed apply to all sectors of the economy, but their impact is likely to differ by sector because:

- the likelihood of the relevant situations varies - e.g. some sectors have relatively few women of childbearing age,<sup>3</sup> or few union members.
- current practice varies;
- exclusion of small firms from statutory recognition procedures will exclude more of the workforce in sectors such as real-estate where employment is dominated by small firms.

27. Thus, engineering establishments might be among those that have to make the greatest changes to their formal procedures in order to comply with new maternity rights but, given current employment patterns, relatively few of their workers become pregnant. (It is possible that enhanced maternity and parental leave rights might encourage more women into those industries in the future.)

28. Like other measures to establish minimum standards across industry, the effects will be greater on those employers who compete on the basis of poor conditions for workers and will reward those that compete through quality. In the long run, and in a global economy, the latter type of firm is in any case more likely to survive.

### *Trade union recognition proposals*

29. The density of trade union membership is highest in public administration, utilities, transport, postal services and education.<sup>4</sup> But the workers in these sectors are already very likely to be covered by recognition agreements. On average about 2.8% of employees are trade unions members but not covered by a recognition agreement (LFS, Autumn 1997); the proportion is markedly above average in education and in the health sector. According to WIRS 1990 the sectors with the biggest gap between the proportion of workplaces with union members and those with union recognition were construction and engineering.<sup>5</sup> Although total membership has fallen since 1990 there is no reason to believe that the pattern has changed since then.

### *Parental leave*

30. Parents are fairly evenly spread across sectors. Many employers already have arrangements that may be comparable in some respects to the new parental leave entitlement - e.g. provision of unpaid leave, paternity leave, additional maternity leave of several years, sabbaticals, career breaks. However, these are concentrated in larger employers and in sectors where young women with qualifications make up a high proportion of the workforce.<sup>6</sup> Other sectors will therefore have the greatest change to make. On the other hand, take-up there is likely to remain low (at least for the foreseeable future). Although there will be difficulties in small firms complying with the parental leave directive, rights and detailed regulations will take account of small firms' needs.

## iii) Costs for a "typical" employer

31. With the exception of the parental leave measures, most employers will be totally unaffected because:

- they already have procedures to ensure that dismissals are fair and those that do find tribunals ruling against them rarely have to pay the maximum award;

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<sup>3</sup> Forth, J., Lissenburgh, S., Callender, C., Millward, N. (1997) *Family friendly working arrangements in Britain - 1996*, DfEE Research Report 16, page 14. Less than 3/5 of establishments in manufacturing /construction have any women under forty, while in the public sector the figure is only 18%.

<sup>4</sup> Cully, M & Woodland, S (1997) Trade union membership and recognition, *Labour Market Trends* June page 237

<sup>5</sup> Millward, N, Stevens, M., Smart, D., Hawes, WR (1992) *Workplace Industrial Relations in Transition*, page 107

<sup>6</sup> Forth et al page 80.

- they allow a third party to be present at disciplinary procedures;
- they allow people to take time off for family or domestic emergencies;
- most are not big enough to be covered by the statutory trade union recognition procedures and most of the larger ones with union membership of any size already recognise trade unions;
- many employers do not have women of child bearing age and even in those that do, pregnancies are not common events,<sup>7</sup>

32. Even where an employer does have to make changes they are unlikely to be affected by **all** of the new entitlements.

33. As has been noted earlier, the measure that is likely to have the most widespread effect is the introduction of an entitlement to parental leave (which will apply to about 15% of the workforce at any time). We do not anticipate that initial take-up will be high - drawing on experience in other European countries. We assume that parental leave will be taken in respect of one in ten children (though because some of these have siblings the proportion of children benefiting from a parent taking parental leave will be considerably higher). That means that each year less than ½% of employees will take up the entitlement. Not all will take the full period to which they are entitled. Our estimates assume that with an average leave of ten weeks the average cost to employers of a person taking parental leave is approximately **£470**.

34. The statutory recognition procedures have been designed to facilitate voluntary agreement in a way that minimises costs. A firm that went through all the stages set out in the legislation might face cost of £8,000 but the number of organisations going through all stages is expected to be small (about 50 per year).

## 5. RESULTS OF CONSULTATION

35. The *Fairness at Work* White Paper published on 21st May invited responses by 31st July 1998. The DTI received more than 470 responses from employers, individuals, lawyers, trade unions and employer organisations. Organisations responding included organisations representing small employers: the Federation of Small Businesses, the Institute of Directors, British Chambers of Commerce. A complete list of respondents has been placed in the Library of the House. Further public consultation will take place on the detailed draft regulations on maternity leave, parental leave, emergency time off and part time work. This will include a small firms litmus test.

36. The responses and other representations have influenced how the proposals set out in the White Paper have been developed into the measures in the Bill.

37. The provisions on parental leave, time off for domestic emergencies and for part time workers all follow the adoption of European directives that were negotiated and agreed by the European social partners.

38. The estimates of numbers affected and the potential impacts draw extensively on the findings of surveys. These include regular surveys, such as the Labour Force Survey, and more specific surveys looking at employers' current practices. Of particular significance in providing information on current practices have been the first findings from the 1998 Workplace Employee Relations Survey,<sup>8</sup> and a 1996 survey by PSI on family friendly employment practices published by DfEE.<sup>9</sup> These give an indication of how many employers already have practices that meet the requirements of the new legislation and how far others might have to change; for the most part they show that the legislation is extending what is already common practice.

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<sup>7</sup> Forth et al page 13. In an 18 month period (1994-1996) 23% of employers had a pregnancy in their workforce. For smaller establishments the figures suggest once every seven years. Establishments with more than 100 employees could expect one in most years.

<sup>8</sup> Cully, M., Woodland, S., O'Reilly, D., G., A. Millward, N., Bryson, A., Forth, J. (1998) *The 1998 Workplace Employee Relations Survey; First Findings*, DTI

<sup>9</sup> Forth, J., Lissenburgh, S., Callender, C., Millward, N. (1997) *Family friendly working arrangements in Britain - 1996*, DfEE Research Report 16

## **6. OTHER COSTS**

### **Costs to the state**

#### *(a) enforcement costs*

39. There may be some small increase in the number of Employment Tribunal applications which would mean an increase in the workload of the Employment Tribunal Service (ETS) and the individual conciliation and arbitration work of ACAS. However this is expected to be very small. The most significant measures are the introduction of parental leave and the right to time off for family or domestic emergencies; other new protections will add small unpredictable numbers (e.g. concerning dismissal of strikers). It is estimated that the two most significant measures could add about 350 to the number of applications each year. That is less than 1% on the current level of applications. And against that there are several elements in the Bill that are expected to reduce the number of disputes that result in an application to an Employment Tribunal. These include: the simplification of maternity rights; the right to be accompanied during grievance procedures; union recognition; and the clarification of rights for part time employees (which may reduce the numbers seeking to claim sex discrimination). So the net increase is likely to be negligible.

40. There will be savings from the abolition of the CRTUM and the CPAUIA. This will be partly offset by the need to fund an increase in the workloads of the Certification Officer, of the Central Arbitration Committee (CAC) (which will be involved in disputes over recognition and will have the power to determine the relevant bargaining unit for recognition) and the collective conciliation work of ACAS (which will be involved in more recognition issues).

#### *(b) expenditure on maternity benefits and income related benefits.*

41. The extension to maternity leave may lead to more women receiving Statutory Maternity Pay (or in a smaller number of cases Maternity Allowance) for longer periods. The costs involved will not affect current DSS forecasts of expenditure on maternity benefits.

42. The parental leave provisions may lead to increased costs in social security benefits. These are most likely to occur in Income Support, Housing Benefit and Council Tax Benefit, particularly for lone parents and people who are sick or disabled.. Taken together these costs are expected to be in the region of £10 million a year.

### **Costs of additional compensation for unfair dismissal**

43. Raising the limit on compensation awards for unfair dismissal is expected to affect about 100 employers, at a total cost of £1.8 million. This cost only falls on employers that fail to comply with the law could be avoided by following proper procedures (at much lesser cost).

## **7. ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

### **Enforcement and Sanctions**

44. Nearly all of the measures in the Bill provide entitlements to individuals. When an individual feels that they have not been able to exercise a right to which they are entitled they will be able to seek redress through an Employment Tribunal or, in a few cases, the civil courts (e.g. breach of contract). There is no new role for government agencies, but the new rights will lead to an increase in the workload of the Employment Tribunal Service and ACAS.

45. On trade union recognition, the procedures gives considerable scope to the parties to settle their differences voluntarily and implement their own arrangements. However the CAC, backed by the civil courts, will have powers to impose sanctions on either employers or unions for failures to comply with its statutory procedure or implement the CAC's recognition awards.

46. There is to be an addition to the functions of the Certification Officer, who will now be able to hold hearings when an individual makes a complaint against the conduct of their union. The

Certification Officer will be able to assess the merits of the case. However, it remains for individual trade union members to initiate cases.

### **Monitoring and evaluation**

47. As noted earlier this Bill represents part of a package designed to enhance employment relations and improve the balance between work and family life. The Government has a range of policies operating in these areas. It is expected that the combined effect of the policies acting together will be greater than the sum of what they could achieve on their own. However, that does make it difficult to assess the contribution of any particular policy, especially when the benefits of the measures are mostly qualitative and long term.

48. The DTI will seek to monitor the take up of parental leave - though there will be no statutory reporting procedure - and evaluate the effect of this and the changes in maternity rights on female participation rates. The Employment Tribunal Service will continue to monitor the number of applications to made to tribunals, and their outcomes, including the size of awards. ACAS and CAC will monitor the number of requests for their involvement in recognition procedures and CAC will monitor the number of applications to use statutory procedures.

49. The DTI will consider the case for participation in a further Workplace Employee Relations Survey at an appropriate time. This would help in assessing some of the quantitative and qualitative changes arising from the Fairness at Work package, together with other policies to promote partnership at work.

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## ASSUMPTIONS AND CALCULATIONS IN THE RIA

1. The following paragraphs provide, for the major proposals in the Employment Relations Bill, an estimate of the number of people who stand to benefit, and, where possible, an estimate of the potential costs, setting out assumptions and calculations. The table below lists those elements in the Bill for which we have made estimates, indicating on which page of the Annex to find them.

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2. There are other elements, for which we have not estimated costs. Some tidy up existing law or clarify rights.. For some measures, for example making it unlawful to discriminate by omission on grounds of trade union membership (or non-membership), the number of instances is thought to be low, and each is different so it would be impractical to estimate costs. The same applies to the proposal to make it unlawful to dismiss workers participating in lawful industrial action.

3. The calculations here cover a range of types of costs that can be reasonably estimated. They are not all “compliance costs” as not all of the costs estimated fall on complying employers - some refer to Government costs, and some, such as tribunal awards, fall only on employers that fail to comply with legislation.

4. As noted in the main text the numbers deriving benefits from any of these measures is much greater than the number who benefit directly. While some people will benefit directly by taking up their entitlements, a much greater number will benefit from the knowledge that the entitlements and protections exist, and that they do not depend on which employer they happen to be with. In most cases it is not practical to quantify the benefits likely to arise from a particular measure - the greatest benefits come from the package as a whole which contributes to the promotion of improved industrial relations and a flexible labour market.

## A. COLLECTIVE RIGHTS

### 1. Trade Union Recognition

#### *Expected benefits*

5. The creation of a statutory framework for trade union recognition, giving workers the right to be represented in collective bargaining by a trade union where that is the wish of the majority of the workforce, is expected to improve industrial relations. By providing a procedure through which differences can be resolved with less conflict, it promotes co-operation and partnership.

6. Automatic recognition, where more than half the workforce are trade union members, is designed to encourage speedier resolution of applications and avoid conflict and costs, recognising that the primary reason for joining a trade unions is that people want to be represented collectively.<sup>10</sup>

#### *Consultation*

7. The measures in the Bill are the outcome of lengthy consultation with the affected parties, including the TUC and CBI, during which many options were discussed.

#### *Number of workers potentially benefiting*

8. The Autumn 1997 LFS reports that 44% of employees are in workplaces with trade union recognition.<sup>11</sup> There are, in Great Britain, about **0.7 million** trade union members in workplaces without recognition - that is about 2.8% of employees.

9. The table below shows the distribution of these workers between sectors and, secondly, within each sector, what proportion of the workforce they constitute. In the public sector a relatively high proportion of the workforce are members of a trade union but not covered by a recognition agreement. The proportions are above average in education and in health - suggesting that these are the industries where a relatively high proportion of the workforce could potentially benefit from the new recognition arrangements. (This is true in whether they are in the public or private sector; over 7% of employees in the private healthcare sector are union members not covered by recognition agreements). These figures are based on the LFS and cannot take account of the size of bargaining unit.

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<sup>10</sup> Waddington, J. & Whitston, C. (1997) Why do people join unions in a period of membership decline? *British Journal of Industrial Relations*, Vol. 35(4), December, pp. 515-546

<sup>11</sup> Cully, M. & Woodland, S. (1998) Trade unions membership and recognition 1996-97: an analysis of data from the Certification Officer and the LFS, *Labour Market Trends*, July, page 360

**Table 1: Trade Union Members not covered by recognition agreement**

|  | Distribution of TU members not covered by recognition agreement | TU members not covered by recognition agreement    |
|--|---|--|
|  | % of total by sector (total = 100%)                             | As % of all employees in the sector (Average=2.8%) |
| Public   | 28.5  | 3.1  |
| Private  | 71.5  | 2.7  |
|  |   |  |
| Agriculture, forestry and fishing, and, mining and quarrying           | 2.1   | 4.3  |
| Manufacturing, electricity, gas and water supply, and, construction    | 24.6  | 2.6  |
| Wholesale, retail and repairs  | 10.2  | 1.8  |
| Hotels and restaurants   | 3.0   | 1.8  |
| Transport, storage and communication                                   | 6.5   | 2.7  |
| Financial intermediation, real estate, renting and business activities | 10.1  | 2.0  |
| Public administration  | 4.0   | 1.8  |
| Education  | 13.5  | 4.6  |
| Health   | 20.9  | 4.9  |
| Other community services   | 5.1   | 3.0  |

Source: LFS, Autumn 1997

*Number of potential claims*

10. The 1998 Workplace Employee Relations Survey found that 53% of workplaces with 25 or more employees had trade union members present,<sup>12</sup> but only 45% of workplaces had recognised unions, leaving 8% where there were members but not recognition. For most of these the union density would be low, though in larger establishments with low overall union density there could still be bargaining units with high membership. In addition there will be workplaces where a trade union is recognised but not for all bargaining units. The survey also found that 3% of establishments over 5 years old had derecognised unions in the past five years.<sup>13</sup> Of workplaces with 25 or more employees only 1% - that is about 1,300 - had trade union density over 50% but without recognition.<sup>14</sup>

11. As a reference point to the number of potential claims, we can look at cases arising from the statutory recognition procedures in the 1975 Employment Protection Act. Following the Act there were up to 900 cases per year in the period 1976-1979<sup>15</sup> - at a time when union membership was considerably greater than it is now. Most of these were withdrawn at some stage before a final ACAS report. The figures suggest that less than a fifth of applications resulted in a full report. Currently ACAS is involved in about 100 recognition cases each year.<sup>16</sup> Bearing this evidence in mind, we assume, for the purposes of this calculation, that there will be about 500 requests for recognition per year.

*Elements of compliance costs for an illustrative employer*

12. The costs arising from these clauses can be considered in two stages: first, **non-recurring** i.e. recognition procedures; and then following recognition the **recurring** costs i.e. consulting and negotiating with a recognised trade union. In both cases there will be some offsetting savings.

<sup>12</sup> Cully, M., Woodland, S., O'Reilly, D., G., A. Millward, N., Bryson, A., Forth, J. (1998) *The 1998 Workplace Employee Relations Survey; First Findings*, DTI page 15.

<sup>13</sup> Cully et al page 16.

<sup>14</sup> Cully et al page 16.

<sup>15</sup> ACAS (1981) *Annual Report 1980* page 65.

<sup>16</sup> ACAS (1998) *Annual Report 1997* Appendix F. Table 2. page 117, shows 102 recognition cases referred to ACAS in 1997. The average for the five years to 1997 was 102.

13. It may be worth stressing that in the RIA we examine the costs of complying with the legislation. The legislation provides a procedural framework only. It can be used to require employers to bargain with unions, but it cannot compel employers to enter collective agreements. The RIA does not therefore estimate the additional benefits or costs to employers of determining pay and conditions by collective agreement. The Government expects that these procedures will contribute to improvements in industrial relations. More consultation and representation of worker views should show in improvements in working practices, e.g. lower turnover or absenteeism, and higher commitment and productivity. However, such outcomes depend on the actions and behaviour of the parties after recognition. In estimating compliance costs for an RIA we can only take into account the more direct effects

#### *Non-recurring cost*

14. The Bill sets out a process by which workers can achieve recognition for their union. It involves several stages: request, negotiation, involvement of ACAS, reference to the Central Arbitration Committee (CAC), a decision on bargaining units, ballots, CAC declaration of recognition. There is deliberately a lot of scope for employers and unions to come to a voluntary agreement at any stage, rather than following the statutory procedures. The procedure has been designed so that few cases are likely to reach the final stage.

15. The estimated costs are based on the opportunity costs of management time involved in going through the procedures (which we assume is proxied by labour costs). The process is designed so that there is not a need for legal costs. The costs are assumed to be broadly similar whatever the employer size. The procedure sets time limits for each stage - so costs are limited. The table below sets out in a very schematic way the number of management days involved according to the stage at which agreement is reached or the application falls. The assumptions on the distribution of outcomes is not an expectation or target but simply for illustrative purposes. There are several potential routes and this is just a broad brush approach. We assume, for these calculations, that management time costs £154.7 per day<sup>17</sup> including non-wage labour costs<sup>18</sup> and the final stage includes provision for a ballot with costs split between the union and employer. The option of automatic recognition (in bargaining units where more than 50% of the workers are union members) is intended to encourage speedier resolution of applications and to avoid conflict and costs, (There will be additional costs for employers or unions that fail to comply with the legislation e.g. where there is failure to agree bargaining procedures after recognition has been agreed.)

16. On the basis of the hypothetical distribution of outcomes we estimate the average cost to be **£4,370 per workplace**.

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<sup>17</sup> New Earnings Survey 1998. Part A. Table A.12.1 Average weekly earnings of personnel managers is £623.8. As average earnings includes profit related pay and other bonuses it probably overestimates the marginal cost of management time. If these were excluded it would reduce the subsequent estimated costs by 8%.

<sup>18</sup> Average non-wage labour costs are estimated to add 24% according to the 1992 labour cost survey. See Clarke, S. & Trenell, R (1994) United Kingdom labour costs in 1992, *Employment Gazette*, September, page 314.

**Table 2: Examples of possible non-recurring costs**

| Stages of process gone through   | Management time  | Assumed Cost | Assumed proportion of cases ending at this stage |
|--|------------------|--------------|--|
| union requests recognition, management negotiates (perhaps involving ACAS), agreement reached                      | 20 days          | £3,100       | 50%  |
| request rejected, union applies to CAC, CAC decides bargaining unit and/or brokers agreement                       | 30 days          | £4,600       | 30%  |
| request rejected, union appeals to CAC CAC determines bargaining unit, 50% union members, CAC declares recognition | 40 days          | £6,200       | 10%  |
| request rejected, CAC determines bargaining unit, ballot, vote on recognition                                      | 50 days + ballot | £8,200       | 10%  |

### *Offsetting savings for employers*

17. A statutory procedure could speed up negotiations of recognition. It will reduce the number of instances where industrial action is taken in the course of a dispute over recognition - of which there are about half a dozen each year.<sup>19</sup>

### *Recurring costs of recognition*

18. The process of consultation and negotiation with a recognised trade union comes in a variety of forms. Although there is no set model, the CAC will be empowered to impose a collective bargaining procedure where the parties are unable to agree on one. The Workplace Industrial Relations Survey (WIRS) 1990 report included a lot of information on the content of negotiations and bargaining structure but it did not have information on what resources were devoted to consultation and negotiation by employers or union members. The following costs are simply illustrative.

19. We assume that meeting the requirements of negotiating over pay, hours, and holidays will require perhaps four meetings per year, each involving six days of employee time<sup>20</sup> and six days of management time (including preparation). For management we assume costs as in the calculation of non-recurring costs and for the employee representatives a median wage<sup>21</sup> (adding 24% for non-wage labour costs<sup>22</sup>) gives a grand total of **£5,656 per workplace**.<sup>23</sup>

20. The total time that representatives and managers spend on consultation and negotiation and other union related affairs will normally be somewhat greater than this - but much of that is activity that would take place anyway e.g. grievance procedures,

<sup>19</sup> The annual article in *Labour Market Trends* identifies disputes over trade union matters (mostly in manufacturing and transport).

<sup>20</sup> WERS 1998 found the median number of worker representatives to be 3 (Cully et al page 16) - each representing on average 28 trade union members. The 1990 survey found that in smaller workplaces the ratio of members to representatives was lower.

<sup>21</sup> Median earnings of full time employees (New Earnings Survey 1998, Part A Table A1.1) are £326.6 per week = £65.32 per day.

<sup>22</sup> *Employment Gazette* September 1994,

<sup>23</sup>  $(£623.8 + £326.6) / 5 \times 1.24 \times 4 \times 6$

dealing with safety representatives, or with other representative bodies. Where there are unions recognised employers may find that consultation is easier and more productive so may devote more time to that activity.

#### *Offsetting savings for employers*

21. These costs should be seen as **gross** costs - as against them we should set the costs of other forms of consultation that management would have to take undertake anyway. Consultation and negotiation through trade unions may displace other forms of consultation or gathering of employee opinion while collective bargaining over pay may displace other forms of pay determination. Many companies currently face significant administrative costs in setting their pay each year in the absence of collective bargaining. Consultation and negotiation may therefore be more efficient for instance than individual negotiations with associated high transaction costs. We do not have quantified information on these processes so have not put a value to them. However, given the savings which could be made from collective bargaining (as opposed to a series of individual pay determination meetings), the net costs will be considerably lower than in this calculation, and could even fall to zero.

22. The presence of a recognised union can make it easier for an employer to meet other legal requirements to consult with the workforce such as over planned redundancies or transfers, or in European Works Councils. It may also be easier to reach a collective agreement to make variations to limits on working time as the regulations allow.

#### *Aggregate compliance costs*

23. Assuming the average cost of going through recognition procedures to be about £4,370, an additional 400 cases per year would result in total **non-recurring** costs of **£1.7 million per year**. These costs are non recurrent for individual employers but for the economy they are annual costs.

24. There is no way of telling how many more workplaces will have union recognition, as a result of this legislation, than would have achieved it otherwise. There is not a stock of workplaces that will move from having non-recognition to having recognition. For illustrative purposes, if we were to assume that in the early years there were to be an annual addition of 350 to the number of establishments with recognition (including the effect of fewer derecognitions). By the third year that would suggest 1,050 more establishments with recognition than there would be otherwise. Applying the average cost of £5,656 gives a total **gross recurring costs** of **£5.9 million**. Net costs will be lower: as noted above, against the gross costs should be set the costs of what employers would have to do anyway by way of consultation and wage setting.

#### *Other costs*

25. The procedure also imposes costs on trade unions seeking recognition. We expect the costs to unions to be something similar to those for employers.

### *Costs to ACAS and CAC*

26. There will be an increased call on the collective conciliation services of ACAS which will require additional resources. It is estimated that the number of staff would have to be increased by five, and the annual cost would be £207,000 (including non-wage costs) with additional one-off training costs in the first year of £40,000. There will also be a need for extra resources to meet the new role of the Central Arbitration Committee.

### *Sanctions*

27. The CAC, backed by the courts will have powers to impose sanctions on either employers or unions for failure to comply with the statutory procedure or implement the CAC's recognition awards. If either party believes that the other is in breach of the procedure it will be able to apply to a court and the court could make an order for specific performance, and failure to comply could be a contempt of court. Similarly if either party does not honour the terms of a recognition agreement the other may apply to CAC in order to have the default procedure applied, and the CAC may impose a legally binding collective bargaining procedure.

## **2. Abolition of CRTUM and CPAUIA and new powers for the Certification Officer**

28. CRTUM and CPAUIA were created by the previous Government to help individuals bring legal action against trade unions. The Commissioner for the rights of Trade Union Members pays legal costs or obtains legal advice for members bringing cases against their trade union. The Commissioner for Protection Against Unlawful Industrial Action does the same for people seeking to stop a trade union organising industrial action unlawfully. The Government proposes to abolish both CRTUM and CPAUIA, and at the same time give additional powers to the Certification Officer to hear complaints of trade union members against their union.

### *Expected benefits*

29. The Government considers these arrangements to be inefficient and unnecessary: (a) the workload is very low, and (b) they encourage use of civil law rather than other forms of dispute resolution. For trade union members with a complaint (and their unions) the opportunity to go to the Certification Officer offers a less legalistic and bureaucratic way of resolving disputes - which is potentially more attractive. Nearly all responses to the White Paper agreed with the proposals, seeing the current arrangements as an unnecessary and inefficient use of resources.

### *Numbers using CRTUM and CPAUIA*

30. The Commissioner for the Rights of Trade Union Members has assisted only **9 cases per year**. The CPAUIA has acted in only one case.

### *Expected Savings*

31. The offices of CRTUM and CPAUIA are held by one person assisted by five staff - with a combined budget of £525,000 in 1998/99. Actual expenditure in 1997/98 was £321,000. Most of this would be saved following abolition - partly offset by an increase in the budget of the Certification Officer.

32. It will also result in reduced legal costs for trade unions. The likely savings cannot be quantified but are likely to be modest given the very small number of cases pursued.

### *Costs to trade unions*

33. The Certification Officer is to be given the power to hear complaints of trade union members against their union. Currently only 9 people per year make use of CRTUM, but it is expected that in a less confrontational context more members might raise complaints. That will mean more cases for the unions. However, as the cost of representing themselves before the Certification Officer will be less than it would be in a civil court, it is expected that this balances the savings from abolition of CPAUIA.

### *Costs to state*

34. An expansion of the role of Certification Officer would require an increase in its budget (yet to be decided).

## **B. FAMILY FRIENDLY POLICIES**

### *Expected Benefits*

35. The “family friendly” measures in the Bill are designed to widen the choices available to people over how they combine work and family life. The measures work towards this objective alongside other Government policies such as the National Childcare Strategy, and those in the recent Home Office consultation document *Supporting Families*. Improved choice for parents and carers should create long term improvements in the welfare of families - particularly their children - with wider benefits (or externalities) for society.

36. Measures that widen choices, for mothers in particular, produce wider improvements in the labour market. Mothers who leave the labour market may suffer two forms of financial loss: in the short term there is a loss of income, in the longer term earnings potential may be reduced. So measures that enable mothers to maintain some attachment to the labour market (an extension in the length of maternity leave increases the probability that mothers will return after childbirth) are of benefit to women but also increase the productive capacity of the economy. These policies contribute to increasing the effective labour supply which will ease recruitment and reduce wage pressures. However, it is unlikely that any changes in the labour market that do occur will be directly attributable to individual policies.

### *Estimating the costs to employers - method*

37. Several of the family friendly measures in the Bill have in common the fact that they give an entitlement to time away from work (with the right to return to the same jobs, or equivalent, and protection from victimisation). Even if unpaid, such absences will involve some cost to the employer. Where a worker is absent, either production is maintained, but at extra cost, or output fall and therefore profits are foregone.

38. Faced with an absence the employer has a variety of options with varying costs. The least costly is to rely on extra effort and unpaid overtime by colleagues (and the individual on return) or to use up stocks - but these are only practical in the short term. Alternatives include leaving the post empty and losing the output, paid overtime, re-scheduling, postponing inessential tasks, using temporary employees, or contracting out. Longer absences may pose bigger problems, but the employer may be able to plan ahead, for instance by bringing forward recruitment in high turnover sectors. If these options are not practical or are too expensive then the employer loses the output and the profit that would have been made.

39. In the absence of more detailed information on the costs of absence, we make a set of stylised assumptions and apply them to all the categories of leave. We assume that on average the cost incurred (i.e. the lost profit or the premium paid to replacement labour) is equivalent to 20% of total labour costs. The marginal labour cost for a woman on median earnings<sup>24</sup> is therefore estimated to be £8.80<sup>25</sup> and the addition to labour costs of arranging cover is therefore £1.76 per hour (=£7.1 x 1.24 x 0.2), making total labour costs £10.56 per hour. The assumed average allows for a range of costs including a small proportion of very disruptive absences.

#### **1. Increasing Statutory Maternity Leave to 18 weeks**

40. The Government intends to increase Statutory Maternity leave from 14 to 18 weeks. to 18 weeks for all pregnant women whatever their length of service.

##### *Expected benefits*

41. The current provision of 14 weeks means that many women are unable to claim their full entitlement to maternity benefits which is available for 18 weeks. For women with less than two years service payment of maternity benefits for the last four weeks of entitlement is therefore at the employers' discretion unless the mother leaves the employer (women with over two years service have a longer leave entitlement).

42. The difference in periods can cause confusion for employers and individuals. The clarification will thus help employers and employees and reduce the burden on advisory services (e.g. ACAS or DSS helplines, CAB). It should particularly benefit small employers where pregnancies are less frequent events and who may therefore be less familiar with the legislation (and potentially more likely to fall foul inadvertently). This proposal was widely welcomed in responses to the White Paper.

##### *Number of workers who stand to benefit*

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<sup>24</sup> NES 1998 (Table A1.2) gives median wage for women as £7.10.

<sup>25</sup> On average non-wage labour costs add 24% on top of earnings *Employment Gazette* September 1994

43. This change will be of benefit to women with less than two years' service,<sup>26</sup> of whom there are about 3.7 million: 2.3 million women with less than one year's service, and 1.4 million with 12-23 months.<sup>27</sup> It may be more appropriate to consider those aged between 18 and 40 in which case the numbers are 1.6 million and 1 million, a total of **2.6 million**. It is estimated that from this group, each year about **85,000 mothers** would have their statutory entitlement increased to eighteen weeks (including 50,000 who will also be entitled to additional maternity leave - see the next section).<sup>28</sup>

44. A high proportion of women do already take 18 weeks' leave, including women who (because of low earnings or short service) are not entitled to maternity benefits. We estimate that of the 85,000:

- (a) 30,000 are already allowed by their employer to take 18 weeks (this includes about 60% of those with service over one year);
- (b) 40,000 do not return to work and, therefore, already claim all of the payments to which they are entitled.

45. These people have no reason to change. Some of those who would otherwise leave the labour market might be induced to return but we assume that this number is very small.

46. That leaves, therefore, 15,000 who will have a right to extend their leave beyond their current entitlement as a result of the new legislation (including 10,000 with service over one year). It is not certain that all of these will take advantage of their new entitlement as most of them are not entitled to Statutory Maternity Pay or Maternity Allowance. Currently about 5,000 return before fourteen weeks and are therefore unlikely to take up the new entitlement. We therefore assume that the number likely to take up the extra leave benefit on about **10,000** (made up of 3,000 with less than a year's service and 7,000 with more).

#### *Elements of compliance costs*

47. There are two categories of cost for employers:
- (a) the cost of arranging cover for longer periods;
  - (b) contributions to Statutory Maternity Pay.

#### *Costs of arranging cover*

48. The cost of arranging cover adds to hourly labour costs. The calculations in the table below are done separately for women with service above and below one year (women with less than one year's service tend to have lower earnings). They assume four extra weeks leave in all cases so the cost of cover ranges from £162 to £168.

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<sup>26</sup> Women with over two years' service already have an entitlement to Additional Maternity leave of up to forty weeks.

<sup>27</sup> LFS, Spring 1998

<sup>28</sup> Figures agreed with DSS.

**Table 3: Estimated costs of cover for increased Statutory Maternity Leave**

|   | Mother's length of time with employer |              |
|---|---------------------------------------|--------------|
|   | <12 months                            | 12-23 months |
| mean hourly wage                                | £5.5                                  | £5.9         |
| additional cost of cover, per hour <sup>1</sup> | £1.36                                 | £1.46        |
| mean hours per week                             | 29.6                                  | 28.7         |
| cost per person for 4 weeks                     | £161.50                               | £167.98      |
| SMP (4 wks @57.7 x 8%)                          | £9.23                                 | £18.46       |
| Total per pregnancy                             | £170.73                               | £186.44      |
|   |                                       |              |
| Number taking extra leave                       | 3,000                                 | 7,000        |
| Total Costs                                     | £0.51m                                | £1.31m       |

<sup>1</sup> Calculated as follows: wage x 1.24 (to allow for non wage costs) x 0.2  
Source: LFS Spring 1998, women aged 18-40

#### *Contributions to Statutory Maternity Pay*

49. In some cases the employer would also have to contribute towards Statutory Maternity Pay (SMP). In the later weeks of leave SMP is currently £57.70 per week. Employers are able to reclaim 92% of this from the DSS, or 107% for very small firms. We assume all reclaim just 92% so the additional SMP costs employers £18.46. This will be payable in all the cases where the mother has been employed for over a year. Where the length of service is less than that, only half of the cases will be entitled to SMP (in the others the mother is not entitled to any benefits or claims Maternity Allowance from the DSS).

#### *Estimated compliance costs for a "typical" employer*

50. Adding replacement costs and SMP contributions together suggest that the cost to employers is about £170 - £186 per case. The average cost to employers will depend on how frequently they have such a case.

51. Many employers would give eighteen weeks leave anyway without the statutory requirement. But even for those that do not the costs to individual employers are fairly low for two reasons:

- in the first place pregnancies are not very common: a study by PSI in 1996 found that up to a third of establishments do not employ any women under forty<sup>29</sup> so are unlikely to be affected by any changes in maternity rights. Of those with women employees, 26% had had a pregnancy in their workforce in the past 18 months;<sup>30</sup>
- this additional entitlement applies to only a small proportion of pregnancies. The 10,000 mothers making use of this new statutory entitlement represent 3% of the annual number of pregnant employees.

52. Using very broad averages, an employer with 100 employees might expect on average 1.6 pregnancies per year, of which about a quarter are to women with less than two years' service. Assuming that the employer does not currently have any extra-statutory provision and that the women return after their leave, annual costs for the employer are raised by, on average, about £70. Of course the distribution of women is not even across firms so costs could be higher where young women make up a higher proportion of the workforce.

<sup>29</sup> Forth, J., Lissenburgh, S., Callender, C., Millward, N. (1997) *Family friendly working arrangements in Britain - 1996*, DfEE Research report 16, page 14.

<sup>30</sup> Forth et al page 13.

### *Aggregate compliance cost*

53. The total recurring cost to employers of arranging cover is calculated in the table above - a total of **£1.82 million** per year. Dividing this total by the number of women in the eligible group (that is the 3.7 million with less than two years' service) gives an average addition to labour costs per person of 50p per year. There should not be any non-recurring costs as employers will already have systems in place for dealing with maternity leave.

### *Savings*

54. Offsetting these costs there will be some savings - to employers, and workers, from having clearer regulations. The proposal to extend maternity leave to 18 weeks means that it is in line with the current entitlement to SMP. It is thus a simplifying measure that removes the confusion caused by the differences in the regulations. It should therefore make the legislation easier to understand for workers and employers. This is likely to lead to fewer difficulties and misunderstandings, with, as a result, fewer calls to DSS or ACAS helplines.

55. Clarity could reduce the number of cases where misunderstandings of the law result in a case being brought to an Employment Tribunal - with savings for individuals, employers and also to the Employment Tribunal Service (ETS) and ACAS.

### *Additional DSS expenditure on Statutory Maternity Pay or Maternity Allowance*

56. We assume that about 7,500 of those taking more leave are entitled to benefits. The costs will not affect current DSS forecasts of expenditure on maternity benefits.

## **2. Wider entitlement to Additional Maternity Leave**

57. The Government proposes to reduce the qualifying length of service for entitlement to additional maternity leave (of up to forty weeks) from two years to one year. This widens the choices available to women with that length of service. It will benefit those mothers who:

- (a) currently return to work when they have used up their ordinary maternity leave but would prefer to spend longer with their child before returning to work; or who
- (b) do not currently return to their employer but would do so if they could have slightly longer maternity leave.

### *Expected benefits*

58. Improving choice contributes to the welfare of families and to children's well being. For those who would otherwise return early it reduces childcare costs, while for those who would otherwise leave it means they can maintain their job so are more likely to maintain their long term earning potential.

59. This measure could have a significant effect on the proportion of women who return to work within a year of giving birth with a consequent increase in female participation rates. Improving the attachment of women to the labour market has wider benefits to the economy as it increases the effective labour supply. Furthermore it makes investment in training more worthwhile for individuals and employers so reinforcing the effect on labour supply.

*Number of workers who stand to benefit*

60. A large majority (75%) of employees who become pregnant already have a statutory entitlement to Additional Maternity Leave of up to 40 weeks.<sup>31</sup> This change is likely to raise that to 90%. We estimate that each year about **50,000** women with service of between one and two years become pregnant. But the new right gives added to protection to all women with between one and two years; service - that is 1.4 million women, 1 million of them under 40,<sup>32</sup> who know they would have this statutory right should they become pregnant.

61. We assume that with the change in statutory rights their behaviour comes to resemble that of women who have two years' service (and therefore already have the right to up to forty weeks' maternity leave). The proportion who do not return is assumed to fall from 40% to only 20%. The table below shows the assumed pattern of leave with current and proposed entitlements.

**Table 4: Maternity leave taken by mothers who have service of 12-23 months**

| Statutory Entitlement                        | weeks before returning |       |       |        |        |       |            |        |
|--|------------------------|-------|-------|--------|--------|-------|------------|--------|
|  | <14                    | 14    | 15-17 | 18     | 19-40  | 40+   | not return | total  |
| current                                      | 4,000                  | 5,000 | 2,000 | 8,000  | 9,000  | 2,000 | 20,000     | 50,000 |
| with Statutory Maternity Leave at 18 weeks   | 4,000                  | 0     | 0     | 15,000 | 9,000  | 2,000 | 20,000     | 50,000 |
| Additional Maternity Leave of up to 40 weeks | 4,000                  | 0     | 0     | 11,000 | 23,000 | 2,000 | 10,000     | 50,000 |

*Estimated compliance costs*

62. In this section the costs include only the extension of the right to maternity leave from 18 to forty weeks.- the cost of the rise to 18 weeks has already been costed elsewhere in the Annex. There should be **no non-recurring costs** because employers should already have procedures in place for women taking maternity leave. (including Additional Maternity Leave), so all the costs estimated below are recurring costs associated with covering for the extra absence.

63. We consider two categories of mothers:  
 (a) those who would otherwise return earlier (mostly at 18 weeks given the increased statutory maternity leave);  
 (b) those who would otherwise not return.

64. Faced with someone being absent for 40 weeks, instead of 18 weeks, an employer will have to reconsider how they will arrange cover. They may choose to fill the post rather than leave it vacant; that may mean hiring a temp which may raising costs, while in some organisations it may simply mean bringing forward recruitment.

65. For both categories of mothers we assume that they work 29 hours per week and the average additional costs of arranging cover is £1.46 (all based on information on women aged 18-40 and with service of 12-23 months<sup>33</sup>). In the former group some already take more than 18 weeks with the agreement of their employer. Many will not take up their full forty week entitlement - a 1996 study found that most mothers with a

<sup>31</sup> Estimate supplied by DSS.

<sup>32</sup> LFS, Spring 1998

<sup>33</sup> Average hours (actual) and wages taken from LFS Spring 1998 for women aged 18-40 with service of 12-23 months. Average wage is £5.78. So replacement cost is calculated as follows: £5.9 x 1.24 x 0.2

right to Additional Maternity Leave return to work before forty weeks.<sup>34</sup> We assume that on average time off is increased by 10 weeks. That giving the cost of arranging cover for the additional leave to be **£423** per mother (=10 x 29 x £1.46).

66. For mothers who return instead of leaving the labour market if we assume that they take a full forty weeks leave that means that the employer has to arrange cover for an additional 40 weeks giving a total cost of £1,694.<sup>35</sup>

#### *Offsetting savings for employers*

67. More women returning will reduce the need to recruit and train permanent replacements. What this means for employers is hard to estimate as there are no authoritative estimates of the costs of recruitment. However, if the costs of recruitment were greater than the cost of arranging cover for extended leave then a rational employer would provide that leave without a statutory requirement. And many employers do. Others may not have made such a careful calculation. Nonetheless we assume that, for those who do not already offer extra leave, the cost of recruitment is less than the cost of arranging cover, but not having to recruit permanent replacements will bring some savings - to be set against the gross cost above. We assume for this calculation that the cost of recruitment is half the cost of holding a post open for forty weeks; which therefore reduces the cost of Additional Maternity Leave to an employer to **£847 per mother**.

#### *Estimated compliance costs for a "typical" employer*

68. From the calculations above we have additional costs per mother ranging from £423 to £847. The cost per establishment will depend on the frequency of pregnancies. The PSI study found that up to a third of establishments do not employ any women under forty<sup>36</sup> and so are unlikely to be affected by any changes in maternity rights. Of those with women employees 26% had had a pregnancy in the past 18 months.

69. Using very broad averages, an establishment with 100 employees could expect, on average, 1.6 pregnancies in the workforce each year, of whom 14% would have this new statutory right. Assuming that all the mothers return and that the employer does not currently have any extra statutory provision then total annual labour costs would rise by £176.<sup>37</sup> Of course the distribution of women across sectors is very uneven and costs may be higher where young women are a higher proportion of the workforce - though such employers are also more likely to already provide more than the statutory minimum.

#### *Aggregate compliance costs*

70. If we assume 13,000 increasing their leave by an average of ten weeks that gives a cost of £5.5 million (=£423 x 13,000), while the cost of 10,000 who do not leave the labour market is £8.5 million (=£846 x 10,000) taking account of the offsetting savings. That gives total recurring costs to be **£14.0 million** per year. Averaged across the 1.4 million women in the newly entitled group this is equivalent to adding £10 to the annual labour costs of each person. There are no non-recurring costs.

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<sup>34</sup> Callender,C., Millward,N., Lissenburgh,S., Forth,J. (1997) *Maternity Rights and Benefits in Britain 1996*, DSS Report No 67, page 149 suggests that the average duration of leave for women entitled to extended maternity absence of 40 weeks and who return is less than 30 weeks.

<sup>35</sup> The situation is complicated a little because employers might hold open a post for women who only decide during the course of their maternity leave that they will not return. We have not allowed for this in the costings because the report found that most women saying they would return did do so. Looking at those women who given a new right to forty weeks leave do return but otherwise would not: in some of these cases the employer would have kept the post open for some weeks so the assumption that they have to find cover for the full forty weeks may be an overestimate of the additional costs.

<sup>36</sup> Forth et al page 14.

<sup>37</sup> £847 x 1.6 x 13%

#### *Other costs*

71. No other costs have been identified.

### **3. Parental leave**

#### *Expected benefits*

72. The introduction of a statutory right to parental leave will ease the problems of many parents, widening choice. The benefits of taking (or thinking of taking) advantage of the entitlement extend beyond employees to their partners and children, and to wider society. This has external benefits for society and the economy. On the one hand it will contribute to sustaining family life and “ensuring the next generation has the best possible start in life.”<sup>38</sup> On the other, by promoting labour market attachment, it contributes to increasing the effective labour supply, and reduces social exclusion.

#### *Options*

73. The measures proposed implement the European Directive on Parental Leave which was agreed by the European Social Partners. The Directive provides for several options, some of which were described in the White Paper (paragraphs 5.15 and following), for example the option to set a qualifying period of up to one year. In paragraph 5.19 the Government set out its proposal to align the qualifying period for parental leave, and for additional maternity absence at one year. Having no qualifying period could create an obstacle for parents seeking employment. Some other details have yet to be decided and will be clarified in draft Regulations.

#### *Number of workers who stand to benefit*

74. Eligibility criteria have yet to be decided. We assume that whatever details, parental leave will be taken in pre-school years. There are about 3.3 million employees with a child under five, of whom 2.6 million have been with their current employer for more than one year. Over time, of course, a large proportion of the workforce would have the opportunity to take parental leave. Each year about 700,000 babies are born.

75. On the basis of findings from a 1996 survey of employers’ family friendly practices,<sup>39</sup> we assume that about 25% of new parents already have some entitlement provided by their employer that might be broadly comparable to the proposed right - e.g. long maternity leave, paternity leave, career breaks.

#### *Take up*

76. We expect that the take up of new parental leave entitlements will initially be fairly low. Take-up will be greater if it is possible to spread the leave over short spells, but a decision has yet to be taken on whether this will be an option. Our assumptions are made bearing in mind:

- 63% of people with dependent children are employees;
- four fifths of these have more than one year’s service;
- the desire to maintain household incomes means that the entitlement to parental leave is likely to be used mainly by people whose income is not the main household income i.e. by those who have a partner in full-time work;

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<sup>38</sup> Home Office (1998) *Supporting Families, consultation document*, page 4.

<sup>39</sup> Forth, J., Lissenburgh, S., Callender, C., Millward, N. (1997) *Family-friendly working arrangements in Britain -1996*, DfEE Research Report 16.

- the likelihood of taking parental leave will be greater among mothers than among fathers (in other European countries that have schemes in place take-up among men is low, even when allowances are paid.)<sup>40</sup>

77. However to this we add lone parents, a group who may have a high likelihood of taking parental leave, as they will be able to claim Income Support while on paternity leave. It is possible that the number of lone parents in employment will rise if this right makes it easier for them to combine work and caring responsibilities.

78. We therefore assume that the numbers taking leave each year are as follows:

|                       |        |
|-----------------------|--------|
| fathers with partners | 6,000  |
| mothers with partners | 70,000 |
| lone parents          | 6,000  |

79. The assumed numbers for one year represent less than ½% of all employees but over time that would mount up to a considerable proportion of employees taking advantage of this right. This is equivalent to parental leave being taken, over time, in respect of about one in nine children.<sup>41</sup> As many of these children will have siblings the proportion of children who will benefit from a parent taking leave is somewhat higher.

80. Allowing for the 25% who already have some entitlement that gives a net increase of 61,500. We assume also that this entitlement (along with the entitlement to time off for family or domestic emergencies) will enable more lone parents to continue in work - with consequent savings on benefit expenditure.

#### *Sectors affected*

81. Take up is likely to be lower in those sectors where there is:

- a low proportion of workers with dependent children,
- a high proportion of men in the workforce,
- a low proportion of the workforce have partners in full time employment - for instance where a high proportion of workers are young,
- a low proportion on low rates of pay,
- a low proportion of part time workers,
- a low proportion of “prime age” workers,
- a high proportion of professional workers (as they are less likely to take breaks),
- a high proportion of short tenure jobs.

82. It is likely that those parents most inclined to take parental leave are with employers that offer it at the moment though this may change over time.

#### *Elements of compliance costs*

83. There are three elements to the costs that employers are likely to face:

- the cost of arranging cover for people while on leave;
- some administration costs;
- defending (unsuccessful) applications to Employment Tribunals.

#### *Estimated costs of arranging cover*

84. We assume that the average number of weeks taken is ten. The table below shows that costs per person range from £285 for a female part time employees to £935 for a male full timer - with an **average of £466** per person.

<sup>40</sup> For a review see *OECD Employment Outlook* 1995.

<sup>41</sup> 700,000 births per year giving rise to about 80,000 people taking parental leave.

**Table 5: Calculations of the cost of replacing people taking parental leave**

|   | men     | women, ft | women, pt | total  |
|---|---------|-----------|-----------|--------|
| mean hourly wages   | £10.00  | £8.20     | £6.60     |        |
| additional cost of cover, per hr<br>(= wage x 1.24 x 0.2) | £2.48   | £2.03     | £1.64     |        |
| mean hours per week                                       | 37.7    | 33.3      | 17.4      |        |
| cost per person for 10 weeks                              | £934.96 | £677.19   | £284.80   |        |
| number  | 4,500   | 21,000    | 36,000    | 61,500 |
| Total costs   | £4.2m   | £14.2m    | £10.3m    | £28.7m |

Source: hours and pay rates taken from LFS, GB, Spring 1998, for parents.

#### *Administrative costs*

85. There may be a need for employers to introduce a system to monitor leave taken. However, the Government aims to design regulations where such needs are minimised, or can be incorporated into existing systems. We cannot make any assumptions about costs until draft regulations are prepared.

#### *Estimated compliance cost for a “typical” employer*

86. The assumed 61,500 taking parental leave each year is equivalent to 0.3% of all employees. For an employer with 100 employees that gives an average annual cost of £140 (=£466 x 0.003 x 100). However, many smaller private sector employers will be unaffected - particularly if, as we assume, take up is concentrated among women.

#### *Additional Employment Tribunal cases*

87. Assuming that this element of the Bill will give rise to an additional 250 Employment Tribunal cases per year (see below) and that in a third of these cases employers are complying with the law, the cost of defending these cases adds to the compliance costs - about £170,000.<sup>42</sup> (There will be further costs arising from Employment Tribunal cases for employers that fail to comply with the legislation; but to include those here would be double counting, adding together the costs of complying and not complying.)

#### *Offsetting savings for employers*

88. There will be some offsetting savings: higher retention rates and more attachment to the labour market generally should reduce recruitment and training costs. But these longer term benefits are not readily calculated.

#### *Aggregate compliance costs*

89. Adding the costs of arranging cover, calculated in the table above, to the cost of additional Employment Tribunal cases gives total recurring compliance costs to be

<sup>42</sup> We assume that the cost of successfully defending a case is about £2,000 - based on an uprating of figures in Tremlett, N & Banerji, N. (1994) *The 1992 Survey of Industrial Tribunal Applications*, ED Research Series No 22, page 55.

**£28.8 million.** This is equivalent to about £1.70 per year per employee not already covered by some parental leave entitlement.<sup>43</sup>

#### *Comparison with earlier estimate of compliance costs*

90. Before the EC Directive on Parental Leave was adopted by the UK Government a compliance cost assessment was presented to Parliament in October 1997. At that time the compliance costs with a qualifying period of one year, was estimated to be £35 million. This new estimate is slightly lower because (a) re-examination of the Labour Force Survey by ONS suggests that there are slightly fewer employees with dependent young children and (b) we assume here that not everyone will take up their full leave entitlement. If all people taking parental leave were to take their full entitlement of three months then the estimated compliance costs would be similar to the earlier estimate.

#### *Additional benefit expenditure by DSS*

91. The introduction of parental leave may lead to increased costs in social security benefits. These are most likely to occur in Income Support, Housing Benefit and Council Tax Benefit, particularly for lone parents and people who are sick or disabled. It is possible that there will also be additional costs in Jobseeker's Allowance. Taken together these costs are expected to be in the region of £10 million a year.

92. However, against this it is possible that this measure could lead to greater labour market attachment of some groups, particularly lone parents. If it leads to a rise in the number of lone parents in employment, by making it easier for them to combine work and caring responsibilities, that would mean a fall in expenditure on Income Support. This is one of the groups the Government is keen to encourage into work. Income Support with parental leave could make the difference between staying in work or leaving the employment market and falling back completely on Income Support.

#### *Extra expenditure on ETS and ACAS*

93. It is likely that a number of Employment Tribunal cases will arise from this legislation - where workers are denied their rights or suffer loss as a result of exercising them. We estimate the number of cases to be 250 per year,<sup>44</sup> producing a public sector resource cost of **£100,000**.

## **4. Time off for family or domestic emergencies**

### *Expected benefits*

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<sup>43</sup> That is £28.8m/22.4m x 4/3. Across all employees it averages £1.3 pa (=£28.8m /22.4 m) but we assume that 25% already have an entitlement. Note that this is averaged across all employees - as the employer need not know who is, or is likely become, a parent.

<sup>44</sup> This has been derived by looking at existing jurisdictions that confer similar rights. In 1997/98 nearly 0.2% of pregnant employees made a complaint to an Industrial Tribunal concerning pregnancy or rights to return after maternity leave (a total of 660). In order to avoid underestimation and to allow for applications recorded under other jurisdictions, we assume that 0.4% of people wanting parental leave register a case with an Employment tribunal. That is 61,500 x 0.004= 246

94. This measure promotes fair treatment at work spreading to all employees a right that the vast majority already enjoy. By enabling people to achieve a better balance between work and family commitments, it contributes to both economic and social objectives. It enables more people to work while caring for family members, ensuring that they can take time off to deal with an emergency at home.

95. There are also positive externalities that benefit the rest of society and the economy. If families are able to make more satisfactory choices, this has benefits for children and other people being cared for who may for instance be able to live more independent lives. Also, more people able to continue in the labour force increases productive capacity. As noted below most employees already have the right to time off in emergencies so the number of direct beneficiaries is relatively small. The legislation, however, sends a reassuring message to people thinking about re-entering (or leaving) the labour market, in that the occasional need to take time off at short notice is not a barrier to them taking up work. It therefore contributes to the Government's Welfare to Work strategy.

96. Employers will be able to manage absence better, in a planned way. The benefits will be a better climate of honesty and trust between employers and employees, less unauthorised absence, phoney sickness, or unplanned lateness.

*Number of workers who stand to benefit*

97. The number of people with potential caring responsibilities who may need time off for family or domestic emergencies is large - effectively the whole workforce - but most people already have such an entitlement so the number benefiting directly from the legislation will be relatively small.

98. A survey by PSI in 1996 found that 63% of employers offered time off for family or domestic emergencies (either paid or unpaid)<sup>45</sup> extending to about 70% of all employees. It is possible that some other employers may not have formal arrangements but would be sympathetic should a case arise. The first findings from WERS 1998 report that, in establishments with 25 or more employees, only 3% of employees said they would be unable to take time off for family or domestic emergencies.<sup>46</sup> In other words, for many people the Directive will involve little change as current practices already comply or offer better conditions. However, the approach to how time-off was taken varied. In 24% of workplaces managers reported a scheme of special paid leave for family emergencies.<sup>47</sup> In others people would have to make the time up, while in some they would have to use up annual leave,<sup>48</sup> and do not have the choice of unpaid time off for family or domestic emergencies.

99. In order to take account of those where time off has currently to be made up or taken out of annual leave, and allowing for a possibly higher proportion without entitlements in smaller establishments, we assume that this measure gives additional entitlements to 10% of employees, that is **2.24 million people**. The proportion likely to take up this entitlement is assumed to be relatively high compared with parental leave. We assume that each year a quarter of the newly entitled people would make use of their entitlement<sup>49</sup> - that is **560,000 people**. Each person taking time off for family or domestic emergencies is assumed to take two days. That is equivalent to an average of 1/2 day per employee overall.<sup>50</sup>

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<sup>45</sup> Forth, J., Lissenburgh, S., Callender, C., Millward, N. (1997) *Family friendly working arrangements in Britain - 1996*, DfEE Research Report 16, page 19.

<sup>46</sup> Cully et al page 21.

<sup>47</sup> Cully et al page 29.

<sup>48</sup> Forth et al page 86 describes a range of practices.

<sup>49</sup> The PSI research found that half of those with an entitlement to time off for family or domestic emergencies made use of it (Forth et al page 78) but that was looking at parents of young children rather than all workers and most of these people had paid leave not just unpaid leave.

<sup>50</sup> With households having a choice over which person takes special leave, it may be more evenly divided between partners and there may be a reduction in take up in firms that currently offer leave but we have not taken that into account.

### *Elements of compliance cost*

100. Employers complying with the legislation face two categories of recurring cost:
- the cost of arranging cover for people while absent - partly offset by less unauthorised absenteeism and lower turnover;
  - Employment Tribunal cases brought by employees who feel that they have been denied their rights.

101. These are recurring costs. There should be no significant non-recurring costs as there is no need to establish new bureaucratic systems. There will be some additional public expenditure to deal with Employment Tribunal applications arising from the legislation.

### *Costs of arranging cover*

102. The PSI research found that in 63% of cases where a person took time off for family or domestic emergencies at short notice, the immediate cost was zero or small.<sup>51</sup> However, for the purposes of the costing we use the assumptions outlined above - that employers face a cost in covering for the absent employee.

103. If we assume that they take, on average, two days that is 13.7 hours, at a cost to the employer of £24.01 per person.

### *Offsetting savings for employers*

104. Assuming the number taking time off for family or domestic emergencies in any year might be 560,000 then the total **gross** cost to employers is £13.5 million. However, against these additional costs should be set the reduction of costs incurred by current arrangements. Where an employer does not give time off for family or domestic emergencies there are other costs: most obviously in “sick leave” and other unauthorised absence (the time is taken any way), lower performance, lateness. There will also be unhappiness (not just from the affected individual but also their colleagues), higher turnover and the related costs of recruitment. All these costs will be saved. Although some employers do not currently perceive the possible savings as sufficient to outweigh the costs of providing such time off for family or domestic emergencies, they do partially offset the cost. We therefore assume that the net cost of giving time off for family or domestic emergencies is half of the gross costs, leaving the net cost of arranging cover to employers as £6.8 million.

### *Additional Employment Tribunal cases*

105. The new entitlement will give rise to extra Employment Tribunal cases - perhaps 100 cases. Assuming that in a third of these the employer has complied with the law that adds **£66,000** to the compliance costs.<sup>52</sup>

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<sup>51</sup> Forth et al page 73.

<sup>52</sup> We assume that the cost of successfully defending a case is about £2,000 - based on an uprating of figures in Tremlett, N & Banerji, N. (1994) *The 1992 Survey of Industrial Tribunal Applications*, Employment Department Research Series No 22, page 55.

### *Aggregate compliance costs*

106. Adding these two elements together gives a total **recurring** cost of **£6.9 million**.

### *Comparison with earlier estimate of costs*

107. Before the EC Directive on Parental Leave was adopted by the UK Government a compliance cost assessment was presented to Parliament in October 1997. The cost to employers was estimated to be £19 million. The compliance costs in this new estimate are considerably lower than the earlier version because new survey evidence, from the 1998 Workplace Employee Relations Survey, showed that the right to time off in emergencies is more common than was previously assumed.<sup>53</sup>

### *Costs to the state*

108. We assume that the new right will give rise to about 100 additional Employment Tribunal applications<sup>54</sup> which will add to the workload of the ETS and ACAS, with an estimated resource cost of about £40,000.

## **5. Equal treatment of part time employees**

109. The legislation, with following regulations, will ensure that part time employees are treated no less favourably than comparable full time employees. This right arises from the European Directive on Part Time Work which was negotiated and agreed by the European social partners. It has a wide degree of agreement.

### *Expected benefits*

110. Giving equal right to part time workers is in the first instance a matter of fair treatment, but it should also encourage flexibility. People may be more willing to take part time work. If people are better able to move between full and part time work without loss then it broadens the choices in how they balance work and other commitments. On the whole, direct benefits are likely to be small because most employers already provide equal treatment. However, the Directive will raise the status of part time work and may open up more highly paid jobs to part timers. This, along with the guarantee of fair treatment may encourage more people to take up part time work.

111. There may also be a reduction in the number of Employment Tribunal cases. The clarification of the law will mean that employees do not have to use sex discrimination legislation to ensure equal treatment.

### *Number of workers who stand to benefit*

112. There are 6.6 million part time employee jobs in Britain,<sup>55</sup> and 80% of them are held by women. They are heavily concentrated in clerical and secretarial occupations, personal services and selling. Many more people (including the majority of women) work as part time employees at some time during their life. It is believed that there are very few cases where there is direct discrimination. In

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<sup>53</sup> The previous estimate had rested on the results of the 1996 PSI survey. Forth et al (1997).

<sup>54</sup> This is a nominal figure. Existing rights to time off (for trade union activities, ante natal care, job search preceding a redundancy) gave rise to just 41 cases in 1997/98 (GB). This new right may apply to a wider population though the number who wish to take it up may not be much more than for existing rights.

<sup>55</sup> Workforce Jobs June 1998.

many cases there are no comparable workers, and where there are comparable workers they are generally on similar rates of pay. This has not always been the case but has changed in recent years partly through the use of sex discrimination legislation.

*Risk Assessment - Evidence of discrimination.*

113. Average pay of part time employees is much lower than the average for full time employees<sup>56</sup> but that is explained by the fact that part time work is heavily concentrated in low paying jobs.<sup>57</sup> An econometric study for the TUC did not find statistically significant evidence of pay discrimination<sup>58</sup> but did conclude that that part time workers did not get certain benefits.

114. Had this legislation been introduced at the start of the 1990's it would undoubtedly have had major costs implications but much has changed in that time. The law has changed in several respects: e.g. maternity rights (1994) statutory employment rights (1995) and pensions. Until recently a large proportion of part time workers had no holiday entitlement at all, and had this measure been introduced before the application of the Working Time Directive to the UK (1998) it would have involved major costs for employers. However, when the working time regulations were introduced it was noted that part time workers would be among the primary beneficiaries. As a result of that legislation the most glaring differences between full and part time employees have already been addressed.

115. Nonetheless differences may still remain. Most past studies have been based on data from individuals. There has been very little work that has sought to look at terms and conditions of part timers where there are comparable full timers. In order to help fill this gap the DTI has therefore commissioned a survey of employers to investigate the conditions of part timers where there were comparable full time employees. This was carried out by BMRB International, an independent market research organisation.

116. There has not yet been time to examine the findings in detail. However, initial findings do suggest there is little direct discrimination. It may be present in a small number of establishments and there may be some differences in non-wage benefits.

117. The survey found that a large majority of establishments (69%) used part time employees. Of these 42% had full and part time employees doing similar jobs (i.e. 29% of all establishments). The majority of employers said that they paid part timers the same as full timers doing a similar job. Cases where differences were reported in smaller establishments, were explained by differences in personal characteristics or job characteristics - though a small number may still discriminate in pay.

118. More significantly, the survey investigated the non-wage benefits available to part time employees.<sup>59</sup> When employers were asked about the availability of a range of benefits, 48% of those with comparable employees identified at least one difference in the treatment of part time and full time employees. That is 14% of all establishments. The most significant differences concerned holidays but this was before the introduction of regulations on Working Time in October 1998, which we assume will have changed this. That leaves about 7-10% of establishments that will have to review their practices. The survey probably sets an upper estimate as in some cases the fact that part time workers do not have benefits may be because entitlement depends on, say, length of service. The issue may be more significant for larger organisations as they are likely to have a wider range of employee benefits.

119. We shall have fuller analysis in time for the draft Regulations.

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<sup>56</sup> LFS Spring 1998 (UK) shows the median hourly wage of part time employees to be 61% of that for full time employees. *LFS Quarterly Supplement* Spring 1998, Table 30.

<sup>57</sup> The difference is reduced if we look just at women - the median rate for female part time employees is 70% that of female full time employees. When detailed occupational groups are examined the gap narrows further.

<sup>58</sup> Lissenburgh, S (1996) *Value for Money The costs and benefits of giving part-time workers equal rights*. TUC. See also Harkness, S. (1996) *The gender gap; evidence from the UK, Fiscal Studies*.

<sup>59</sup> Fuller details will be presented to Parliament shortly.

*Small firms*

120. The survey was based on a representative selection of establishments so long as they had any employees. It will therefore be able to give information on practices in the smallest employers.

**C. DISCIPLINARY AND GRIEVANCE PROCEDURES**

**Right to be accompanied by a fellow employee or trade union representative of their choice during grievance and disciplinary procedures**

*Expected benefits*

121. Giving people a right to be accompanied in disciplinary or grievance procedure (where there is one) helps promote fairness and good industrial relations. It should contribute to speedier and more satisfactory resolutions of disputes, for instance by involving expert or disinterested parties. If there is greater trust in the process there should be fewer cases escalating and coming to Employment Tribunals.

*Number of workers who stand to benefit - coverage*

122. The 1998 Workplace Employee Relations Survey asked employers whether their employees could be accompanied by a third party in disciplinary procedures. Among establishments with 25 or more employees, 92% had an individual grievance procedure, and of those only 3% said that employees could not be accompanied.<sup>60</sup> Where trade unions are recognised the individual is usually able to choose a trade union official. Although no details were published on size of these establishments, we can reasonably assume that these workplaces tend to be relatively small and employ a low proportion of workers.

123. Establishments with 25 or more employees account for 67% employees (LFS Spring 1998). That suggests about 417,000 with a new right. Among the 7½ million employees in smaller establishments,<sup>61</sup> we assume that 85% have access to formal procedures<sup>62</sup> and that 5% of these do not provide the right to be accompanied: that gives 322,000 in smaller establishments and a total of about **740,000 people** with a new right<sup>63</sup> (see table below for calculations).

*Number of workers who stand to benefit - take up*

124. We do not know precisely how many employees are involved in grievance or disciplinary procedures. WIRS 1990 found that in about three fifths of establishments (of 25+ employees) management had exercised sanctions short of dismissal<sup>64</sup> on employees in the past year; these sanctions included formal written warnings, suspension, and deductions from pay.<sup>65</sup> In total 3.2% of employees had been subject to sanctions,<sup>66</sup> about half of them leading to dismissals. The figure in establishments of 25-99 employees was somewhat higher (3.8%) so we assume a rate of 4% in establishments with fewer than 25 employees. This gives a total of 26,000 disciplinary actions as calculated in the table.

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<sup>60</sup> Cully et al (1998) page 14.

<sup>61</sup> LFS Spring 1998 7,586,040 employees in establishments with less than 25 employees.

<sup>62</sup> Among establishments with 25-49 employees 87% had a grievance procedure.

<sup>63</sup>  $22.69 \text{ million} \times (2/3 \times 0.92 \times 0.03 + 1/3 \times 0.85 \times 0.05) = 739,000$ .

<sup>64</sup> We assume this meets the criteria for "serious" issues.

<sup>65</sup> Millward, N., et al page 199.

<sup>66</sup> Millward et al page 200.

**Table 6: Estimated number of cases**

|   | Establishment size   |                    |
|---|----------------------|--------------------|
|   | 25 or more employees | under 25 employees |
| Employees                                   | 15.1 million         | 7.6 million        |
| Proportion covered by procedures            | 92%                  | 85%                |
| of whom, not entitled to be accompanied     | 3%                   | 5%                 |
| Number of employees with new right          | 417,000              | 322,000            |
| Proportion subject to disciplinary action   | 3.2%                 | 4%                 |
| Number of disciplinary actions              | 13,300               | 12,900             |
| Number of disciplinary or grievance actions | 20,000               | 19,000             |

125. We need to allow for grievance procedures as well as disciplinary actions, so add 50% to give the total number of incidents where the new right might apply - a total of 39,000.

126. However, not all employees will wish to take up their right to be accompanied. On the other hand some who do already have a right to be accompanied but which is restricted (e.g. it does not include the option of a trade union official), may wish to make use of this new right. We assume that take up is equivalent to two thirds of those with the new entitlement - a total of **26,000** people per year.

*Elements of compliance costs*

127. The Bill proposes that employees in disciplinary procedures or using grievance procedures should have the right to be accompanied by a fellow employee or trade union representative of their choice. We assume that the main cost is the loss of output that would otherwise be produced by the fellow employee - this we assume is equal to the marginal labour costs. In other cases, where the person chooses to be accompanied by a trade union official who is not from the workplace, the cost of their time does not fall on the employer (though in most cases the trade union representative is likely to be from the workplace). For the purposes of the calculation we assume that in all cases workers are accompanied by a fellow employee from the workplace and that without the legislation there would be nobody accompanying them. So our estimate may be considered a maximum of potential costs.

128. There are no non-recurring costs as this right applies only in organisations that already have formal grievance or disciplinary procedures.

*Estimated costs per case*

129. We assume that the time taken by the formal procedure and consulting with the relevant employee is, on average, one day (some may take two or even more days but most will take much less). Assuming an average wage (excluding premia)<sup>67</sup> and non-wage labour costs of 24%<sup>68</sup> gives a cost of **£87.89 per case**. (This is likely to be an overestimate as those employers that do not already provide this right are more likely to pay lower wages.)

<sup>67</sup> Using New Earnings Survey (NES) 1998 the average wage for full time employees is £384.5 per week. As we are looking at spells of less than a day, for the purposes of the calculation we are more interested in marginal labour costs than average costs, as it is marginal output that is lost - so have excluded overtime, profit-related pay and shift premia which account for 8% of the total.. That gives £354.4 per week, or £70.88 per day.

<sup>68</sup> The average non wage labour cost is estimated to be 24% according to the 1992 labour cost survey. See Clarke, S. & Trenell, R (1994) United Kingdom labour costs in 1992, *Employment Gazette*, September, page 314.

130. The involvement of a third party may mean the procedure takes extra time (longer meetings and longer between meetings) though the legislation is framed so that the worker can not create unreasonable delays. The cost of this is likely to be fairly small and difficult to calculate.

*Estimated compliance cost for a “typical” employer*

131. WIRS 1990 found that sanctions were used in three fifths of establishments in the preceding year.<sup>69</sup> It does not say how often grievance procedures were used. As noted most employers will have not have to change their practices. For those that do, the incidence of cases, derived from WIRS 1990, suggests that a private sector establishment<sup>70</sup> with 100 employees would have to apply the new procedures about four times a year (allowing for grievances and some cases where people would not take up their entitlement to be accompanied). Therefore, the average cost per affected employer might be **£350 per year**.

*Aggregate compliance costs*

132. Assuming 26,000 cases per year times £87.89 per case gives a total **recurring cost of £2.3 million**. As explained above our calculation assumes that all people making use of this new right are accompanied by a fellow employee rather than someone from outside so may be considered on the high side. As this applies to employers that already have systems in place, non-recurring costs will be negligible.

*Offsetting savings for employers*

133. One might expect fewer cases being taken to an Employment Tribunal. Although the entitlements may create additional cases themselves (from people who feel they have been denied the opportunity to be accompanied), on balance the effect is likely to be a reduction. Individuals are more likely to feel that they have been given a fair hearing and the involvement of third parties may bring specialist knowledge and skills that make resolution more likely. (The usefulness of a third party with specialist skills is shown in that the involvement of ACAS in Employment Tribunal applications results in a settlement in a third of cases.<sup>71</sup>) Five hundred fewer cases being brought to an Employment Tribunal would save employers about £1 million (and the public sector about £0.2 million).

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<sup>69</sup> Millward,N, Stevens,M., Smart,D., Hawes,WR (1992) *Workplace Industrial Relations in Transition* Dartmouth, page 199.

<sup>70</sup> Millward et al page 200 shows incidence of sanctions short of dismissal to be 39 per 1,000 employees in the private sector.

<sup>71</sup> *Labour Market Trends* April 1997.

## **D. INDIVIDUAL RIGHTS**

### **1. Raising limits on compensation for unfair dismissal compensation**

#### *Benefits*

134. This measure will ensure that vast majority victims of unfair dismissal are able to be fully compensated for their economic loss.

#### *Number of workers who stand to benefit*

135. Each year about 40,000 people make an application to an Employment Tribunal claiming unfair dismissal. However, only one hundred of these result in an award at the limit. Raising of the limit on awards for unfair dismissal would therefore benefit only about one hundred applicants. We do not expect the number of applications to increase as a result of the change, since that would imply there is a pool of people who have a grievance (or who might seek to make a vexatious claim), but find the potential award of £12,000 insufficient incentive to make a claim. The rise in the limits is unlikely to encourage employers to change their practices to ensure that they do not make unfair dismissals.

#### *Options*

136. The options considered were:

- (a) to leave the level of awards as they are - subject to annual review;
- (b) to abolish the limit altogether;
- (c) to raise the level substantially - and link to changes in RPI thereafter.

#### *Option (a)- status quo*

137. The first option had drawbacks:

- (i) It would mean that victims of unfair treatment might not get fully compensated for their loss.
- (ii) If the level of compensation is low, then it may increase the incentive for employers to break the law. The level of compensation has fallen in real terms for several years and has fallen even further relative to wages, yet, despite this, the number of cases of unfair dismissal has doubled over the past ten years - suggesting that the current level of compensation does not deter enough employers from dismissing employees unfairly.
- (iii) The annual review involves a resource cost for government and interested parties, and the responses are usually the same each time.

#### *Option (b)*

138. Abolition of the limit would put unfair dismissal in line with other areas of law covered by Employment Tribunals. It would, incidentally, reduce the incentive for applicants to claim for discrimination rather than unfair dismissal. However, the potential for large awards (to people on high salaries) may alarm employers - as it might also drive up settlements. It may be better for these cases to be dealt with outside the Employment Tribunal system. The potential for large awards might reduce the likelihood of the parties reaching a compromise agreement and so increase the number of cases going to a hearing.

### *Option (c) - proposed in Bill*

139. The Government therefore sees this option as the best way of promoting fair treatment.

### *Compliance costs*

140. The proposed change imposes no additional costs on employers that comply with existing law - so there are no compliance costs.

### *Other costs*

141. However, about 100 employers who are found to have dismissed someone unfairly will face an increased award. Assuming that the average of these is about £30,000 (that is midway between the current £12,000 and the new ceiling) then their average payment is increased by £18,000 giving a total cost of **£1.8 million per year** (= £18,000 x 100), a cost that is currently borne by the victims of unfair dismissal. (There may be some indirect influence on the levels of settlements reached in compromise agreements.) These cost should be avoidable by following proper procedures (at much lower cost).

## **2. Consolidating Additional and Special Awards**

142. Special awards apply where an employer fails to comply with a re-employment order that arises from an unfair dismissal claim on certain specific grounds (there are five of these). Additional awards are payable when an employer has failed to comply with a re-employment order in other unfair dismissal cases. These awards have minimum and maximum limits. Higher limits apply when the dismissal is for sex, race or disability discrimination.

143. It has been agreed to consolidate Additional and Special Awards into a single award (an additional award).

### *Number of workers who stand to benefit*

144. Figures are not held on the number of special awards but the number of applications under the five jurisdictions which can attract a special award is small - fewer than 350 in 1996/97.. The lowering of the maximum level of compensation is unlikely to affect behaviour so the number of awards will be unchanged.

145. On unfair dismissal and discrimination cases, there were 55 re-employment orders made in 1996/97.<sup>72</sup> We do not know how many were followed by additional awards. We do not expect employer behaviour to change as a consequence of raising the limit.

### *Options*

146. Options considered were:

- (a) no change;
- (b) remove limits and allow tribunals to award aggravated damages;
- (c) create a single new award.

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<sup>72</sup> *Labour Market Trends* April 1997, page 152 shows the number of reinstatement or re-engagement orders in Unfair Dismissal cases to be 78 in 1994/95 and 68 in 1995/96. That was less than 1% of cases proceeding to a hearing.

## *Compliance costs*

147. Employers that comply with the law will not have to change their behaviour and will face no extra cost from the consolidation.

### *Other costs*

148. Without more information on the current split of types of awards under both additional and special, it is impossible to estimate the net cost of the change to this new structure of awards. Some awards will be increased, whilst others will decrease. This will largely depend on the decisions of the Tribunal hearings and is likely to fluctuate from year to year. However, we believe that the net costs to employers that do not comply with the law will be negligible.

## **3. Indexation of awards and statutory payments**

### *Expected benefits*

149. Index linking will replace the current system of reviewing annually the limits on payments and awards which is time-consuming, costly and produces results which are largely predictable. Index linking limits will maintain their real value in relation to prices so that the compensation that people receive does not fall in real terms.

### *Number of workers who stand to benefit*

150. The main statutory payment concerns **redundancy payments**. About 15 million employees have been with their employer for more than two years (66% of all employees),<sup>73</sup> and therefore have a statutory right to redundancy payments. Approximately 400,000 of these are made redundant in a year<sup>74</sup> (that is about 3%). Of those with over two years' service, a high proportion (approximately half) receive payments above the statutory provision.<sup>75</sup> Of those who receive only the statutory payment it is estimated that about **115,000-140,000** are at the current maximum.

151. A statutory payment is also made in the event of people being laid off - that is a Guarantee payment. Most employers offer better terms than the statutory provisions. Expenditure on statutory guarantee payments is thought to be low.

### *Sectors affected by statutory payments*

152. A 1992 survey of employers for the Employment Department estimated that 20% of establishments made redundancies in the preceding twelve months<sup>76</sup>. In many cases the statutory limit will have no effect as workers are covered by terms that improve on the statutory provision, or because the workers made redundant do not qualify for payments. The statutory limit is most likely to apply in construction and in engineering.

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<sup>73</sup> Labour Force Survey, GB, Spring 1998.

<sup>74</sup> According to the LFS each year in Great Britain a total of about 800,000 people are made redundant. More than half of these people are not entitled to statutory redundancy payments as they have not completed two years' service.

<sup>75</sup> Spilsbury, D., McIntosh, A., Banerji, J. (1993) Redundancies and the Statutory Redundancy Payments Scheme: results from a survey of employers, *Employment Gazette*, July, page 324.

<sup>76</sup> Spilsbury, D., McIntosh, A., Banerji, J. (1993) Redundancies and the Statutory Redundancy Payments Scheme: results from a survey of employers, *Employment Gazette*, July.

## *Options*

153. The Government has considered two options:
- (a) the status quo, with an annual review of limits;
  - (b) indexation, linking payments to changes in the Retail Prices Index.

154. The current system means that every year the DTI has to conduct a review that consumes administrative resources and the time and money of the people, employers and other organisations that take part in the consultation. Earlier consultation has shown a strong majority of respondents favouring increases in line with inflation. The two options are therefore likely to produce the same outcome in terms of the effect on redundancy payments and awards - so there is no difference in the real effect and the cost to employers. However, there would be savings from ending the annual consultation.

## *Estimated savings*

155. The annual consultation is estimated to take up some of the time of 8 civil servants at an estimated cost of **£7,000** (including non wage costs).<sup>77</sup>

156. In the most recent consultation exercise there were 27 responses. Assuming that, on average, each response required a day's work, this would give total cost of **£3,300**.<sup>78</sup> Some of the organisations consulted (e.g. employer associations) may undertake a full consultation of their members - in which case the cost would be considerably greater.

## **4. Abolition of unfair dismissal waiver clauses on fixed term contracts**

### *Expected benefits*

157. The ability to include unfair dismissal waivers in fixed term contracts of at least one year's duration is open to abuse by employers who may not have a genuine need for time-limited employment, and may require the inclusion of waivers in successive contracts as a way to circumvent employment rights. The prohibition of such waivers will discourage the abuse of fixed term contracts where the employment is neither time-limited nor task-specific. In turn, this will help to raise the status, and increase the security, of fixed term contract workers.

### *Number of workers who stand to benefit*

158. According to the LFS (Spring 1998) there are, in Great Britain, about 826,000 people with fixed term contracts, but only **298,000** of them have a contract for more than 12 months. About a half of these are in the **public sector**, and a quarter are in professional occupations. It is not known how many have waiver clauses or how many have their job terminated in a way that might be challenged as unfair dismissal, but the latter number is believed to be negligible.

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<sup>77</sup> Cost based on DTI's Ready Reckoner for Staff and Related Costs June 1998.

<sup>78</sup> NES 1998. Table A.12.2 shows average earnings of officials of trade associations to be £492.7 per week. Adding 24% non-wage labour costs gives a daily cost of £122.2.

### *Sectors using fixed term contracts*

159. WERS 1998 found that 44% of all workplaces (with 25 or more employees) used employees on fixed term contracts.<sup>79</sup> They were particularly common among professional and clerical & secretarial staff. In education, nearly three quarters of workplaces employed professionals on fixed term contracts. 20% of establishments had employees on fixed term contracts which ran for more than a year and 22% of these had contracts which included waiver clauses (i.e. 4% of all workplaces). Small employers are much less likely to use fixed term contracts (in WERS only a fifth of the smaller establishments used them) so are unlikely to be affected by this legislation.

### *Options*

160. The White Paper (paragraphs 3.12-3.12) presented three options:

- (a) prohibition of waivers altogether;
- (b) restricting the waiver to redundancy payments; and
- (c) promoting best practice.

161. It was stated that the last of these alone would not deter unscrupulous employers but complete abolition could be too restrictive. The Government therefore intends to restrict the waiver to redundancy payments.

### *Estimated compliance costs*

162. Restricting the waiver to redundancy payments will require changes in contracts. However we do not foresee much change in current practices - as we are not aware of numbers of temporary contracts terminated in a way that might be seen as unfair dismissal. Costs are therefore likely to be minimal.

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<sup>79</sup> Cully et al page 8.