



dti

SUCCESS AT WORK

Increasing the holiday entitlement

Partial Regulatory Impact Assessment

JANUARY 2007

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Executive summary

The objective of these proposals is to ensure that workers are able to take more paid holiday by making the four weeks' statutory holiday entitlement additional to time off for bank and public holidays (on a pro rata basis for those working part time), and thus enabling people to have an appropriate work-life balance.

The draft regulation applies to Great Britain. Responsibility for employment rights is devolved in Northern Ireland and the Department for Employment and Learning is preparing similar proposals for Northern Ireland.

At present there is no statutory right to take holiday on bank and public holidays. Current legislation on bank holidays only makes provision for banks to close on such days; it does not grant any right to leave (paid or unpaid) for bank holidays. DTI estimate 11% of employees receive 5.6 weeks' paid annual leave (28 days for those working five days a week – 8 days for bank and public holidays, plus 20 days' statutory entitlement); 70% of employees receive more than this and approximately 19% of employees receive less.

If the Government maintained the current situation some employees and other workers, particularly the lowest paid, would continue to have time off for bank and public holidays (some or all eight) included in their statutory four week holiday entitlement. Around four-fifths of employees, however, would continue to receive their four week holiday entitlement in addition to paid time off for bank and public holidays from their employer; in effect, their contractual holiday entitlement is at least 5.6 weeks, equivalent to 28 days for those working five days a week and pro rata for part-time workers.

Summary of costs

Table 1 below summarises the estimated coverage, policy and administration costs for the three options considered in this Regulatory Impact Assessment (RIA). Options two and three would affect the same number of people – around 6 million employees and other workers (22% of the total British workforce) stand to benefit from this legislation.

Table 1. Summary of estimated policy and administrative costs

Options	One	Two	Three
Proposal	Do nothing	Introduce a statutory right to take leave on eight bank and public holidays	Increase the statutory holiday entitlement to 28 days (5.6 weeks) to reflect the number of bank and public holidays
Benefits to employees	None	Around 4.4 million employees would stand to benefit	Around 4.4 million employees would stand to benefit
Benefits to other workers	None	Around 1.5 million other workers would stand to benefit	Around 1.5 million other workers would stand to benefit
Total benefits	None	Around 6 million people would stand to benefit	Around 6 million people would stand to benefit
Policy costs¹	None	Between £3.3bn and £4.4bn per annum	Between £3.3bn to £4.4bn per annum
Administrative costs	None	£143 million transitional costs	£119 million annual transitional costs
		£86 million administrative costs	£43 million annual administrative costs

Source: DTI estimates, based on the Paid Annual Leave Survey 2006. Estimates are for Great Britain, and are for total labour costs.

¹ This includes both employees and workers. The majority of people in work are employees. A person is classed as an employee if they are working under a contract of employment. A worker is any individual who works for an employer, whether under a contract of employment or not, or any other contract where an individual undertakes to do or perform personally any work or services. For more details on employment status, please see: www.direct.gov.uk/employment/employees/employmentcontractsandconditions/fs/en

The policy costs for options two and three are, likewise, expected to be the same. The overall cost of implementing a right to take paid leave on bank and public holidays is between £3.3 billion and £4.4 billion per annum. This represents 0.4% to 0.6% of the aggregate wages bill.²

However the administrative costs for employers of implementing option 2 are significantly higher than for option 3, due to its greater administrative complexity.

The Government believes that the most appropriate way of implementing its commitment is to increase the current statutory holiday entitlement from 4 weeks to 5.6 weeks (subject to a maximum entitlement of 28 days) in order to reflect the number of permanent bank and public holidays (option 3). Around 6 million people would benefit from extending the holiday entitlement. The estimated annual policy cost for employers of implementing this is £3.3 billion to £4.4 billion.²

Administrative costs

Extending the holiday entitlement will not affect the vast majority of British employers, who already pay 28 days (5.6 weeks) or more. However those employers who do not would face two sets of administrative costs. These are the *transitional* costs in calculating the increased entitlements and communicating them to staff; and the *ongoing* costs of managing an increased volume of leave requests. These transitional costs include:

- Any changes to computer software
- Employer's familiarization
- Calculating new entitlements for employees and other workers
- Informing those affected of the change.

It is proposed to extend the holiday entitlement in two phases of implementation in 2007 and 2008.

² It must be noted that these estimates are likely to be a significant over-estimate of the actual cost as they assume 100% compliance.

For option 2, the *transitional* administrative labour costs for introducing a statutory right to take leave on bank holidays using the proposed two-phase implementation are around £143 million.³ The *ongoing* administrative labour costs for option 2 are estimated to be around £86 million per year.⁴

For option 3 it is estimated that the transitional costs of increasing the current statutory holiday entitlement from 4 weeks to 5.6 weeks would be lower than option 2 on a per capita basis, as the calculation of entitlements for part-time employees and other workers is likely to be simpler than for introducing a statutory right to take leave on bank holidays. The overall *transitional* administrative labour cost for option 3 using the proposed two-phase implementation is estimated to be £119 million. The *ongoing* administrative cost to employers is estimated at £43 million per year.

³ Based on 30 minutes management time per capita @ £22.20 (the median hourly wage from ASHE) x 6 million workers, plus 30% non-wage labour costs. Throughout this RIA we take the median hourly wage for managers of £22.20 per hour. This is based on the Annual Survey of Hours and Earnings 2006, ONS.

⁴ This is calculated on the basis of 30 minutes per employee of management time at £22.20 per hour x 6 million, plus 30% non-wage labour costs.

Increasing the holiday entitlement

Purpose and intended effect

Objective

The objective of these proposals is to ensure that workers are able to take more paid holiday by making the four weeks' statutory holiday entitlement additional to time off for bank and public holidays (on a pro rata basis for those working part time), and thus enabling people to have an appropriate work-life balance.

The draft regulation applies to Great Britain. Responsibility for employment rights is devolved in Northern Ireland and the Department for Employment and Learning is preparing similar proposals for Northern Ireland.

The Government intends to implement the first phase of 0.8 weeks' (four days for those working a five-day week) additional holiday in October 2007 and the second phase of the remaining 0.8 weeks' holiday in October 2008.

Background

In its election manifesto, the Government proposed that it would extend the statutory entitlement to paid holiday, making it additional to time equivalent to bank holidays, during its third term in office. This would be on a pro-rata basis for those working part time. At present, all workers, whether part time or full time, are entitled to 4 weeks' paid annual leave, under the Working Time Regulations (1998). Holiday should allow an individual to be away from work for that period. A week's holiday should be the same amount of time as a working week – for example, if someone works a five day week, he or she is entitled to 20 days' paid holiday; for a three day week the entitlement is 12 days.

Whilst the overwhelming majority of employees and other workers currently enjoy a contractual holiday entitlement equivalent to at least four weeks with paid leave for bank holidays in addition, the statutory holiday entitlement is not additional to bank and public holidays. Although many employers provide paid leave on bank holidays (in addition to their four weeks' statutory leave entitlement), some require people to count the bank and public holidays as part of their 4 weeks' leave entitlement. The DTI Paid Annual Leave Survey on annual and bank holiday entitlement shows that the lowest paid, including part-time employees, women and those from ethnic minorities are more likely to have bank and public holidays included in their four-week holiday entitlement (see Annex A for more details).

In its March 2006 *Success at Work* policy document the Government restated its manifesto commitment to make the four-week holiday entitlement additional to bank and public holidays. This Regulatory Impact Assessment concerns regulations to give effect to that commitment.

Rationale for government intervention

The original Working Time Regulations 1998 implemented the European Working Time Directive, and have been subsequently amended to reflect domestic and European tribunal and court judgements. There are, however, no European requirements to amend the regulations as proposed.

If the Government does not intervene, the current inequality in holiday provision will be maintained; most employees and other workers will continue to receive contractual entitlements well in excess of the statutory minimum, whilst a minority will continue to receive only the four-week statutory minimum, and some will continue to receive less. Research by IDS⁵ indicates that contractual holiday entitlements are increasing gradually year-on-year; hence it is likely that the gap between those receiving only the statutory entitlement and those receiving more generous contractual arrangements will continue to widen.

There is evidence that the ability to spend time away from work on holiday is a key component in work-life balance and that there are significant health benefits from taking holiday, including reduced stress levels and sickness absenteeism. There are also likely to be wider societal benefits from stronger family relationships and greater social cohesion.

Many of those receiving only the statutory minimum entitlement work in non-unionised workplaces performing relatively low-paid jobs. As such, they may lack the collective power to be able to negotiate better holiday entitlements with their employers without Government intervention. DTI estimates show that 6 million workers (around 22% of the total British workforce including 19% of employees) currently receive less than the full 5.6 weeks' (28 days') holiday entitlement a year (pro-rata for part-timers). Women and part-timers in particular are less likely to receive the equivalent of 28 days' holiday. The Government therefore believes that there will be strong equity benefits from making paid leave for bank holidays additional to the four-week holiday entitlement (see Annex B for more details).

⁵ IRS Employment Review No. 817 11 February 2005.

In the Working Time Regulations 1998, the Government set minimum standards for working time, including annual leave entitlements. Whilst employers are free to provide contractual holiday entitlements more generous than the statutory entitlement in order to attract and retain staff, it is appropriate that the Government regulates to ensure minimum standards on paid annual leave.

Consultation

Within Government

In preparing the draft regulations, the sectors believed to be particularly affected have been consulted both to help assess the potential impact on those sectors and also to ensure that the sector is consulted in the most effective way. Early research indicated that the road transport, hospitality and care sectors were most likely to be affected, and as a result the relevant teams in the Department for Transport, Department for Culture, Media and Sport and the Department of Health have been consulted. As the regulations will extend to the sea fishing and inland waterway transport sectors, the Maritime and Coastguard Agency, as the policy lead for these sectors, has also been consulted. The Ministry of Defence has been consulted in its role as an employer and the Small Business Service and the Small Business Council Better Regulation Interest Group have been consulted because of the potential for a disproportionate impact on smaller businesses.

As the implications for the lowest paid are significant, the interaction with the National Minimum Wage plays an important part in the development of this policy; we have therefore kept the Low Pay Commission informed of the progress and outcome of the public consultation process. HM Treasury and the Better Regulation Executive have been consulted on any wider impacts on the economy and on the regulatory burden on business.

Because of the devolution of responsibility in Northern Ireland, DTI have worked in close co-operation with the Department for Employment and Learning in developing these proposals. The Wales Office and the Scotland Office have been consulted and have helped to ensure effective engagement with stakeholders in Wales and Scotland.

The ACAS helpline handles a considerable number of enquiries about the holiday entitlement; they were consulted about common issues raised by employers and workers. The Commission for Racial Equality was consulted about the potential positive diversity impacts.

Public consultation

A number of key stakeholders were approached to ensure that the consultation covered the full range of issues and was sufficiently clear. Those consulted included the TUC, CBI, EEF, CIPD, and representative bodies from the care, hospitality, road transport, retail and construction sectors.

The Prime Minister announced the launch of the initial consultation on 13 June 2006 and during the 14-week consultation period, 344 written responses to the consultation were received. Due to the potential impact on small businesses, details of the consultation were sent to over 2,100 businesses on the Small Business Service's consultation database. The consultation received considerable press attention and the consultation webpage received over 48,000 hits during the consultation period. Over 800 people asked (via a link on the DTI Holiday Entitlement webpage⁶) to be kept informed of progress on the proposals and an electronic version of the consultation response form was sent to this mailing list a week before the consultation closed.

To supplement the written consultation, public meetings were held in early September 2006 in Swansea, Exeter, Manchester and London, with just under 100 people attending from a broad range of organisations. A focus group of small businesses was organised in Worcester by the Forum for Private Business and further meetings were held with individual stakeholders.

An evaluation of the consultation found that most of those who wanted to respond to the consultation were able to do so, although a more accessible format for the form on the webpage would have made it easier to complete a response and return it by email. The consultation document was found to be easy to understand, and the response form was easy to complete, but may have been over-structured. The consultation meetings were described by businesses as a very informative and useful addition to the consultation process, enabling the viewpoints of others to be explored.

6 <http://www.dti.gov.uk/employment/holidays/index.html>

Options

Option One: Do nothing.

The Government could maintain the current situation, where on the one hand, some employees and other workers, particularly the lowest paid, have leave for bank holidays included in their statutory holiday entitlement, whilst on the other hand, most receive considerably more paid holiday from their employer than the statutory minimum. The Government is concerned that many disadvantaged workers do not receive sufficient holiday to enable a satisfactory work-life balance to be struck and the Government believes that the current situation is unfair. It has made a commitment to address the situation by making paid leave for bank holidays additional to the annual holiday entitlement.

Option Two: Introduce a statutory right to take leave on bank and public holidays.

At present there is no statutory right to take holiday on bank and public holidays. Current legislation on bank holidays only makes provision for banks to close on such days; it does not grant any right to leave with respect to bank holidays.

With growing customer expectations and increased world trade, many businesses require some or all of their workforce to work over bank holidays in order to cover extended business operating hours. Responses to the consultation from businesses were fundamentally opposed to extending a statutory right to take leave on bank holidays, because of loss of flexibility in working hours, as well as the complexity in having two differing types of holiday entitlement (one for bank and public holidays; one for the four-week entitlement). The Government, therefore, does not propose to introduce a statutory right for paid leave to be taken on bank and public holidays.

A number of those responding to the consultation drew attention to the way in which the Republic of Ireland implemented the Working Time Regulations, where there is an entitlement either to a day off on the bank holiday, time off in lieu or a day's pay. Whilst this approach would increase the degree of flexibility over the way in which time off for bank holidays could be treated, it would require the legislation to further define bank and public holidays (risking inadvertent impacts) and could increase the complexity for employers, should people prefer differing arrangements for leave.

Option Three: Increase the statutory holiday entitlement to reflect the number of bank and public holidays.

Taking into account concerns expressed during the consultation about the potential for overly complex legislation, the Government believes that the most appropriate way of implementing its commitment is to increase the current statutory annual leave entitlement from 4 weeks to 5.6 weeks (subject to a maximum entitlement of 28 days) in order to reflect the number of permanent bank and public holidays. This would require the minimum changes to existing legislation and enable all other current arrangements for holiday (such as the requirement to give notice of taking holiday and the method of calculating holiday pay) to remain the same.

Benefits

In *Success at Work* the government restated its manifesto commitment to increase the current statutory minimum holiday entitlement to make paid time off for the bank holidays additional to the current four-week entitlement. Both options 2 and 3 would increase the holiday entitlement to 5.6 weeks (equivalent to an increase from 20 days to 28 days for someone working a five-day week). Under option 2, employees and other workers would have a right to take leave on bank and public holidays; under option 3 employers would be able to require people to work on a bank holiday under the Working Time Regulations (although in reality employers may offer premium rates of pay to ensure adequate coverage for bank holidays).

Under both option 2 (introducing a statutory right to take leave on bank and public holidays) and option 3 (increasing the statutory holiday entitlement to reflect the number of bank holidays), we estimate that around 6 million individuals in Great Britain stand to benefit.

There are a number of potential benefits associated with increased holiday (either through option 2 or 3), which are outlined in Annex B. The increase will ensure that employees and other workers are provided with basic minimum paid holiday rights through a legal framework.

Costs

All policy and administrative costs shown below are estimated on a total labour cost basis – that is, both wage and non-wage labour costs. Further details on the costing assumptions and methodology are set out in Annex C.

Policy costs

From the DTI Paid Annual Leave Survey 2006, approximately 6 million people stand to benefit from extending the annual leave entitlement (those not receiving 28 days). It is hardly surprising that women stand to benefit more than men as they are less likely than men to get paid leave for the 28 days given the proportion of women working part-time (this is described in more detail in Annex A).

It is anticipated that administrative costs would only be incurred by employers that do not currently provide 28 days' holiday entitlement (either as 'four weeks + bank holidays', or as 28 days' holiday, pro rata for part-timers).

Option 2

These estimates have been calculated using a similar methodology to that used to estimate the impact of the introduction of four weeks annual leave including bank holidays, in the Regulatory Impact Assessment for the Working Time Regulations (April 1998).⁷ The estimates have been derived by taking the difference between the cost of Paid Annual Leave (PAL) including and excluding bank holidays. For example, if a full-time person currently worked five days a week they could be getting 12 days' holiday once bank holidays are excluded. Under the proposed option the same wage earner would be entitled to 20 days' holiday and so their wage payer would, if all other factors remained the same, have to pay for an extra 8 days' holiday. For those working part-time, entitlements have been allocated on a pro-rata basis. In order to calculate the additional employees who would benefit, as well as the additional costs associated with option 2, it was assumed that the holidays for employees who did not currently get paid leave on bank holidays, or worked on bank holidays, would be increased from twenty to twenty eight days.

⁷ See *1997-1998 Compendium of Regulatory Impact Assessments*, Employment Relations Research Series No. 67, DTI, London, URN 06/1840. Available from: <http://www.dti.gov.uk/employment/research-evaluation/errs/page13419.html>

The costs are based on the number of employees affected multiplied by the number of extra days they would be entitled to, multiplied by the wage and non-wage labour costs. The non-wage labour costs are estimated to increase the cost of paying an employee by 30% (this figure is a standard assumption from the Cabinet Office that is used to estimate non-wage costs). An adjustment to wages has also been made to take into account the fact that employees with low levels of annual leave are more likely to be paid less than those with higher levels of annual leave. The differences between part-time/full-time and male/female wage rates have been taken into account.

Table 2. Costs for making the 8 bank and public holidays statutory

Number of employees who stand to benefit	4.4 million
Number of other workers who stand to benefit	1.5 million
Total number of people who stand to benefit	6.0 million
Estimated annual wage cost	£2.6bn to £3.5bn
Estimated annual labour cost (including non-wage labour at 30%)	£3.3bn to £4.4bn

Source: DTI estimates, based on the Paid Annual Leave Survey 2006. Estimates are for Great Britain.

By making 8 bank and public holidays statutory approximately 6 million individuals will benefit. The estimated annual wage cost for implementing this is between £2.6bn to £3.5bn. However, once non-wage labour costs are included the estimates rise to an annual total labour cost of £3.3bn to £4.4bn.⁸ A range is provided as we have considered the worst case and best case scenarios (for more details, see Annex C); in other words we have considered the lowest and highest paid individuals and those who receive little paid leave and those who receive their full quota.

⁸ This includes both employees and workers

Option 3

The estimates for increasing the holiday entitlement to 28 days (5.6 weeks) from 20 days (4 weeks) used the same methodology as for option 2.

Table 3. Costs for increasing holiday entitlement to 28 days (5.6 weeks)

Number of employees who stand to benefit	4.4 million
Number of other workers who stand to benefit	1.5 million
Total number of people who stand to benefit	6.0 million
Estimated annual wage cost	£2.6bn to £3.5 bn
Estimated annual labour cost (including non-wage labour at 30%)	£3.3bn to £4.4bn

Source: DTI estimates, based on the Paid Annual Leave Survey 2006. Estimates are for Great Britain.

Increasing the holiday entitlement to 28 days will benefit 6 million individuals (4.4 million employees and 1.5 million workers). The associated annual policy cost is estimated between £2.6bn and £3.5bn in wages paid; however once non-wage costs are included (see Annex C for more details), the estimated total annual labour costs are £3.3bn to £4.4bn.⁹

However, this costing is likely to be an over-estimate because the 30% allowance for the non-wage costs is relative: that is, as it is mostly the low-paid that will benefit from the additional leave, the non-wage costs will be much lower than 30%. It is also likely to include a small level of double counting which we are unable to discount as the 'employees' estimate is likely to erroneously include some 'workers'. The costs equate to 0.4 – 0.6% of the total wages bill, although the impact in particular sectors may be more significant.¹⁰

⁹ This includes both employees and workers.

¹⁰ To illustrate the range of wage bill impacts, the cost for the hospitality sector (the sector most likely to be affected) is estimated in the range of 0.5 – 0.8% of the wage bill for each of the increases in 2007 and 2008, or 1.0-1.5% in total.

Administrative costs

In summary, the transitional administrative costs of implementing the increased holiday entitlement in 2007 and 2008 are estimated at around £143 million for option 2 and £119 million for option 3.

The ongoing administrative costs are estimated to be around £86 million for option 2, and £43 million for option 3. The basis for these calculations is set out below.

Option 2

Two sets of administrative costs would be incurred by making bank and public holidays statutory. Firstly, there would be transitional costs in calculating the increased entitlements and communicating these to staff. Secondly, there will be ongoing costs of managing increased holiday requests, ensuring staff cover etc.

The transitional costs for option 2 (introducing a statutory right to take leave on bank holidays) are estimated to be approximately £86 million¹¹ for the first increase and £57 million for the second increase in the holiday entitlement.¹² Hence for the proposed two-phase implementation, the total transitional cost would be around £143 million.

These transitional costs include

- Any changes to computer software
- Employer's familiarization
- Calculating new entitlements for staff
- Informing staff of the change.

The ongoing administrative costs for option 2 are estimated at £86 million,¹³ more than under option 3. These on-going costs would in part reflect the complexity of making the 8 bank and public holidays statutory. For an employer this would involve more rostering and arranging cover for staff on holiday as well as the consequences of staff taking the actual bank holiday, for example loss of productivity or continuity of service. The ongoing costs are based on an estimate of 30 minutes of management time per member of staff to schedule and roster time to ensure adequate cover for staff holidays.

¹¹ Based on 30 minutes management time per staff @ £22.20 x 6 million workers.

¹² We assume that one-third of employers would extend the full 8 day holiday entitlement in the first phase of implementation. This would increase their policy cost in the first year, but half their transitional administrative costs.

¹³ This is calculated on the basis of 30 minutes per employee of management time at £22.20 x 6 million, plus 30% non-wage labour costs.

Table 4. Administrative costs of option two

	Wage cost	Total labour cost
Transitional administrative costs	£110 million	£143 million
Ongoing administrative costs	£66 million per annum	£86 million per annum

Source: DTI estimates. Estimates are for Great Britain.

Option 3

The transitional costs for option 3 are expected to be lower than option 2 on a per worker basis. The calculation of entitlements for part-timers, for example, is likely to be simpler than for option 2.

The transitional cost for option 3 is estimated at around £72 million¹⁴ for the first increase and £48 million for the second increase in the holiday entitlement. Hence for the proposed two-phase implementation, the total transitional cost would be around £119 million.

As described above, there would also be an ongoing administrative cost to employers of managing an increased holiday entitlement and ensuring sufficient cover for staff on holiday. Again, the costs will vary considerably depending on the cover requirements and the staffing levels of employers, but we estimate that the ongoing administrative costs to employers of option 3 (an increased holiday entitlement) may be of the order of £43 million per year.¹⁵

We believe that this is likely to be an over-estimate, based on 15 minutes of management time per employee, as existing research on administrative burdens suggests that notifying changes of leave accounts for approximately 10 hours of management time overall for an average-sized company of 120 staff. However a company may have a variety of different holiday arrangements for different groups of staff, which may increase the time required to manage the additional holiday entitlement.

¹⁴ Based on 25 minutes management time per staff @£22.20 x 6.0 million, plus 30% non-wage labour costs.

¹⁵ This is calculated on the basis of 15 minutes of management time for each staff member, at £22.20 per hour x 6.0 million – costs may be much less if maintaining cover is not an issue, or significantly more if extensive re-rostering is required. A number of employers may also specify up front when the additional leave will be taken which would reduce the admin costs.

Table 5. Administrative costs of option three

	Wage cost	Total labour cost
Transitional administrative costs	£92 million	£119 million
Ongoing administrative costs	£33 million per annum	£43 million per annum

Source: DTI estimates. Estimates are for Great Britain.

The Government will look to minimise these transitional administrative costs by providing an online tool to calculate the increased entitlement. To implement the proposals, employers would be required by the Employment Rights Act 1996 to notify staff in writing of changes to holiday entitlements. This notification, however, does not need to be personalised and may take the form of a circular notice that goes to every affected member of staff or a statement on a pay slip, in accordance with DTI's simplification plan.

Estimated costs of phasing the introduction

Administrative costs are also a key factor in deciding the phasing of the introduction of the additional leave. Introducing the additional leave in 2007 and 2009 would spread the increase in leave over four leave years for most staff (as many leave years do not start on 1 October). Introducing the additional leave in 2007 and 2008 would spread the increase over only three years for most staff, reducing the transitional costs for employers significantly.

Some employers may choose not to phase the increase in holiday entitlement but rather choose to increase the entitlement for staff to 5.6 weeks in one go; this would significantly reduce the overall administrative cost of a two-phase implementation.

The phases would not be of equal size, as some workers will already get more than four weeks' holiday but less than 5.6 weeks'. The first phase of the increased entitlement (from 20 days to 24 days for someone working 5 days a week) would have a policy cost of £1.4 – 2.0 billion, the second phase £1.8 – 2.4 billion.

Simplification measures

In developing these proposals, the Government has sought to minimise the impact on employers by phasing the introduction, by providing a facility for carrying leave over, by capping the entitlement at a maximum of 28 days and by treating the additional holiday as non-working time for the purpose of calculating weekly working hours. The Government has also sought to bring forward simplification measures. The draft regulations propose removing the requirement for the holiday entitlement to be rounded up to the nearest whole day during the first year of employment. Companies may wish to continue to round up holiday entitlements in the first year, but there would be no legal requirement to do so. Removing the rounding requirement may reduce the policy costs of the proposals by up to £100 million.¹⁶

The Government also proposes to provide an on-line tool to enable holiday entitlements to be calculated easily, both for the increase in entitlement and for people entering employment during a leave year. It is anticipated that this will reduce the amount of time required to calculate holiday entitlements for all staff, not just those benefiting from the increase in entitlement under these proposals. The potential administrative costs savings from the online calculator are estimated at around £5 million per year.¹⁷

Under the Part-time Workers (Prevention of Less Favourable Treatment Regulations) 2000, part-time staff should receive a holiday entitlement pro rata to comparable full-timers. Where part-time staff do not usually work on days on which bank holidays fall (typically Monday or Friday), some employers have found the calculation of a pro-rata entitlement difficult. The approach in these proposals of treating time off for bank holidays in the same way as the statutory holiday entitlement should make the calculation of holiday entitlements for part-time staff much simpler. The administrative cost savings of this simpler approach are estimated at up to £2m¹⁸ per year.

¹⁶ Based on the assumption that around 10% of the workforce change employment in any one year. 0.3 days (impact of rounding) x £22.20p.h. x 5 hours (average working day) x 28 million workforce x 10% changing jobs in a year. 10% may be an under estimate for job changes in some sectors such as hospitality, yet in other sectors it is likely to be an over estimate.

¹⁷ Assuming a five-minute time saving from using the calculator for all new starters each year. 28 million x 10% changing jobs in a year x £22.20 p.h. x 5 minutes.

¹⁸ Assuming an average seven minute time saving for all new part-time starters each year. 7 million part-timers x 10% changing job each year x £22.20ph x 5 minutes

Sectors and groups affected

Extending the annual leave entitlement will affect some sectors more than others. As shown by tables 6 and 7 below, the highest incidence of employees who are not receiving their full 5.6 weeks' (28 days') annual leave entitlement (pro-rata for part-time) are those working in hotels and restaurants (49%), followed by wholesale/retail (29%) and other public services (27%).

Table 6. Incidence of low-leave employees by sector**

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
Manufacturing	0.4	14%	*	*	0.5	15%
Construction	0.2	16%	*	*	0.2	17%
Wholesale/retail	0.5	25%	0.5	38%	1.0	29%
Hotels/restaurants	0.2	36%	0.2	67%	0.4	49%
Transport/Storage/ Communication	0.2	14%	*	*	0.2	14%
Financial Intermediaries	*	*	*	*		*
Real Estate	0.2	10%	*	*	0.3	12%
Public Administration	0.1	6%	*	*	0.2	9%
Education	0.1	10%	0.3	36%	0.4	19%
Health/Social Work	0.3	16%	0.3	21%	0.7	19%
Other public service	0.1	15%	*	*	0.3	27%
Other	0.1	18%	*	*	0.1	17%
Total	2.5	14%	1.9	31%	4.4	19%

Source: DTI Paid Annual Leave Survey 2006

* estimates too small to provide a reliable sample ** Low leave meaning less than 28 days leave

However, Table 7 shows the greatest number of low leave¹⁹ employees is in wholesale/retail – approximately one million employees, which accounts for 22% of all low-leave employees. The industry with the second highest is health/social work, whose 0.7 million represents 15% of low-leave employees.

Table 7. Proportion of low-leave employees by sector**

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
Manufacturing	0.4	16%	*	*	0.5	11%
Construction	0.2	6%	*	*	0.2	4%
Wholesale/retail	0.5	21%	0.5	24%	1.0	22%
Hotels/restaurants	0.2	7%	0.2	13%	0.4	10%
Transport/Storage/ Communication	0.2	9%	*	*	0.2	6%
Financial Intermediaries	*	*	*	*	*	*
Real Estate	0.2	8%	*	*	0.3	7%
Public Administration	0.1	5%	*	*	0.2	5%
Education	0.1	6%	0.3	16%	0.4	10%
Health/Social Work	0.3	13%	0.3	18%	0.7	15%
Other public service	0.1	5%	*	*	0.3	7%
Other	0.1	3%	*	*	0.1	2%
Total	2.5	100%	1.9	100%	4.4	100%

Source: DTI Paid Annual Leave Survey 2006

* estimates too small to provide a reliable sample ** Low leave meaning less than 28 days leave

19 Low leave meaning less than 28 days leave

Impacts on firms and competition assessment

The small firms' impact test

Every effort was made from the onset to engage small companies and their representatives in the development of this policy. There was an awareness that small companies are less likely to respond to government consultations, and a number of proactive steps were taken to encourage as wide participation as possible in the initial consultation.

The extension of holiday entitlement will impact upon business of all sizes. However, as Table D2 in Annex D indicates, there is a higher incidence of low-leave employees in workplaces with less than 50 employees than in medium-sized or larger organisations. More details on the small firms' impact can be found in Annex D.

Competition assessment

The proposed changes would apply to all firms. The changes are however likely to affect certain industries more than others. For example, Table 6 indicates a much higher incidence of low-leave employees in hotels and restaurants than in other industries. Nonetheless, on the basis of the assessment set out in Annex E, it is believed that neither of the two options presented in this RIA would have a significant impact on competition.

Equity and fairness

The proposal applies to all employees and other workers. Both options 2 and 3 would have a positive impact on the 6 million employees and other workers who currently receive less than 28 days' (or pro-rata equivalent) annual holiday entitlement.

Results from the DTI Paid Annual Leave Survey 2006 (Annex A) indicate that the extension of the holiday entitlement would particularly benefit women, part-time employees and those aged less than 25 years. Non-white employees have a marginally higher incidence of low-leave than white employees, so are likely to benefit more than average.

The survey was not able to provide reliable estimates of the likely impacts by sexual orientation, disability or religion and belief. However, as people with disabilities are more likely to work part-time, they could benefit particularly from the increase in holiday entitlement.

The increase in holiday entitlement is believed likely to have a positive impact on religious diversity as the proposals would put holy days of different religions on the same legal basis for holiday entitlement. The initial consultation did not identify any equality issues regarding holiday entitlement on the basis of sexual orientation.

Enforcement and sanctions

The Working Time Regulations are currently enforced through the Employment Tribunal system. As the main effect of these proposals is to increase the quantum of the holiday entitlement, rather than other aspects of the legislation, it is proposed that enforcement of the additional holiday entitlement will be through the Employment Tribunals as well.

Enforcement for the additional holiday entitlement should be consistent with enforcement of the current statutory entitlement.

An Employment Tribunal can award compensation to a complainant, taking into account any loss suffered by the member of staff and the employer's default in refusing to give the member of staff their statutory holiday entitlement.

Contact details

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Annex A: Incidence of low-leave employees

The tables below provide key findings on the distribution and incidence of low-leave employees by gender, employment status, age and ethnicity from the DTI Paid Annual Leave Survey 2006. Low-leave employees are those who received less than 28 days annual holiday. More comprehensive results will be published in Spring 2007.

Table A1. Distribution of low-leave employees by gender and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
Male	1.6	63%	0.3	14%	1.9	42%
Female	0.9	37%	1.6	86%	2.6	58%
Total	2.5	100%	1.9	100%	4.4	100%

Source: DTI Paid Annual Leave Survey 2006

Table A2. Incidence of low-leave employees by gender and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
Male	1.6	14%	0.3	41%	1.9	15%
Female	0.9	15%	1.6	30%	2.6	22%
Total	2.5	14%	1.9	31%	4.4	19%

Source: DTI Paid Annual Leave Survey 2006

As there are more women working part-time than there are men, we would expect women to benefit more from the extension of annual leave. Tables A1 and A2 show that women are indeed more likely to have lower leave levels than men. Part-time employees are more than twice as likely as full-time employees to receive less than 28 days' leave.

Table A3. Distribution of low-leave employees by age and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
16-24	0.5	18%	0.3	15%	0.7	17%
25-34	0.7	27%	0.4	20%	1.1	24%
35-44	0.6	24%	0.5	28%	1.1	26%
45-49	0.3	11%	*	*	0.4	9%
50+	0.5	20%	0.6	31%	1.1	25%
Total	2.5	100%	1.9	100%	4.4	100%

Source: DTI Paid Annual Leave Survey 2006

Table A4. Incidence of low-leave employees by age and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
16-24	0.5	23%	0.3	49%	0.7	29%
25-34	0.7	16%	0.4	30%	1.1	19%
35-44	0.6	13%	0.5	28%	1.1	17%
45-49	0.3	12%	*	*	0.4	14%
50+	0.5	12%	0.6	31%	1.1	18%
Total	2.5	14%	1.9	31%	4.4	19%

Source: DTI Paid Annual Leave Survey 2006

Younger workers between the ages 16 – 24 are more likely to suffer from low leave levels than older workers (tables A3 and A4), with 29% receiving less than 28 days' holiday entitlement compared with 19% overall.

Table A5. Distribution of low-leave employees by ethnic origin and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
White	2.2	89%	1.8	92%	4.0	91%
Non white	0.3	11%	*	*	0.4	9%
Total	2.5	100%	1.9	100%	4.4	100%

Source: DTI Paid Annual Leave Survey 2006 *estimates too small to be reliable

Table A6. Incidence of low-leave employees by ethnic origin and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
White	2.2	14%	1.8	30%	4.0	18%
Non white	0.3	16%	*	*	0.4	21%
Total	2.5	14%	1.9	31%	4.4	19%

Source: DTI Paid Annual Leave Survey 2006 * estimates too small to be reliable

Tables A5 and A6 show that the non-white population fare marginally worse than the white population: table A6 shows that 21% of the non-white population have less than 28 days leave.

Annex B: Potential benefits of increased holiday

Economic benefits

It is anticipated that there may be economic benefits to particular sectors of the economy, depending on how people use the additional leisure time that an increased holiday entitlement would bring. Research commissioned by the Scottish Parliament has shown that many people choose to use bank holidays to go on day trips or short breaks; bank holidays are also busy retail periods. The research suggests that there would be a positive impact on retail, tourism and hospitality sectors of an increased holiday entitlement.

A better work life balance

The increased opportunity for holiday should lead to a better work-life balance for the workforce. It will allow more time to spend time on aspects of life that are important to them outside of work including allowing parents, and other carers, to better manage their time to avoid conflict between work and home.

A more committed workforce

The extension in the entitlement to four weeks' holiday, making it additional to paid holiday for bank holidays, should contribute to better relationships at the workplace leading to improvements in workforce commitment, morale and performance and could result in higher productivity. Some organizations may also choose to review working practices, which could lead to more efficient and strategic working arrangements.

Stress

Stress remains a debilitating factor among the UK workforce: the Health and Safety Executive estimates that a total of 12.8 million working days were lost to stress, depression and anxiety in 2004/5, at a cost to the UK economy of £3.7 billion per year.

A major cause of stress for parents of younger children is the conflicting demands of employment and raising a family – this also follows for those with other caring responsibilities. Increasing opportunities for holidays and time with dependents will help to reduce stress levels; it will also reduce the need for unscheduled leave – noted by employers as more difficult to work around than annual leave.

Productivity

Two studies²⁰ have shown that staff that receive good terms and conditions feel valued by their employer and are happier and more motivated in their work.

Family cohesion

Increased holiday will give people the opportunity to spend more time with their families, be it partners, children and other dependents or other family members.²¹

Improved clarity over holiday allowance

There remains a good deal of confusion among both staff and their employers on annual leave. Over 10% of calls to the ACAS Helpline (100,000 calls) in 2005 were on holiday; working time and whether or not public holidays are included causes “particular confusion”. The proposals will provide clarity on the entitlements for all staff and in particular remove the existing ambiguities over entitlements for part-time staff. It is hoped that the increased clarity will reduce the number of workplace disputes and cases to Employment Tribunals, with resultant cost savings for employers. Provision of detailed guidance and an on-line calculator will further alleviate confusion.

Greater flexibility for employers

Employers will be able to specify that the additional 1.6 weeks are taken for specified bank and public holidays, but are not obligated to do so. Businesses advised during the consultation that this would afford them useful flexibility. One business said that many of their staff preferred to take holy days as leave rather than bank holidays; as they were open over bank holidays, it meant that they had sufficient staff who were willing to cover.

20 Robert Taylor, Britain's *World of Work – Myths and Realities* (ESRC, 2002). http://www.esrc.ac.uk/ESRCInfoCentre/Images/fow_publication_3_tcm6-6057.pdf and Nick Isles, *The Joy of Work?* (The Work Foundation 2004, http://www.theworkfoundation.co.uk/Assets/PDFs/Joy_of_Work.pdf)

21 *Families and work in the twenty-first century*, (Joseph Rowntree Foundation September 2003) and *More time for families: tackling the long hours crisis in UK workplaces* (TUC/Working Families report August 2004)

Annex C: Costings methodology

Main data sources

The DTI commissioned a Paid Annual Leave Survey in 2006 to obtain more robust data on the incidence and distribution of annual leave than was available from the Labour Force Survey (LFS). Estimating the exact number of individuals who will be affected by the additional leave entitlement is difficult as contractual arrangement for annual leave and bank/public holidays are complex and will differ between industries.

The LFS, used in the original estimate, has limitations. Questions regarding annual leave are only asked in the Autumn quarter which covers September to November each year and data gathered on bank and public holidays working is only collected every other Autumn. There is a risk that respondents will confuse the question on annual leave entitlement with the number of days actual leave taken thus resulting in an underestimation of the number of days of paid holiday entitlement. This is verified with many full- and part-time employees claiming they have no leave entitlement. The LFS also has proxy responses in areas that are of importance: earnings and industry. As many employees over estimate actual hours worked this can lead to the derived earnings variable to underestimate hourly pay and therefore makes the LFS earnings even less reliable. Respondents can often misclassify their industry.

The Paid Annual Leave Survey obviates many of the problems of the LFS. The survey has a sample size of approximately seven thousand. It was carried out between March and November 2006 over four waves with equal intervals of six weeks; one wave was conducted over the Easter bank holiday in order to identify if there were significant seasonal biases. Questions were asked about income, paid leave, whether bank and public holidays were paid and whether this was double time or time-off-in-lieu. The data set is robust and answers many questions that the LFS does not and therefore fewer assumptions have been made. DTI will publish more comprehensive results from this survey in Spring 2007.

Costing methodology

These estimates have been calculated using a similar methodology to that used to estimate the impact of the introduction of four weeks annual leave including bank holidays, in the Regulatory Impact Assessment for the Working Time Regulations (1998).²² The estimates have been derived by taking the difference between the cost of Paid Annual Leave (PAL) including and excluding bank holidays. For example, if a full-time person currently worked five days a week they could be getting 12 days' holiday once bank holidays are excluded. Under the proposed option the same wage earner would be entitled to 20 days' holiday and so their wage payer would, if all other factors remained the same, have to pay for an extra 8 days' holiday.

For those working part-time, entitlements have been allocated on a pro-rata basis. In order to calculate the additional employees who would benefit, as well as the additional costs associated with option 2, it was assumed that the holidays for employees who did not currently get paid leave on bank holidays, or worked on bank holidays, would be increased from twenty to twenty eight days.

The costs are based on the number of employees affected multiplied by the number of extra days they would be entitled to, multiplied by the wage and non-wage labour costs. The non-wage labour costs are estimated to increase the cost of paying an employee by 30 % (this figure is a standard assumption from the Cabinet Office that is used to estimate non-wage costs).

An adjustment to wages has also been made to take into account the fact that employees with low levels of annual leave are more likely to be paid less than those with higher levels of annual leave. The differences between part-time/full-time and male/female wage rates have been taken into account.

²² See 1997-1998 *Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 67*, DTI, London, URN 06/1840. Available from: <http://www.dti.gov.uk/employment/research-evaluation/errs/page13419.html>

Ranges of wage costs

The estimates of wage costs derive from the Paid Annual Leave Survey. Survey respondents are typically more reluctant to answer questions about income. To maximize response rates, they were asked to say which of several possible bands included their income. Even so, fewer people answered this question than any other. To reflect the uncertainty, costs were calculated on the basis of best and worse case scenarios. The best and cheapest case is where all respondents happen to be at the lower limit of the income band. The worst case is where they are all at the upper limit.

Definitions and assumptions used in the costing

The proposals for change in this Regulatory Impact Assessment cover both 'employees and 'workers'. The survey which has been used to estimate the figures, does not use the term 'worker', but rather asks people to self-report whether they consider themselves to be employees or self-employed (who have been excluded in the analysis). It has been assumed that 'workers' are 6% of the workforce and this has been taken into account in the estimate.

All estimated costs are based on average gross annual earnings (including overtime and those unaffected by absence). The costs in this assessment also include non-wage labour costs. The non-wage labour costs are estimated to add 30% to the wages that employees actually received. This figure is the official Cabinet Office figure, and includes employers' NI and pension contributions as well as expenditure on redundancies, training and benefits in kind.

The estimated cost to employers includes only the immediate costs and does not attempt to include secondary or longer term effects. In the long run, a greater share of the cost is likely to be borne by wage earners who as a result of the proposal would receive more paid annual leave, through wage increases being lower than they would have been otherwise. No allowance has been made for this longer-term effect, nor has allowance been made for reductions in hours or improvements in holidays that would have occurred in the absence of the regulation, whether through collective bargaining or otherwise.

Costings for both options two and three assume full compliance with the current Working Time Regulations.

As was the case when the Working Time Directive was introduced, it is difficult to assess how business will react to the introduction of this proposed regulation. For this reason, policy implementation will be adapted to incorporate responses obtained from stakeholders in the consultation process. Monitoring and evaluation plans will be outlined in the final Regulatory Impact Assessment.

Administrative costs

Whilst the Administrative Burdens Measurement Exercise (ABME) quantified unit costs for amending particulars of employment (at £59.79), those unit costs cannot be directly used to derive estimates of the administrative burden of increasing the holiday entitlement, as the proposed amendments would not require particulars to be amended. Legally, employers would be required to give staff written notification of the increased holiday entitlement, but would not be required to amend or reissue contracts.

The Standard Cost Model used in the ABME can be used, however, to enable cost estimates to be derived. This assessment of time suggests that around 20 minutes per capita would be required for an average employer to implement any increase in the holiday entitlement; 25 minutes for a statutory right to bank holidays.

The actual time spent will depend on a number of factors, including the number of staff affected, the variety of working patterns involved and the leave year arrangements in place. To allow for such variation, an additional allocation of 5 minutes has been included, giving a total management time of 25 minutes per capita for option 3, 30 minutes for option 2. For a business that employs 10 staff, this would give around 4 hours as the total management time required to implement the increase in the leave entitlement. A number of telephone interviews held with businesses validated this overall time estimate.

The total administrative costs, therefore, are:

For option 2, based on 30 minutes of internal time (at £22.20 per hour), giving a per capita cost of £11.10

For option 3, based on 25 minutes of internal time (at £22.20 per hour), giving a per capita cost of £9.25.

Annex D: Small firms' impact test

Consultation

Every effort was made from the outset to engage small companies and their representatives in development of this policy. There was an awareness that small companies are less likely to respond to government consultations, so a number of proactive steps were undertaken to encourage as wide participation as possible in the initial consultation, including:

- Sending copies of the consultation document to 2,100 small firms via the Small Business Service's database;
- Sending copies to various representative intermediaries including the Forum for Private Business (FPB), the Federation for Small Business (FSB) and British Chambers of Commerce (BCC);
- Policy officials met with all three of the above organisations as well as a number of sector specific organisations whose members are predominantly small businesses;
- A small focus group was organised by the FPB – providing a useful opportunity to explore issues in more depth;
- Policy officials attended a meeting of the Small Business Council's Better Regulation Interest Group.

Of the 344 responses received to the initial consultation, 39 (11%) were received from firms employing up to 9 staff (micro) and 73 (21%) from those employing up to 50 (small). These figures exclude responses from intermediaries representing small companies and these are broken down by size of businesses and are the following: 22 % from large businesses; 17 per from medium businesses; 38 % from small and 19 % from micro businesses. The survey revealed that incidences of low-leave employees are more prevalent in small firms. The figure of 61% is higher than anticipated and in large part due to a high proportion of part-time workers (71%). The figures are also unable to reflect the flexible leave arrangements many small firms operate.

Distribution and incidence by firm size

Table D1. Distribution of low-leave employees by size of workplace²³ and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
Small	1.3	53%	1.3	71%	2.7	61%
Medium	0.6	24%	0.3	14%	0.9	20%
Large	0.6	23%	0.3	15%	0.9	20%
Total	2.5	100%	1.9	100%	4.4	100%

Source: DTI Paid Annual Leave Survey 2006

Note: Small workplaces are defined here as those with 1-49 employees,. Medium-sized as those with 50-249 employees.

Table D2. Incidence of low-leave employees by size of workplace and employment status

	Full-time		Part-time		Total	
	millions	%	millions	%	million	%
Small	1.3	19%	1.3	38%	2.7	25%
Medium	0.6	14%	0.3	23%	0.9	16%
Large	0.6	9%	0.3	20%	0.9	11%
Total	2.5	14%	1.9	31%	4.4	19%

Source: DTI Paid Annual Leave Survey 2006

Note: Small workplaces are defined here as those with 1-49 employees,. Medium-sized as those with 50-249 employees.

Tables D1 and D2 show results from the DTI Paid Annual Leave Survey 2006 on the distribution and incidence of low-leave employees by workplace size. It can be that employees in small firms (1-49 employees) will benefit the most as they have the highest incidence – 25% of low leave.

²³ Firm size: 1-49 = small; 50 -249 = medium; 250+ = large.

Table D3. Estimated annual policy costs by workplace size (£ million)

		Full-time	Part-time	Non-wage costs	Total costs
Under 5	(min)	334	110	133	576
	(max)	465	172	191	828
5 to 49	(min)	405	266	201	872
	(max)	559	454	304	1316
50 to 499	(min)	507	162	201	870
	(max)	679	241	276	1196
500 and over	(min)	249	72	96	418
	(max)	334	120	136	591
Total	(min)	1,495	610	631	2,736
	(max)	2,036	988	907	3,932

Source: DTI Paid Annual Leave Survey 2006

We provide a breakdown of likely annual policy costs by workplace size in table D3. The reason for the wide range between minimum and maximum cost estimates is because it gives a worse and best case scenario with regard to costs and workplace size in having 8 additional days' annual leave. This was evaluated on the basis of the cost of a replacement employee.²⁴ The other way to evaluate this would be on the basis of lost production but this would have auxiliary assumptions along with behavioural assumptions of which we have a limited knowledge.

A number of key themes were identified by the small business respondents and representative bodies and are summarised below.

²⁴ This was calculated using National Accounts and employing the appropriate measure. A more detailed methodology will be set out in the final RIA.

Financial impact

Early indicators showed that small firms were no less likely to offer their staff 20 days annual leave plus public holidays and this was substantiated by a survey of 500 IoD members which demonstrated that 95% of smaller firms already give bank holidays on top of 20 days with little size variation for SMEs. However, it was recognised that small companies would be less able to subsume the impact of an increase, a point reiterated by many of the small companies and their representatives that responded to the consultation. Others (who already gave at least 5.6 weeks'/28 days' leave) suggested that gradual introduction and limiting when leave could be taken (to ensure cover at busy periods) mitigated the negative impact.

The FSB, the FPB and a number of individual businesses argued that this policy should be viewed against the context of the wider strategy to expand employment rights. The forthcoming increase to the National Minimum Wage was highlighted. Both organisations and the BCC asked for more clear research into the anticipated impact.

On wider impact, a survey undertaken by the FSB demonstrated that businesses that were not directly affected felt there would be a negative impact on them – one reason given for this was resulting price increases along the supply chain. However a similar survey undertaken by the FPB showed only a small majority of respondents were against the change – 57% against with 41% for the change.

Need for guidance

Several small company respondents identified the need for good quality guidance for both employers and employees well in advance of any increase – a point also highlighted during consultation meetings. One small employer explained that many staff (particularly part-time) were unclear of their existing rights on annual leave. The FSB survey also showed a clear lack of understanding as to what the minimum requirements currently are. When asked if they offered the minimum entitlement of 4 weeks' annual leave, 61% said that they did, however when explored further, only 23% included bank holidays in the minimum entitlement, and 38% of businesses asked thought that they were offering the minimum but in fact were not.

Need for flexibility

The need for flexibility, particularly in the areas of buying out and carrying over the additional leave were considered particularly important for small companies – although here, as in all, forms of mitigation – there was no wish to have differing arrangements or a form of opt-out for small companies. The Small Business Council also reiterated the importance of not introducing a statutory right for the extra holiday to be taken on a bank or public holiday enabling business to determine when it needs to work.

Timing and approach of implementation

There was a general consensus that the increase should be made with as much notice as possible, in no more than two phases and with minimal administrative disruption, but views on how and when this be introduced were more divided. The BCC were unsure that a phased approach would offer any real mitigation, and wanted careful exploration of this option. The FSB wanted a phased approach with the second phase to be introduced only after a review. The FPB also favoured a phased approach but with the second phase a year after the first, suggesting that their members would prefer ‘a quick end’ to the implementation. Many others want a fixed date for both phases, to enable forward planning.

Annex E: Competition assessment

The market

Increasing the holiday entitlement will have an impact on a wide range of businesses. DTI research suggests that some sectors will be affected to a greater extent than others. Those industries likely to be particularly affected include road transport, retail, hospitality and care. The structure of the road transport and care markets is dominance by small businesses or the self employed; these industries are diffuse with few sizeable players. There is greater market concentration in retail and hospitality, but few businesses have a sizeable market share or can bring a significant influence to bear on the market overall.

Substantially different effect on firms

The proposals will impact employers differently. Where an employer already provides at least 28 days' holiday (pro-rata for part-time staff), there will be little or no direct impact as they will comply with the proposed regulations. Employers that do not comply will have to amend their employment conditions; increasing an individual's holiday entitlement from the current four-week minimum to the proposed new minimum of 5.6 weeks equates to a 3.1% increase in wage costs.

The overall impact on a particular business will depend on the cost structure of that business. The impact will be greatest where wage costs amount for a significant proportion of the business' overall costs, such as in the hospitality and care industries. The phased introduction of the additional entitlement will reduce this differential impact, with the maximum impact being 1.6% of the total wages bill from 1 October 2006.

Changes to market structure

DTI research shows that there is a variation in holiday entitlement according to the size of the business, with 11% of staff working for large employers receiving low levels of holiday at present, compared with 25% for small businesses. Whilst this could change the structure of the market, favouring larger employers over smaller businesses, other size-related factors (such as the ability to leverage economies of scale) are likely to be much more significant. On balance, it is believed unlikely that these proposals will lead to a significant change in the structure of the markets particularly affected.

Penalising new firms

We believe that these proposals will not penalise new market entrants, either through higher set-up costs or higher on-going costs, compared to businesses established in the market place.

Restrictions on firms

In responding to the initial consultation, employers have identified two potential restrictions that the proposed regulations would place on businesses. Firstly, a number of employers use additional service-related holiday entitlement to motivate and retain staff. In increasing the statutory minimum holiday entitlement, the scope for giving such service-related entitlements could be restricted.

Secondly, a number of employers who currently comply with the requirements of the proposed regulations supported early implementation as the proposals would undermine the competitive advantage (in cost terms) enjoyed by employers who give their staff the minimum statutory entitlement only. The proposals, in the words of one respondent, would create 'a more level playing field'. On the other hand, raising the statutory minimum entitlement could undermine the competitive advantage (in terms of recruitment and retention of staff) of employers who give additional contractual holiday.

Summary assessment

On the basis of this assessment, it is believed that neither of the options presented in this RIA (introducing a statutory right to take leave on bank and public holidays, or increasing the statutory holiday entitlement to reflect the number of bank holidays) would have a significant impact on competition.



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