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Innovation & Skills

**EMPLOYMENT RELATIONS RESEARCH
SERIES NO. 116**

2008 Compendium of Impact
Assessments

DECEMBER 2010

About Labour Market Analysis & Minimum Wage

Labour Market Analysis & Minimum Wage is a multi-disciplinary team of economists, social researchers and statisticians based in the Employment Relations Directorate of the Department for Business, Innovation & Skills (BIS).

Our role is to provide the evidence base for good policy making in employment relations, labour market and equality and discrimination at work. We do this through:

- Conducting periodic benchmark surveys
- Commissioning external research reports
- Conducting in-house research and analysis
- Assessing the regulatory impact of new employment laws
- Monitoring and evaluating the impact of government policies

We publicly disseminate the results of this research through the BIS Employment Relations Research Series and other publications. For further details of the team's work, including PDF versions of all our publications, please see our web pages at:

<http://www.bis.gov.uk/policies/employment-matters/research>

About this publication

The project manager for this compendium is Tim Harrison in the Labour Market Analysis & Minimum Wage Team.

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Please contact us at labourmarket.analysis@bis.gsi.gov.uk if you would like to receive regular email updates on our research, new publications and forthcoming events.

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Foreword

This publication was produced in December 2010 and at this time the Department for Business, Innovation and Skills (BIS) leads work to build a dynamic and competitive UK economy by creating the conditions for business success, promoting innovation, enterprise and science and giving everyone the skills and opportunities to succeed. To achieve this, we will foster world-class universities and promote an open global economy.

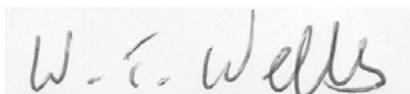
Within the Department the Labour Market Analysis & Minimum Wage team provides the evidence and information that underpins policy making and delivery in the Employment Relations Directorate. This involves an extensive programme of analysis, research and evaluation on areas including domestic and European employment legislation; labour market flexibility and diversity; employment and industrial relations; and monitoring developments in ACAS and other organisations in the employment relations area.

Impact assessments of policy and regulatory changes are a key component of this evidence base. This compendium provides a single source for all the Impact Assessments on employment relations policy we published in 2008. Similar compendia for earlier years can be found via:

<http://www.bis.gov.uk/policies/employment-matters/research>

We hope that you find this compendium of interest. Electronic copies of this and all other reports in our Employment Relations Research Series can be downloaded from the BIS website. (We have discontinued publishing printed copies). A complete list of our research series can be found at the back of this report.

Please contact us at labourmarket.analysis@bis.gsi.gov.uk if you would like to receive regular email updates on our research, new publications and forthcoming events.



Bill Wells

Deputy Director, Labour Market Analysis & Minimum Wage
Department for Business, Innovation and Skills

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Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Employment Bill: Part 2 - Dispute Resolution Review	
Stage: Final	Version: Final	Date: 1 February 2008
Related Publications: Resolving Disputes in the Workplace: A Government Response		

Available to view or download at:

<http://www.berr.gov.uk/files/file42728.pdf>

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

The Gibbons Review identified key problems with the current dispute resolution system in Great Britain, including the tendency of the current statutory dispute resolution procedures to formalise disputes, and inconsistencies in the workings of the employment tribunals. The evidence suggests that the current system is costing too much for all parties both in terms of money and time; and that it could do more to resolve disputes at the earliest opportunity. These concerns were reflected by a wide range of stakeholders in the recent full public consultation.

What are the policy objectives and the intended effects?

The current shortcomings of the system point to a future model that is more efficient and simpler to use, offers users advice on more proportionate ways of resolving their disputes, and which enables disputes to be resolved earlier, with less lost time, expense and stress for all parties.

What policy options have been considered? Please justify any preferred option.

The Government consulted on a range of policy options, based on many of the recommendations of the Gibbons Review. The Government intends to proceed with: repeal of the statutory dispute resolution procedures; an enhanced Acas statutory Code and guidance; encouraging compliance with the Code by allowing tribunals to adjust awards if it has not been followed; and new services including more Acas conciliation; a fast track for simple claims and an improved advice service. The option which this package represents will achieve the optimum in terms of early and efficient resolution of disputes.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The outcomes of the policy will be assessed a reasonable period after entry into force of the legal changes.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 6 December 2007

Summary: Analysis & Evidence

Policy Option: 3	Description: Repeal statutory dispute resolution procedures and introduce a package of measures to promote effective dispute resolution
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' All costs are Government costs and relate mainly to the set up and operation of the new interactive advice service as well as the provision of pre-claim conciliation
	One-off (Transition)	Yrs	
	£ 6m	1	
	Average Annual Cost (excluding one-off)		
	£ 12.5m-£15.5m		Total Cost (PV) £ 28.7m-34.2m
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Government will benefit from savings of £14m to the ET system. Employers will save £176.9m mainly due to reductions in admin burdens (£149.9m), but also from changes to the dispute system. Employees will benefit by £9.2m
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 200.1m		Total Benefit (PV) £ 367.3m
Other key non-monetised benefits by 'main affected groups' see summary table in evidence base.			

Key Assumptions/Sensitivities/Risks Cost-benefit estimates are based on an estimated throughput of 67,000 single-equivalent tribunal claims a year. Costs will be incurred from 2008 onwards and the benefits will be realised from 2009 onwards. While the policy will be ongoing, costs and benefits have been calculated in NPV terms for only 3 years initially.

Price Base Year 2007	Time Period Years 3	Net Benefit Range (NPV) £ 333m-338.5m	NET BENEFIT (NPV Best estimate) £ 338.5m
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What is the geographic coverage of the policy/option?	GB								
On what date will the policy be implemented?	April 2009								
Which organisation(s) will enforce the policy?	Tribunals Service								
What is the total annual cost of enforcement for these organisations?	£ 314.52m								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	No								
What is the value of the proposed offsetting measure per year?	£ N/A								
What is the value of changes in greenhouse gas emissions?	£ N/A								
Will the proposal have a significant impact on competition?	Yes/No								
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> <tr> <td style="text-align: center;">No</td> <td style="text-align: center;">No</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> </tr> </table>	Micro	Small	Medium	Large	No	No	N/A	N/A
Micro	Small	Medium	Large						
No	No	N/A	N/A						
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A				
No	No	N/A	N/A						

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 149.9m	Net Impact £ 149.9m decrease

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

A: Strategic overview

1. In the light of the independent review by Michael Gibbons¹ (the Review) of workplace dispute resolution practices and the associated public consultation², the Government proposes to repeal the statutory dispute resolution procedures and implement a package of replacement measures to encourage early/informal resolution of disputes. This supports BERR's Simplification Plan with significant savings for business, estimated at £177m per annum.

B: The issue

2. The Review identified key problems with the current dispute resolution system in Great Britain:
- The statutory dispute resolution procedures introduced in 2004 carry a high cost burden for employers and employees and have had unintended negative consequences, which outweigh their benefits;
 - While around 75% of claims made to an employment tribunal are resolved without the need for a hearing (a substantial portion with the involvement of Acas), many settlements happen too long after the dispute first occurred and a significant proportion of those cases that do reach a tribunal hearing should have been capable of being resolved beforehand between the parties.
3. The evidence therefore suggested that the current dispute resolution system is costing too much for all parties - employers, employees and Government - both in terms of money and time; and that more needed to be done to resolve disputes at the earliest opportunity. The Government has sought an alternative model that is more efficient, simpler to use, offers users more proportionate ways of resolving their disputes, and aims to resolve disputes earlier.

Consultation

Within government

4. The Review consulted widely within government, including the then DTI, Acas and the Tribunals Service, along with other government departments.

Public consultation

5. The Review received considerable input from key non-government stakeholders, including representatives of business (including the CBI) and of workers (including the TUC). Following publication of the Review's report in March 2007, the Government undertook a three-month public consultation on options based on the recommendations of the Review. The Government received over 400 responses to the consultation. Several responses summarised the views of a number of stakeholders and many others were from representative organisations on behalf of their members. A number of meetings held in England, Scotland and Wales were attended by over 200 people. Formal written responses to the consultation came from a broad spectrum of interests. Employers and their organisations were strongly represented among respondents.

¹ 'Better Dispute Resolution. A Review of employment dispute resolution in Great Britain' Michael Gibbons March 2007

² 'Success at Work: Resolving Disputes in the Workplace' DTI March 2007

C: Objectives

6. Following the Review and the issues identified with the current system, the Government considered a package of measures to help solve employment disputes successfully in the workplace so that:

- Productivity is raised through improved workplace relations;
- Access to justice is ensured for employees and employers;
- The cost of resolving disputes is reduced for all parties;
- Disputes are resolved swiftly before they escalate; and
- Employment rights are not diluted.

7. These measures include: repealing the statutory dispute resolution procedures; providing better help and guidelines to resolve disputes at an earlier stage; and improving the way employment tribunals work.

Background

8. The Government's policy on resolving disputes in the workplace was last set out in the 2001 consultation paper *'Routes to Resolution: Improving Dispute Resolution in Britain'*. This proposed three principles for a modern dispute resolution system: access to justice; fair and efficient tribunals; and a modern, user-friendly public service. A framework to achieve this was laid out in primary legislation in the Employment Act 2002. This established statutory minimum dismissal and disciplinary and grievance procedures. A three-step process of a written statement, a meeting and an appeal was introduced by The Employment Act 2002 (Dispute Resolution) Regulations 2004 (the Regulations), and accompanied by revised employment tribunal rules of procedure and a revised Acas Code of Practice on disciplinary and grievance procedures.

9. The Government gave a commitment to review the Regulations after two years, to see if these objectives had been met. This commitment was confirmed in *'Success at Work'*³ as part of our programme to deliver better regulation. This is a key part of BERR's work to simplify regulation, by removing compliance costs and complexity, and addressing irritants for business and others affected by employment law, while ensuring that employee rights are protected.

10. In December 2006, the Government broadened the review to look end-to-end at the whole dispute resolution framework with the appointment of Michael Gibbons as an independent reviewer. The Gibbons Review (the Review) looked at the options for simplifying and improving all aspects of employment dispute resolution, to make the system work better for employers and employees.

11. The Review put forward recommendations for change, covering the current legal requirements, the way employment tribunals work and the scope for new initiatives to help resolve disputes at an earlier stage.

12. In its consultation *Success at Work: Resolving Disputes in the Workplace*⁴ in March 2007 the Government considered these recommendations and invited views on various measures to help resolve disputes successfully in the workplace. The partial impact assessment (RIA) published alongside the consultation provided initial estimates of the costs and benefits of these measures. This final impact assessment (IA) sets out revised estimates of the costs and benefits of the proposed changes in the light of responses to the consultation.

³ *'Success At Work: Protecting vulnerable workers, supporting good employers'* March 2006 URN 06/1024.

⁴ <http://www.berr.gov.uk/files/file27469.pdf>

D: Options identification

13. A summary of the measures on which the Government consulted is set out below. The partial impact assessment considered a package of measures (Option 3) against two alternatives: do nothing (Option 1) and repeal the statutory procedures and streamline employment tribunals (Option 2). Details of these options can be found in the partial impact assessment.

- **Option 1:** Do nothing;
- **Option 2:** Repeal the statutory dispute resolution procedures and streamline employment tribunals;
- **Option 3:** As Option 2 above, but also introducing a package of measures to promote effective dispute resolution including:
 - i. offering a new advice service;
 - ii. providing a new entry point for employment tribunal applications;
 - iii. providing a new approach to straightforward claims;
 - iv. making dispute resolution services available earlier in appropriate cases;
 - v. removing fixed periods for Acas conciliation.

14. Despite the fact that the available data to assess the effects of the 2004 reforms is limited, the Review identified some key trends within the current system. Since the introduction of the reforms in October 2004, the total number of employment tribunal claims has risen, but this is entirely due to a significant increase in multiple claims. Although the number of multiple claims varies from quarter to quarter, claims have on average risen from almost 16,000 a quarter in the financial year (FY) 2005-06 to around 19,200 in FY 2006-07⁵. Single claims fell initially after the 2004 reforms from around 16,000 claims a quarter to 12,000 in the fourth quarter of 2004. However, since then the number of single claims has been rising steadily to 14,400 per quarter in the first half of 2007. Following an initial fall, there has since been an upward trend in the number of single claims towards pre-October 2004 levels.

15. The 2004 reforms seemed to have had an initial impact on reducing the risk of unfair dismissal, but at a higher cost to business. The PricewaterhouseCoopers / BRE administration burdens exercise 2005 identified that the costs to business of complying with and carrying out the various elements of the statutory dispute resolution procedures amounted to £114.8 million⁶ (after taking account of business as usual costs).

16. In terms of the number of tribunal claims and associated costs together with the administrative burden placed on employers of having to follow the statutory procedures, Option 1 would not reduce the number of claims or the costs for all parties.

⁵ Multiple claims accounted for 58 per cent of all claims in 2006-07 compared with 36 per cent in 2004-05.

⁶ This is based on the number of employment tribunal claims registered in 2004/05, i.e. around 86,000

17. Following the consultation, the Government intends to make the following changes i.e. Option 3:

- Repeal the statutory dispute resolution procedures
- Revert to the case law⁷ which applied before 2004 regarding the role of procedural unfairness in unfair dismissal
- Invite Acas to revise its statutory Code of Practice on disciplinary and dismissal procedures, and give employment tribunals discretion to make adjustments to awards if parties have unreasonably failed to comply with the Code
- Introduce an expanded Acas advice service which will be able to give employers and employees information about the options open to them to resolve employment disputes
- Improve the existing short-track process for certain employment jurisdictions within the Tribunals Service
- Make additional Acas pre-claim conciliation services available where appropriate
- Remove the current time restrictions on Acas' duty to conciliate after a claim is made to a tribunal.

18. These are described briefly below.

19. In addition to these measures, the Government will work with the providers of Alternative Dispute Resolution (ADR) services, such as training and mediation, and with bodies representing employers and employees, to promote the benefits of early dispute resolution in the workplace.

Resolving more disputes in the workplace

20. Under this Option the statutory procedures⁸ would be repealed. The principles which underpinned the statutory regulations procedures are supported by employer and employee organisations. However, the procedures have had a number of unintended negative consequences, including an increase in the number of disputes needlessly reaching a formal stage, an increased use of legal advice and a focus on following procedure rather than reaching an early outcome. Provisions for repeal are contained in the Employment Bill. The Government also proposes to revert to the situation following the Polkey case, whereby a dismissal may be found to be unfair on procedural grounds but the tribunal may reduce the compensation award in proportion to the likelihood that dismissal would have gone ahead even if the correct procedure had been followed.

21. The Government recognises that repeal of the statutory procedures could result in some employers and employees failing to act appropriately in attempting to resolve disputes in the workplace prior to an employment tribunal claim. The Government is therefore proposing a short, non-prescriptive statutory Code should be introduced, drawn up by Acas in collaboration with stakeholders. This would allow tribunals to consider the appropriateness of parties' behaviour in the particular circumstances of a case rather than assessing compliance with set procedures. It is also proposed that tribunals be allowed to adjust awards by up to 25% if either party has acted unreasonably in failing to comply with elements of the relevant statutory Code.

Beyond the workplace

22. Michael Gibbons concluded that better advice and guidance for employers and employees and greater availability of conciliation in the early stages of disputes could enable more parties to resolve their differences without needing to go to tribunal. The Government is therefore proposing additional investment in improving the advice on resolving disputes available to employers and employees, and on funding a greater level of conciliation for disputes which are not yet the subject of an employment tribunal claim.

23. Two legislative changes intended to maximise the effectiveness of Acas conciliation are contained in the Employment Bill. Time restrictions on Acas's duty to offer conciliation to parties involved in employment tribunal claims are to be removed, ensuring that Acas conciliation is open to parties until a tribunal hearing has been held. This will ensure that Acas help is available when parties realise close to the date of a hearing that they wish to reach an agreed settlement. The Government also proposes that Acas's existing duty to conciliate on request from the parties in cases which are not yet the subject

⁷ In particular the House of Lords judgement in *Polkey v A E Dayton Services Ltd* [1988] AC 344

⁸ Sections 29-33 and Schedules 2, 3 and 4 of Employment Act 2002, along with s98A Employment Rights Act 1996 and consequential amendments in other primary and secondary legislation

of a tribunal claim should become a power. This would enable Acas to prioritise its caseload if that was necessary.

24. The Government believes that some tribunal cases, which revolve around the determinations of facts in cases of monetary disputes, could be dealt with more quickly and simply. The Government intends to enhance existing arrangements to deal with such cases effectively, through future changes to administrative practice and secondary legislation and through two provisions in the Bill. The first clarifies the power of employment judges to propose to the parties that a case should be determined in writing, but the Bill restates the position and makes it clear that both parties can insist on a hearing if they want one. A further provision is designed to allow claimants who have suffered direct financial losses as a result of not receiving money they were owed, over and above the non-payment itself, to ask the tribunal to order compensation for such losses to be paid by the employer. At present such compensation has to be sought in a separate action in the small claims court.

More effective employment tribunals

25. The Government consultation sought views on a number of different measures to improve and streamline processes and procedures. Most of these would require secondary legislation and will be consulted on in more detail at a later date.

E: Analysis of options

Costs and Benefits

26. The estimated costs and benefits associated with the Government's preferred option (Option 3) are presented and discussed below. They are compared against the baseline Option 1, the current system with no change.

27. It should be noted that although these figures have been developed since the partial RIA, they remain provisional estimates. They will be developed and revised further during the course of the Government's policy implementation, and will be re-presented as necessary in the impact assessments that accompany the relevant secondary legislation.

28. BERR will also be carrying out the next Survey of Employment Tribunal Applications (SETA) in early 2008 with the first findings available later that year.

Assumptions

29. Since some of the planned measures produce effects that are dynamic in nature, in that changes to one area will have a consequential impact on other aspects of the system, the various cost implications have been analysed using a simple model of the employment tribunal system. This model is based on a number of illustrative assumptions:

- The effect of any change to the system must be analysed against a consistent baseline number of tribunal claims. It is straightforward to assess the level of single claims from Tribunals Service data, around 52,000 in 2005/06. Furthermore the number of single claims has been relatively stable over recent years. It is inherently more difficult to do so for multiple claims as the underlying unit, and hence average, costs will vary according to how many claims an individual employer is facing. This model therefore adopts an estimate of single-equivalent claims with a baseline of 67,000 claims⁹;
- The model estimates costs and benefits for employers, employees and the Exchequer. The unit costs used for each group vary, reflecting as far as possible the costs of the current system to each group;
- Evidence from the Survey of Employment Tribunals 2003 (SETA 2003) shows that costs vary according to a number of factors, but are mainly affected by the stage reached in the dispute resolution process¹⁰ and the jurisdiction(s) under which the claim is filed;

⁹ Although the number of ET claims rose to around 133,000 in 2006/07, the number of single claims has remained relatively stable in recent years. For this reason and also to maintain consistency with the partial RIA we have continued to use 67,000 single-equivalent cases as our baseline.

¹⁰ Before reaching an employment tribunal hearing, claims may be withdrawn, settled privately or a settlement reached using Acas conciliation.

- Some data are available from the PricewaterhouseCoopers/BRE Administrative Burdens Measurement Exercise database. Both the aggregate information obligation (IO) burdens and their underlying unit costs have been used where appropriate¹¹;
- Although it is intended that the measures will take effect around April 2009, some involve initial set-up costs;
- Finally, only a relatively small proportion of employment disputes end up in the employment tribunal system. Many are settled or may be withdrawn along the way. The RIA on the statutory dispute resolution procedures estimated, on the basis of the Legal Services Research Centre (LSRC) Periodic Survey, that there may be between 700,000 and 900,000 employment-related justiciable¹² events each year

30. The model-derived estimates are based on the following assumptions:

- As discussed above, the number of initial disputes entering the system is set at 67,000;
- The new advice service successfully resolves 10% of potential disputes¹³ before they go any further in the system;
- Of the remainder, as with the current system, around 10% are dealt with by means of the fast-track process. However of these we assume that initially 10% are resolved through new powers to make written determinations with the consent of the parties, rather than through a hearing. We anticipate that recourse to written determination increases in subsequent years, but this is not yet included in the model;
- A further 40% engage with the expanded Acas pre-claim conciliation service, with half of these being successfully conciliated. Those that are not resolved re-enter the main employment tribunal system;
- Of all the cases that enter the employment tribunal system proper, conciliation is attempted in some 90% of cases and 40% of the time the case is resolved. Of those that are not resolved, 60% of cases fall out of the system for other reasons.

31. Unit costs for employer staff time involved in all stages of the dispute resolution process have been estimated at 2007 prices¹⁴. We have further assumed external legal costs at £250/hour, though only in cases where employers use representation in the form of solicitors at different stages in the process¹⁵.

32. These assumptions have been based on the available data (where it exists) as well on discussions with key stakeholders such as the Tribunals Service and Acas. Inevitably changes to the system involve a degree of uncertainty and as more evidence and data becomes available we will revise the model accordingly and present the results in subsequent impact assessments to be produced alongside secondary legislation in this area.

¹¹ It should be noted that the PwC admin burdens exercise was based on data for 2004/05. Furthermore the PwC data make no distinction between single and multiple claims and hence does not account for variations in unit costs. We have therefore attempted to produce a measure of single-equivalent claims, which inevitably leads to problems of comparability.

¹² A 'justiciable event' is defined by Genn, Paths to Justice, 1998 as a matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being 'legal' and whether or not any action taken by the respondent to deal with the event involved the use of any part of the civil justice system.

¹³ In the partial RIA we assumed 5%. Subsequent analysis of the effectiveness of the current Acas helpline service [ref. to 2007 Acas survey] and consultancy on the design of the expanded service indicate that the effectiveness of the service is likely to be greater than this.

¹⁴ These are wage data taken from the Annual Survey of Hours and Earnings (ASHE) 2007 and have been uprated by a factor of 1.21 to allow for non-wage labour costs. Specifically these relate to wages for office managers (SOC code 1152), lawyers (SOC 2411) and personnel/HR staff (SOC 1135).

¹⁵ See SETA 2003 chapters 4 and 7 and report annexes for further details

Costs

Exchequer Costs

One-off costs

33. One-off implementation costs will be incurred by the Government in 2008/09.

34. In total these costs are estimated at £6 million in 2008/09. This is mostly accounted for (£5.6 million) by the set-up costs of the advice service, which includes technical and training costs, additional staff costs, consultancy support and regional piloting costs¹⁶. In addition to this there will be costs of £0.4m for piloting the additional pre-claim Acas conciliation services, in order to confirm how best to target disputes that are likely to benefit from these services.

Recurring costs

35. Ongoing Exchequer costs then come on stream from 2009/10 onwards and are estimated to range between £12.5 million to £15.5 million each year.

36. These costs are mainly due to an extra £10m of funding for pre-claim Acas conciliation in cases that are considered most likely to benefit from it.

37. The new advice service is estimated to have running costs of between £2.5m to £5.5m, depending on the average length of calls made to the helpline¹⁷. This investment is over and above the current £7.5m spent on the Acas helpline.

Benefits

38. As a result of these policy and service changes, benefits are estimated to accrue to employers, employees and the Exchequer and are set out below. In each case benefits are realised mainly from 2009/10 onwards when the changes become fully effective.

39. A proportion of the benefits are as a result of savings made from the redesign of the employment tribunal system. On the basis of the model, we estimate that the number of single-equivalent employment tribunal hearings will fall by around 30%. It should be noted once again that this is based on single-equivalent cases entering the system to take account of multiples and therefore will not be directly comparable to published data by the Tribunals Service. However, the changes will have an effect throughout the system as cases take different routes to reach resolution and hence the savings identified amount to more than just those associated with a fall in the number of employment tribunal hearings.

Benefits to the Exchequer

40. Benefits to the Exchequer are estimated to amount to £12.1 million each year in 2009/10 and 2010/11. All of this is achieved through employment tribunal savings as a result of the repeal of the statutory procedures (£1m), the new interactive advice service (£7m) and earlier conciliation (£3.8m).

Benefits to employers

41. Total annual recurring savings to employers from all the proposed changes are estimated at £176.9 million and is made up as follows:

Employer savings from reduction in administrative burdens

42. Employers will benefit from a reduction in administrative burdens totalling £149.9 million¹⁸.

43. First of all, by repealing the three-step procedure employers will no longer be subject to the 11 information obligations relating to the procedures. Together the saving from this (after business as usual costs) will amount to £114.8 million. We would expect employers to continue to follow the principles which the procedures sought to encapsulate – in particular to communicate effectively with employees about disciplinary issues, and to comply with the requirements of the law on unfair dismissal – and the revised Acas statutory Code of Practice will continue to promote those principles and the ability of

¹⁶ BERR New Services Programme Advice Service Description, Detica, October 2007

¹⁷ *ibid*

¹⁸ It should be noted that this is based on the PwC administrative burdens study and hence is a) at 2005 prices and b) is based on a volume of around 86,000 ET claims for the period 2004/05.

tribunals to adjust awards for unreasonable failure to comply with the Code will incentivise compliance. The administrative burden saving to employers derives from the fact that they will no longer need to comply with the complex and sometimes over-burdensome requirements which arose from putting the principles into regulatory form.

44. Second, changes to the dispute resolution process will mean that those disputes that are resolved at either the helpline stage or through pre-claim conciliation will not require either party to complete tribunal claim and response forms (known as the ET1 and ET3). The PwC administrative burdens exercise estimated that each claim would cost employers £2,000 on average to produce their ET3 form, with much of this accounted for by the use of external services such as legal advice. From our model we have estimated that just over 26%¹⁹ of potential ET claims would not reach the formal ET1/ET3 stage. Using our standardised volume of 67,000 potential claims feeding into the dispute resolution system, this would amount to an overall saving to employers of £35.1 million²⁰.

Employer savings from other changes to the dispute resolution system

45. In addition to reductions in administrative burdens, employers will also benefit from further savings totalling £27 million. These savings are generated as a result of potential claims being resolved at an earlier stage in the dispute resolution process and the overall reduction in claims that reach a full tribunal hearing. Consequently there are reductions in internal staff time as well as the degree to which external legal advice is required. Specifically these cost savings are:

- The reduction in costs as a result of the 10% of claims that are now dealt with at the interactive advice service stage. This is estimated at £12.8 million.
- The 10% of fast-track claims that are dealt with by written determination. Savings amounting to £0.3 million mainly as a result of the time saved in no longer having to attend a hearing.
- £13.8 million generated as a result of the 20% of remaining claims being resolved via pre-claim conciliation.

¹⁹ Those cases dealt with by the interactive advice service and those resolved through pre-claim conciliation would not be subject to ET3 costs.

²⁰ As discussed above, it is difficult to compare directly with the PwC data as they used a volume of total ET claims of around 86,000.

Employee Benefits

46. Employees will benefit by £9.2 million from 2009/10 onwards mainly due to the effect of the interactive advice service (£5.3 million) as well as savings from using pre-claim conciliation (£3.8 million).

Table 1. Detailed costs and benefits (£m).

	2008/09	2009/10	2010/11
COSTS			
Exchequer – total one-off costs	6.0	0.0	0.0
- interactive advice service set-up	5.6	0.0	0.0
- pre-claim conciliation	0.4	0.0	0.0
Exchequer – total recurring costs	0.0	12.5 -15.5	12.5 – 15.5
- interactive advice service	0.0	2.5 – 5.5	2.5 – 5.5
- pre-claim conciliation	0.0	10.0	10.0
BENEFITS			
Exchequer – total recurring	0.0	14.0	14.0
- repeal 3 steps	0.0	1.0	1.0
- new approach to fast-track claims	0.0	0.4	0.4
- interactive advice service	0.0	9.7	9.7
- pre-claim conciliation	0.0	3.8	3.8
Employers – total recurring benefits	0.0	176.9	176.9
- repeal 3 steps	0.0	114.8	114.8
- new approach to fast-track claims	0.0	0.3	0.3
- interactive advice service	0.0	12.8	12.8
- pre-claim conciliation	0.0	13.8	13.8
- reduce burden of ET3s	0.0	35.1	35.1
Employees – total recurring benefits	0.0	9.2	9.2
- new approach to fast-track claims	0.0	0.2	0.2
- pre-claim conciliation	0.0	3.8	3.8
- interactive advice service	0.0	5.3	5.3

Source: BERR estimates

F: Risks

47. It is inevitable that the costs and benefit estimates presented above are liable to a degree of uncertainty, especially with changes to the dispute resolution system and the introduction of new measures.

48. It should be noted that there will be a ceiling on the additional resources available for pre-claim conciliation services, and Acas will be given the statutory ability to prioritise its use of these resources as it sees fit. This approach was broadly supported in consultation. Furthermore, the advice service is being designed to be capable of dealing with a significant expansion of demand over and above the current level. We are using expert consultancy to assess likely demand and identify the most effective structure for the future service. As a result, we will be piloting both the new pre-claim conciliation services and various aspects of the expanded advice service during 2008 to ensure they are fit for purpose and test our demand assumptions

G: Enforcement

49. If a dispute is not resolved in the workplace, an employee may make a claim to an employment tribunal as with the existing dispute resolution system. Employment tribunals are specialist judicial bodies that are part of the Tribunals Service.

H: Recommendation and summary table of costs and benefits

50. Overall costs and benefits by main group affected are given in Table 2 below.

51. Ongoing benefits to employers include an estimated £149.9 million as a result of reductions in administrative burdens.

52. It should be stressed that all these costs and benefits are subject to ongoing revision as new data and information becomes available.

Table 2. Summary of costs and benefits (£m).

	Costs		Benefits	
	Year 1	Year 2+	Year 1	Year 2+
Exchequer	6.0	12.5 – 15.5	None	14.0
Employers	None	None	None	176.9
Employees	None	None	None	9.2

Source: BERR estimates

I: Implementation

53. We expect that all the key changes will come on stream in April 2009.

J: Monitoring and evaluation

54. The planned changes to the Acas advice service and the additional pre-claim conciliation services will be tested through regional piloting before implementation. BERR intends to develop detailed benefits realisation plans for these services during the set-up phase. The overall volume of tribunal claims will also be an indicator of the effectiveness of the changes, although this is of course influenced by external factors including the introduction of new employment rights. Subsequently, the next Survey of Employment Tribunal Applications (SETA) to be carried out in early 2008 will give a benchmark upon which to assess the impact of any changes.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Please see the summary impact assessment for the details of the specific tests carried out with respect to this policy are.

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of the amendment to the National Minimum Wage regulations 2008	
Stage: Final	Version: 2	Date: 20 May 2008
Related Publications:		

Available to view or download at: <http://www.berr.gov.uk/employment/pay/national-minimum-wage/index.html>

Contact for enquiries: Asad Ghani/Nicola Dissem

Telephone: 020 7215 1627/0389

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

The National Minimum Wage (NMW) came into force in April 1999 and since then the NMW rates have been uprated annually. The government has accepted the Low Pay Commission's (LPC) recommendations on the new October 2008 rates for the NMW. The NMW is part of the government's strategy to provide fair standards in the workplace and to make work pay. This impact assessment also looks at extending the exemption of the NMW for work trials up to a duration of 6 weeks and the clarification of which government employment programmes are exempt from the NMW.

What are the policy objectives and the intended effects?

The NMW sets a wage floor below which pay cannot fall. The aim when setting the rates is to help the low paid through an increased minimum wage, while making sure that we do not damage their employment prospects by setting it too high. The extension of work trials from 3 to 6 weeks (a DWP policy lead area) is intended to build on the progressive extension of welfare to work policies to economically inactive groups. Clarification of which government employment programmes are exempt from the NMW will assist firms to apply NMW regulations correctly and ensure that workers are not underpaid.

What policy options have been considered? Please justify any preferred option.

The NMW policy targets an improvement in the wage rates of those earning low wages. The NMW rates are reviewed by the independent LPC annually. The LPC carries out a wide ranging consultation on the operation of the NMW and takes account of the economic position before recommending rates. DWP have carefully considered the appropriate duration of extended work trials.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The government has again asked the Low Pay Commission to monitor, evaluate and review the National Minimum Wage and its impact. DWP regularly monitor and evaluate work trials.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Pat McFadden

Minister of State for Employment Relations and Postal AffairsDate: June 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Business - increase in labour costs for proposed 2008 rates £0-62 million (of which increase in wage bill accounts for £0-54 million received by workers, remainder are non-wage labour costs (a transfer from employers to workers or the Exchequer). £50 per extended work trial to Government.			
	One-off (Transition) Yrs		1		
	£				
	Average Annual Cost (excluding one-off)				
	£ 0-62m	Total Cost (PV)	£ 0-62 m		
Other key non-monetised costs by 'main affected groups' Those involved in Government employment programmes may incur some small familiarisation costs. However, they also benefit from simplification and clarification of the law.					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Workers - increase in wage bill for proposed 2008 rates £0-54 million (this is a transfer from employers to workers). Non-wage labour costs (£0-8m) (a transfer from employers to workers or the Exchequer). Extending work trials will result in a net benefit of around £6,500 a year to the Exchequer (per trial).			
	One-off Yrs				
	£				
	Average Annual Benefit (excluding one-off)				
	£ 0-62 m	Total Benefit (PV)	£ 0-62m		
Other key non-monetised benefits by 'main affected groups' Extended work trials will result in more people in work, employers can fill vacancies more quickly and hence output, employment and profits will be higher.					

Key Assumptions/Sensitivities/Risks

Main assumptions can be found in the impact assessment. The uprating of the NMW involves transfers between employers and workers and employers and the Exchequer.

Price Base	Time Period	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)	
Year	Years	£	£	

What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	October 1 st 2008			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ 7.5 million			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ Negligible			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0
Net Impact			£ (0)

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

A: Strategic overview

Existing Government initiatives

NMW uprating

The NMW was introduced in April 1999. The rates have increased in a number of steps, most recently in October 2007. The adult minimum wage rate has increased from £3.60 in April 1999 to £5.73 (to come into effect in October 2008). The development rate of the NMW has also increased from £3.00 in April 1999 to £4.77 (to come into effect in October 2008). The 16-17 year olds rate was only introduced in October 2004 and has increased from £3.00 to £3.53 (to come into force in October 2008).

Government employment programmes

Government employment programmes are intended to provide individuals with training, work experience or temporary work or to assist them in seeking or obtaining work. Currently, for example, New Deal for Young People requires participants to opt for a period of activity that provides training or work experience with an employer, the voluntary sector or on an environmental project. Participants will remain on benefits for the duration of these placements, but some may opt for a period of subsidised employment with an employer, during which they will receive a wage. Participants in some employment programmes are exempt under the NMW Regulations 1999. These include individuals taking part in work placements with an organisation to gain work experience.

Work trials

Work Trials were originally part of the Job Interview Guarantee scheme, which started nationally in 1990, but became a separate national programme from April 1993. Currently, Work Trials enable employers to take on unemployed and inactive benefit claimants for a trial period of up to three weeks. The Work Trial must be for an actual job vacancy and be non-competitive: in other words, the individual on the Work Trial is the only person being considered for the post.

Individuals are eligible for a Work Trial if they are participating in a government programme such as the New Deal or Local Employment Partnerships, are receiving an out-of-work benefit such as Income Support or incapacity benefits, or have been claiming Jobseeker's Allowance (JSA) benefits for six months or more. Some people on JSA may also be eligible for Work Trials before six months, for example if they have a disability or if Jobcentre Plus staff believe they are at a particular disadvantage in the labour market.

The period of each Work Trial is agreed between the individual and the employer on an incremental basis and the individual can terminate the work trial at any time without it affecting their benefit entitlement. Many Work Trials last for less than the current three week maximum.

Implications for Administrative Burdens

The NMW is now a recognised part of employment practices and implementation costs of administering the proposed increase will be minimal.

Participation, for both employers and individuals, is voluntary. Therefore, both parties will have judged that any extra administrative costs they incur are expected to be more than offset by the benefits of participating in the Work Trial. For employers it will provide them with the opportunity to fill jobs more quickly. For individuals it will provide them with the opportunity to move into a job more quickly.

B: The issue

NMW uprating

Decisions on the NMW rates are made by the government following consideration of recommendations by the independent LPC. The LPC reports contain a large body of evidence and analysis on the impact to date of the NMW. The evidence and data collected and produced by the LPC have been used to inform this IA²¹.

Government employment programmes

Individuals taking part in employment programmes, such as those on New Deal, who are actually employed by an employer and receive or are entitled to receive remuneration from that employer (other than for the purpose of reimbursing expenses such as those incurred in travelling to and from work), are entitled to receive the national minimum wage. Participants in other programmes are exempt but will continue to receive Government benefits for the duration of the scheme.

Work Trials

The NMW Regulations 1999 currently provide an exemption for work trials of up to three weeks. Work trials involve an unemployed individual being placed with a potential employer for a trial period. The trial period relates to a particular post and the intention is that the unemployed individual will be offered the post if the trial is satisfactory. The trial allows both employer and potential employee to decide if the arrangements will suit them. During the trial the potential employee continues to receive benefits from DWP.

The Prime Minister announced that this scheme will be extended to six weeks for some client groups, eg lone parents. An amendment to the NMW regulations is required to ensure the extended scheme is exempt, in the same way as the current scheme.

The case for this change rests on the success of the current Work Trial programme, coupled with the progressive extension of welfare to work policies to harder to help economically inactive groups. Recent reforms to welfare to work policies announced by DWP are looking to ensure employment programmes are more flexible and responsive to the needs of different individuals, particularly those who have been out of work for a long period of time. In this situation individuals may need more time to demonstrate their suitability to potential employers, develop the confidence that they can take a job on a permanent basis or make decisions about the type of work they want to do. Extending the exemption will provide this flexibility, though we would expect it to be used in only a minority of cases, and only with the agreement of both the individual concerned and their employer.

Department for Work and Pensions (DWP) have produced an impact assessment which examines the impact of extending work trials from 3 to 6 weeks. BERR have incorporated their analysis into this impact assessment because this scheme would need amendments to the NMW regulations in order to exempt work trials from the National Minimum Wage.

Policy and economic rationale for Work Trials

Work Trials offer individuals the opportunity to try an actual job vacancy while remaining on benefit. Some customers may be job ready but hold reservations about a particular job. For others, particularly those who have been out of work for a longer period of time, they may not believe they will be able to hold down a job. In addition to their benefits, participants receive travel and meal expenses.

²¹ National Minimum Wage , Low Pay Commission report 2008
(http://www.lowpay.gov.uk/lowpay/report/pdf/2008_min_wage.pdf)

Work Trials offer employers the opportunity to test a person's suitability for a job. Research evidence suggests that employers sometimes screen out the long term jobless because they have misconceptions or stereotypical views about their work experience and skills²².

Work Trials can therefore help to address market failures, on both the demand side and the supply side of the labour market, caused by lack of information. On the demand side, Work Trials provide the facility for an employer to find out about an individual's actual performance in a job, providing information which would otherwise have been unavailable given the lack of a recent work history.

On the supply side, Work Trials can help to demonstrate to an individual that their non-financial barriers to work are not as high as they might have first thought and enable them to try out, without risking their benefits, types of work, working environments or work patterns that they may not have previously considered.

The other important economic rationale for Work Trials, like all active labour market programmes, is to support an increase in the effective supply of labour. This increases the efficiency of the job matching process and addresses structural mismatches in demand and supply which, over time, helps to ensure that the economy can continue to grow and support higher levels of employment without adding to inflationary pressures.

Consultation

Within government

BERR has been working closely with DWP and HMT.

Public consultation

The LPC consulted a range of stakeholders including employee and employer organisations to recommend new updated NMW rates.

C: Objectives

Background

NMW uprating

The purpose of the NMW is to create a minimum pay level and thus to protect workers from unacceptably low rates of pay. The NMW forms part of the government's policies to make work pay, alongside other measure particularly tax credits.

Decisions on the NMW rates are made by the government following consideration of recommendations by the independent LPC. The LPC reports contain a large body of evidence and analysis on the impact to date of the NMW. The evidence and data collected and produced by the LPC have been used to inform this IA²³.

The NMW was introduced in April 1999. The rates have increased in a number of steps, most recently in October 2007. The adult minimum wage rate has increased from £3.60 in April 1999 to £5.73 (to come into effect in October 2008). The development rate of the NMW has also increased from £3.00 in April 1999 to £4.77 (to come into effect in October 2008). The 16-17 year olds rate was only introduced in October 2004 and has increased from £3.00 to £3.53 (to come into force in October 2008).

²² For example, see Atkinson, Giles, and Meager (1996), *Employers recruitment and the unemployed*, IES Report 325 or *Employer perspectives on the recruitment, retention and advancement of low-pay, low-status employees* Atkinson J Williams M Cabinet Office July 2003.

²³ National Minimum Wage , Low Pay Commission report 2008 (http://www.lowpay.gov.uk/lowpay/report/pdf/2008_min_wage.pdf)

Government employment programmes

The regulations do not change the current position of individuals taking part in government employment programmes but seek to clarify the existing provisions to make it clear which participants are exempt from national minimum wage and which should receive national minimum wage for their work.

Extended Work Trials and the National Minimum Wage (NMW) regulations

There are a number of factors behind the government's decision to introduce extended Work Trials:

- the success of the current Work Trial programme, which although relatively small in scale is inexpensive to administer, and has a high success rate.
- ensuring Work Trials operate in a way that is consistent with the direction of travel of the government's wider welfare reform agenda. This is aiming to build on the success of current active labour market policies through a new generation of employment programmes, including Pathways to Work and the flexible New Deal, that ensure support is as responsive as possible to the needs of individuals in different geographical locations or those facing particular labour market challenges
- the progressive extension of welfare to work policies to economically inactive groups, particularly those on benefits, most of whom are not currently looking for work and have been claiming benefits for more than two years. It is important that existing employment policies such as Work Trials can be adapted to respond to the increasingly diverse needs of the individuals who will be accessing provision in the future.

For example, many people on lone parent and incapacity benefits will have been out of work for a long time and only have a weak attachment to the labour market. They may need more time to demonstrate their suitability to an employer, to develop the confidence that they can take a job on a permanent basis or to make decisions about the type of work they want to do. As with other labour market programmes, this flexibility will be carefully targeted at local level through the way in which it is implemented by Jobcentre Plus staff, so that it suits the needs of the individual.

We would expect it to be used in only a minority of cases, and only with the agreement of both the individual concerned and their prospective employer.

In order for extended Work Trials to become a reality, it is necessary to amend the existing exemption period for Work Trials within NMW regulation 12 (6) to cover periods up to a maximum of six weeks.

It has always been the policy intention that jobless individuals taking part in short term measures aimed at improving employability and supporting a transition to sustained work should not be subject to the National Minimum Wage. The existing three week exemption for Work Trials in the NMW Regulations reflects the fact that at the time the NMW was introduced this was the standard length of a Work Trial. There was no reason at the time to expect that changes in the objectives and scope of active labour market policies might mean this would need to change in the future. Nevertheless, this point has now been reached.

In line with normal DWP practice, guidance used by Jobcentre Plus in its work with employers will be updated for use for when the changes come into effect. This will help to ensure that administrative burdens are minimised by providing both employers and individuals with the accurate, relevant and timely information that they need to make their decisions.

D: Options identification

Options

NMW uprating

The LPC in their latest report to the government have recommended the following NMW rates:

Adult rate (for workers aged 22+)	£5.73
Development rate (for workers aged 18-21)	£4.77
16-17 year olds rate	£3.53

The LPC has recommended this latest rate rise after a wide ranging consultation and careful consideration of economic evidence and the impact on the employment prospects of low paid workers. The government has accepted this recommendation and the new NMW rates will come into force in October 2008.

The government accepts the LPC's analysis, that these proposals represent an acceptable balance between maintaining and enhancing the value of the NMW and preserving employment prospects for many of the most vulnerable workers. The LPC's analysis is set out in their report.

Government employment programmes

The existing regulations do provide an exemption for participants in certain employment programmes. However, the government believes that as currently drafted the regulations leave scope for uncertainty. It is therefore desirable to amend the regulations to clarify which participants are entitled to receive the national minimum wage and which participants are exempt.

Extended Work Trials

Department for Work and Pensions (DWP) have carefully considered the most appropriate period to extend work trials and have opted to examine the extension of work trials from 3 to 6 weeks.

E: Analysis of options

Costs and Benefits

NMW uprating

The impact of the proposed changes in the NMW rates will be to increase the pay of some workers above the level that it would otherwise have been. This will be a cost to employers and a benefit to workers (explored later on in this IA). The NMW is now a recognised part of employment practices and implementation costs of administering the proposed increase will be minimal.

Business sectors affected

All sectors are affected by the NMW, although agriculture has its own minimum wage machinery. In practice, the impact of the NMW is most keenly felt in a number of sectors: retail; hospitality; cleaning and security; social care; manufacture of textiles, clothing and footwear; and hairdressing. In their report, the LPC paid particular attention to these sectors.

Number of potential workers covered by the NMW uprating

The latest data relating to the low paid jobs in the UK relates to spring 2007. The data shows that at that time:

- an estimated 1.7 million jobs held by those aged over 21 were paid below the proposed October 2008 NMW adult rate of £5.73.
- an estimated 0.16 million jobs held by those aged between 18 and 21 were paid below the proposed development rate of £4.77 for October 2008.
- an estimated around 30,000 16-17 year olds were earning less than £3.40 – the proposed rate for 16-17 year olds from October 2008.

The numbers of jobs that are actually covered by the proposed increases in October 2008 will depend upon what has happened, and is likely to happen, to the wages of workers in the period between spring 2007 and October 2008.

The adult and development rates of the NMW were increased to £5.52 and £4.60, respectively, in October 2007, and it is assumed that these changes fed through into earnings for all workers earning below those levels. We are assuming full compliance with the NMW²⁴. The vast majority of businesses are compliant with NMW. The government has focussed on further increasing compliance, through increased resource for enforcement and monitoring of NMW and the introduction of a new penalty regime through the Employment Bill.

Increase in NMW rates from October 2008

In this IA, our main assumption is that the hourly pay of all those earning less than the October 2008 rates increases in line with average earnings growth (measured by the Average Earnings Index) between Spring 2007 and October 2008. This is based on an average increase using actual data for the period April 2007 to January 2008,²⁵ and a forecast rate of increase thereafter derived from the HM Treasury comparison of independent economic forecasts.²⁶

On this assumption, approximately 1 million workers will be covered by the proposed October 2008 NMW uprating. This comprises of around 30,000 16-17 year olds; around 100,000 18-21 year olds, and around 0.8 million workers aged 22 and over.²⁷ Of the around 1 million covered by the NMW uprating, around two-thirds will be women.

²⁴ It is very difficult to measure the precise level of non-compliance using ASHE data as there are exemptions from paying the NMW. Low Pay Commission's 2008 Report includes an analysis of the number of employees reported to be paid less than NMW in the 2007 ASHE data.

²⁵ Average earnings (including bonuses) grew by 2.2% April 2007 -January 2008. ONS Average Earnings Index (LMNQ).

²⁶ Source: http://www.hm-treasury.gov.uk/media/2/1/bud08_forecast_278.pdf (page 5, table 2) Independent average forecast for AEI growth in 2008 was 4.0 per cent in March 2008.

²⁷ This is calculated by deflating the October 2008 proposed rates by actual and forecast headline average earnings growth (including bonuses), i.e. by 6.2 per cent over 18 months, producing the equivalent rates of £5.40 for adults; £4.49 for 18-21 year olds and £3.33 for 16-17 year olds. The numbers affected are then calculated from the cumulative distributions of jobs and hourly pay based on 1p pay bands from ASHE 2007. The total number of workers covered by the NMW uprating is rounded to the nearest 100,000.

An alternative assumption, which is less likely, is that the hourly pay of all those earning less than the October 2008 rates will have increased in line with Retail Price Index (RPI) inflation between April 2007 and October 2008. This is based on an average increase using actual data for the period April 2007 to February 2008,²⁸ and a forecast rate of increase thereafter derived from the HM Treasury comparison of independent economic forecasts²⁹. On this assumption, the number of jobs that would potentially benefit from the proposed October 2008 increase is approximately 1.1 million, made up of about 30,000 jobs held by 16-17 year olds, about 0.12 million jobs held by 18 to 21 year olds and 0.97 million jobs held by those aged over 22³⁰.

Impact on labour costs of uprating

The impact of the upratings on wage and labour costs also depends upon the assumptions made about the likely path of wage increases between October 2007 and October 2008.

The methodology for estimating the increase in wage costs for the uprating is as follows:

- We calculate the additional average hourly uplift in pay that is required to bring all those jobs paying less than the October 2008 proposed rates onto the minimum wage. The size of this average increase will depend on the assumption made about what happens to earnings in these low paid jobs between October 2007 and October 2008 (i.e. the two scenarios discussed above, using either AEI or RPI). It is assumed that there is full compliance with the October 2007 rate³¹. Multiply this average increase per hour by the average number of hours worked by those workers affected. The latest data³² shows average hours worked per week excluding overtime was 29.6 hours for low paid 16-17 year olds; 26.6 hours for low-paid adults (22 and over) and 25.5 hours for low-paid 18 to 21 year olds³³;
- Multiply by 52 weeks per year.
- Multiply by the number of potential beneficiaries (see above).

To go from the total wage bill to total labour costs, we add 15 per cent to take account of the cost to employers of National Insurance and any other non-wage benefits (such as pension contributions) that are linked to wages. We use a figure of 15 per cent, which is less than the 21 per cent figure used in other IAs, because low-paying jobs are likely to be associated with smaller non-wage benefits.

It should be noted that the IA only considers the direct impact of the uprating. This means we have not accounted for additional costs to employers or benefits to workers (earning above the NMW) as a result of the uprating.

The size of the average hourly increase in pay that employers are required to pay to comply with the minimum wage policy depends on the assumption made about what happens to low-paid earnings

²⁸ RPI grew by 2.9% April 2007 –February 2008. ONS, Retail Price Index.

²⁹ The March independent average forecast for RPI growth in 2008 was 2.7 per cent. Source: http://www.hm-treasury.gov.uk/media/2/1/bud08_forecast_278.pdf (page 5, table 2)

³⁰ This is calculated by deflating the October 2008 proposed rates by actual and forecast growth in the retail price index, i.e. by 4.8 per cent over 18 months, producing the equivalent rates of £5.47 for adults; £4.55 for 18-21 year olds and £3.37 for 16-17 year olds. The numbers affected are then calculated from the cumulative distributions of jobs and hourly pay based on 1p pay bands from ASHE 2005. The total number of workers covered by the NMW uprating has been rounded.

³¹ Although full compliance with the October 2007 rates indicate presumed minimum rates of pay of £5.52/£4.60, we need to maintain a constant price base. So, we deflate these presumed minima to £5.40/£4.50/£3.33 to take account of 6 months of earnings growth between April and October 2007 under the AEI scenario. Under the alternative RPI scenario shown in the annex, the presumed minima are deflated using the RPI.

³² Source: April 2007 Annual Survey of Hours and Earnings.

³³ Low pay defined by hourly pay excluding overtime in April 2007 for all ages earning less than or equal to the October 2008 minimum wages, deflated by 18 months AEI growth to give equivalent April 2007 rates. This was £5.40 for ages 22+; £4.49 for 18 to 21 year olds and £3.33 for 16-17 year olds.

between April 2007 and October 2008. The two scenarios discussed above were that in the absence of any uprating, earnings would have risen in line with RPI or average earnings.

Costs for a typical business

The proposed changes to the October 2008 rates represent an increase of 3.8 per cent on the current rate for adults; 3.7 per cent for 18 to 21 year olds and 3.8 per cent on the current rate for 16-17 year olds. Those employers with staff currently paid at or close to the minimum wage will therefore see the earnings of these workers increase in line with the expected growth rate of average earnings. However, most workplaces do not employ people at or near current NMW rates and therefore will be unaffected. And most workplaces that do employ people at or near current NMW rates are unlikely to employ significant proportions at these rates. Thus most businesses are unlikely to see any large changes to their cost base.

Benefits

Increase in minimum wage rates in October 2008

1. The aggregate additional benefit for workers is expected to be neutral in the year commencing October 2008. This is because the minimum wage will rise broadly in line with expected average earnings growth.³⁴
2. Under the alternative assumption that low-paid workers' earnings rise in line with the RPI, the estimated wage bill effect and aggregate benefit to workers is expected to be around £54 million for the year commencing October 2008, equivalent to an average pay rise per worker of £49 for the year from October 2006.

Government employment programmes

The regulations clarify the existing provisions to make it clear which individuals taking part in employment programmes are exempt from the national minimum wage and which should receive national minimum wage for their work. This will benefit employers and individuals taking part since the position will be more clearly set out. Through the Employment Bill the government is introducing a new penalty for employers found to have underpaid their workers. Improved clarity about the application of national minimum wage will support employers in complying and not becoming subject to a penalty. Greater clarity will also ease HMRC's enforcement of the national minimum wage.

We do not expect these clarifications to impose any significant cost since there will not be a change in the way the exemptions operate. The changes will be of interest only to those involved in a scheme. For those groups the application of the exemptions will be clearly set out by the agency making the arrangements at the placement when it begins. Those involved in the scheme may incur some small familiarisation costs which we do not quantify in this impact assessment.

³⁴ IA calculations assume on average hours worked per week of 25.1 for adults, and 27.2 for 18-21 year olds and 31.3 for 16-17 year olds. ASHE 2007. We also assume that the NMW would have grown in-line with Average Earnings if there was no uprating.

Extended Work Trials

Work Trials are an important but in absolute terms relatively small programme. In recent times it is estimated that around 15,000 people annually have taken up one of the existing 3-week Work Trials.

The success rate of people moving into the job from a Work Trial is around 50% and has been very stable over time. In addition, there may be some people who move from a Work Trial into a different job than the one they have been trying out, either with the same or a different employer. These jobs are not recorded.

There are a number of developments, including the extension of the Work Trial period, which leads us to expect the numbers of people starting a Work Trial in the future will increase:

- the success of the current programme has led to more emphasis being placed on the value of Work Trials in recent initiatives such as Local Employment Partnerships.
- the option of a longer period of time to test out a job may encourage more employers to offer and more individuals to participate in a Work Trial.

There is little current evidence on which to take a view of the number of people likely to take up Work Trials as a result of these developments. However, early evidence from the operation of Local Employment Partnerships, combined with the greater attractiveness of extended Work Trials to both employers and individuals, suggests it would be reasonable to assume that they might increase by around 10,000 a year on current levels.

Although extended Work Trials allow more time for participants to make a decision about a job, this time will not necessarily be taken up. Under current arrangements the maximum period of a Work Trial is three weeks, but in practice the modal length of all the Work Trials undertaken is just one week. Clearly for many people it takes only a relatively short period of time to come to a decision about whether to continue a job on a permanent basis.

Therefore, under these proposed changes we would expect that only a minority of all Work Trial starters would need to take advantage of the extended period. Under current arrangements only about one in ten starters remain on their Work Trial right up to the three week maximum. A cautious assumption would be that the availability of extended Work Trials, alongside the aim of getting more people from disadvantaged groups to participate, leads to this figure rising to one in five of all starters. This implies around 5,000 people a year commencing a Work Trial that ends up lasting more than 3 weeks (though only some of these would make use of the full 3 week extension).

Costs and benefits to individual employers and participants

One of the key objectives of existing Work Trials is to make participation by both employers and individuals as close to cost and hassle free as possible. Similar arguments apply to extended Work Trials. The programme is voluntary; with take up encouraged on the basis that there is little risk and little to lose for either party. As indicated earlier, individuals continue to receive their benefits and get travel and meal expenses. There may be some recruitment and training costs for employers, though as Work Trials are required to be actual job vacancies these are unlikely to be materially different from the costs that would have been incurred anyway. A Jobcentre Plus employer survey conducted in 2004 found that only about one in twenty firms responding currently use Work Trials. However, around half said the availability of Work Trials would be likely to increase their usage of Jobcentre Plus.

Since a Work Trial must be for an actual job vacancy, employers are in effect receiving a wage or recruitment subsidy in return for considering an individual who they might otherwise have over-looked. However, given their short duration and non-competitive nature (which means they can be set up quickly) the key benefit to an employer in many cases is likely to be in getting an employee for a period when that post would otherwise have yet to be filled.

Individuals on benefit who find work as a result of Work Trials will gain financially as their in-work income from earnings and tax credits will be higher than their out-of-work income from benefits and tax credits.

Public expenditure costs and benefits

The public expenditure costs of Work Trials are also small. Individuals continue to receive their benefits while participating, but this only leads to an increased cost for the state if they would otherwise have moved into work during the period of the Work Trial. Given the target group for the programme – economically inactive and long-term unemployed people – and the relatively short duration of even extended Work Trials compared to most other labour market programmes, this risk is small.

The main additional cost of the programme to the government lies in the arrangement of the initial placing by Jobcentre Plus staff and in paying expenses for which individuals would not otherwise be eligible. Compared to the current cost of £25 per existing Work Trail we are assuming that the extended Work Trials will be £50. This is a deliberately cautious assumption³⁵.

The net impact of the policy on employment depends on two factors - additionality and displacement. Additionality refers to the proportion of those getting jobs through the programme that would not have done so otherwise. Additionality will not be 100% - because of the normal process of flows into and out of work in the labour market some people will get jobs anyway. Estimating additionality is difficult since it is hard to know precisely what would have happened to those on the programme had they not participated.

Displacement and/or substitution refers to the fact that the programme may have a negative impact on the employment chances of other jobseekers in the labour market, since they will not have access to these jobs. In practice, the UK labour market is highly flexible and the number of jobs is not fixed. Someone who fills a job does not necessarily preclude another person from finding alternative work. Over the medium term employment is primarily driven by the supply side, the proportion of people active in the labour market, rather than by any limit on the number of job opportunities available. Therefore short-term displacement is not necessarily a serious concern as it does not prevent programmes from improving the functioning of the labour market and, over time, supporting higher levels of sustained employment.

There is no significant quantitative evidence of displacement in existing evaluations of UK labour market programmes³⁶. Other evidence suggests that the UK labour market is sufficiently flexible that substitution is not a serious concern. For example, Gilpin et al³⁷ show that the flow of workers from new EU member states did not have a significant impact on the unemployment chances of natives. Given the paucity of any empirical evidence that substitution or displacement is a concern, this analysis assumes that they are not. As a consequence it is likely that the number of additional jobs attributable to Work Trials is likely to be close to the actual number of people moving into work – around 50% of take up.

Where jobs are additional, and not offset by substitution and displacement, there will be financial savings to the Exchequer from reduced benefit payments and higher tax, national insurance, and VAT receipts. We assume that moving people into work through Work Trials, over the course of a year, has net benefits of around £6,500 for the Exchequer. This estimate includes reduced benefit payments, higher income tax and National Insurance contributions, higher indirect tax payments and payment of tax credits and is in line with assumptions commonly used in the analysis of prospective labour market programmes³⁸.

We assume that 5,000 people take part in extended Work Trials annually and, based on the performance of the existing programme, that the cost is £50 per person with a gross conversion into jobs of 50%³⁹. We also assume a duration of one year for all jobs taken up by extended Work Trial participants. In reality some jobs will last longer than this and some much less. Analysis of the New

³⁵ The assumption that extended Work Trials will cost £50 per head is deliberately cautious as some of the current figure reflects the fixed cost of setting up a Work Trial to begin with.

³⁶ See for example, "Evaluating the impact of a mandatory job search assistance programme" Blundell, Dias, Meghir and van Reenen (2001) IFS working paper WP01/20

³⁷ "The impact of free movement of workers from Central and Eastern Europe on the UK labour market" Gilpin, Henty, Lemos, Portes, Bullen (2006). DWP working paper 29.

³⁸ This figure was used, for example in the impact assessment carried out for "Ready for Work: full employment in our generation", the government's recent statement of the next steps on welfare reform.

³⁹ If extended Work Trials are used by individuals who are, on average, more disadvantaged, the success rate could be lower. Against that, there is evidence that the current estimated figure of 50% may be under-stated.

Deal for Disabled People, for example, suggests employment effects can last for several years. However one year is used here for simplicity and in the absence of specific evidence for programmes of this type.

On this basis additionality of no more than one and a half per cent would be needed for the investment in extended Work Trials to break even. In fact, the experience of other labour market programmes is that rates of additionality are much higher - particularly over the medium term where substitution and displacement can be ignored.

Extended Work Trials – which are likely to have an additionality rate much closer to 50% of take up – are therefore, very likely to have a positive pay-off in economic terms for individuals, employers and the taxpayer:

- individuals: more people will be in work
- employers: vacancies will be filled more quickly and, hence, output, employment and profits will be higher
- public finances: the additional costs are small and the flowbacks to the Exchequer are much more substantial.

F: Risks

The estimates of costs and benefits presented in this impact assessment are necessarily based upon a number of assumptions which are subject to uncertainty. In terms of the annual uprating, the analysis builds in sensitivity to provide a range of costs and benefits.

G: Enforcement

The NMW is enforced by the HM Revenue and Customs. HMRC respond to complaints about situations where workers may not be being paid NMW. They also visit employers identified through risk assessment. Individuals may also make a complaint to an Employment Tribunal that their employer has not paid them the NMW. Employers found to have underpaid their workers NMW are required to pay arrears to their workers and may be subject to a penalty. The Employment Bill, currently being considered by Parliament, will introduce an automatic penalty for all employers found by HMRC to have underpaid their workers, potentially unlimited fines and a new way of calculating arrears to ensure workers do not lose out in real terms as a result of underpayment.

H: Recommendation and summary table of costs and benefits

Table 1 below, shows the effect on the aggregate wage bill and labour costs of the October 2008 uprating under the assumption that in the absence of any uprating, low-paid earnings would have risen in line with average earnings.

Table 1: Impact of the October 2008 uprating on aggregate wage and labour costs (assumes low-paid earnings rise in line with average earnings)

Increase in wage bill for proposed 2008 rates	£0 million
Percentage increase in economy's total wage bill due to uprating	0.0%
Increase in labour costs for proposed 2008 rates	£0 million

Source: BERR estimates, based on ONS sources.

Table 1 shows that employers face no additional cost (over and above what they would in any case have to pay their workers) because the NMW is not rising faster than average earnings in October 2008.

Under the alternative, less likely assumption that low-paid earnings rise in line with the RPI, the impact on wage and labour costs would be greater. This effect is shown below.

Impact of the 2008 uprating on aggregate wage and labour costs under RPI assumption

Table 1 above shows the effect of the uprating on the aggregate wage bill and labour costs under our main assumption that in the absence of any uprating, low-paid earnings rise in line with average earnings.

Table 2 below, shows the effect on wage and labour costs under the alternative assumption that in the absence of any uprating, low-paid earnings rise in line with the RPI.

Table 2: Impact of the 2008 uprating on aggregate wage and labour costs (assumes low-paid earnings rise in line with the RPI)

Increase in wage bill for proposed 2008 rates	£54 million
Percentage increase in economy's total wage bill due to uprating	0.01%
Increase in labour costs for proposed 2008 rates	£62 million

Source: BERR estimates, based on ONS sources.

The £54 million increase in the wage bill is a transfer from employers to workers; it represents a cost to employers but a benefit to workers. Increase in labour costs is made up of increase in the wage bill plus non-wage labour costs (£8 million). Non-wage labour costs represent a transfer from employers to workers or employers to the Exchequer.

Other than the replacement of the AEI assumption by the RPI assumption, the methodology is the same as that described in the main section of the IA:

- We calculate the additional average hourly uplift in pay that is required to bring all those jobs paying less than the October 2008 proposed rates onto the minimum wage. The size of this average increase will depend on the assumption that average earnings in these low paid jobs rise in line with RPI between October 2007 and October 2008 it is assumed that there is full compliance with the October 2007 rate⁴⁰. Multiply this average

⁴⁰ Although full compliance with the October 2007 rates indicate presumed minimum rates of pay of £5.52/£4.60, we need to maintain a constant price base. So, we deflate these presumed minima to

increase per hour by the average number of hours worked by those workers affected. The latest data⁴¹ shows average hours worked per week excluding overtime was 29.2 hours for low paid 16-17 year olds; 25.6 hours for low-paid adults (22 and over) and 26.7 hours for low-paid 18 to 21 year olds⁴²;

- Multiply by 52 weeks per year.
- Multiply by the number of potential beneficiaries under the RPI scenario (see above).

To go from the total wage bill to total labour costs, we add 15 per cent to take account of the cost of employers National Insurance and any other non-wage benefits (such as pension contributions) that are linked to wages. We use a figure of 15 per cent, which is less than the 21 per cent figure used in other IAs, because low-paying jobs are likely to be associated with smaller non-wage benefits.

Government employment programmes

We do not expect these clarifications to impose any significant cost since there will not be a change in the way the exemptions operate. The changes will be of interest only to those involved in a scheme. For those groups the application of the exemptions will be clearly set out by the agency making the arrangements at the placement when it begins.

Extended Work Trials

As Work Trials are a relatively small scale programme, we would not expect extended Work Trials alone to have a significant quantitative effect on the numbers of people moving from out-of-work benefits into employment.

However, extended Work Trials will form just one part of a suite of labour market programmes. This reform - which requires amendment to the NMW Regulations to make it possible - is consistent with the long term direction of travel towards employment programmes that are as flexible and responsive as possible and, as a result, better able to meet the potentially diverse needs of those who take them up.

This change will also allow government to respond positively to requests for greater flexibility from local areas that have highlighted the existing three week limit as an example of centrally determined rules that reduce their ability to tailor support to individual need, especially for those furthest from the labour market.

While small in itself, Work Trials operate in tandem with other programmes such as New Deal and Local Employment Partnerships. Taken together, improvements in the operation these programmes and the effectiveness with which they interact could have significant effects in improving the efficiency of the labour market and, over time, supporting higher levels of sustained employment.

£5.47/£4.55/£3.37 to take account of 6 months of earnings growth between April and October 2007 under the RPI scenario.

⁴¹ Source: April 2007 Annual Survey of Hours and Earnings.

⁴² Low pay defined by hourly pay excluding overtime in April 2007 for all ages earning less than or equal to the October 2008 minimum wages, deflated by 18 months RPI growth.

I: Implementation

The new NMW rates will apply to pay reference periods beginning on or after 1 October 2008. The amendments relating to employment programmes and extended Work Trials will come into effect from the day after the amending regulations are made. Compliance with the new provisions will be checked by HMRC. HMRC investigate complaints about situations where workers may not be being paid the NMW and also investigate companies where HMRC believe there is a high risk of non-compliance.

J: Monitoring and evaluation

The government has asked the LPC to monitor, evaluate and review the NMW and its impact, with particular reference to the effect on pay, employment and competitiveness in the low paying sectors and small firms; the effect on different groups of workers, including different age groups, ethnic minorities, women and people with disabilities and migrant workers and the effect on pay structures. The report is due by the end of February 2009.

Information on enforcement is set out in the government's evidence to the LPC. The evidence is published on the BERR website and copies are placed in House Libraries.

DWP will continue to monitor and assess the operation of Work Trials.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annex A

Coverage estimates of the 2008 uprating by sex and Government Office region

BERR estimates that approximately 1 million workers are covered by the October 2008 uprating of the National Minimum Wage (NMW). This estimate is based on 1p pay bands from the ONS' Annual Survey of Hours and Earnings (ASHE) 2007, and takes account of actual and forecast average earnings growth between April 2007 and October 2008. Of the estimated 1 million workers covered, around two thirds will be women.

Table A1. Number of workers that are covered by the October 2008 National Minimum Wage uprating by age and sex

	Male	Female	Total
16-17	20,000	10,000	30,000
18-21	50,000	40,000	100,000
22 and over	260,000	530,000	800,000
Total	330,000	590,000	920,000

Source: BERR estimates based on ONS' Annual Survey of Hours and Earnings (ASHE) 2007

Note: These data are based on 1p pay bands from the ONS ASHE and take account of actual and forecast average earnings inflation between the period Spring 2007 and October 2008; uprating from £3.40 to £3.53 for 16-17 year olds, £4.60 to £4.77 for 18- 21 year olds and from £5.52 to £5.73 for those 22 and over. ASHE 1p pay bands measure number of jobs; therefore coverage estimates assume workers do not hold more than one job at the NMW. Figures have been rounded to the nearest 10,000. Numbers may not sum to total due to rounding.

Coverage estimate by country and Government Office region are also provided (Table A2).

Table A2. Number of workers that are covered by the October 2008 National Minimum Wage uprating by country and government office region

Country or region	Coverage estimate
Wales	50
Scotland	90
<i>Northern Ireland</i>	
	40
England	740
North-East	60
North-West and Merseyside	120
Yorkshire & Humberside	80
East Midlands	80
West Midlands	100
Eastern	80
London	70
South East	90
South West	70
United Kingdom	920,000

Source: BERR estimates based on ONS' Annual Survey of Hours and Earnings (ASHE) 2007

Note: These data are based on 1p pay bands from the ONS ASHE and take account of actual and forecast average earnings inflation between the period Spring 2007 and October 2008; uprating from £3.40 to £3.53 for 16-17 year olds, £4.60 to £4.77 for 18- 21 year olds and from £5.52 to £5.73 for those 22 and over. ASHE 1p pay bands measure number of jobs; therefore coverage estimates assume workers do not hold more than one job at the NMW. Figures have been rounded to the nearest 10,000. Numbers may not sum to total due to rounding.

Annex B

SPECIFIC IMPACT TESTS

1. Competition Assessment

Business sectors affected

The NMW provides a floor for wages and therefore ensures that firms cannot compete against each other by driving down wages to unacceptable levels. Most of the sectors where the impact of the NMW is felt most keenly are characterised by large numbers of relatively small firms. To the extent that the NMW increases labour costs, these are borne by all employers in a sector. It is therefore unlikely that the NMW creates significant barriers to entry.

We have fully considered the questions posed in The Office of Fair Trading competition assessment test⁴³ and conclude that clarifying the exemptions for those participating in employment programmes, extending work trials or uprating the NMW is unlikely to hinder the number or range of suppliers or the ability and incentive for businesses to compete. Although the effects of extended work trials alone are expected to be small, it supports an increase in labour supply, increasing the efficiency of the supply side of the labour market.

Table A1. Competition assessment.

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BERR

2. Small Firms Impact Test

The LPC's remit required them to consider the impact of the NMW on small firms. Their recommendations were based upon extensive analysis and gathering of evidence, including evidence received from, and discussion with, small businesses and their representatives.

As indicated earlier, Local Employment Partnerships will be an important source of opportunities for the new extended Work Trials. Through LEPs Jobcentre Plus are seeking to engage employers across a wide range of different sectors, securing stronger commitments to take people on from the most disadvantaged jobless groups in return for a more personalised and flexible recruitment service.

Over 600 employers have already signed up to LEPs, with an initial focus on larger employers in the sectors that account for the greatest proportion of Jobcentre Plus' current business. However, small and medium size enterprises account for about half of all new vacancies, and JCP will increasingly be looking to use LEPs, and opportunities such as Work Trials that form one part of it, as a way of engaging smaller firms.

⁴³ http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft876.pdf

3. Equality Impact Assessment

NMW uprating

In line with better regulation best practice and the Equalities Duties we have considered the impact of the NMW uprating on minority groups.

Who will be affected?

The Low Pay Commission has carefully monitored the position of women, ethnic minorities and people with work limiting disabilities in relation to the NMW uprating.

Gender

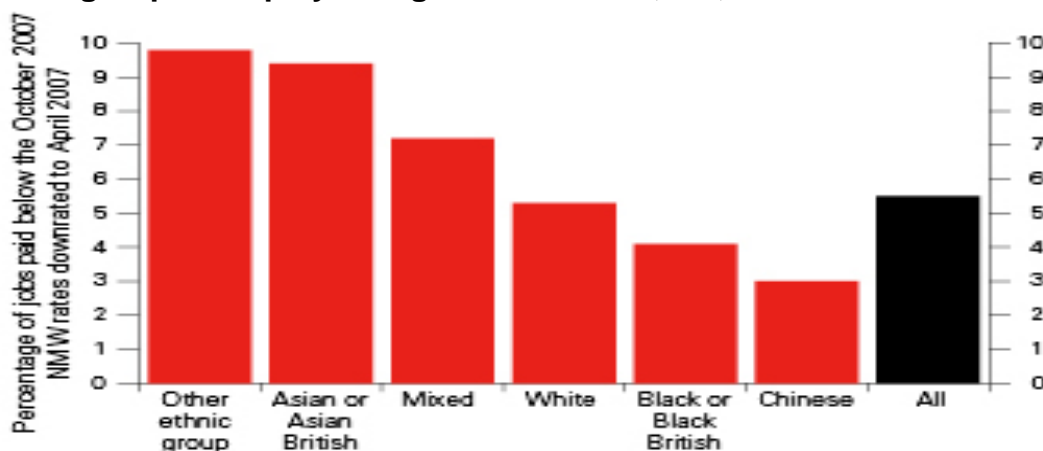
The gender pay gap including and above the middle of the earning distribution is largely independent of the NMW. However, towards the lower end of the distribution the reduction in the gender pay gap is most obvious, declining from 10.5 per cent in 1998 to 3.8 per cent in 2007 – bottom 5th percentile. This suggests that the NMW has had a major impact in reducing the gender pay gap among the low paid.

We estimate that around 590,000 women will be covered by the October 2008 upratings.

Ethnicity

Workers from the ethnic minorities are more likely to be employed in the low paying sectors as compared to their white counterparts. There is evidence that the earnings position of the ethnic minorities has improved towards the lower end of the distribution since the introduction of the NMW. An estimate by the LPC suggests that 7.7 per cent of the employees from ethnic minority groups were covered by the October 2007 uprating in the NMW compared to 5.3 per cent of white employees (see chart below).

Estimated coverage of 2007 upratings of the National Minimum Wage by Ethnic group of employees aged 16 and over, UK, 2007



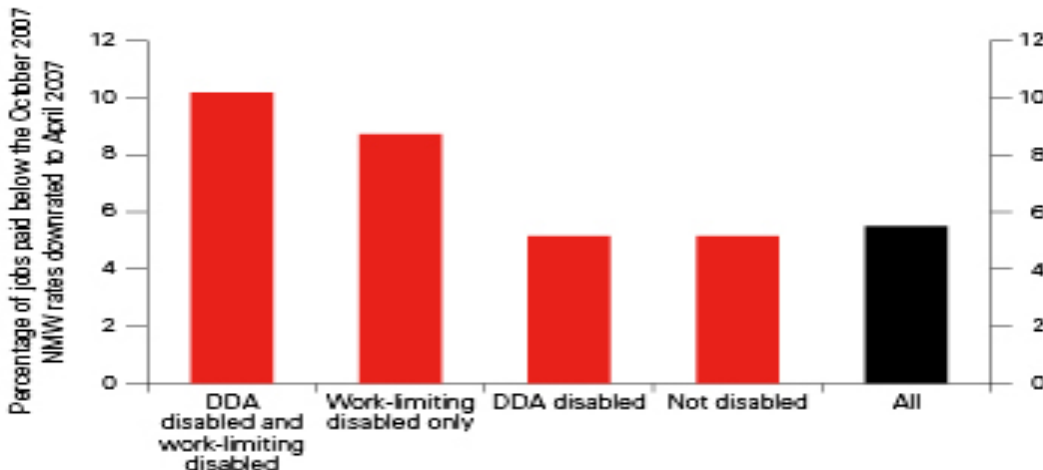
Source: ONS estimates based on LFS microdata, not seasonally adjusted, UK, Q2 2007.

Note: Covered employees defined as adults (aged 22 and over) earning less than £5.40, youths (aged 18–21) earning less than £4.50 and 16–17 year olds earning less than £3.32 in April 2007.

Work limiting Disability

As illustrated in the figure below an increasing proportion of workers with work limiting disabilities continues to benefit from increases in the minimum wage. The October 2007 uprating covered 8.7 per cent of the employees with work limiting disabilities, compared to 5.2 per cent of workers without such disabilities. This proportion increases to 10.2 per cent if we consider workers having a work limiting disability and workers having disability as defined in the disability discrimination act (DDA).

Estimated coverage of 2007 upratings of the National Minimum Wage by Disability for employees aged 16 and over, UK, 2007



Source: ONS estimates based on LFS microdata, not seasonally adjusted, UK, Q2 2007.

Note: Covered employees defined as adults (aged 22 and over) earning less than £5.40, youths (aged 18–21) earning less than £4.50 and 16–17 year olds earning less than £3.32 in April 2007.

Consultation with stakeholders in relation to the October 2008 uprating of the NMW

The LPC entered extensive formal and informal consultation with the interested parties such as worker and employer unions⁴⁴. The LPC visited different parts of the UK to talk to individuals and businesses directly affected by the National Minimum Wage. The LPC also spent two days listening to the oral evidence from stakeholders. In addition to these formal exercises the LPC was also involved in many informal meetings and visits involving the businesses and other interested groups. The increase in the NMW is unlikely to have any intentional specific impact in terms of race, gender and disability as it is a broad policy and is targeted at a broader group of people (paid at or below the NMW) rather than any specific minority group.

Removal of barriers which hinder equality

The NMW policy is a broad policy and is designed to have a positive impact on all workers in low paid sectors regardless of their gender, race or disability. Therefore the current NMW uprating is unlikely to create any barriers to equality in terms of gender, race and disability. The LPC⁴⁵ have concluded that women, ethnic minority groups and people with work-limiting disabilities have become more involved in the labour market over the last ten years and there is no evidence of an adverse impact on their employment due to the minimum wage.

⁴⁴ The parties of the consultation included BRC, CBI, BCC, BRC, BATC, BBPA, TUC, PCS, NUS etc

⁴⁵ National Minimum Wage, Low Pay Commission report 2008
(http://www.lowpay.gov.uk/lowpay/report/pdf/2008_min_wage.pdf)

Extended Work trial equality issues

The extension of Work Trials is part of a shift in the focus of active labour market help from people on unemployment benefits to people on 'inactive' benefits such as lone parent and incapacity benefits.

This shift is likely to improve the relative employment situation for women because, while women make up about half of all benefit claimants, they account for a disproportionate share of recipients of some inactive benefits. Over ninety percent of lone parents in Great Britain are female. Female lone parents are more likely than male lone parents to be out of work (43.5 percent of lone mothers are not employed compared to 35.3 percent of lone fathers) though this gap narrows for parents of older children. Lone parents who engage in work focused interviews, join the New Deal for Lone Parents (NDLP) or take part in other programme support will all be eligible to take up extended Work Trials.

The Incapacity Benefit caseload has fallen from a high of 2.77 million in May 2003 to 2.64 million in May 2007, its lowest level in seven years. Programmes such as Pathways to Work and the New Deal for Disabled People have already had some success in boosting the number of disabled people moving into work. Extended Work Trials, alongside other initiatives such as Local Employment Partnerships, will help to maximise the benefits of the investment these programmes have made in participants' skills and motivation by linking them more effectively to job vacancies. Alongside this Work Trials provide an opportunity to seek commitment from employers to consider the widest range of possible candidates, including those from groups, such as disabled people, that they might otherwise overlook.

While about 1 in 10 of the working age population in Great Britain has an ethnic minority background, about 15% of NDLP (New Deal for Lone Parents) participants are from an ethnic minority, while 20 percent of long-term JSA (Job Seekers Allowance) claimants also have an ethnic minority background. Nearly 1 in 10 of the disabled working age population comes from an ethnic minority background—similar to their share in the overall population.

With extended Work Trials open to on long-term JSA claimants, all recipients of inactive benefits, and all jobless people in the most disadvantaged wards (where many people from ethnic minorities live) the programme aligns well with the aim of drawing local ethnic minority populations into job vacancies in local firms.

However, as the Work Trial programme itself is small in scale, the effects from Work Trials alone are also likely to be small.

URN: 08/936

Summary: Intervention & Options

Department /Agency: Business, Enterprise and Regulatory Reform	Title: Impact Assessment of amendments Maternity and parental leave regulations and Paternity and Adoption leave regulations 2008	
Stage: Final	Version: 1	Date: 27 June 2008
Related Publications: (Amendments) 2008 Regulatory Impact Assessment for Sex Discrimination Act 1975		

Available to view or download at:

<http://www.>

Contact for enquiries:

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

Amendments have been made to the Sex Discrimination Act to remove the exception which allowed an employer to discriminate against a woman on additional maternity leave. This ensures that the right to non-pay contractual terms and conditions to which a woman is entitled during ordinary maternity leave continues throughout additional maternity leave. As a consequence, changes are proposed to Maternity and Parental leave etc regulations to restore parity with the Sex Discrimination Act and to avoid confusion for employers and employees.

What are the policy objectives and the intended effects?

High Court judgement of March 2007⁴⁶ ruled on the effect that the amendments to the Sex Discrimination Act 1975 (SDA) must have. Government policy is to give effect to this judgement and is making changes to the Maternity and Parental leave regulations to reflect the amended Sex Discrimination provisions so as to clarify the legal position. There is no additional burden on employers as a result of these amendments.

In addition, Government policy is to provide protection for employees taking adoption leave that is, as far as possible, equivalent to that afforded to biological mothers.

What policy options have been considered? Please justify any preferred option.

Giving effect to the judgement and doing no more at the earliest appropriate opportunity is the only viable option. The impact on Maternity provisions, as detailed in this assessment, is as a direct result of the SDA changes and as such has no additional burden (cost estimates are provided within the IA for SDA amendments 2008 and are repeated here for transparency). Changes to adoption provision are being made to provide equivalent protection to adopters and the additional costs are detailed here.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Government regularly reviews maternity and adoption provisions through Maternity and Paternity rights surveys. The next survey will take place in 2009 to be published 2010.

Ministerial Sign-off For Final Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Pat McFadden, Minister of State for Employment Relations and Postal Affairs Date: 27 June 2008

⁴⁶ *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin)

Summary: Analysis & Evidence

Policy Option:	Description: Extension of entitlement to terms and conditions of employment during Ordinary Adoption leave to Additional Adoption leave.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Transition costs arise from familiarisation costs only. In addition to these costs of £5.91m per year arise from the provision of non-pay contractual benefits during additional adoption leave.				
	<table border="1" style="width: 100%;"> <tr> <td style="width: 60%;">One-off (Transition)</td> <td style="width: 40%; text-align: center;">Yrs</td> </tr> <tr> <td style="text-align: center;">£ 6.33m</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£ 6.33m	
	One-off (Transition)		Yrs			
	£ 6.33m					
<table border="1" style="width: 100%;"> <tr> <td style="width: 60%;">Average Annual Cost (excluding one-off)</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">£ 5.91m</td> <td></td> </tr> </table>	Average Annual Cost (excluding one-off)		£ 5.91m			
Average Annual Cost (excluding one-off)						
£ 5.91m						
Total Cost (PV)		£ -55.31m				
Other key non-monetised costs by 'main affected groups'						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'				
	<table border="1" style="width: 100%;"> <tr> <td style="width: 60%;">One-off</td> <td style="width: 40%; text-align: center;">Yrs</td> </tr> <tr> <td style="text-align: center;">£0</td> <td></td> </tr> </table>		One-off	Yrs	£0	
	One-off		Yrs			
	£0					
<table border="1" style="width: 100%;"> <tr> <td style="width: 60%;">Average Annual Benefit (excluding one-off)</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">£ 0</td> <td></td> </tr> </table>	Average Annual Benefit (excluding one-off)		£ 0			
Average Annual Benefit (excluding one-off)						
£ 0						
Total Benefit (PV)		£ 0				
Other key non-monetised benefits by 'main affected groups' Women on Additional Maternity or Adoption Leave to receive the same non-pay benefits of terms and conditions as when on Ordinary Maternity or Adoption Leave.						

Key Assumptions/Sensitivities/Risks

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ -55.31m	NET BENEFIT (NPV Best estimate) £ -55.31m
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What is the geographic coverage of the policy/option?	Great Britain								
On what date will the policy be implemented?	1 October 2008								
Which organisation(s) will enforce the policy?	Employment Tribunal								
What is the total annual cost of enforcement for these organisations?	£								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	No								
What is the value of the proposed offsetting measure per year?	£ 0								
What is the value of changes in greenhouse gas emissions?	£ 0								
Will the proposal have a significant impact on competition?	No								
Annual cost (£-£) per organisation (excluding one-off)	<table border="1" style="width: 100%;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> <tr> <td style="text-align: center;">No</td> <td style="text-align: center;">No</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> </tr> </table>	Micro	Small	Medium	Large	No	No	N/A	N/A
Micro	Small	Medium	Large						
No	No	N/A	N/A						
Are any of these organisations exempt?	No								

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Strategic Overview

The Sex Discrimination Act 1975 has been amended to eliminate any distinction in the types of claim a woman can bring in relation to the periods of ordinary and additional maternity leave. This means a woman may have a claim if she is not afforded the same benefits of the terms and conditions of employment during additional maternity leave as she is during ordinary maternity leave.

For the purposes of legal clarity the Maternity and Parental Leave Regulations are being amended to extend the non-pay rights that a woman has on Ordinary Maternity Leave to the period of Additional Maternity Leave. The impact on Maternity provisions, as detailed in this assessment and in the Regulatory Impact assessment for the Sex Discrimination Act (amendments) 2008, are as a direct result of the SDA changes and have no additional burden to employers.

Since Statutory Adoption Leave and Pay were introduced in 2002, the rights of an adopter on adoption leave have, where possible, broadly equal to those of a biological mother taking maternity leave. To continue this parity of entitlement, the provisions of the Maternity and Parental Leave Regulations are being copied into the Paternity and Adoption leave Regulations to extend the non-pay contractual rights an adopter has during ordinary adoption leave to the period of additional adoption leave.

The Issue

The Maternity and Parental etc Leave regulations must be amended as a consequence of the amendments to the Sex Discrimination Act. Not to do so would have the potential to cause confusion about the rights and responsibilities of employees and employers in relation to non-pay benefits of the terms and conditions of employment when on maternity leave.

Objectives

The main objective of this change is to provide legal clarity between the amended Sex Discrimination Act, the Maternity and Parental Leave Regulations and Paternity and Adoption Leave Regulations. The intended outcome is for employees taking Additional Maternity or Adoption leave to have the same non-pay contractual benefits as during ordinary maternity or adoption leave, bringing UK law into line with EU law.

Overall Benefits

Women on Additional Maternity or Adoption Leave will benefit from the same non-pay benefits of terms and conditions as when on Ordinary Maternity or Adoption Leave.

The amendments to Maternity and Parental Leave regulations and Paternity and Adoption Leave regulations reflect these changes and reduce confusion for employers and employees, who may otherwise be misled by conflicting legislation.

The changes proposed do not alter fundamentally the way the law works in practice and the new information that employees and individuals need to know about is modest.

Costs

The costs for Maternity provision have already been detailed in the Impact Assessment for amendments to the Sex Discrimination Act and are repeated here for consistency but do not constitute an additional burden. In addition to these, costs for changes to Adoption leave provision are also detailed.

Contractual terms and conditions during Ordinary and Additional Maternity and Adoption Leave

The proposed amendments to the MPLR, which will provide entitlement to continuation of the same non-pay contractual terms and conditions during Additional Maternity and Adoption leave as during Ordinary Maternity and Adoption leave, are likely to have some impact on some, but not all, employers.

Those employers affected will be those who satisfy the following: a) provide benefits of terms and conditions of employment (other than remuneration)⁴⁷, and b) employ women who take maternity leave or adopters who take adoption leave for periods longer than 26 weeks, and c) do not currently provide those non-pay benefits after the 26th week, (i.e. during AML / AAL).

The types of benefits that are likely to result in an additional policy cost for employers who satisfy a), b) and c) above, are, for example: contractual annual leave above the statutory minimum, company cars, gym membership, and mobile telephones, among others. Also included in this list is the matter of counting time spent on AML / AAL towards length of service calculation, which is discussed in more detail below.

Impact

The calculation of the additional policy cost must be based on an assumption made about the anticipated amount of AML / AAL actually taken by employees. At present, relatively few employees take AML / AAL, but with the recent extension of statutory pay to 39 weeks (leaving the last 13 weeks of maternity / adoption leave unpaid), it is anticipated that more women will take at least some AML / AAL in future.

Thus, previous estimates of the take-up and duration of maternity leave show that around 247,000 mothers may take 27 weeks or longer (some 173,000 female employees are estimated to take AML from weeks 27 – 52)⁴⁸. Assumptions have also been made about the varying periods of AML actually taken within this number, as some mothers will return to work within the 27-52 week period.

It is estimated that approximately 4000⁴⁹ employees take adoption leave each year. It is recommended practice that at least one adoptive parent is able to spend time at home with the child during the first few months of placement. It is therefore assumed that there is 100% take-up of the entitlement to paid adoption leave.

The net additional cost to employers as a result of the need to provide non-pay contractual benefits (with the exception of length of service calculations - see below) is therefore:

⁴⁷ "Remuneration" means benefits that consist of the payment of money to an employee by way of wages or salary, and that are not benefits whose provision is regulated by the employee's contract of employment (i.e. non-contractual). Remuneration (as defined) during maternity leave is not affected by the SDA, with the exception of "maternity related remuneration" (meaning remuneration to which the woman is entitled as a result of being pregnant or being on maternity leave), remuneration in respect of times when a woman is not on maternity leave or remuneration by way of bonus in respect of times when a woman is on compulsory maternity leave.

⁴⁸ For further details see the Work and Families: Choice and Flexibility Final RIA in the 2005 Compendium of Regulatory Impact Assessments, Volume 1, DTI, Employment Relations Research Series No. 48, <http://www.berr.gov.uk/files/file27449.pdf>

⁴⁹ Work and Families: Choice and Flexibility Final RIA in the 2005 Compendium of Regulatory Impact Assessments, Volume 1, DTI, Employment Relations Research Series No. 48, <http://www.berr.gov.uk/files/file27449.pdf>

Costs already included within the SDA Impact assessment	
<i>Maternity:</i>	
Cost of contractual annual leave	£157.43m
Cost of fringe benefits	£30.32m

Additional costs arising from these amendments	
<i>Adoption:</i>	
Cost of contractual annual leave	£7.38m
Cost of fringe benefits	£490k

However there is evidence to show that some employers offer such benefits over and above the statutory minimum⁵⁰. We have assumed here that 30% of employers already offer such extended benefits. Hence the total cost effect calculated above should be reduced by this amount to reflect this.

Thus the policy cost of providing non-pay benefits during Additional Maternity leave is estimated to be £131.43m.

The additional policy cost of providing non-pay benefits during Additional Adoption leave is estimated to be £5.51m

Length of Service Calculations

A further impact on employers as a result of these amendments is likely to be a new requirement to include periods of time spent on AML as part of an employer's calculations in respect of length of service for the purposes of assessing seniority.

As above, the impact will only be felt by employers whose employees actually take AML and where they are entitled to benefits based on their total length of service. Clearly the employer must, too, be in a position where, were it not for the change in the law, it would have actually discounted any period of time spent on AML from such calculations.

For the purposes of the cost calculations, we have considered here two principal areas where length of service may be an additional cost issue, namely:

- pay and progression that is based on length of service; and
- additional annual leave entitlement earned through length of service

Before presenting the cost estimates for the impact of the policy change in these areas, some qualifications need to be made.

First of all, since the introduction of the Equality Employment (Age) Regulations in October 2006, only periods of service up to 5 years may be considered permissible in such calculations. Data shows that around 60% of mothers with children aged under 5 have the necessary qualifying job tenure⁵¹.

Second, of those 247,000 employed mothers who take 27+ weeks maternity leave, not all will return to work and of those who do a proportion change employer. In both cases their right to service-related benefits will cease. Data from the 2005 Maternity and Paternity Rights Survey⁵² shows that in 2005, 74% of women returned to and remained in work. We have further assumed some mothers change

⁵⁰ Data from the 2005 Maternity and Paternity Rights Survey indicate that 29% of all mothers were in receipt of occupational maternity pay, compared with 58% who received SMP only and 11% who received MA. CIPD data also show that at the end of 2006 26% of employers already offered extended maternity leave and 37% offered enhanced maternity pay.

⁵¹ See Table 15.3 in H. Robinson, Gender and Labour Market Performance in the Recovery, in R. Dickens, P. Gregg, J. Wadsworth (eds), The Labour Market Under New Labour: The State of Working Britain.

⁵² see table 5.1 in ERRS No.50: 80% of mothers had returned to work by 17 months, but 6% returned and then left employment.

employer once they have returned to work and estimate that 70% of mothers return and remain with the same employer.

Third, estimates of the duration of maternity leave used in the 2005 Work and Families: Choice and Flexibility RIA can be used to determine the proportion of mothers who may return to work between 27 and 52 weeks. For this we have estimated those taking between 27 and 39 weeks and those taking 40 to 52 weeks.

Fourth, because of the difference in the type and provision of length of service benefits between the public and the private sector, the analysis undertaken has taken account of this in order to arrive at more reliable cost estimates.

As a result of the above, the relevant affected population has been scaled down to produce the following cost estimates.

(i) pay and progression

Data from the CIPD⁵³ shows that 88% of public services and 40% of private services use length of service as a criterion in the determination of annual pay awards. Using data from the Annual Survey of Hours and Earnings (ASHE) 2007 on median weekly wages for public and private sector employees we have estimated the effect of these policy changes will amount to £20.94m for maternity and £340k for adoption.

Similarly when it comes to progression, the CIPD survey shows that 41% of public service employers and 9% of private service sector employers used length of service as one of a number of reasons for determining promotion. We assume here that there is a 10% chance of promotion within an organisation and furthermore that such a promotion results in an increase in salary of 10%. On this basis, **we estimate the effect of the policy change on progress 23k for adoption** in addition to £1.59m for maternity.

(ii) increased leave entitlement

There is little accurate data available on increased annual leave entitlement due to length of service. However, a survey of companies by IRS in February 2005⁵⁴ found that 61% of employee groups had service-related holiday and that annual leave is most commonly added at the rate of 1 day a year for the first 5 years' service. This rate of accrual may well be an upper end estimate, but using this as a benchmark would result in an estimated effect of £2.62m for maternity and **£39k for adoption from this policy change**.

Thus the policy cost of providing length of service benefits is estimated to be £25.15m for additional maternity leave.

The additional policy cost for providing these benefits during additional adoption leave is estimated at £402.

Simplification Measures

The removal of the exceptions relating to the employee's terms and conditions during AML will have a positive impact as a simplification measure. Whereas previously the claims of discrimination which could be made differed depending on whether it related to a period of Ordinary or Additional maternity leave, employers will now need to be aware of, and comply with, a single approach during maternity leave.

Summary Table

The overall effect of these changes is given in the summary table below and amount to up to £156.68m for maternity and **£5.91m for adoption**

⁵³ Reward Management 2007, CIPD, February 2007, <http://www.cipd.co.uk/NR/rdonlyres/08FE4AE7-7DD5-4185-9070-F34225A6EB0C/0/rewmansr0107.pdf>

⁵⁴ IRS Employment Review No. 817, February 2005

Overarching familiarisation costs

Reading and Understanding Guidance

Employers will need to be made aware of the nature of the changes being introduced. The format of the guidance, and the method of communicating it, will naturally help determine the response by employers. Guidance explaining the changes to maternity and adoption provision will be available via Businesslink.gov.uk and Direct.gov.uk. The 'Pregnancy and Work' leaflet, which provides guidance for employees and employers on maternity rights at work will also be updated to reflect changes.

There will be a small cost to a manager in each business or organisation of reading and understanding this guidance which explains the law. We assume that small, medium and large employers in Great Britain will spend 10 minutes reading guidance, at a total cost of no more than £6.33 million.

Costs to the Exchequer

The associated guidance will be available online and key stakeholders will be notified by email.

Specific costs and benefits are discussed above.

Administration Costs

There are no new administration processes or costs associated with these changes.

Enforcement, sanctions and monitoring

The Government has improved its guidance on maternity and adoption provisions to reduce non-compliance by employers due to ignorance of the law. For instance through 'Pregnancy and Work: A guide for employees' and 'Pregnancy and Work: A guide for employers' which are distributed to all pregnant women and are available on the BERR website.

The primary means of enforcing the amended Maternity and Parental etc Leave Regulations will remain with individuals bringing claims to the employment tribunals.

Post-implementation review

The Government has no specific plans for evaluation of the implementation of these amendments but does keep Maternity and Adoption legislation under regular review through Maternity and Paternity rights surveys.

Sectors affected

All employers in the public, private and voluntary sectors have the potential to be affected by these changes. They will all need to be aware of the changes and will have to familiarise themselves with them, and make any adjustments necessary to comply with the legislation, for instance where policies or practices do not accommodate the changes.

Estimated Quantifiable costs

	<u>Cost (£m)</u> <u>Maternity</u>	<u>Cost (£m)</u> <u>Adoption</u>
1. Non-pay Benefits	£131.43	£5.51
- <i>Contractual annual leave</i>	<i>110.21</i>	<i>5.17</i>
- <i>Fringe benefits</i>	<i>21.22</i>	<i>0.34</i>
2. Length of Service	£25.15	£0.402
- <i>Annual pay awards</i>	<i>20.94</i>	<i>0.34</i>
- <i>Progression</i>	<i>1.59</i>	<i>0.023</i>
- <i>Increased leave entitlement</i>	<i>2.62</i>	<i>0.039</i>

The costs for Maternity provision have already been detailed in the Impact Assessment for amendments to the Sex Discrimination Act and are repeated here for consistency, they are not additional policy costs.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	No	Yes/No
Sustainable Development	No	Yes/No
Carbon Assessment	No	Yes/No
Other Environment	No	Yes/No
Health Impact Assessment	No	Yes/No
Race Equality	Yes	Yes/No
Disability Equality	Yes	Yes/No
Gender Equality	Yes	Yes/No
Human Rights	Yes	Yes/No
Rural Proofing	No	Yes/No

Table 1: Familiarisation costs of proposals to amend the Maternity and Parental Leave regulations and Paternity and Adoption Leave regulations 2008

	Time Required	Unit cost	Cost per firm	Number of firms	Total Cost (£m)
Micro firms	10 minutes	£26.95 ⁵⁵	£4.91	1,054,875	5.17
Small firms	10 minutes	£26.95	£4.91	176,505	0.86
Medium & large firms	10 minutes	£29.11 ⁵⁶	£4.85	37,615	0.18
Public authorities	10 minutes	£29.11	£4.85	25,481	0.12
Total					£6.33

This represents familiarisation costs for all companies; however it is likely that a reduced proportion of companies will incur these costs as companies where there are no or few women of childbearing age within the workforce will not be affected.

Competition assessment

A detailed competition assessment is not necessary for the proposals put forward in this Regulatory Impact Assessment. The proposals presented apply across the board and across all sectors of the economy. They do not favour one sector of employment or business activity over another.

Question	Answer Yes / No
Directly limit the number or range of suppliers?	No
Indirectly limit the number or range of suppliers?	No
Limit the ability of suppliers to compete?	No
Reduce suppliers' incentives to compete vigorously?	No

⁵⁵ Source: Annual Survey on Hours and Earnings (ASHE) Survey 2007 – code 11

⁵⁶ Source: Annual Survey on Hours and Earnings (ASHE) Survey 2007 – code 1135

Small firms' impact test

We do not expect that the impact of this amendment to MPLR would have a significantly greater impact on small firms than on large firms. As with large firms and public authorities, small firms will need to familiarise themselves with the new guidance. On the costs side, we expect them to spend 5-10 minutes doing this. On the benefits side, there will be increased clarity in the law.

Human Rights

The provisions of the Maternity and Parental etc Leave Regulation are compatible with the European Convention on Human Rights.

Equality Impact Assessment

Amending the Maternity and Parental leave Regulations and Paternity and Adoption Leave Regulations to reflect changes to the Sex Discrimination Act 1975

1. Introduction

- 1.1 This Equality Impact Assessment addresses the proposals to reflect the amendments to the Sex Discrimination Act 1975 (SDA) within the MPLR. This assessment considers the impact of the proposals in terms of race, disability and gender.
- 1.2 The aim of this Equality Impact Assessment is to ensure that the implications for gender, race and disability equality are thoroughly assessed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified.
- 1.3 The assessment follows the guidance produced by the former Commission for Racial Equality on conducting Equality Impact Assessments. While addressing the impact of proposals on all the equality strands, it therefore also fulfils our duties, arising from section 71 of the Race Relations (Amendment) Act 2000, section 3 of the Disability Discrimination Act 2005 and the section 76A of the SDA, to assess and consult where required on the likely impact of proposed policies on the promotion of race equality, equality for disabled people and gender equality.

2. Proposals

- 2.1 We propose to amend the MPLR to reflect the changes to the SDA which require a woman on Additional Maternity leave to have the same rights to non-pay contractual benefits as a woman on Ordinary Maternity Leave.
- 2.2 The changes will apply to the law in England, Scotland and Wales only. In Northern Ireland separate but equivalent law on Maternity and Adoption Leave apply. Separate regulations are being brought forward in Northern Ireland to make equivalent changes to the Maternity and Parental Leave (Northern Ireland) and Paternity and Adoption Leave (Northern Ireland).

3. Context and drivers for the proposals

- 3.1 The European Equal Treatment Amendment Directive is a legal framework that covers all European member states and updates the 1976 Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. In Great Britain, the SDA has provided similar, and in some respects wider, protections for over 30 years. The Act has been amended to take account of the Court's ruling on the interpretation of European requirements.
- 3.2 The Maternity and Parental etc leave regulations are being amended to reflect these changes and to provide clarity for everyone about their rights and responsibilities during Maternity and Adoption Leave.

4. Impact of the proposals

- 4.1 This section analyses the likely impact in respect of the race, disability and gender equality duties. It provides analysis of the impact on men and women and an analysis of any differential impact that could arise due to a person's race, sexual orientation, religion or belief, age or whether they are disabled or not.
- 4.8 The MPLR and PALR make certain exceptions to an employee's entitlement to the terms and conditions of their employment during maternity and adoption leave. Following the amendment of the SDA to enable the same claims of discrimination to be made relating to the terms and conditions of employment in relation to periods of both ordinary and additional maternity leave, we are amending the MPLR and PALR to remove these exceptions. This will mean that women will have enhanced protections against detriment during maternity and adoption leave than is the case at present.

5. Conclusion

- 5.1 The Government believes that the proposed amendments to the MPLR covered by this Equality Impact Assessment will benefit women in respect of maternity leave discrimination. Clarification that women are entitled to benefit from all of the terms and conditions of their employment whilst on additional maternity leave (other than in relation to benefits by way of remuneration) will be particularly helpful to women of childbearing age. There is no discernable difference in the impact these proposals could have due to a person's race, sexual orientation, religion or belief, age or whether they are disabled or not.

6. Consultation

- 6.1 The judgment of the High Court set out the effect that the law must have in respect of employment and related areas, therefore no consultation was required ahead of the amendments to the SDA. These changes to the MPLR are consequential and therefore do not require additional consultation. The Government Equalities Office consulted with the EOC (which was subsequently replaced by the Commission for Equality and Human Rights) on the regulations amending the SDA and the EOC commented on draft regulations.
- 6.2 The draft MPLR amendments were also shared with key stakeholders including employers, trade unions and parenting groups for comment.

7. Decisions on whether to adopt the policy

- 7.1 The regulations reflect the amended SDA following the ruling of the Court to recast specific provisions in relation to maternity leave discrimination.

8. Monitoring arrangements

- 8.1 The amendments will be monitored through research by BERR on Maternity and Paternity rights as carried out in periodic surveys of new parents.

Summary: Intervention & Options

Department /Agency: BERR	Title: Implementing the Recommendations of Imelda Walsh's Independent Review and Amending and Extending the Right to Request Flexible Working to Parents of Older Children	
Stage: Consultation	Version: FINAL	Date: 06 August 2008
Related Publications: Consultation document and Recommendations of Imelda Walsh's Independent Review		

Available to view or download at:

www.berr.gov.uk/files/file47434.pdf

Contact for enquiries: Tim Harrison/Alan Martin

Telephone: 0207 215 5799/1123

What is the problem under consideration? Why is Government intervention necessary?

Extending the right to request flexible working to parents of older children will introduce greater fairness and equity amongst working parents. Following the introduction of the right to request flexible working for parents of children under six and of disabled children under 18 in 2003 and the extension of the policy to cover carers of sick and disabled adults in 2007, the Government is looking to extend the scope of the law to parents of children aged 16 and under. Although flexible working arrangements exist for many parents of older children, a significant proportion would still benefit from legislation enabling them to request flexible working and having their employer consider such requests seriously.

What are the policy objectives and the intended effects? To provide parents of children aged 16 and under with the same choices in balancing work and childcare responsibilities through flexible working as are available to parents of children under six and disabled children, whilst ensuring that businesses have the flexibility to refuse requests on business grounds. Although there are costs to employers in terms of procedure and making adjustments to working arrangements, these are estimated to be outweighed by the benefits to firms resulting from savings in recruitment costs, lower staff turnover and absenteeism and increased productivity and profits. Employees via an increase in take-up of flexible working are expected to benefit from a better work-life balance.

What policy options have been considered? Please justify any preferred option.

The Government accepted the recommendations of the Walsh Review that the right to request should be extended to parents of children aged 16 and under. The Government is now consulting on measures to assist business with implementation as well a deregulatory measure to reduce associated admin burdens.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? BERR regularly conducts baseline surveys of employees and employers to establish the effects of employment policy aimed at improving work-life balance. Forthcoming surveys that will assist monitoring and evaluation include the 2010 Workplace Employer Relations Survey. This survey will also contribute to an assessment in 2010 of the success, or otherwise, of the proposed policy extension.

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State for Employment Relations and Postal Affairs **Date:** 06 August 2008

Summary: Analysis & Evidence

Policy Option: 1	Description: Baseline case - extend to parents of children aged 16 and under
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Additional procedural costs, including admin burdens, to employers of £26m plus £43m in costs of making adjustments to working patterns		
	One-off (Transition)	Yrs			
	£ 0	0			
	Average Annual Cost (excluding one-off)				
£ 69m	10	Total Cost (PV)		£ 574m	
Other key non-monetised costs by 'main affected groups' It is assumed that the extension of the existing law will have negligible implementation costs. An outline of implementation measures can be found in Section D					

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. Savings to employers from higher productivity (£64m), lower labour turnover (£21m) and reduced absenteeism (£6.1m)		
	One-off	Yrs			
	£ 0	0			
	Average Annual Benefit (excluding one-off)				
£ 91m	10	Total Benefit (PV)		£ 757m	
Other key non-monetised benefits by 'main affected groups' - better work-life balance for employees, increased labour supply, improved health and wellbeing and positive environmental impacts environmental impact. Potential admin burden savings via simplification of the law (the full IA will examine this benefit further).					

Key Assumptions/Sensitivities/Risks. Cost-Benefit figures and Admin Burden totals based on working assumptions produced for this IA and also draw on previous Flexible Working IAs. Final impact assessment will include updated information on likely take-up of flexible working and 'deadweight requests'. Hence cost-benefit values will be revised.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 183m	NET BENEFIT (NPV Best estimate) £ 183m
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What is the geographic coverage of the policy/option?				GB	
On what date will the policy be implemented?				April 2009	
Which organisation(s) will enforce the policy?				Tribunals Service	
What is the total annual cost of enforcement for these organisations?				£ tbc	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				No	
What is the value of the proposed offsetting measure per year?				£ N/A	
What is the value of changes in greenhouse gas emissions?				£ N/A	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)		Micro £12	Small £108	Medium £601	Large £2296
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase of	£ 11.2m	Decrease of	£ 0	Net Impact	£ 11.2m increase

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2
(Summary of 2a, 2b and 2c below)

Description: Baseline case for extension to parents of older children plus implementation assistance and summary of effect of deregulatory measure across all flexible working strands

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Additional procedural costs (including admin burdens), to employers of £18.2m plus £43m in costs of making adjustments to working patterns for extension to parents of older children
	One-off (Transition)	Yrs	
	£ 0	0	
	Average Annual Cost (excluding one-off)		
	£ 61m	10	Total Cost (PV) £ 509m
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. Savings to employers from higher productivity (£64m), lower labour turnover (£21m) and reduced absenteeism (£6.1m) from extension to parents of older children. Plus admin burdens reductions totalling £19.8m from deregulatory measure for parents of younger children and carers.
	One-off	Yrs	
	£ 0	0	
	Average Annual Benefit (excluding one-off)		
	£ 111m	10	Total Benefit (PV) £ 922m
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks. Cost-Benefit figures derived from previous flexible working IAs and working assumptions regarding procedural costs. Admin Burden figures use baseline calculations compiled for relevant admin burden exercises assessing different stages of development of right to request flexible working policy (see individual summary sheets)

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 413m	NET BENEFIT (NPV Best estimate) £ 413m
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		April 2009		
Which organisation(s) will enforce the policy?		Tribunals Service		
What is the total annual cost of enforcement for these organisations?		£ tbc		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro £10	Small £91	Medium £505	Large £1930
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 3.8m	Decrease of	£ 111.7m
		Net Impact	£ 107.9m decrease

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2a	Description: Parents of older children – baseline case plus deregulatory measure and implementation assistance
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Additional procedural costs (including admin burdens), to employers of £18.2m plus £43m in costs of making adjustments to working patterns
	One-off (Transition)	Yrs	
	£ 0	0	
	Average Annual Cost (excluding one-off)		
£ 61m	10	Total Cost (PV) £ 509m	
Other key non-monetised costs by 'main affected groups' It is assumed that the extension of the existing law will have negligible implementation costs.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. Savings to employers from higher productivity (£64m), lower labour turnover (£21m) and reduced absenteeism (£6.1m)
	One-off	Yrs	
	£ 0	0	
	Average Annual Benefit (excluding one-off)		
£ 91m	10	Total Benefit (PV) £ 757m	
Other key non-monetised benefits by 'main affected groups' - better work-life balance for employees, increased labour supply, improved health and wellbeing and positive environmental impacts environmental impact. Potential admin burden savings via simplification of the law (the full IA will examine this benefit further).			

Key Assumptions/Sensitivities/Risks. Cost-Benefit figures and Admin Burden totals based on working assumptions produced for this Impact Assessment also draw on previous Flexible Working Impact Assessments.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 248m	NET BENEFIT (NPV Best estimate) £ 248m
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What is the geographic coverage of the policy/option?					GB
On what date will the policy be implemented?					April 2009
Which organisation(s) will enforce the policy?					Tribunals Service
What is the total annual cost of enforcement for these organisations?					£ tbc
Does enforcement comply with Hampton principles?					Yes
Will implementation go beyond minimum EU requirements?					N/A
What is the value of the proposed offsetting measure per year?					£ N/A
What is the value of changes in greenhouse gas emissions?					£ N/A
Will the proposal have a significant impact on competition?					No
Annual cost (£-£) per organisation (excluding one-off)		Micro £10	Small £91	Medium £505	Large £1930
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ 3.8m	Decrease of	£ 0	Net Impact £ 3.8m increase

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2b	Description: Parents of younger children - deregulatory measure and implementation assistance
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' No additional costs for this policy area over and above those identified in original IA (see footnote 6 in main text below)		
	One-off (Transition)	Yrs			
	£ 0	0			
	Average Annual Cost (excluding one-off)				
	£ 0m	10	Total Cost (PV)	£ 0m	
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. Using current estimates for admin burdens unit costs the deregulatory measure would reduce burdens to business from £19m to £6.6m, a reduction of £12.4m		
	One-off	Yrs			
	£ 0	0			
	Average Annual Benefit (excluding one-off)				
	£ 12.4m	10	Total Benefit (PV)	£ 103m	
Other key non-monetised benefits by 'main affected groups' -					

Key Assumptions/Sensitivities/Risks. Cost-Benefit figures derive from unit cost estimates in 2006 IA on the extension to carers along with revised estimates regarding admin burdens and procedural costs. These update estimates used in the baseline calculations compiled for 2005 Admin Burden calculation exercise estimating costs attributable under right to request flexible working legislation in force at the time.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 103m	NET BENEFIT (NPV Best estimate) £ 103m
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What is the geographic coverage of the policy/option?				GB	
On what date will the policy be implemented?				April 2009	
Which organisation(s) will enforce the policy?				Tribunals Service	
What is the total annual cost of enforcement for these organisations?				£ tbc	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				N/A	
What is the value of the proposed offsetting measure per year?				£ N/A	
What is the value of changes in greenhouse gas emissions?				£ N/A	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)		Micro £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £ 0	Decrease of £ 89m	Net Impact	£ 89m decrease	

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Summary: Analysis & Evidence

Policy Option: 2c

Description: Carers- deregulatory measure and implementation assistance

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' No additional costs for this policy area over and above those identified in original IA (see footnote 6 in main text below)	
	One-off (Transition)	Yrs		
	£ 0	0		
	Average Annual Cost (excluding one-off)			
£ 0m		0	Total Cost (PV)	£ 0m
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. Using current estimates for admin burdens unit costs the deregulatory measure would reduce burdens to business from £11.3m to £3.9m, a reduction of £7.4m	
	One-off	Yrs		
	£ 0	0		
	Average Annual Benefit (excluding one-off)			
£ 7.4m		10	Total Benefit (PV)	£ 62m
Other key non-monetised benefits by 'main affected groups' -				

Key Assumptions/Sensitivities/Risks. Cost-Benefit figures derive from unit cost estimates in the 2006 IA on the extension to carers along with revised estimates regarding admin burdens and procedural costs. These update the admin burdens figures used in baseline calculations compiled for Simplification Plan assessment exercise in relation to extension of flexible working to carers.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 62m	NET BENEFIT (NPV Best estimate) £ 62m
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What is the geographic coverage of the policy/option?				GB
On what date will the policy be implemented?				April 2009
Which organisation(s) will enforce the policy?				Tribunals Service
What is the total annual cost of enforcement for these organisations?				£ tbc
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				N/A
What is the value of the proposed offsetting measure per year?				£ N/A
What is the value of changes in greenhouse gas emissions?				£ N/A
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 22.7m
		Net Impact	£ 22.7m decrease

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

A: Strategic overview

Existing Government initiatives

The right to request flexible working was introduced in April 2003 following a report⁵⁷ by the Work and Parents Taskforce, led by Professor Sir George Bain. The Taskforce was established by the Government with the remit of developing the detail of legislation to give parents of young children a right to request flexible working and to have that request seriously considered by their employer.

One of the principal questions which the Taskforce had to consider was the age at which a child would most benefit from the immediate presence of a parent.

The Taskforce's considered view, in light of the many representations it received and the research available to it, was that the right to request flexible working should initially be introduced for those with parental responsibility for children up to the age of six, or up to the age of 18 for disabled children. The Government accepted this recommendation.

Ever since its introduction in 2003, there have been calls for the scope of it to be extended to other groups of employees. Following a major public consultation⁵⁸ in 2005, the Government decided that the legislation should be extended to carers of adults: this extension came into effect on 6 April 2007.

Implications for Administrative Burdens

The 2005 PwC Admin Burdens measurement exercise identified a number of information obligations associated with the Flexible Working (Procedural Requirements) Regulations 2002. As the current policy proposals would be implemented in a similar fashion, these would result in additional administrative burdens for employers. These are detailed in section E below on Costs and Benefits. However, the consultation document will explore the potential for introducing deregulatory measures (discussed in more depth below).

B: The issue

In the Queen's Speech in November 2007 the Prime Minister announced that the Government had decided to extend the scope of the right to request to those with parental responsibility for older children. This will introduce greater fairness and equity amongst working parents.

Imelda Walsh, HR Director of J Sainsbury plc, was appointed to lead an independent review to consider the questions of where the age cut-off of an older child should be set for this purpose; and whether the extension should be staged.

Consultation

Within Government

These proposals have been developed in consultation with the following Government departments: the Department for Work and Pensions, the Government Equalities Office and the Department for Children, Schools and Families.

Public consultation

This partial impact assessment will accompany a public consultation on the issue in August 2008.

⁵⁷ Published as *About Time: Flexible Working* in November 2001.

⁵⁸ *Work and Families: Choice and Flexibility – A Consultation Document*, published February 2005, URN 05/847.

Since the announcement of the Walsh Review there has been an intensive programme of stakeholder engagement, involving meetings with trades unions, parents' bodies, personnel organisations and business representatives. As Imelda Walsh's own background is in big businesses (Barclays and Coca Cola, as well as Sainsbury's), she has been particularly keen to obtain the views of small businesses.

C: Objectives

To provide those with parental responsibility for children aged 16 and under with the same choices in balancing work and childcare responsibilities through flexible working as are available to those with parental responsibility for children under six and disabled children under 18, whilst ensuring that businesses have the flexibility to refuse requests on business grounds. Although there are costs to employers in terms of procedure and making adjustments to working arrangements, these are estimated to be outweighed by the benefits to firms resulting from savings in recruitment costs, lower staff turnover and absenteeism and increased productivity and profits. Employees via an increase in take-up of flexible working are expected to benefit from a better work-life balance.

Background

Since April 2003, the law provides those with parental responsibility for children under six or disabled children under 18 the right to apply to work flexibly, with a statutory duty on employers to consider such requests according to a set procedure.

The law is designed to meet the needs of parents and employers, particularly small employers. It aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns, and to find a solution that suits them both.

The law does not provide an automatic right for parents to work flexibly. This reflects the reality of the workplace where there will sometimes be circumstances when an employer is unable to accommodate an employee's desired work pattern. There are eight business grounds specified in legislation under which a request can be refused⁵⁹.

BERR's Third work-life balance employee survey⁶⁰ showed that over the last two years, 17 per cent of employed parents made a change in how they regularly work for a sustained period of time. Twenty-two per cent of women said that they had made a request to change the way that they work in the past two years as compared to 14 per cent of men. Women made up 57 per cent of all those requesting a change.

There were also significant differences by work status: 28 per cent of those who were working part-time at the time of the research had approached their employer to request a change in their working pattern within the past two years. This compares to 15 per cent of full-time workers.

Employees were able to cite a range of ways that they might have submitted their request to work flexibly. The most common approach was to make the request in a face to face meeting or discussion.

⁵⁹ Section 80(G)(1)(b) of the Employment Rights Act 1996 list the following eight grounds for refusal of a request for flexible working:

- Burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.

This was mentioned by 83 per cent of those making a request. Meanwhile, 18 per cent made the request by letter or on a form, four per cent by email and three per cent on the telephone.

In most cases, requests were either fully (60 per cent) or partially (18 per cent) agreed to. Women were more likely than men to be successful in making a request: 66 per cent of female workers had their requests fully agreed to, as compared to 53 per cent of male workers.

In the large majority of cases (87 per cent) requests were accepted outright; however, 13 per cent said that they had only had their request to change the way that they worked agreed once they had negotiated or appealed against an original employer decision.

Over half of all employees interviewed (56 per cent) were aware of the new right. A higher proportion of parents with children aged under six (65 per cent) were aware of the right to request than were other employees (53 per cent).

D: Options identification

The Walsh Review was set up to consider to what age the extension of the right to request flexible working should apply. Imelda Walsh set out three different ages which she considered were significant stages in a child's education. A view which the vast majority of the interested parties agreed. The three cut-off ages considered were:

- children aged 12 and under: this would cover the transition from primary to secondary school;
- children aged 16 and under: this would allow parents to support their children until the end of their secondary education and GCSEs;
- children aged 18 and under: this would allow for support until the end of sixth form or vocational training and would be consistent with the existing right for parents of disabled children.

Some respondents argued that age 12 is the best option on the grounds that this is the age at which a child makes the transition to secondary school and when the child can safely be regarded as being responsible enough to be left to go home after school and look after him or herself. However, the NSPCC advise that although it depends on the individual child, most children under about 13 are not mature enough to cope with an emergency and should not be left alone for more than a very short period of time. Furthermore, although there is no clear legal position on when children can be left at home on their own, parents can be prosecuted for wilful neglect if they leave a child under 16 unsupervised "in a manner likely to cause unnecessary suffering or injury to health"⁶¹.

The majority of stakeholders highlighted that educational support is of increasing concern for parents, and argued that the completion of GCSEs or A-Levels were the most natural cut-off points. This narrowed the options down to age 16 and under or 18 and under. The arguments in favour of selecting 18 are that this would be consistent with the current right for a disabled child and would fit with the higher school-leaving age of 18 from 2013. However, as Ms Walsh argued, it is reasonable to regard a person aged 17 or 18 as a young adult who can be expected to show a good measure of independence and personal responsibility whether as part of further education, a first full-time job or vocational training. For these reasons, and because she felt there would be more support and understanding, Ms Walsh recommended that the cut-off point age be 16 and under.

The Government has accepted the recommendation to raise the age cut-off to parents of children aged 16 and under and is looking at how best to implement this with the aim of introducing the changes from April 2009. On this basis this impact assessment looks at the costs and benefits of extending the right to those with parental responsibility for children aged 16 and under.

Option 1: Baseline case - extend to parents of children aged 16 and under

The Government has accepted the recommendations put forward by Imelda Walsh to extend the right to request flexible working legislation to those with parental responsibility for children aged 16 and under. An analysis of the costs and benefits of implementing these recommendations is contained in Section E below.

Option 2: Extend to parents of children aged 16 and under and introduce Implementation and deregulation measures

The Government wants to implement the change in the law in the most cost effective way for employers and Government. The Department will be consulting with business so that costs can be minimised. In line with the Government's agenda to simplify regulation wherever possible, the public consultation will also seek views from stakeholders on potentially removing some information obligations falling on firms. Section E contains more details under 'administrative burdens'.

⁶¹ Children and Young Persons Act 1933

E: Analysis of options

Costs and Benefits

The analysis of costs and benefits is conducted in two parts below.

- **PART 1:** First of all, cost and benefit estimates are provided for the extension of the current policy to cover parents of children aged 16 and under. It should be noted that this impact assessment is considering the *marginal* effect of extending the right to request to parents of older children. Clearly parents of children under six and of disabled children under 18 will already be covered by the legislation and hence are not included in the estimates of eligible parents discussed below⁶².
- **PART 2:** Following on from this, the cost-benefit analysis will address directly the areas that are currently subject to consultation, namely
 - a) the introduction of a deregulatory measure and
 - b) implementation assistance to business.

PART 1: Extending the age limit to cover those with parental responsibility for children aged 16 and under

Eligibility

To be eligible to make a request under this right, a person must satisfy the following criteria:

General

- Be an employee
- Have worked for their employer continuously for 26 weeks at the date the application is made
- Not be an agency worker or a member of the armed forces
- Not have made another application to work flexibly under the right during the past 12 months

Parents

- Be the parent, or have parental responsibility for a child aged 16 or under
- Have responsibility for the upbringing of the child and be making the application to enable them to care for the child
- Be either:
 - the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has been granted a residence order in respect of a child; or
 - married to or the partner or civil partner of the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or of a person who has been granted a residence order in respect of a child.

Assumptions

Earlier impact assessment work

The methodology adopted for estimating the costs and benefits associated with the extension of the right to request flexible working follows closely and builds upon that used for the development of earlier policy in this area. Specifically this relates to impact assessment work carried out in 2002 for those with parental responsibility for young children and in 2006 for carers of adults⁶³.

⁶² For instance, where employed parents have one child aged 5 and one aged 9 they would already be covered by the law and so are not counted here.

⁶³ See respectively *Imposing a Duty on Employers to Seriously Consider Requests for Flexible Working from the Parents of Young and Disabled Children*, 2002 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 40, www.berr.gov.uk/files/file11440.pdf, and *Extending the scope of the right to request flexible working (Full)*, 2006 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 74, www.berr.gov.uk/files/file38874.pdf

Take-up of flexible working arrangements and deadweight

Take-up of the extended right to request flexible working is likely to differ between mothers and fathers and also by current working pattern. Those who already have 'flexible' working patterns (such as part-time or flexi-time) may be more or less likely to request a change to working patterns than people with what appear to be 'non-flexible' working patterns. For this reason, the assumptions used to construct estimates of take-up are disaggregated by sex, full-time/part-time status and by whether the employed parent has some identifiable 'flexible' working pattern. The detail of the analysis is set out in Annex C.

We have assumed that some requests will be regarded as 'deadweight' i.e. requests that would have occurred in the absence of any policy change. It is not straightforward to estimate the deadweight effect. Annex C presents some illustrative estimates of deadweight requests.

This impact assessment uses data from the Second Work-Life Balance Survey⁶⁴ to estimate take-up rates and degree of deadweight requests. It may be possible for the final impact assessment to update these assumptions based on results from the Third Work-Life Balance Survey. This could change the level of costs and benefits. However, any changes to the degree of take-up or deadweight requests will not alter the ratio of costs to benefits.

In addition, for this partial impact assessment we consider a linear relationship between both the costs and the benefits of extending the right to request flexible working and the age of the child.

It is likely that the take-up initially rises and then tapers off as the age of the child increases. The scope for parents to request to work flexibly is likely to decrease with a child becoming older and more independent. We are looking to examine this relationship further using the Third Work-Life Balance Survey.

Accounting for disabled children aged under 18

The existing legislation covers disabled children aged under 18 and hence these are not included in the current analysis. See footnote no.7 below for further details.

BENEFITS

A number of benefits have been identified that may result from the extension of the right to request flexible working.

The principal benefits to business of the proposals are:

- Reduced vacancy costs and increased skill retention
- Increased productivity and profits
- Reduced absenteeism rates

These are considered in detail in this impact assessment and estimates of the associated monetised benefits are set out in the tables below.

Wider benefits

We also recognise that there are likely to be wider benefits of this policy, namely:

- Better work-life balance for employees
- Increased labour supply due to availability of more flexible working opportunities
- Improved health and wellbeing
- Positive environmental impact⁶⁵

At this stage, these benefits have not been quantified, but, where the data allow, further analysis will be carried out with a view to presenting these in the final impact assessment.

⁶⁴ The Second Work-Life Balance Employees Survey, March 2004, Employment Relations Research Series No.27

⁶⁵ For instance a reduction in commuting as a result of enabling more employees to work from home

Estimated eligibility and new working arrangements

Table 1 below shows the number of eligible parents, number of new requests and the estimated number of new working arrangements per annum expected from parents of older children⁶⁶.

Table 1. Estimated number of eligible parents and of new working arrangements*

Scope of law	Number of entitled employees ('000s)	Number of additional entitled employees ('000s)	Number of new requests ('000s)	Number of additional new requests ('000s)	New working arrangements ('000)	Additional number of new working arrangements p.a. ('000)
Parents of children aged six and under	3,512	-	503	-	441	-
Parents of children aged 16 and under	8,005	4,493	811	308	711	270

Source: LFS Q2 2007, BERR estimates. *Rounded to nearest 1000

The chart below illustrates the relationship between entitled employees and number of new working arrangements.



To be eligible to request to work flexibly parents should be employed for more than 6 months and have a child aged 16 and under. As discussed above for the purpose of this IA, we have used data from the Second Work-Life Balance Survey to estimate take-up rates and degree of deadweight requests, and are examining the robustness of the data from the Third Work-Life Balance Survey with a view to updating this. Further assumptions underpinning the estimated number of new working arrangements can be found in Tables C1 to C3 in the Annex.

1. Reduced vacancy costs and increased skill retention

Where flexible working enables parents to remain in the labour market, there will be benefits in terms of reduced staff turnover costs and increased skill retentions. There are no reliable figures on the cost to fill a post that becomes vacant. In order to find a suitable measure, for the purposes of this IA, we have assumed a cost of £5,276⁶⁷.

There may be broader savings to employers through reduced turnover among the parents of older children. At present, many working parents have some form of flexible working pattern, but to achieve this, a proportion will have had to change their job. Parents may leave their jobs for others with more flexible working patterns but which may be lower paid or lower skilled.

⁶⁶ The calculations for table 1 and the following tables include parents of disabled children; these, however, are already covered by the law. Following ONS 2004 Health of Children and Young People report and BERR calculations the number of disabled children under 18 is estimated to be in 2008 less than 7,000, hence a relatively small proportion of all children and consequently negligible impact on the costs and benefits estimates. ONS report used two separate sources of data, data from the General Household Survey and data from Family Fund and Trust's register of applications.

⁶⁷ Since 2004 CIPD have carried out an annual survey on recruitment and turnover covering between 715 and 905 UK organisations. The survey asked about the costs of labour turnover and costs of recruitment. Relatively few organisations provided information on the cost of overall labour turnover - hence its unsuitability here - whereas a much higher number responded to the cost of recruitment. In order to obtain an estimate of the cost of labour turnover we assumed for 2007 the same mark up of cost of labour turnover over the cost of recruitment as in 2005. We then apply an annual growth rate of 4per cent to the 2007 figure.

In 2007 CIPD estimates a labour turnover rate of 18.10per cent⁶⁸ and 9.7per cent⁶⁹ of individuals who left their place of employment to either have - or to look after their - children. To estimate the effect of the policy it is assumed that the introduction of a right to request flexible working for parents of older children will prevent 5per cent of employees leaving their jobs to look after family members. The cost of filling a post that becomes vacant is assumed to be £5,276. The savings made through lower recruitment costs are presented in the table below.

Table 2. Estimated savings in recruitment costs as a results of lower labour turnover

Scope of law	Estimated number of employees who leave their job to have or look after children* (000s)	Estimated number of employees who decide to remain with their existing employer as a result of the scope of law being extended * (000s)	Additional employer savings in recruitment costs as a result of extending scope of law **
Parents of children aged 6 and under	62	3	-
Parents of children aged 16 and under	141	7	£21m

Source: LFS Q2 2007 and BERR estimates. * rounded to nearest 1000. ** rounded to nearest million.

2. Increased productivity and profits

Evidence has shown that flexible working arrangements can have a beneficial effect in terms of increased productivity, output and ultimately profits.

BERR's third Work Life Balance Survey found that 12per cent of employers thought that flexible working and leave arrangements had a negative effect and 47per cent reported positive effect⁷⁰, with the remainder reporting no impact⁷¹. Overall 36per cent of firms reported a net positive impact on productivity⁷². BERR's Third Work Life Balance Survey is based on responses from 1,456 managers. In addition to asking managers what the effects of flexible working had been on productivity at the establishment they were also asked about the perceived effects of flexible working on employee relations, motivation and commitment, recruitment, labour turnover and absenteeism. For the most part, employers thought that flexible working and leave arrangements had a positive effect or no effect on employees and human resources management at the establishment. At least around four in ten employers thought that flexible working and leave arrangements had a positive effect on each of the six criteria. Relatively small proportions perceived these practices to have a negative effect.

Table 3 presents the estimated increase in profits as a result of employees being more productive after a request for flexible working is accepted. Here we have assumed that 36per cent of new working arrangements will result in an increased level of productivity for employees who adopt a new working arrangement.

A further assumption was made that a notional level of 5per cent output gain would be achieved for the 36per cent of new working arrangements that result in increased productivity⁷³. A 5per cent level was chosen because employers must have realised a significant rise in productivity to report that flexible working has had a positive impact on their firm. A further assumption was made that improved productivity leads to higher output. It was then assumed that 14.2per cent of the increased output will

⁶⁸ CIPD, Recruitment and turnover survey 2007

⁶⁹ CIPD, Recruitment and turnover survey 2007. In 2007 18per cent of people left their job to have or look after their children. This is a quite big increase with respect to previous years with no apparent reason. For the Regulatory Impact Assessment analysis we took the average of the last three years.

⁷⁰ This assumes that the magnitude of average productivity gains is broadly similar to the magnitude of losses. Further research will be carried out to investigate this and the results will be presented in the final impact assessment.

⁷¹ We assumed that the 13per cent of employers that did not answer or refused to answer perceived the same effect on productivity as those who did answer.

⁷² 47.2per cent-11.5per cent = 35.7per cent~36per cent.

⁷³ To calculate output per worker the following sources and calculation have been used. In October-December 2008 there were 25,329 employees (MGRN) (source: ONS Labour market statistics February 2008). To get a figure for May 2008 we assumed a change on quarter of 0.6per cent as for previous quarter. UK output in 2004 was £2,151,833m (ONS Blue Book 2006). To get to 2008 figure we apply an average growth rate of 2.5per cent.

represent gross profit. The 14.2per cent figure represents the ratio of gross operating surplus to domestic output of product for the entire economy⁷⁴. The table below presents the increased gross profit as a result of improved productivity.

Table 3. Increased profits as a result of increased productivity - parents of older children

Scope of law	Extra gross profits (Total) p.a.
Parents of children aged 6 and under	-
Parents of children aged 16 and under	£64m

Source: BERR estimates. Figures have been rounded

3. Reduced absenteeism rates

BERR's third work life balance survey also showed that a net of 33per cent of firms report a positive effect on absenteeism as a result of flexible working and leave arrangements⁷⁵. The CIPD surveyed found that on average the cost of an employee being absent per year is £685⁷⁶. An assumption was made that 33per cent of new working arrangements will result in lower employee absenteeism. For the purpose of this IA, we are using a constant rate of people being absent even though we do recognize that the likelihood to be absent is inversely related to the age of the child. A further assumption has been made that the cost of absenteeism prior to making a request is £658 per year and after a request is accepted the cost of absenteeism falls by 10per cent. It is assumed that the absenteeism cost falls because flexible working allows employees to reduce the incidences of absence per year. Table 4 below presents the savings made by employers as a result of lower absenteeism.

Table 4. Savings in absence costs - parents of older children

Scope of law	Savings in absence costs
Parents of children aged 6 and under	-
Parents of children aged 16 and under	£6.1m

Source: BERR estimates. Figures have been rounded

Summary of quantifiable benefits

The table below provides a summary of the quantifiable benefits adding together the savings in recruitment cost (Table 2), the quantifiable benefits of increased productivity (Table 3) and the quantifiable savings in absence costs (Table 4).

⁷⁴ The Gross operating surplus is taken from the United Kingdom Economic Accounts, Q3 2007 Table 12, series ABNF (gross operating surplus). To get the 2008 figure we applied an annual growth rate of 4per cent: $343,510 \times 1.04 = 357,250$. The Domestic Output of products comes from the 2006 Blue Book, an annual growth rate of 4per cent has been applied: $2,151,833 \times 1.04 \times 1.04 \times 1.04 \times 1.04 = 2,517,340$
 $357,250.4 / 2,517,340.3 = 14.2$ per cent.

⁷⁵ After controlling for those employers that did not answer we have 10.4per cent of employers thinking that flexible working had a negative effect on absenteeism and 43.7per cent thinking that it has a positive effect.

⁷⁶ CIPD, cost of being absence in 2007 £659, we then applied a annual growth rate of 4per cent.

Table 5. Total additional quantifiable benefits - parents of older children

Scope of law

Total additional quantifiable benefits

Parents of children aged 6 and under	-
Parents of children aged 16 and under	£91m

Source: BERR estimates. Figures have been rounded.

COSTS

The principal costs to business of the proposals fall under three headings:

1. Implementation costs of the proposals:
2. Procedural costs arising from exercise of the right to request flexible working:
3. The costs of accommodating such requests (when they are accepted)

These are considered in turn.

1. Implementation costs

The extension of the right to request flexible working would result in one-off Implementation costs for business. These are estimated and discussed in detail in part 3 below. It is assumed that the extension of the existing law will have negligible implementation costs. Firms are already familiar with how to process a request for flexible working. The cost of communicating the change in eligibility to employees will be very little as it is assumed that firms will already have a method of communication in place that will only need updating.

These are one-off costs. Most will be incurred in the period around when the legislation comes into force although in some cases, for example where smaller firms have no eligible employee at the time of implementation, the costs may not occur straight away.

2. Procedural Costs

2.1 Average cost of handling a formal request

Essentially, the first stage encompasses a written request from the employee, deliberation by the employer both before and after a meeting with the employee, and then preparation of a decision. The principal cost will be the time of both management and employees (it is assumed that employees prepare requests during work rather than in their own time).

Clearly, there will be considerable variation in the time this process takes depending upon the nature of the request, the way the request is then handled by the employer (the level of management permitted to decide on requests, the degree of written protocol), whether an employee is accompanied at the meeting with management, and whether or not a decision is straightforward to make (e.g. whether other employees have to be consulted).

Experience has also shown that as a result of the formal right to request acting to accelerate culture change in the workplace, many applications are considered on a more informal basis, which again significantly reduces the procedural costs.

We estimate 2 hours of employee time, and 3 hours of management time to process a request that is dealt with formally. It is assumed that with requests that are dealt with informally it takes half an hour of employee time and one hour and a half of management time to process the request. Details on the time to process a request are provided in table 6 below. This works out at approximately £65 per request.

It is likely in practice that for 'deadweight' requests, i.e. those where employees are already allowed to work flexibly, the average procedural cost is likely to be much less. Even where flexible working is guaranteed, the cost of any existing procedure for changing working patterns – however informal - must

be subtracted. Adopting the methodology used in earlier impact assessments a notional cost of £22 is assumed for each deadweight request

2.2 Average cost of appeal or internal grievance stage

The appeal stage will involve a written statement of appeal by the employee, a meeting (where the employee may be represented) and a written response by the employer. Where requests reach this stage, it is likely that both employees and managers take more care and attention over their written communications. The meeting may also be longer and more wide-ranging. It is therefore assumed that the average cost is double that of the first stage, namely £130 per request.

2.3 Average cost of external dispute resolution stage

The average cost to an employer of an application to an Employment Tribunal - £4,980⁷⁷ - is used as a benchmark figure. The cost to the employer excludes any financial or non-financial costs borne by the employee at this stage. Other sources of dispute resolution, e.g. the ACAS arbitration scheme, may be cheaper for both parties.

The total procedural cost per annum is presented in table 7.

2.4 Administrative Burdens

Annex B sets out the PwC administrative burden information obligations associated with the Flexible Working (Procedural Requirements) Regulations 2002⁷⁸. This allows us to identify and separate out from the procedural costs, those activities under the current proposals that are likely to impose an information obligation on employers.

It is important to note that not all the procedural costs set out above can be strictly termed as administrative burdens. The associated information obligations such as written notification of the employer's decision relating to the request are a subset of the procedural costs and can largely be estimated on the basis of time taken to complete the relevant tasks. The remainder of the procedural costs are therefore considered to be policy costs.

As the underlying unit cost (i.e. the hourly rate for management and employee time) is the same, the differential is in terms of time commitment. These are set out in the table below.

⁷⁷ Source Survey of Employment Tribunal Applications 03'

⁷⁸ i.e. the introduction of the right to request flexible working for parents of children under 6 and disabled children under 18.

Table 6. Estimated time to process a request[#]

Acceptance stage		unit cost		of which admin burden	
		formal	informal	formal	informal
Average time to processing requests at first stage (accepted)	Management time	3	1.5	1	1
	Employee time	2	0.5	0	0
Average time to processing requests at first stage (rejected)	management time	3	1.5	1	1
	Employee time	2	0.5	0	0
Average time to processing requests at first stage (deadweight request)*	Management time	1	0.5	0.33	0.33
	Employee time	0.67	0.17	0	0
Average additional time per request taken to appeal stage**	Management time	6	3	2	2
	Employee time	4	1	0	0

Source: BERR estimates. * Assumed to be one third of a new request. **Assumed to be the double of a new request .# in hours

In terms of administrative burdens these will fall on employers only and estimates of time required are given in Table 6 above. We assume initially that administrative burden costs apply to all formal and informal requests, although it is reasonable to assume that informal requests may not always result in formal written notification from the employer.

We estimate extending the right to parents of children aged 16 and under will result in 308,000 additional requests⁷⁹ of which we estimate that 270,000 will be accepted. We have assumed in this impact assessment that 80per cent of requests are informal hence it is likely that only a small proportion of employees will request a written confirmation.

BERR would welcome views on the extent to which employees would request a written confirmation when their request has been accepted.

The resulting costs of administrative burdens (without considering any simplification measures) to employers are presented in table 7 below and reflect the split between formal and informal requests outlined above.

3. Cost of accommodating requests for flexible working

Employers may also face costs in accommodating a request for flexible working. Examples might include re-organising work schedules or adjustments to IT systems (e.g. to permit flexible rostering). In some cases, the potential costs could be more substantial (e.g. if another employee had to be recruited to cover for an employee reducing their working hours). These examples should not be considered as exhaustive.

Employers can reject requests on cost but this does not imply that the additional costs of accommodating requests are zero. Employers will accept cases where some additional cost is involved.

On average the costs of accommodating requests for flexible working might be a week's wages for requests that ask to work part time. For other types of requests we have assumed the equivalent of 1 day's wages to accommodate the request. Another assumption has been made that half of all request are to work part time, hence the average cost of accommodation is 3 days wages. Using average earnings from the 2007 Annual Survey of Hours and Earnings and allowing for 21per cent for non-wage labour costs, this produces costs of £242 for male full-time, £77 for male part-time, £193 for female full

⁷⁹ Details in appendix C table C4

time and £99 for female part time⁸⁰. The annual cost of adaptation is assumed to be constant for each of the various proposals because evidence from the LFS suggests that the stock of parents who work flexibly is approximately constant over time.

It is likely that requests accommodated at the appeal stage, or at the external dispute resolution stage, will be more finely balanced and therefore, on average, more costly to implement. The estimates above are, therefore, multiplied by factors of 1.5 and 2 respectively for the (small) number of requests that are successful at the appeal or external dispute resolution stage.

The total procedural costs and the cost of making adjustments to working patterns for the first year are presented in the table below. The last three columns of table 7 below show a) the additional cost to employers per year due to the new law and b) of this the increase in administrative burdens, presented both in 2008 and 2005 prices.

Summary of costs

Table 7 Summary of annual procedural costs and cost of accommodating requests*

	Total procedural cost (£ millions)	Total costs of making adjustments to working patterns (£ millions)	Additional cost to employer (£millions)**	Of which administrative burdens	
				2008 Prices	2005 Prices***
Scope of law					
Parents of children aged 6 and under	42	77	-	-	-
Parents of children aged 16 and under	68	120	69	12	11.2

Source: Berr estimates *Rounded to nearest million. **This column represents the difference between the total employer cost (procedural cost + cost of adjustment) for the proposed option and current scope of law. *** to compare against 2005 admin burdens baseline

* All the wage figures above are based on 60per cent of average gross weekly earnings plus 21per cent of non-wage labour costs.

Part 2A: Deregulatory measure

As part of the statutory process required for an employee to request a flexible working pattern there is an obligation for the employer to write to notify the employee of agreement to the revised pattern (see annex B).

The Government is committed to simplifying and reducing where possible the administrative burdens on business. We are therefore seeking comments from respondents to the linked consultation on the merits of replacing the current obligation for the employer to write to notify the employee of *agreement* to the revised pattern with a right to have this written confirmation only if the employee specifically requests it.

This change would remove the need for an employer to write to confirm agreement and reflects our understanding that most employers are increasingly handling requests informally. The obligation to write would **not** be removed where an employer refuses a request for flexible working.

The extension of the right to request flexible working to parents of children aged 16 and under is planned for introduction in April 2009 and we would aim to implement this deregulatory measure at the same time. If this was not possible we would seek to do this at the earliest opportunity but it would not have the effect of delaying the introduction of the extension.

(i) Calculating the effect of deregulation for the extension to older parents

In table 6 above, we set out the underlying unit costs used to calculate both the procedural and separate administrative burdens costs. The results were presented in table 7.

Evidence from the Third Work-Life Balance Survey suggests that 80per cent of requests are made informally and 20per cent formally. Furthermore the acceptance rate of requests at first stage is 87per cent, with the overall acceptance rate, including appeals, rising to 88per cent. On this basis we estimated total admin burdens costs to be **£12m** (in 2008 prices) for the extension of the right to request flexible working to parents of children aged 16 and under.

As stated above, the aim of the deregulatory measure would be to remove the requirement to notify the employee in writing of an acceptance of that request unless the employee specifically requests it. Therefore we assume here that only 25per cent - instead of all - of all the requests accepted will still request written notification of acceptance. The gross effect on admin burdens across all types of request (formal and informal) and all types of decision (accepted or rejected) is a 65per cent saving, or **£7.8m**.

With the deregulatory measure total administrative burdens are estimated to amount to **£ 4.2m**⁸¹.

(ii) The effect of deregulation on earlier right to request policies.

The proposed deregulatory measure would apply not only to those covered under the extension of the right to request flexible working but across the whole of the right to request legislation. In aiming to keep the process as straightforward as possible for both employers and employees it is important to ensure consistency throughout the legislation in order to minimise confusion. Furthermore it would not be practicable for business to have the measure apply to only one of the groups eligible for the right to request. Therefore the proposed deregulatory measure will affect all those eligible for the right to request flexible working. The calculations in this Impact Assessment are applicable to each of the relevant groups eligible under the right to request flexible working legislation.

(a) The right to request flexible working for parents of younger children and disabled children under 18

The PWC admin burdens exercise in 2005 estimated the costs of information obligations under the first right to request legislation introduced in 2003. This attributed a cost to business of £137m of this regulation. On this basis, an initial estimate of the saving to employers of removing this obligation (again using the 65per cent reduction identified above) unless an employee specifically requests it is £89m.

⁸¹ Corresponding to 3.8m in 2005 prices

More recent estimates suggest that in fact most requests for flexible working are handled informally and that the time taken to fulfil the obligation where it is completed is significantly less than previously assumed. On this basis the cost of the current regulation to business is **£19m** and the saving to employers of removing it unless an employee specifically requests it is **£12.4m**, leaving an actual administrative burden of £6.6m.

(b) The right to request flexible working for carers of sick and disabled adults

In the final Regulatory Impact Assessment for the extension of the right to request flexible working to carers of sick and disabled adults, it was estimated that administrative burdens costs to employers would total £35m. On this basis, an initial estimate of the saving to employers of removing this obligation (again using the 65per cent reduction identified above) unless an employee specifically requests it is £22.7m.

Recognising that more requests are handled informally and that the current estimates of the time required to fulfil the obligation are lower, using the unit costs from above⁸² we estimate that the deregulatory measure would reduce administrative burden costs by 65per cent from £11.3m to £3.9m, a saving of **£7.4m**.

⁸² This extension of the policy came into force in 2007, hence after the 2005 PwC exercise and as such no specific alternative unit cost estimates exist in this case.

Part 2B: Assisting business with implementation

Furthermore, the Government has accepted the recommendation in Imelda Walsh's independent report that the age cut-off point for the legal right to request flexible working should be increased to those with parental responsibility for children aged 16 and under and that this change should be implemented in a single step, rather than a staged introduction, to avoid creating confusion for business and employees. Therefore the focus of the consultation is implementation of this recommendation and simplification of the administrative procedures.

The Walsh Review also recommended that business would benefit from increased information and guidance about dealing with flexible working requests. The consultation asks for views about how this could best be done.

Ms Walsh's report highlighted that evidence shows that some groups of employee are less likely than others to be aware that they currently have the right to request flexible working, in particular fathers and carers of adults. In response, the Department for Business, Enterprise and Regulatory Reform and the Government Equalities Office will be launching a campaign this year to increase awareness of the right among both employees and employers, targeted at the groups highlighted by Ms Walsh. The campaign will focus on raising awareness of both the individuals' right to request flexible working and helping business understand how to handle such requests through more effective use of tools and advice available on BusinessLink.Gov. Activities will be spread over 12 months encompassing media opportunities, Ministerial events and making use of publications to reach the various target audiences.

Information and Improved Guidance

Access to flexible working arrangements has made an important difference to millions of employees. Many employers recognise that flexible working improves retention and some acknowledge additional productivity benefits too. This is borne out by recent research⁸³ which found that the majority of flexible workers, co-workers of flexible workers and managers of flexible workers reported that there was either a positive impact or no impact on individual performance.

However, Ms Walsh's review found that many employers would appreciate more help and guidance about how to introduce flexible working as they are concerned about the impact on their business and the customers they serve. Despite having heard about the potential benefits, they are understandably cautious about how to go about introducing flexible working arrangements in their own organisations.

Ms Walsh therefore recommended that the Government consider how it can better assist and offer practical encouragement to businesses implementing these changes. She suggested that employer representative bodies, with Government support, could assist in the sharing of good practice and ideas.

In the consultation document, the Government is seeking views as to what more Government can do to assist businesses that are implementing flexible working arrangements, having regard to the existing guidance and templates available on BusinessLink.gov.uk⁸⁴ and to any particular characteristics of parents of children 16 and under.

Calculating the impact of improved implementation assistance

We assume here that additional measures to help business with implementation of the legislation for the extension to parents of older children will have an impact in terms of reducing the time it takes to process a request for flexible working.

From table 7 above we use those procedural costs that are net of admin burdens, hence around £14m in this case, and assume that improved guidance will result in business reducing these costs by 25per cent, or by **£3.5m**.

⁸³ "Flexible Working and Performance", Cranfield University School of Management, April 2008

⁸⁴ www.businesslink.gov.uk/bdotg/action/layer?r.l2=1073858926&r.l1=1073858787&r.s=tl&topicId=1073931239

F: Risks

The estimates of costs and benefits presented in this impact assessment are necessarily based upon a number of assumptions, that relate among other things to possible take-up and the procedural costs associated with the right to request flexible working. We will continue to firm up our estimates for the final impact assessment as new data and information become available. This will also contain a full sensitivity analysis.

Further work will also be conducted on measuring productivity gains to test the assumptions made above about the actual extent of these gains.

G: Enforcement

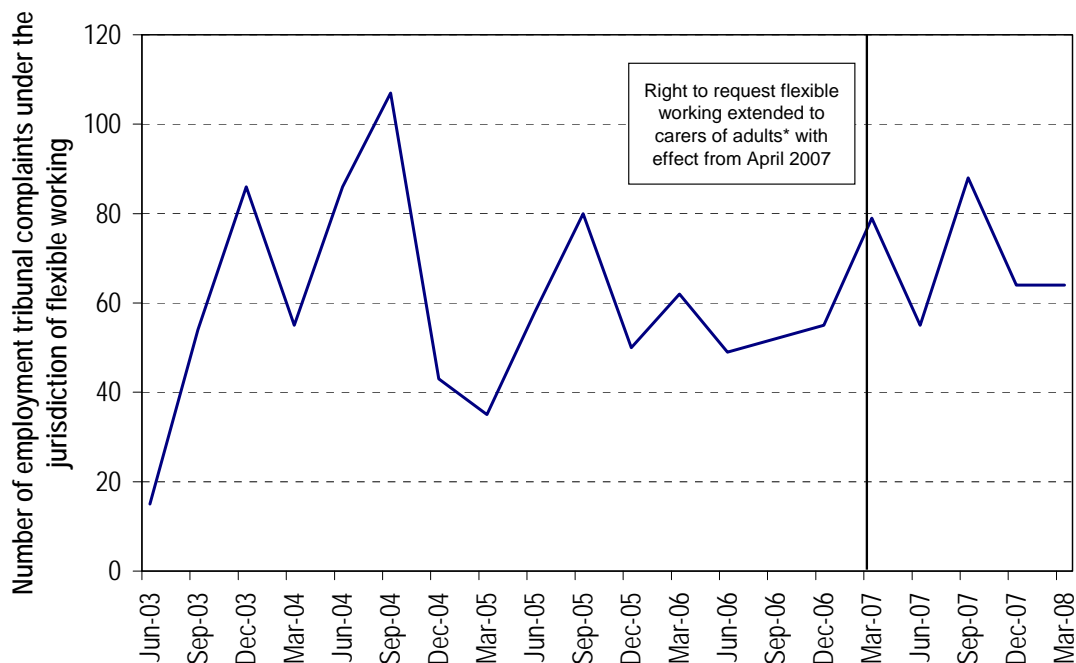
Employees trigger the duty to consider by making a request for flexible working. If the employer rejects the request and the employee is not satisfied with the explanation, he or she can appeal to the employer.

If the employee still does not think the employer has given the matter serious consideration, he/she can seek resolution through an external dispute resolution mechanism and ultimately through an employment tribunal.

The chart below summarises the quarterly data on Employment Tribunal claims since early 2003 when the right to request flexible working was first introduced for parents of young children under six and disabled children under 18.

Overall the number of claims for the flexible working jurisdiction has been relatively small, accounting for less than 0.1per cent of all ET claims over the period. Furthermore following the extension of the right to request to carers of adults in April 2007, there was not a significant increase in claims: in the year to March 2007 there were a total of 235 ET claims, whereas in the year to March 2008 there were 271 ET claims.

Chart 1 – Number of employment tribunal complaints under the jurisdiction of flexible working[#]



Source: Employment Tribunal Service. [#]Great Britain, not seasonally adjusted.* On 6 April 2007 the right to request flexible working was extended to carers of adults. Carer must be or expect to be caring for a spouse, partner, civil partner or relative; or if not the spouse, partner or a relative, live at the same address as the adult in need of care.

We therefore assume that an extension of the right to request to parents of older children will have a marginal effect on the number of ET claims.

H: Recommendation and summary table of costs and benefits

Table 9 presents a summary of the estimated quantifiable costs and benefits for each option.

Table 9. Summary of quantifiable costs and benefits

Scope of law	Annual Costs (£m)	Annual Benefits (£m)
Option 1: Parents of children aged 16 and under	69	91
Option 2: as above plus deregulatory measure and implementation assistance	61	111

Source: BERR estimates. Figures have been rounded

In addition to the benefits quantified above, we also recognise that there are likely to be wider benefits of this policy, such as better work-life balance for employees, increased labour supply due to availability of more flexible working opportunities, improved health and well-being, and positive environmental impacts. Further analysis will be carried out with a view to quantifying and presenting these in the final impact assessment.

I: Implementation

We expect that the amended regulations will be introduced in April 2009. We intend to consult on how best the change in the law can be implemented so that the costs of implementation can be minimised e.g. through providing clear guidance and developing simple procedures for implementation.

J: Monitoring and evaluation

Monitoring and evaluation of the extension of the right to request flexible working will be carried out through surveys of employers and employees. BERR regularly conducts baseline surveys of this nature, with the most recent being the Work-Life Balance Employee Survey carried out in March 2007⁸⁵ and the Work-Life Balance Employer Survey in December 2007⁸⁶. Information relating to this area should also be available from the next Workplace Employment Relations Survey (WERS), which will be conducted in 2010. This survey will also contribute to an assessment in 2010 of the success, or otherwise, of the proposed policy extension.

⁸⁵ The Third Work-Life Balance Employees Survey, March 2007, Employment Relations Research Series No.58

⁸⁶ The Third Work-Life Balance Employers Survey, December 2007, Employment Relations Research Series No.86

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annex A: SPECIFIC IMPACT TESTS

1. Competition Assessment

Business sectors affected

The table below shows the number of additional employees by broad sector who would be eligible to request flexible working if the current law was extended to those with parental responsibility for older children. Overall the sectoral impact is likely to be minimal. The distribution of eligible employees across sectors is in fact very similar to the overall distribution of all employees. The main exceptions to this are a) hotels and catering – where there is less likelihood of there being eligible parents, and b) public administration, education and health where there are likely to be disproportionately higher eligibility.

Table A1. Estimated additional eligible employees by business sector as per cent of total employees

	total employees	parents of youngest children aged 6-16
A-B: Agriculture & fishing	1per cent	1per cent
C,E: Energy & water	1per cent	1per cent
D: Manufacturing	14per cent	15per cent
F: Construction	6per cent	5per cent
G-H: Distribution, hotels & restaurants	19per cent	15per cent
I: Transport & communication	7per cent	6per cent
J-K: Banking, finance & insurance etc	16per cent	13per cent
L-N: Public admin, educ & health	31per cent	39per cent
O-Q: Other services	5per cent	4per cent
Workplace outside UK	0per cent	0per cent
total	100per cent	100per cent

Source: LFS Q2 2007

Public – private sector split

Tables A2 and A3 below present estimates of the number of eligible parents, new requests for flexible working and new working arrangements in the public and private sectors respectively.

Table A2: Estimated number of eligible parents, new requests and of new working arrangements in the public sector						
Scope of law	Number of entitled employees (000s)	Number of additional entitled employees (000s)	Number of new requests (000s)*	Number of additional new requests (000s)	New working arrangements ('000s)	Additional number of new working arrangements p.a. ('000s)
Parents of children aged 6 and under	949	-	157	-	137	-
Parents of children aged 16 and under	2555	1606	278	121	243	106

Source: BERR estimates. *Excluding deadweight requests

Table A3 Estimated number of eligible parents, new requests and of new working arrangements in the private sector						
Scope of law	Number of entitled employees (000s)	Number of additional entitled employees (000s)	Number of new requests (000s)*	Number of additional new requests (000s)	New working arrangements ('000s)	Additional number of new working arrangements p.a. ('000s)
Parents of children aged 6 and under	2559	-	346	-	303	-
Parents of children aged 16 and under	5443	2884	533	187	467	164

Source: BERR estimates. *Excluding deadweight requests

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A4 below). The proposed legislation will apply to all firms and is unlikely to affect the competitiveness of any particular sector.

Table A4. Competition assessment.

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BERR

2. Small Firms Impact Test

The proposed amendment to the regulations would apply to firms of all sizes. Table A5 presents the distribution of estimated eligible parents and compares this to the distribution of all employees by workplace size across the economy. The indication is that small and medium sized workplaces would not be disproportionately affected.

Table A5 Estimated additional eligible employees by size of the company as per cent of total employees

	total employees	parents of youngest children aged 6-16
1-10	20per cent	19per cent
11-19	9per cent	9per cent
20-24	5per cent	5per cent
25-49	14per cent	14per cent
50-249	26per cent	26per cent
250-499	8per cent	8per cent
500 or more	18per cent	19per cent
Total	100per cent	100per cent

Source: LFS Q2 2007. Assuming that the "do not know but under 25" have the same distribution as the 1-10,11-19,20-24 groups, and the "do not know but between 50 and 499" have the same distribution as the group 50-249 and 250-499.

3. Equality Impact Assessment

An initial equality impact assessment suggests there would not be any disproportionate effects by gender, race or disability. This will be supplemented by a full analysis for the final impact assessment.

Table A6 Estimated additional eligibility by ethnicity of employees

	total employees	parents of youngest children aged 6-16
White	92per cent	92per cent
Mixed	1per cent	1per cent
Asian or Asian British	4per cent	4per cent
Black or Black British	2per cent	3per cent
Chinese	0per cent	0per cent
Other	1per cent	1per cent
Total	100per cent	100per cent

Source: LFS Q2 2007

ANNEX B: OUTLINE OF ADMIN BURDEN INFORMATION OBLIGATIONS RELATING TO 2002 REGULATIONS

The table below sets out the administrative burdens information obligations under the Flexible Working (Procedural Requirements) Regulations 2002.

ID	IO Description	Information Metric
30371	Providing an employee with written notice of the decision relating to a request for a contract variation. Specifying in the written notice: - the contract variation agreed to and date on which the variation is to take effect, where your decision is to agree to the application; or - the prescribed grounds for refusal where the application is turned down.	No of requests for a contract variation in relation to flexible working
30411	Notifying the employee, in writing, when you uphold your decision to refuse an application to change working arrangements after the employee has appealed. The notice of your decision should specify the contract variation agreed to and stating the date from which the contract variation is to take effect	No of instances an employer upholds their decision to refuse an application to change working time arrangements after the employee has appealed
30463	Confirming the withdrawal of an application for a contract variation to change working arrangements to the employee in writing in certain circumstances, for example, where the employee has failed to attend meetings.	No of withdrawals of an application for a contract variation to change working arrangements in certain circumstances, for example, where the employee has failed to attend meetings.
30415	Notifying the employee of your decision following a meeting to discuss the appeal. Written notice stating: - where you uphold the appeal, the contract variation agreed to and the date from which the variation is to take effect or; - where you dismiss the appeal, the grounds for the decision with a sufficient explanation as to why those grounds apply.	No of appeals in connection with requested contract variations
30363	Requirement for an employer to notify an employee in writing within 28 days of an application for a contract variation of any agreed variation. Written notice specifying the contract variation agreed to and the date from which it is to take effect	No of instances where an employer agrees to an employee's application for a contract variation to provide for an alternative/flexible working arrangement

ANNEX C: FLEXIBLE WORKING ESTIMATES FOR PARENTS OF OLDER CHILDREN

This impact assessment uses data from the Second Work-Life Balance Survey to estimate take-up rates and degree of deadweight requests. It may be possible for the final impact assessment to update these assumptions based on results from the Third Work-Life Balance Survey. This could change the level of costs and benefits. However, any changes to the degree of take-up or deadweight requests will not alter the ratio of costs to benefits.

The impact of extending the right to request flexible working to those with parental responsibility for older children will depend upon a number of factors. The key cost-benefit drivers, however, will be take-up of the right to request, i.e. how many parents of older children make a request for flexible working, and how employers respond to those requests.

It is likely that take-up will vary by sex and by whether or not parents already have any identifiable 'flexible' working pattern.

Table C1 disaggregates the eligible group of parents by sex, age of youngest child, full-time/part-time status and whether or not they said they had one of a number of identifiable 'flexible' working patterns.

Table C1: Disaggregation of eligible parents ('000s)

Age of youngest child	Mothers				Fathers			
	FT non flex	FT flex	PT non flex	PT flex	FT non flex	FT flex	PT non flex	PT flex
0	145	53	112	44	340	66	12	*
1	75	39	157	68	349	70	16	*
2	55	24	127	46	266	56	16	*
3	63	19	123	37	227	48	*	*
4	48	27	92	44	200	41	*	*
5	50	26	70	40	153	28	*	*
6	59	28	93	55	170	33	*	*
7	52	36	77	57	142	37	*	*
8	65	33	83	45	152	29	*	*
9	70	31	85	47	149	31	*	*
10	62	29	80	56	140	34	*	*
11	70	29	61	53	137	34	*	*
12	75	38	72	47	150	34	*	*
13	80	39	62	42	140	36	*	*
14	89	38	60	42	138	37	*	*
15	87	57	73	36	147	36	*	*
16	65	36	47	27	112	25	*	*

Source: LFS Q2 2007. Assuming that the "no answers" and "does not apply" behave as the rest of the population. * = less than 10,000.

Notes: FT/PT = Full-time/Part-time. 'flex' = any of flexi-time, term-time working, job shares, annualised hours, nine-day fortnights and four and a half day weeks and zero hours contract.

Table C2 sets out some illustrative estimates of deadweight requests

Table C2 Illustrative Deadweight assumptions

Age of youngest child	Mothers				Fathers			
	FT non flex	FT flex	PT non flex	PT flex	FT non flex	FT flex	PT non flex	PT flex
0	0.05	0.3	0.5	0.5	0.05	0.1	0.3	0.3
1	0.05	0.2	0.1	0.1	0.05	0.05	0.05	0.05
2	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
3	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
4	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
5	0.03	0.2	0.05	0.05	0.03	0.05	0.05	0.05
6	0.03	0.2	0.05	0.05	0.03	0.05	0.05	0.05
7	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
8	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
9	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
10	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
11	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
12	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
13	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
14	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
15	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05
16	0.03	0.1	0.05	0.05	0.03	0.05	0.05	0.05

Note: assumed unchanged from previous IA, and assuming that parents of child aged 18 behave as parents of child aged 17

Deadweight is expressed as a proportion, i.e. 3per cent of mothers (and fathers) with a youngest child aged 16 working full-time without any identifiable 'flexible' working pattern are assumed to already make a request for flexible working.

The following principles have been used in deriving these assumptions:

- It has been assumed that the most likely to time to seek a change to working patterns is in the year after birth of a child, especially the option to work reduced hours
- Deadweight is not zero among full-time 'non-flexible' employees because some may obtain flexibilities not captured in surveys (e.g. changing starting and finishing times that do not fit into a formal flexi-time scheme).
- Nor is deadweight 100per cent for those with part-time or other 'flexible' working options. Many parents will have changed jobs to secure these types of working (and thus made their 'request' via the jobs market rather than internally). In other cases, the 'flexibility' might be an incidental feature of a job they had taken for other reasons and thus no request for change had been made.
- For mothers working full-time, there is an increased proportion seeking flexible working options when their children start school (i.e. in the 5-6 age group).

Table C3 sets out take-up rates of 'new' (after excluding deadweight) requests for flexible working. New requests is expressed as a proportion i.e. 7per cent of mothers with a youngest child aged 16 working full-time without an identifiable 'flexible' working pattern are assumed to make a new request.

Table C3 Take up rates of "new" requests for flexible working

Age of youngest child	Mothers				Fathers			
	FT non flex	FT flex	PT non flex	PT flex	FT non flex	FT flex	PT non flex	PT flex
0	0.55	0.4	0.25	0.25	0.15	0.2	0.2	0.2
1	0.25	0.1	0.15	0.15	0.05	0.15	0.05	0.1
2	0.17	0.1	0.15	0.15	0.05	0.05	0.05	0.1
3	0.22	0.15	0.2	0.2	0.05	0.05	0.05	0.1
4	0.17	0.1	0.15	0.15	0.05	0.05	0.05	0.1
5	0.22	0.05	0.2	0.2	0.07	0.1	0.05	0.1
6	0.27	0.1	0.2	0.15	0.07	0.1	0.05	0.1
7	0.17	0.1	0.15	0.15	0.03	0.05	0.05	0.1
8	0.17	0.1	0.15	0.15	0.03	0.05	0.05	0.1
9	0.12	0.05	0.1	0.1	0.03	0.05	0.05	0.1
10	0.12	0.05	0.1	0.1	0.03	0.05	0.05	0.1
11	0.12	0.05	0.1	0.1	0.03	0.05	0.05	0.1
12	0.12	0.05	0.1	0.1	0.03	0.05	0.05	0.1
13	0.07	0	0.05	0.05	0.01	0.02	0.05	0.1
14	0.07	0	0.05	0.05	0.01	0.02	0.05	0.1
15	0.07	0	0.05	0.05	0.01	0.02	0.05	0.1
16	0.07	0	0.05	0.05	0.01	0.02	0.05	0.1

Note: assumed unchanged from previous IA, and assuming that parents of child aged 16 behave as parents of child aged 15

Numbers of requests accepted by employers

Requests can be accepted by employers at a number of stages: when a request is first made; at the appeal or internal grievance stage; and following recourse to external dispute resolution (either an Employment Tribunal or another form of dispute resolution). BERR's third work life balance employee survey showed that 87 per cent of new requests are accepted at first stage and 25 per cent of unsuccessful cases are taken to appeal stage. We assumed that 20 per cent of new requests are accepted at appeal stage, 2 per cent of unsuccessful requests referred to external dispute resolution, of which 20 per cent to be successful.

It is therefore necessary to map the progress of requests through these various stages. This is done in Table C4.

Table C4: Progress of requests through the various stages (000's)

Scope of law	Parents of children under 6	Parents of children aged 16 and under	Additional new requests
1) No. of new requests	503	811	308
2) Proportion accepted at first stage (0.87=87per cent)	0.87	0.87	0.87
3) No. of requests accepted at first stage =1x2	438	705	268
4) Proportion of requests taken to second stage (0.25=25per cent)	0.25	0.25	0.25
5) No. of second stage requests =(1-3)x4	16.4	26.4	10
6) Proportion accepted at second stage (0.2=20per cent)	0.2	0.2	0.2
7) No. of requests accepted at second stage =5x6	3.3	5.3	2.0
8) No. of requests turned down by employer= 5-7	13	21	8
9) Proportion referred to external dispute resolution (0.02=2per cent)	0.02	0.02	0.02
10) No. of additional external dispute resolution cases=8x9	0.26	0.42	0.2
11) Proportion successful at external dispute resolution stage	0.2	0.2	0.2
12) No. of requests accepted at external stage = 10x11	0.05	0.08	0.0
13) No. of requests unsuccessful at external stage = 10-12	0.21	0.34	0.1
14) Total no. of new working arrangements = 3+7+12	441	711	270

Summary: Intervention & Options

Department /Agency: BERR	Title: Partial Impact Assessment of the review of Commission Directive 94/45/EC on European Work Councils for the purpose of informing and consulting employees.	
Stage: Consultation	Version: FINAL	Date: 28 August 2008
Related Publications: Consultation document		

Available to view or download at: <http://www.berr.gov.uk/files/file47617>

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

A Commission review of the European Works Council Directive identified a number of problems with respect to the practical application of the Directive with regard to the information and consultation of employees; legal certainty, and coherence between EWCs and national level procedures, with a significant market failure noted in the form of information asymmetry between employer and employee. Although a non-regulatory approach involving additional promotion of best practice would produce some economic and social benefits, it would entail some additional costs for the EU budget. Moreover, this approach is unlikely to tackle the objectives of legal certainty and coherence in Community legislation. The Commission has therefore published a legislative proposal to amend the EWC Directive which seeks to address the problems set out above.

What are the policy objectives and the intended effects? The Commission's objectives for amending the Directive are:

- to improve the effectiveness of information and consultation of employees in existing EWCs;
- to increase the number of EWCs being established;
- to improve legal certainty in the setting up and the operation of EWCs (for example during mergers and acquisitions); and
- to enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

What policy options have been considered? Please justify any preferred option.

There are three policy options considered by the Commission: (1) Do nothing: leave Directive unchanged; (2) Non-legislative approach to encourage best practices; (3) Legislative Review of existing Directive. As the Commission rules out the first option and judges the second option would, alone, fail to achieve the objectives of the current Directive review, the preferred policy option is (3) – for a review of existing legislation – supplemented by aspects of (2), by encouraging best practices through improved dialogue. Given a non-regulatory approach is not viewed as a viable option to achieve the review's objectives, this Impact Assessment will solely assess legislative review, as in the consultation document, compared with a benchmark of Option (1): Do nothing.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Article 14 of the Directive requires a review by the Commission five years after the revised Directive comes into force. The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS). The Central Arbitration Committee (CAC) is currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999.

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State for Employment Relations and Postal Affairs Date: 31st August 2008.

Summary: Analysis & Evidence

Policy Option: 2

Description: Implement proposed review to the Directive.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Direct costs are increased costs borne by existing EWCs and indirect costs capture the cost of additional take-up. One-off costs are estimated at £1.98m over 3 years (wherein 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £3.93m and £4.91m depending upon scenario considered.	
	One-off (Transition)	Yrs		
	£ 1.98m	3		
	Average Annual Cost (excluding one-off)			
	£ 3.93 – 4.91m	10	Total Cost over 10 years (PV)	£ 34.3m – 42.4m
Other key non-monetised costs by 'main affected groups' costs relating to Admin Burdens detailed within individual articles.			There are a number of negligible costs relating to Admin Burdens detailed within individual articles.	

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. It was not possible to quantify benefits, given their intangible nature.	
	One-off	Yrs		
	£ n/a	0		
	Average Annual Benefit (excluding one-off)			
	£ n/a	10	Total Benefit (PV)	£ n/a
Other key non-monetised benefits by 'main affected groups'			More effective information & consultation of employees, if achieved, has the potential to demonstrate a positive commitment to employees and to enhance understanding of management, employee-management relationship and the impact of restructuring on employees.	

Key Assumptions/Sensitivities/Risks.

Please refer to Sections E and F, which detail assumptions made and risks identified.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ (-42.4m) – (- 34.3m)	NET BENEFIT (NPV Best estimate) £ - 34.3m
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		Unknown - consultation		
Which organisation(s) will enforce the policy?		CAC		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ negligible	Decrease of	£ 0
Net Impact		£ negligible	

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

A: Strategic overview

Existing Government initiatives

The European Works Council (EWC) Directive was adopted in September 1994, with an implementation date of September 1996. At the time, the UK Government had not signed the social chapter of the Maastricht Treaty 1992 and so the Directive did not apply to the UK. The Government accepted the social chapter in June 1997, and as a result the original Directive was extended to cover the UK and was given effect in UK law in January 2000 by the Transnational Information and Consultation of Employees (TICE) Regulations.

Implications for Administrative Burdens (AB)

Original PwC admin burdens exercise estimated total post-BAU (Business as Usual) costs of just under £5.4m a year. This was based on an estimated 55 UK-based EWCs. The proposed changes to the Directive on EWCs has no potential to reduce AB, as amendments increase the obligation to provide information in a number of areas. However, as detailed in more depth in Section E, the additional admin burdens are predicted to be negligible in each of the areas when AB are affected.

B: The issue

The EWC Directive sets out requirements for informing and consulting employees at the European level in undertakings or groups of undertakings with at least 1000 employees across the Member States of the European Economic Area (EEA) and at least 150 employees in each of two or more of those Member States. The purpose of the Directive is to establish mechanisms for informing and consulting employees where the undertaking has been requested to do so in writing by at least 100 employees or their representatives in two or more Member States, or on the management's own initiative. This will entail the setting up of a European Works Council (or some other form of transnational information and consultation procedure). Where no request is received or where management does not initiate the process, there is no obligation to start negotiations or to set up an EWC.

Once a request has been made (or at the management's initiative) employee representatives⁸⁷ are either elected or appointed to a Special Negotiating Body (SNB). Article 6 of the Directive requires the SNB to negotiate with central management to determine the scope, composition, functions of the EWC and the duration of the agreement. Negotiations can last up to three years but where agreement has not been reached after that period, or the undertaking has failed to initiate negotiations six months after receipt of the employees' request to establish an EWC, a set of minimum requirements will apply which are laid out in the Annex to the Directive, entitled the 'subsidiary requirements'. In practice few, if any, EWCs have been set up under these fall-back subsidiary requirements but it is understood that the provisions of many EWC agreements have been influenced by them.

Where a company had already in place arrangements to inform and consult all of its employees in the EEA prior to the Directive coming into force, such agreements are exempt from the provisions of the EWC Directive. These provisions are made at Article 13 of the Directive and apply to agreements concluded by 22 September 1996 (or 15 December 1999 for UK companies when the Directive was extended to the UK). Such voluntary arrangements are often referred to as 'Article 13 agreements' and make up approximately 40 per cent of the EWCs in operation in the EEA today.

Expenses related to the negotiations are borne by the employer, including the cost of one expert to advise the SNB. The operational cost of the EWC is also met by the employer. The Directive further sets out the procedures for the handling of confidential information and makes provisions to ensure that the employees' representatives do not suffer any detriment as a result of their role. Representatives are also entitled to time off with pay for attending SNB or EWC meetings.

⁸⁷ An employee representative attends the general 'annual' meetings of the EWC and has a duty to represent and report back to colleagues.

Review of the EWC Directive

The European Commission is under a duty to review the operation of the EWC Directive. In April 2004, it started that review following which the Commission identified a number of problems in respect of the practical application of the Directive. The Commission has subsequently published a legislative proposal to amend the EWC Directive which seeks to address these problems.

The French Presidency and the European Commission are seeking political agreement from the Member States and the European Parliament on the revision of the EWC Directive by December 2008. The Commission's proposals will therefore be subject to early and detailed consideration by the Council this autumn, starting with Working Group meetings scheduled for mid September 2008.

Proposed changes to Directive articles seek to address current problems in EWCs – which include ineffective information & consultation (I&C) of employees, lack of legal clarity on I&C issues and lack of coherence between national and transnational procedures – involve clearer definitions of I&C and the scope of EWC activities and purpose, provision for more balanced representation within EWCs, establishment of arrangements to link national-level procedures to those at Commission level (i.e. EWCs), increased obligation of reporting of information before and during the establishment of EWCs and the right to training without loss of wages for EWC members.

Consultation

Within government

These proposals have been developed in consultation with the following Government departments: Department for Work and Pensions, HM Treasury, the Cabinet Office, the Foreign and Commonwealth Office and the Devolved Administrations.

Public consultation

This impact assessment will accompany a public consultation on the issue in September 2008

C: Objectives

Background

This Impact Assessment (IA) seeks to assess the impact of the proposed revision of Council Directive 94/45/EC, which allows for the provision and establishment of European Work Councils (EWCs) within companies of more than 1000 employees operating in two or more EU Member States. The aim of such councils is to improve employee understanding of management decisions in issues such as restructuring by encouraging effective information and consultation for employees in all operating countries. The European Commission is under a duty to review the Directive and, following a Commission review of its current failings, the objectives for amending the Directive are:

1. To improve the effectiveness of information and consultation of employees in existing EWCs
2. To increase the number of EWCs being established
3. To improve legal certainty in the setting up and operation of EWCs
4. To enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

The following analysis will review the impact the Directive has had on such companies with headquarters in the UK since its creation in 1994, as well as the likely effect on affected UK businesses of proposed changes to the Directive. The recent dialogue between Business Europe and ETUC, who are likely to agree on slightly amended changes to those proposed by the Commission, will also be taken into account for practical reasons.

D: Options identification

Option One: Do nothing

Once the directive is agreed at EU level, the UK will have to implement the necessary changes. Doing nothing therefore is not a viable option.

Option Two: Implement changes proposed by the draft Directive

The European Commission impact assessment suggests two possible approaches to achieving the four broad objectives set out above. The first is a non-regulatory approach which involves additional promotion of best practice. The second involves a review of existing legislation.

Although it is recognised that the former does produce some economic and social benefits, it does also entail some additional costs for the EU budget. Moreover, this approach is unlikely to tackle the objectives of legal certainty and coherence in Community legislation and the Commission IA⁸⁸ recognises that it would not yield the immediate and spectacular results it is seeking.

Therefore, the Commission's preferred approach is a review of existing legislation. This is being taken forward through a series of working groups during the autumn of 2008 and is therefore the basis on which this Impact Assessment is set out.

The detail of the proposed changes is discussed fully in the accompanying consultation document and presented in summary form below in the section on costs and benefits.

Given a non-regulatory approach is not viewed as a viable option to achieve the review's objectives, this Impact Assessment will solely assess review to Directive legislation, as is the case in the Consultation Document.

E: Analysis of options

Costs and Benefits

Assumptions

A number of information sources have been used to inform the cost-benefit analysis that follows. These include data on the current number of EWCs created across the EEA. Although there is no requirement to register EWCs, the European Trade Union Institute (ETUI) maintains a database of EWCs created since the early 1990s⁸⁹, providing information such as date of creation, date ended (if the EWC is no longer effective), the article of the directive under which the EWC was established, the sector in which the undertaking operates, the number of meetings per year and the number of EWC members by country. These are the best available data to allow an up to date analysis⁹⁰ of the current take-up of EWCs in the UK.

More detailed information relating, amongst other things, to the costs of setting up and running EWCs are derived from two key sources. First, we revisit and, where necessary, revise original unit cost estimates used in the original DTI Regulatory Impact Assessment⁹¹ (RIA) which accompanied implementation of Directive 97/74/EC which extended to the UK Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees. Much of the analysis used for that RIA was based on a study commissioned by DTI⁹².

⁸⁸ Commission Impact Assessment, 2008, page 62.

⁸⁹ ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu/>

⁹⁰ As of mid-August 2008

⁹¹ The Transnational Information and Consultation of Employees Regulations 1999, <http://www.berr.gov.uk/files/file34183.pdf>

⁹² Costs and benefits of the European Works Councils Directive, DTI, ERRS No.9. Tina Weber, Peter Foster and Kursat Levent Egriboz. URN 00/630; <http://www.berr.gov.uk/files/file11620.pdf>

More recent data and information have been taken from the European Commission Impact Assessment⁹³ (IA) of July 2008 which underpins the proposal for the current draft directive seeking to amend the original directive. The European Commission IA itself drew on the findings of a preparatory study⁹⁴ and we have used these data where appropriate.

It should be noted that these studies of EWCs are based on a case study approach and therefore the sample size for obtaining cost estimates is relatively small and may result in wide variations. This may be exacerbated by the fact that the recent European Commission studies report estimates based mainly on EEA averages. These may not always reflect the costs experienced in the creation and operation of UK-based EWCs. Therefore where suitable data exist, we use relevant UK cost estimates wherever possible.

The unit cost estimates for the set-up and operation of EWCs we have used in this impact assessment are presented in tables 1 and 2 below:

1. Set-up costs

The UK price estimates are derived from the ECOTEC study in 1999, which formed the basis of the UK Impact Assessment (1999), updated to 2008 prices. Details of how prices have been updated are noted below relevant tables. The 'Commission IA average', included for the sake of comparison, comes from the 2008 Commission Impact Assessment figure for the average cost of setting up an EWC agreement since 1996 (hence of Article 6 agreements)

Table 1: Average costs of setting up UK EWC (2008 prices)*

Element	Average setting up costs
management time	£18,796
employee time	£7,992
cost of venue	£8,639
travel	£8,240
translation costs	£3,987
interpretation costs	£14,752
language and other	£10,632
admin support	£1,776
dissemination costs	£1,329
costs of experts -for employees	£3,848
costs of experts - for management	£5,328
documentation for meetings	£532
admin of ballot	£18,207
total	£104,057
Commission IA average - 2008	£98,584

Source: UK EWC IA (1999).* All figures are updated using the RPI (CHAW) index (factor change of 1.329) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the Average Earnings Index, excluding bonuses (factor change of 1.48)

⁹³ Impact assessment on the revision of the European Works Council Directive SEC(2008)2166 of 2 July 2008, http://ec.europa.eu/employment_social/labour_law/docs/2008/impact_assesment_part1_en.pdf

⁹⁴ Preparatory study for an impact assessment of the European Works Council Directive, EPEC GHK, May 2008, http://ec.europa.eu/employment_social/labour_law/docs/2008/ewc_impact_assessment_preparatory_study_en.pdf

2. Operating costs

Table 2: Average costs of a UK EWC annual meeting (2008 prices)

Element	Running Costs (£)
management time	£6,497
employee time	£9,472
cost of venue	£19,908
travel	£13,104
translation costs	£6,725
interpretation costs	£14,167
admin support	£2,309
dissemination costs	£3,575
costs of experts - for employees	£2,782
costs of experts - for management	£7,770
documentation for IT	£1,289
TOTAL	£87,599

Source: UK EWC IA (1999).^{*} All figures are updated using the RPI (CHAW) index (factor change of 1.329) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the Average Earnings Index, excluding bonuses (factor change of 1.48)

Table 3: Total average annual running costs of a UK EWC (2008 prices)

Type of meeting	Average unit cost	Average annual frequency	UK average annual cost	Commission IA average
Annual meeting	£87,599	1.13	£98,987	£80,224
Extraordinary meeting				£80,224
Select Committee	£2,326 ^{**}	1.6	£3,721	£20,373
Training	£34,722		£34,722	£34,722
Total			£137,430	£215,544

Source: UK EWC Impact Assessment (1999) and Commission IA (2008)

^{**}Average cost of a Select Committee has been updated to 2008 prices from the 1999 UK IA estimate, again using the AEI as the majority of costs (not broken down) are predicted to be associated with labour, because there are greatly reduced venue and subsistence costs.

The UK price estimates are again derived from the ECOTEC study in 1999, which formed the base of the UK Impact Assessment (1999), updated to 2008 prices and the 'European averages' come from the Commission IA (2008), converted from Euros at €1 = £0.792731. The average annual frequency of general (plenary) meetings is derived from the ETUI EWC database data⁹⁵, in which UK EWCs list the number of general meetings held each year, whereas the Commission averages assume each EWC holds on average two full-size plenary meetings each year; one standard annual meeting along with one extraordinary meeting. The frequency of Select Committee meetings is calculated from the ECOTEC study (1999) assumption that 80 per cent of UK EWCs hold Select Committee meetings, of which each holds two per year.

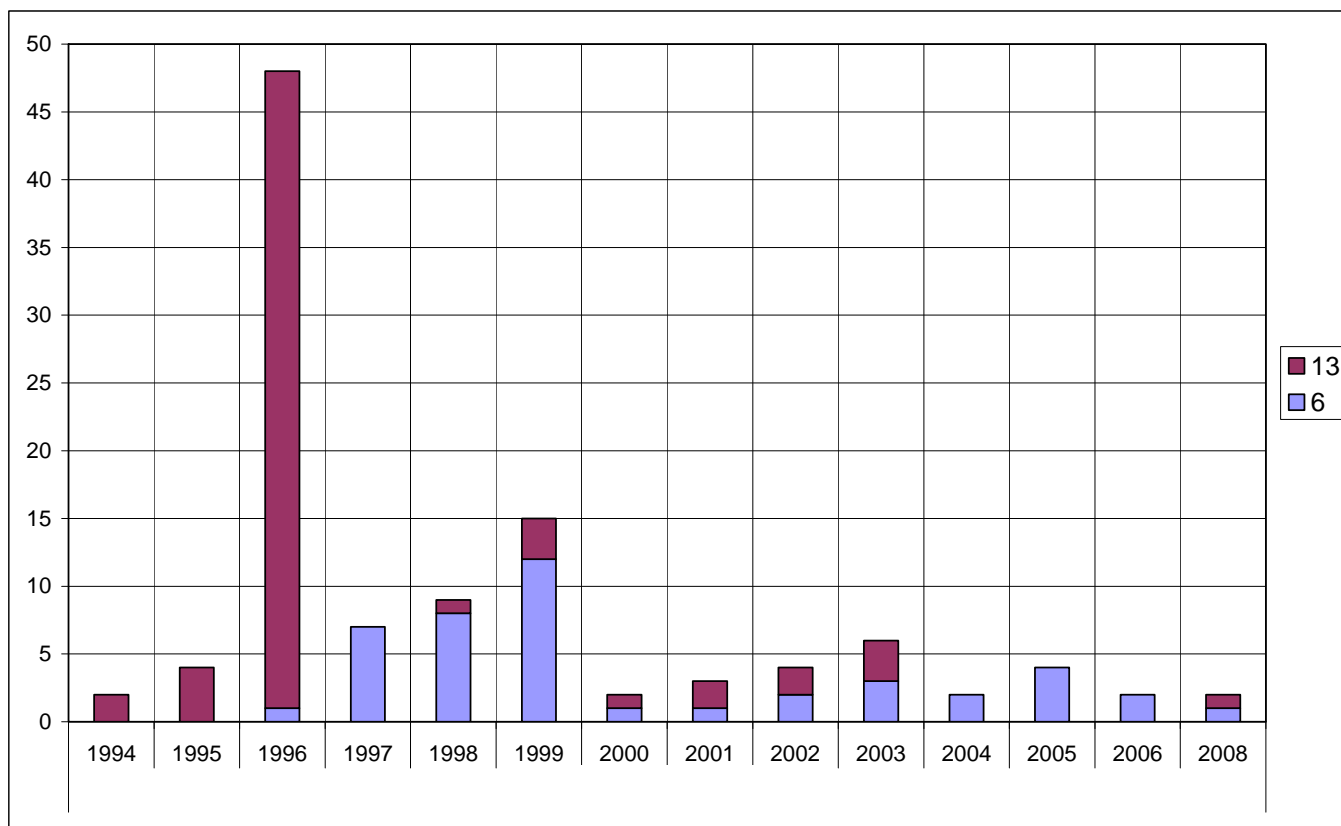
Take-up of EWCs in the UK

Since the Directive was originally implemented across the EU in 1994 141 undertakings with headquarters in the UK have been established. Of these 113 are currently effective.

⁹⁵ ETUI Database on European Works Councils Agreements <http://www.ewcdb.eu/>

Graph 1 below provides a summary of UK-based EWCs created by year. Around 60 per cent were created under Article 13 of the Directive, which allows companies to continue with agreements arranged before the Directive came into force, with the remaining 40 per cent having established newly formed council agreements under Article 6, which entails a specific procedure as set out by the Directive.

Graph 1: Creation of UK EWCs (those currently effective) by year and by Directive article.



There are an estimated 265 companies⁹⁶ with UK headquarters that could potentially fall within the scope of the Directive. This implies a current take-up rate of 43 per cent, which compares with the EEA average of 36 per cent.

Of the 28 UK EWCs which are no longer effective, 86 per cent were terminated due to Merger or Acquisition. Two thirds of those replaced by other EWCs remained in the UK, with the remainder relocating their headquarters outside of the UK. Furthermore none of the EWC agreements concluded since 2001 have ended.

Data from the ETUI EWC Database indicates that the majority of UK EWCs hold just one annual meeting (with an average of 1.1 meetings per year for UK EWCs), hosting an average of eight UK and eleven non-UK members. Beyond this, nearly all UK EWCs have provision for Select Committees to meet before the annual meeting in order to prepare the agenda, currently with a maximum of three members, which is proposed to be increased to five members.

Under Directive 94/45/EC, companies are only obliged to set up an EWC at the request of 100 or more of its employees. This would remain the case under the 2008 amended Directive, though such amendments intend to allow EWCs to be created more easily, by obliging management to 'obtain and provide information to enable the commencement of negotiations...' Take up could also be increased following proposed improvements to current EWCs, in terms of the provision of more effective information & consultation, improved legal clarity and increased coherence between national and transnational procedures.

⁹⁶ Commission Impact Assessment 2008, page 66, from ETUI-REHS, Brussels, 2006.

BENEFITS

It would be extremely difficult to quantify benefits associated with EWCs, given their intangible nature, though it is still worth considering positive effects the establishment and maintenance an EWC may have for a UK company.

The potential benefits of the proposed amendments to the Directive largely mirror those set out during the establishment of Directive 94/45/EC, as the 2008 proposed revision aims to enhance the working of EWCs, by improving the effectiveness of information and consultation of employees.

Evidence from the ECOTEC study in 1999 identified a number of benefits perceived by a majority of companies surveyed, primarily a notion of 'symbolic value' of EWCs, wherein the presence of an EWC 'demonstrates a positive commitment to employees'. This was accompanied by a general consensus that the establishment of an EWC had increased ability to exchange information with employee representatives and had involved employees more closely in the business.

A number of sample companies also believed the EWC had improved employees understanding of reasons for management decisions.

GHK (2008)⁹⁷ drew similar perceived benefits from their survey of EWCs across Europe, with 81 per cent of surveyed EWCs agreeing or strongly agreeing that understanding of management decisions had been improved; 79 per cent that there was a better exchange of information trans-nationally and 75 per cent that relations between management and employees had improved. Such benefits, as with those found by ECOTEC, are surely a desirable consequence of the presence of an EWC, though it remains difficult to assess their economic impact and indeed to be certain that the perceived benefits mirror reality.

The Commission Impact assessment goes further in their benefit analysis, suggesting that associated improvements in legal clarity and effectiveness of information and consultation of employees – particularly on restructuring issues – is likely to improve the management of change within the company. From this, they suggest costs relating to labour disputes and legal processes in situations could be reduced; huge economic costs relating to redundancy payouts (of up to €220 000 per worker)⁹⁸ could thus be reduced, which could far outweigh the costs of the running of an EWC. However, BERR does not believe that there is sufficient evidence to support this proposed benefit; whilst effective information & consultation is highly desirable in effecting management of change, the presence of an EWC is unlikely to have such a direct impact on issues of this kind.

Given mixed evidence for company support for the merits of EWCs, the potential positive impact of EWCs on issues such as the management of change should not be overestimated. It seems more reasonable that, at best, the establishment and presence of an EWC may ameliorate the impact of restructuring on employees rather than achieving significant reductions in the cost of restructuring.

COSTS

The cost estimates presented below focus on two broad areas:

- the direct effect of proposed changes to the directive that seek to improve the effectiveness of EWCs; and
- the indirect effect of these changes on the possible take-up of EWCs

Direct effect of proposed changes

The changes proposed by the draft Directive are presented in greater detail in the accompanying consultation document, but are summarised again below:

⁹⁷ A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007.

⁹⁸ 1999. Commission Impact Assessment, page 41.

- More clearly defined and implemented information & consultation of employees (Article 1.2)
- EWCs to be limited to transnational issues only (Article 1.3/4)
- Information to be defined and consultation to be redefined (Articles 2f and 2g)
- Obligation on management to provide information to enable commencement of negotiations (Article 4)
- Changed rules on size and composition of Special Negotiating Body to ensure balanced representation of employees (Article 5.2.b)
- The SNB to be allowed to meet before and after any meeting with the central management, without presence of employee representatives (Article 5.4)
- Ensuring balanced representation of employees as EWC representatives (Article 6.2.b)
- Establishment of arrangements for linking EWC procedures with those of national employee representation bodies.
- Increase in maximum size of Select Committee; from three to five members (Article 6.2.e)
- Management and SNB able to amend and terminate agreement and date of entry into force (Article 6.2.g)
- Duty of employer to represent the interest of employees, with an entitlement to the 'means acquired to apply the rights' to this. (Article 10.1)
- Access to training without loss of wages for EWC and SNB representatives (Article 10.2 and 10.4)
- Requiring national and transnational arrangements to start in parallel (Article 12.3)
- Clarification that there is no obligation to renegotiate EWC agreements established under Article 6.
- In the case of 'significant changes in structure' taking place within the company, agreements must be renegotiated at the request of at least 100 employees or their representatives (Article 13.3)

The anticipated effect of each of these changes and their estimated costs are presented in turn below.

Article 1: Legal Clarity on EWC objectives and information & consultation.

Article 1 has been amended so that the arrangements for informing and consulting employees must be defined and implemented in such a way to ensure the effectiveness of the procedure and enable the undertaking to take decisions effectively.

The Commission Impact Assessment argues that the current lack of clarity on information and consultation leads to time-consuming and therefore costly disputes within companies, citing examples of EWC companies who have suffered greatly lengthened restructuring processes, which they claim to be partially as a result of such a lack of clarity. Therefore, it is argued that proposals to this Directive should reduce costs in this area, rather than increase them. However, BERR questions the extent to which a clarification of I&C would reduce costs associated with restructuring and prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

In addition, the Commission has proposed a new paragraph in order to clarify that the information and consultation procedures for consideration by EWCs is limited to transnational issues and thereby distinct to matters of national interest only. Thus, matters for the consideration of the EWC must concern the Community scale undertaking as a whole, or at least two undertakings or establishments situated in two different Member States.

Clarifying that EWC business should be limited to transnational issues only is unlikely to create any additional costs; conversely, it is likely to shorten EWC meetings by ensuring that the objectives of EWC meetings are understood.

Article 2: Definitions of information and consultation

The Commission has proposed a new definition for 'information' and has amended the definition for 'consultation', introducing the concept of time, fashion and content for the information and consultation

procedures, in order to bring it into line with other Directives containing information and consultation provisions.

This is a very similar argument to part one of Article 1 (above), wherein more clearly defined information and consultation could improve company operations, for example by reducing costs resulting from lengthening of undertaking restructuring due to labour disputes. However, BERR prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

Article 4: Responsibility for the establishment of an EWC

The undertaking must make available information relating to the number of its employees. The new text also states that the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body (SNB); in particular to the structure of the undertaking and the size of its workforce.

The amendment to this article amounts to the provision of more information, which could involve additional management time. However, given the predicted four new UK EWCs per year (based on past growth in EWC numbers)⁹⁹, even if five hours are devoted to such a responsibility, the additional burden would only be $(5 \times £22^{100} \times 4) = \text{£}440$. At an estimated £110 per company, this is certainly a negligible cost, whatever the extent of aggregation.

Article 5: Special Negotiating Body

A number of changes are proposed for this Article:

*Introduction of a simplified method for composition of the SNB
Informing other bodies about SNB negotiations
Entitlement for SNB to meet separately from central management
Use of experts*

Introduction of a simplified method for composition of the SNB

The Commission has proposed a simplified method for the composition of the SNB which means that, subject to a minimum of 50 employees in one Member State, one SNB seat will be allocated per portion of employees employed in that Member State amounting to 10 per cent, or a fraction thereof, of the total number of employees of the undertaking in the EEA.

The Commission IA (2008) states that the change to SNB composition is not controversial and that this Directive update would have ‘minimal impact on set-up costs’ and lead to a ‘limited increase in the number of SNB members and therefore in the costs’

Informing other bodies about SNB negotiations

Article 5(2) (c) currently requires that the central and local management must be informed about the composition of the SNB. This requirement has been expanded so that central and local management are also informed of the start of the negotiations.

The obligation to inform management about the start of negotiations is likely to take very little additional employee representative time. Even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13¹⁰¹ per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**¹⁰² to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

⁹⁹ Taking into account the termination of certain agreements through M&A etc., there has been an average of four new EWCs established per year.

¹⁰⁰ Source: Annual Survey of Hours and Earnings (ASHE)

¹⁰¹ Source: Annual Survey of Hours and Earnings (ASHE)

¹⁰² $(£200 + (2 \times £13 \text{ per hour}) = £226 \text{ per EWC} = \text{total of } £904$

Entitlement for SNB to meet separately from central management

In order to enable employees' representatives to be able to cooperate together to define their positions in the negotiations, a new entitlement has been proposed to allow the SNB to meet before and after any meeting with the central management without the employers' representatives being present.

The entitlement for the SNB to meet separately will increase set-up costs of an EWC, by increasing the time and resources taken up by SNB negotiations. If it is assumed that, in addition to the one standard meeting with management there would be two additional meetings held solely by the SNB (one before meeting with management and one after)

Taking the cost break-down for setting up of an EWC, which in practice details the cost of the SNB meeting aimed to establish the EWC, the average daily cost of an SNB meeting of **£61 726** (excluding management time and costs of experts for management - which are not relevant, and excluding ballot costs – which should not be duplicated), giving a total average costs per SNB of £123 452¹⁰³. For the estimated four newly established UK EWCs, this would give a total additional cost burden of **£0.49m**.

Use of experts

*Article 5(4) entitles the SNB to be assisted by experts of its choice; **the cost of one of which must be met by the undertaking**. The Commission seeks to recognise the role that trade union organisations can play in negotiating EWCs agreements. A further entitlement is created to allow the SNB to request an expert's presence at the negotiating meeting, where appropriate. The Commission has therefore amended the text to suggest that an appropriate Community level trade union could fulfil the role of an expert, although it should be noted that the choice remains one for the SNB to make. In order to enable the monitoring of new EWCs being established and the promotion of best practice, European trade union organisations and European employers' organisations have also been added to bodies to be informed about these matters.*

The amendment only extends the amendment so that 'an appropriate Community level trade union could fulfil the role of an expert'; 'the choice remains one for the SNB to make.' There is therefore little likely increase in costs related to the use of experts, rather a wider choice for the SNB

Article 6: Content of the Agreement

EWC composition – size and representation

The current requirement, relating to the composition of the EWC, its size and how seats are allocated, has been expanded to include that, where possible, in the interest of the balanced representation of employees, its composition should also take into account the activities, category and gender of the employees of the undertaking.

It is unlikely that ensuring balanced member composition will involve any significant costs. Firms are only required to 'take in account' 'where possible' the composition of representation in terms of activities, categories and gender, which should not involve more than a simple consideration in the case of setting up a new EWC and perhaps a minor redistribution of representative members in the case of established EWCs.

Linking national and transnational provisions

The establishment of arrangements for linking of the EWC procedures with national employee representation bodies. This Article is closely related to the amendments made at Article 12 about the links between the EWC Directive and other Community and national provisions.

For this reason, the impact of linking of national and transnational provisions is detailed under Article 12.

¹⁰³ Assumed that SNB would meet without management twice.

Composition of the Select Committee

The number of members of the select committee has been increased from three members to a maximum of five members.

The current average number of members in a UK EWC Select Committee is four,¹⁰⁴ - and the GHK EU average estimate is five¹⁰⁵ - so the amended article to limit the size of the Select Committee to a maximum of five is unlikely to have a large impact on set-up or operation costs. In fact, it is likely to reduce the size and therefore costs of a number of UK EWC Select Committees who currently have more than five members and who will be obliged to diminish the size of their Select Committees.

Article 10: Role and protection of Employees' Representatives

There would be a new duty on the members of the EWC to inform the employees of the content and outcome of an information and consultation procedure carried out in accordance with this Directive.

This duty to inform employees could take additional time of EWC members. However, as with the argument provided in Article 5, even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13 per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**¹⁰⁶ to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

Members of the SNB and EWC are to have access to training without loss of wages in so far this is necessary for their representational duties in an international environment.

The right of members of the SNB and EWC to training without loss of wages is likely to account for the largest increase in cost burden to UK EWCs, as both current and newly established EWCs will be affected.

Though evidence on current provision of training within EWCs is rather limited, the most recent study on EWCs (GHK, 2008) indicates that only around 36 per cent¹⁰⁷ of companies with EWCs currently provide training to all members. However, beyond this, another 43 per cent¹⁰⁸ of EWC companies provide training to at least one member of the EWC. Therefore, if an upper-limit estimation is taken by which 50 per cent of current UK EWCs do not provide any EWC members with training (and thus the remaining half provides full training: a simplification of the picture perceived by GHK), then 50 per cent x 113 = 56 UK EWCs would be obliged to provide training following the revision of the Directive. The GHK report (2007) on EWCs suggests that the European average that those who already provide training are spending is £35 000 (€43 800) per EWC.

If these 56 EWCs were to all immediately spend this average amount on training, then the total additional cost burden would be **£1.96m**, although this cost is divided amongst 56 transnational companies of more than 1000 employees.

It should also be noted that:

a) There is likely to be some additional deadweight within this estimation, as in reality some proportion of the 'remaining 50 per cent of EWCs' not currently reported to provide training are likely to do so to some extent, to all or some members of their EWC.

¹⁰⁴ Average members in Select Committee of effective UK EWCs giving relevant data: ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu>

¹⁰⁵ A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007, page 17.

¹⁰⁶ (£200 + (2 x £13 per hour) = £226 per EWC = total of £904 (4 x £226)

¹⁰⁷ 46 per cent (fraction which provided training) x 79 per cent (companies which provided at least some training within their EWCs)

¹⁰⁸ 54 per cent (of companies providing training to less than all EWC members) x 79 per cent (of all EWC companies providing training) = 43 per cent.

b) The average training figure per EWC may overestimate the true average amount an EWC will spend on training, because the figure used is taken uniquely from firms which are providing training on initiative and therefore are more likely to have a strong culture of training.

In order to account for this issue, an alternative scenario - potentially closer to the true likely consequence of the Directive changes - could be added to the analysis above. If only 25 per cent of EWCs were to start fully training their EWC members following Directive amendments – taking into account the deadweight issue and the likelihood that there would not be a 100 per cent take-up of training, then only 28 EWCs will be subject to the training costs of £35 000. This would imply a cost burden of only **£0.98m**

This amendment is not said to be controversial in the eyes of the social partners, who recognise the benefit to the EWC of having a well-trained representative body, which would be extended to include EWCs not currently offering training to their employees.¹⁰⁹

Article 12: Links between this Directive and Other Community and National Provisions

National and transnational arrangements for information and consultation are required to start in parallel. Further to this, the SNB and management are required to establish the arrangements for linking the national and transnational arrangements on informing and consulting employees which exist within the company during the negotiating period.

The enforced linking and alignment of national processes with Community level provisions is a point of concern. If the amended Directive on EWCs were to spill over into national provisions on information and consultation, risking a re-opening of discussions on the UK Information and Consultation Directive, this would have large economic cost in terms of time and resources. This is not to be quantified at this stage, rather highlighted as an undesirable potential consequence resulting from amendments the Community Directive.

Article 13: Agreements in force

Article 13 enables companies to continue with agreements which were concluded voluntarily before the Directive came into force provided such agreements cover its entire workforce and provides for the transnational information and consultation of employees. Once the Directive came into force, EWC agreements were required to meet the more specific requirements laid out in Article 6. In other words, agreements in force on 22 September 1996 are exempt from the provisions of the EWC Directive. With regard to the UK where the Directive came into force on 15 December 1999 existing arrangements meeting the above criteria are similarly deemed exempt from the Directive.

The current proposal envisages that unless specific provisions exist in current Article 6 or Article 13 agreements, any *significant change to the structure* of an undertaking would result in the requirement for an EWC agreement to be renegotiated under the provisions of Article 6.

As the proposals do not define what constitutes a change in structure, we have assumed here that this would relate to mergers and acquisitions (M&A). Using data from the ETUI EWC database, of the 28 UK-based EWC agreements that are no longer effective 86 per cent - or 24 agreements - were because of mergers and acquisitions. Furthermore the results of these mergers and acquisitions indicate that a third of these re-located their headquarters outside of the UK. Therefore, overall, 16 of the 28 agreements that ended resulted in new UK-based EWCs. Since 1992 this averages at two UK-based EWCs a year that may undergo a merger or acquisition.

In the absence of detailed information concerning provisions for changes of structure within existing Article 6 or Article 13 provisions, we assume here that such provisions exist in half of all EWC agreements. From this we estimate therefore that the proposed changes to Article 13 would affect 1 UK-based EWC each year. Using the estimated set-up costs from table 1 above this would lead to an **increase in costs to business of around £0.1m a year.**

¹⁰⁹ Lessons learned on European Work Councils, 2005.

Table 4: Summary of estimated direct effect costs

	Estimated cost p.a £m
Article 1: Legal Clarity on EWC objectives and information & consultation.	Not quantified
Article 2: Definitions of Information & Consultation	Not quantified
Article 4: Responsibility for the establishment of an EWC	negligible*
Article 5: Special Negotiating Body	0.49
Article 6: Content of the Agreement	negligible*
Article 10: Role and protection of Employees' Representatives	0.98 - 1.96**
Article 12: Links between this Directive and Other Community and National Provisions	Not Quantified
Article 13: Agreements in force	0.1
Total	1.57 - 2.55

Source: BERR estimates, 2008.

Estimated increased cost burden of £110 and £425 respectively per new UK EWC.

**Depending on training scenario considered.

2. Indirect effect of new directive on take-up of EWCs

As noted above, the database of EWCs indicates that there are 113 effective UK headquartered EWCs and the most recent data available on the total number of companies covered by the Directive (ETUI-REHS, 2006) suggests there to be 265 with headquarters in the UK. This gives a UK take-up rate of 42.6 per cent, compared to the EEA average of 35.5 per cent, where 583 EWCs have been established from a potential 1642.

One objective of the proposed amendments to the existing Directive is to increase the take-up rate. An addition to Article 4 of the Directive states that 'the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body', which seems to be the most direct attempt to encourage take-up. Proposed improvements to EWCs – through improved effectiveness of information and consultation, legal clarity and coherence – could also be seen as an indirect method for inciting eligible companies to establish a new EWC.

However, it seems unlikely that the 152 eligible UK companies are currently without an EWC agreement solely due to a lack of guidance on information provision; in other words it is questionable whether amendments of this nature are likely to greatly increase the current take-up of EWCs in the UK. As it is only 28 new UK-based EWCs have been created since 2001.

Further to this, evidence from the Commission Impact Assessment suggests that the establishment of an EWC depends upon factors such as the sector the company operates in (41 per cent average take-up rate in the metals sector compared to only 24 per cent in the services sector) and the presence of employees in certain EEA member states (for instance, over half of eligible companies operating in Sweden have established an EWC).

Perhaps most essentially, it will remain the case that the establishment of an EWC agreement is voluntary and company management are only obliged to do so at the request of at least 100 employees,

hence the proposed changes to the Directive are unlikely to have any marked impact on the take-up rate.

In light of this, it is worth considering the additional cost burden which would be borne if the UK take-up rate were to increase. For illustrative purposes we have assumed an increase in the take-up rate to 50 per cent from the current level of 42.6 per cent, which would result in 132 UK-based EWCs, or 19 new UK EWCs. It seems reasonable to assume that the creation of these new EWCs would be spread over a number of years following the amendment to the Directive. We assume here a 3-year period for creation of the 19 new EWCs with seven established in the year following the Directive amendment and six more established in each of the following two years. On this basis the estimated additional costs to the set-up and running of UK EWCs would be as follows:

Table 5: Indirect costs, per year, envisaged as a result of additional take-up of EWCs (current prices followed by Present Values)

Year following change	1	2	3	4 etc.	TOTAL over 10 year	Average per year – over 10 years
Discount Rate	3.50%					
Number of new EWCs	7	6	6	0		
Set-up costs	£728,399	£624,342	£624,342	£0	£1,977,083	£197,708
Running costs	£962,010	£1,786,590	£2,611,170	£2,611,170	£23,637,960	£2,363,796
Set-up costs (PV)	£703,767	£582,830	£563,121	£0	£1,849,718	£184,972
Running costs (PV)	£929,478	£1,667,801	£2,355,126	£2,275,484	£19,352,925	£1,935,292

Source: Impact Assessment (1999) and BERR estimates.

Table 6: Summary of quantifiable costs

2008 Prices	Direct Costs £m	Indirect Costs £m	Total £m
One-off costs £m*	0	1.98	1.98
Running costs £m #	1.57 - 2.55	2.36	3.93 - 4.91

Source: Impact Assessment (1999) and BERR estimates. *One-off costs are spread over 3 years. # average running costs over 10 years.

F: Risks

The estimates of costs and benefits presented in this impact assessment are based upon actual data sources where they exist. Beyond this a number of assumptions have been made where there are gaps in the data. Furthermore there is inevitably a degree of uncertainty surrounding the indirect and direct effects of the changes proposed by the draft directive. Moreover further changes may result as the draft directive is negotiated at EU level during the autumn of 2008. We will continue to firm up our estimates for the final impact assessment as new data and information become available.

Please also refer to the potential cost related to amendments to Article 12 in Section E, which details the risk of re-opening of discussions on UK Information & Consultation Directive.

G: Enforcement

The Central Arbitration Committee (CAC) is currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999. It is therefore likely that the

enforcement of any amendments to the EWC Directive will fall to the CAC. The number of cases brought before the CAC under the Transnational Information and Consultation of Employees Regulations to date has been minimal, suggesting that compliance is high. Therefore there is no reason to believe that these proposed changes are likely to have a significant impact.

H: Recommendation and summary table of costs and benefits

Table 7 below presents a summary of the estimated quantifiable costs and benefits for each option.

The costs and benefits reflect the policy option of implementing amendments set out by revised Community Directive 94/45/EC on European Work Councils.

Scope of law, £m	Annual Costs (ongoing)	One off costs	Annual Benefits (£m p.a.)
Direct Effect of Changes Proposed by Directive (i.e. on existing EWCs)	1.57 - 2.55	0	Not quantified – please refer to EWC Benefits description in Section E.
Indirect effect of increased take-up of EWCs	2.36	1.98	Not quantified – please refer to EWC Benefits description in Section E.

Source: BERR estimates. Figures have been rounded

I: Implementation

It is likely that any legislative changes to the EWC Directive will be implemented by way of a revision of the Transnational Information and Consultation for Employees Regulations 1999 which transposed the provisions of Directive 94/45/EC on the establishment of a European Works Council. However, the Government will prepare a further public consultation to seek stakeholders' views on the implementation of the revised Directive.

J: Monitoring and evaluation

A review of the EWC Directive will be undertaken by the European Commission five years after the Directive comes into force.

The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS) (expected to be completed in 2010) which provides an integrated picture of employment relations, including information and consultation arrangements.

The Government monitors the cases brought before the CAC under the Transnational Information and Consultation for Employees Regulations 1999, which are published annually in the CAC's Annual Report. It will continue to do so following the implementation of the revised EWC Directive.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annex A: SPECIFIC IMPACT TESTS

1. Competition Assessment

Business sectors affected

Table A1 below presents the distribution of currently effective EWC's with UK headquarters. All of these EWCs are in the private sector.

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A4 below). The proposed legislation will apply to all undertakings with at least 1,000 employees within EU member states and, given the relatively small magnitude of the costs, is unlikely to affect the competitiveness of any particular sector.

Table A1: Distribution of currently effective UK-based EWCs by sector

% distribution	Effective
Building and Woodwork	3%
Chemicals	20%
Food, hotel, catering and agriculture	15%
Graphical	5%
Metal	24%
Other services	10%
Public services	0%
Services Commerce	5%
Services Finance	7%
Services IBITS	2%
Textile	2%
Transport	7%

Source: EWC Database, ETUI**

**Online database accessible through <http://www.ewcdb.eu/>. Data accessed and retrieved on 20 August 2008

Table A2. Competition assessment.

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BERR

2. Small Firms Impact Test

Undertakings with fewer than 1,000 employees across the EEA and fewer than 150 employees in any member state are not affected by the provisions of this directive.

3. Equality Impact Assessment

In line with better regulation best practice and the Equalities Duties we have considered the impact of changing the law by gender, race and disability.

The Commission Impact Assessment has not identified any negative impacts on equality which would result as a consequence of a revision to this Directive.

In addition, the proposed amendment to Article 6, detailed in Section E, stipulates 'balanced representation of employees within the EWC', taking the 'activities, category and gender' of employees of the undertaking into account.

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Amending the National Minimum Wage regulations	
Stage: Consultation	Version: Final	Date: 29 October 2008
Related Publications: Consultation document		

Available to view or download at:

<http://www.berr.gov.uk/files/file46462.pdf>

Contact for enquiries: Amanda Lyne/Asad Ghani

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

The National Minimum Wage is part of the Government's strategy to provide fair standards in the workplace and make work pay. Since the National Minimum Wage Act came into force in 1999 c39 and regulation section 31(1)(e) of the National Minimum Wage Regulations 1999 has permitted the use of service charges tips, gratuities and cover charges to count towards the national minimum wage subject to certain conditions being met. Proposals in this impact assessment attempt to ensure tipping practices are made fairer ensuring all workers, whether they are paid tips or not, receive a fair wage in the form of at least the national minimum wage in basic pay and by providing greater transparency to consumers so that consumers can make a more informed choice when tipping.

What are the policy objectives and the intended effects?

The national minimum wage sets a wage floor below which pay cannot fall. The aim of this policy is to provide access to the national minimum wage in basic pay for low paid workers and create an equitable wage floor for all workers irrespective of if they are paid tips as part of their wage or not. The amendment to regulation 31(1)(e) will ensure that all eligible workers will receive at least the national minimum wage in basic pay and any tips that may be paid are in addition to that. This will create a level wage playing field for all workers and business. We also seek to improve transparency for consumers who may not be aware of what happens to their tips.

What policy options have been considered? Please justify any preferred option.

Two approaches have been considered: 1). all tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW, and consumer information and awareness is improved; 2). only discretionary tips and gratuities, and mandatory and discretionary service charges are excluded from counting towards the NMW and consumer information and awareness is improved. Policy options have been compared to a benchmark 'do-nothing' scenario. At this partial impact assessment stage the Government does not have a preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Low Pay Commission will assess the use of tips as part of their annual national minimum wage report published in 2010 and then annually thereafter.

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden

.....Date:

Summary: Analysis & Evidence

Policy Option: 1/2	Description: This summary sheet summarises options 1 and 2 (the costs and benefits of each option are similar, with option 2 allowing cover charges to be included in NMW payments).
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Potential increase in employers' labour costs resulting from higher pay and employers' National Insurance Contributions (NICs). An increase in employees' NICs payments towards pensions, contributory benefits and the NHS. Annual costs calculated are static and constant over time
	One-off (Transition)	Yrs	
	£ 0m	0	
	Average Annual Cost (excluding one-off)		
	£ 7 – 73m	10	Total Cost (PV) £ 61 – 631 million
Other key non-monetised costs by 'main affected groups' one-off Small administrative and familiarisation costs for employers. Implementation and enforcement costs for HMRC. Associated policy costs in raising awareness amongst consumers.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Potential increase in basic pay for employees with tips in addition to that. Increase in NICs receipts. Annual benefit calculated are static and constant over time.
	One-off	Yrs	
	£ 0m	0	
	Average Annual Benefit (excluding one-off)		
	£ 7 – 73m	10	Total Benefit (PV) £61 – 631 million
Other key non-monetised benefits by 'main affected groups' Equalisation of NICs treatment across sectors and employees. Eligibility of employees for benefits. Greater transparency for consumers.			

Key Assumptions/Sensitivities/Risks The analysis carried out is static and does not take into account the dynamics of the labour market. The costs equal the benefits because of transfers involving employers, employees and the exchequer. Analysis of options 1 and 2 is essentially the same but option 2 could be an over estimate.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 0 million	NET BENEFIT (NPV Best estimate) £ 0 million
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			Spring 2009		
Which organisation(s) will enforce the policy?			HMRC / BERR		
What is the total annual cost of enforcement for these organisations?			£ negligible		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			N/A		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ negligible	Decrease of	£ negligible	Net Impact	£ negligible

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

A. Strategic overview

Existing Government initiatives

The national Minimum Wage Act 1998 c39 states that all workers qualifying for the national minimum wage (NMW) must be paid at least the NMW. Regulation 30 of the NMW Regulations 1999 specifies which monies paid to the worker by their employer counts towards NMW pay. Regulation 31(1)(e) reduces NMW pay where monies representing service charges, tips, gratuities and cover charges, are paid to the worker via the employer's payroll.

The use of, service charges, tips, gratuities and cover charges for payment of the NMW is a complex area. There is a myriad of different systems in place that the government does not regulate in detail.

Some definitions:

Service charges we take to mean those amounts that are added to the customer's bill before it is presented to the customer. If it is made clear that the amount is purely discretionary then there is no obligation for the customer to pay and the payment is voluntary. Where this is not the case, the payment is a mandatory charge.

Tips and gratuities we take to mean uncalled for and spontaneous payments offered by the customer either as cash tips left on the table or deposited in a box by the till or on a bar etc, or given to a taxi driver, hairdresser etc or offered as part of a cheque, debit or credit card payments or detailed on a bill (typically a 10% service charge) and added at the point of transaction (typically a discretionary amount added by the customer paying by credit, debit, charge card or cheque) and are optional.

Cover charges we take to mean to be a mandatory fixed amount, often per head, that pays for entertainment and other services, (not necessarily waiting service in the case of restaurants), but that generally provide assistance towards other costs that might relate to expenditure that contributes to the experience (typically for items such as bread etc).

B. The issue

Ten years after the introduction of the National Minimum Wage Act, on 31st July 2008 the Government announced its intention to amend the Regulations so that tips can no longer count towards the payment of the NMW.

The changes will end the practice of employers using service charges, tips and gratuities processed through the payroll in payment or part payment of the NMW for all individuals on the youth, development and adult rates.

The Governments strategy is to provide fair standards in pay for all workers across all sectors. This partial impact assessment attempts to establish costs and benefits of the policy change detailed in the consultation. These are:

- 1). all tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW, and consumer transparency and awareness is improved;
- 2). only discretionary tips and gratuities, and mandatory and discretionary service charges are excluded from counting towards the NMW and consumer information and awareness is improved.

The reforms will also enable a ‘level playing field’ amongst employers and employees. At present tips and gratuities that count towards payment of the NMW may be exempt from employer and employee National Insurance contributions (NICs) depending on how they are allocated to the employee. In terms of employees in tipping sectors, those who do receive tips and gratuities as part of their NMW pay may benefit from exemptions from NICs whereas all other employees must pay NICs on earnings above the “earnings threshold” which is currently £105 per week for each employment for the 2008/09 tax year (this figure is subject to annual change).

Consultation

Within Government

These proposals have been developed in consultation with the following Government departments: HM Revenue and Customs and HM Treasury.

Public consultation

This partial impact assessment will accompany the 12 week public consultation.

C. Objectives

The Government is intervening for three reasons:

1. To ensure that employees receive at least the NMW that is not made up from service charges, tips or gratuities and that any tips are paid in addition to the NMW.
2. To align the treatment of the tipping sectors with the other sectors, both in terms of wages and NICs.
3. Increase consumer information and greater awareness

Background

Under the current regulations, amounts paid by a customer as service charge, tip, gratuity or cover charge can count towards NMW pay in certain circumstances.

Other sectors (i.e. non-tipping sectors) are compelled by law to pay their staff the NMW and both employer and employee pay NICs on all elements of pay above the earnings threshold (currently £105 per week).

ASHE (Annual Survey of Hours and Earnings) shows that in 2007, basic hourly pay actually exceeded the NMW in the tipping sectors – see table 1. It means that *on average*, people working in these sectors are paid a basic pay (without tips) above the NMW and that therefore the proposed amendments will have no impact on them.

The proposed change in legislation would affect people whose basic pay is less than the NMW and topped up by tips, thus potentially increasing employers and employees’ NICs.

1. Basic hourly pay per sectors – 2007

SIC code	Name	Mean basic hourly pay (£)
55	Hotels and restaurants	7.04
60.22	Taxi operations	7.17
92.71	Gambling and betting activities	9.37
93.02	Hairdressing and beauty treatments	6.52

Source: ASHE

Table 2 below shows the mean hourly basic pay for employees earning less than the NMW in basic pay. We assume later on in the impact assessment that some employees earn less than the NMW in basic pay because their pay is being topped up by tips to reach the NMW. When analysing wage distributions the median is often preferred over the mean (as it is not affected by outliers). However, for the purpose of this impact assessment the use of the mean hourly wage is more appropriate when estimating the impact of legislative change.

2. Basic hourly pay for those earning less than the National minimum wage in basic pay - 2007 (£)				
SIC code	Name	16-17	18-21	22 and over
55	Hotels and restaurants	2.65	3.69	4.54
60.22	Taxi operations	-	-	4.62
92.71	Gambling and betting activities	-	3.24	4.65
93.02	Hairdressing and beauty treatments	2.25	3.16	4.19

Source: ASHE. - Not possible to report a figure due to sample size

3. NMW rates (in £ per hour)			
Employee's age	16 - 17	18-21	22 and over
2006/07	3.30	4.45	5.35
2007/08	3.40	4.60	5.52
2008/09	3.53	4.77	5.73

Source: LPC

In this impact assessment when analysing the difference between basic pay and the NMW the 2006/07 NMW rates have been used as these were the NMW rates at the time when the 2007 Annual Survey of Hours and Earnings was compiled.

D. Options identification

Option 1

All tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW and consumer information and awareness is improved.

Option 2:

Only discretionary tips and gratuities, and mandatory and discretionary service charges are excluded from counting towards the NMW and consumer information and awareness is improved.

Both of the options above have been measured against a 'do-nothing' benchmark.

E. Analysis of options

1. Business sectors affected

When measuring the impact of the proposed amendments, we are considering the tipping sectors of the economy; these are principally the hospitality and gambling sectors:

- SIC 55: Hotels and restaurants
- SIC 60.22: Taxi operations
- SIC 92.71: Gambling and betting activities
- SIC 93.02: Hairdressing and other beauty treatments

2. Costs to the employers

The proposed change to the legislation may cause an increase in employers' labour costs. The increase in labour costs would concern employers who pay their staff less than the NMW and use tips in payment or part payment of the NMW. The increase would come from:

- the additional pay the employer would have to provide, and
- the increase in employers' NIC (12.8%) resulting from that.

These monetised costs would be similar under both options 1 and 2 as the impact of NIC payments in both instances will be the same.

Under option 2 (which permits cover charges counting towards payment or part payment of the NMW), cover charges already attract NICs. Although cover charges will form part of the business income we anticipate these payments to be small.

Under option 1 (all service charges, tips, gratuities and cover charges are excluded from the payment of NMW) employers concerned would have to top up basic pay with additional pay on which NICs will may also need to be paid (NICs are only due on earnings in excess of the earnings threshold currently £105 per week).

Increase in labour costs

In order to calculate the increase in labour costs, the following methodology was followed:

- 1) Estimate the number of people earning a basic pay below the NMW and receiving tips in payment of part payment of the NMW, and
- 2) Differentiate between sectors and age group because NMW rates differ depending on age – see table 2.
- 3) Calculate the increase in labour costs.

Estimating the number of people earning a basic pay below the NMW and receiving tips

See Annex B for detailed calculation. Table 3 below gives a summary of the number of estimated employees that currently receive service charges, tips gratuities and cover charges in payment or part payment of the NMW and might be affected by the proposed amendment

BERR estimates, based on Annual Survey of Hours and Earnings (ASHE) data, are that **between 4,500 and 44,800 workers could be concerned by the change in the legislation.**

BERR welcomes views on the range of employees estimated to be covered by a change in legislation as well as any wider comments on this impact assessment.

3. Estimates of the population concerned by the proposed change to the legislation by age groups and receiving a basic pay below the NMW

Sectors	16 - 17		18 - 21		22 and over		Total	
	Receiving basic pay below NMW and other pay	Receiving basic pay below NMW	Receiving basic pay below NMW and other pay	Receiving basic pay below NMW	Receiving basic pay below NMW and other pay	Receiving basic pay below NMW	Receiving basic pay below NMW and other pay	Receiving basic pay below NMW
SIC 55	0	400	400	5,200	3,400	29,100	3,800	34,700
SIC 60.22	0	0	0	0	0	500	0	500
SIC 92.71	0	0	0	300	100	1,200	100	1,500
SIC 93.02	0	1,900	300	3,500	300	2,700	600	8,100
Total	0	2,400	700	9,100	3,900	33,400	4,500	44,800

Source: BERR estimates based on ASHE. Totals may not sum to the individual parts due to rounding. 4,500 employees receive basic pay below the NMW and some form of other pay. BERR estimates that 44,800 employees earn less than the NMW in basic pay.

Calculating the increase in labour costs for employers:

See Annex C for the details of the estimate in increased labour costs. Tables 4, 5 and 6 below show a summary of the additional labour costs due to the proposed change in the legislation.

**The potential increase in extra pay could total between £5.7 and £59.2 million.
The increase in employers' NICs could total between £0.7 and £7.6 million.
The increase in labour costs could total between £6.5 and £66.8 million.**

4. Summary table for people aged between 16 and 17

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
2,400	3.6	0.5	4.1

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

5. Summary table for people aged between 18 and 21

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
700 – 9,100	1.7 – 13.7	0.2 – 1.7	2.0 – 15.4

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

6. Summary table for people aged 22 and over

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
3,900 – 33,400	4.0 – 42.0	0.5 – 5.4	4.5 – 47.4

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

7. Summary table for people aged 16 and over

Population	Total – extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
4,500 – 44,800	5.7 – 59.2	0.7 – 7.6	6.5 – 66.8

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

Administrative costs

The implementation costs may include: rewording of contracts and adjusting the payroll. Employees who don't have a written contract containing specified information and who are employed for one month or more have a statutory right to receive a written statement of employment particulars including 'the scale or rate of remuneration or the method of calculating remuneration', which may also imply the need for a change – depending on how the employer expresses the pay arrangements. It's a reasonable assumption that the relevant employers will also need to amend their payroll arrangements, but these would be one-offs and are assumed to be negligible.

3. Costs/benefits to the employees

The proposed change to the legislation will affect employees, through an increase in their NICs and an increase in their *basic* pay.

Increase in NICs

See Annex D for details of the calculations.

The increase in employees' NICs will total between £0.6 and £6.5 million.

8. Summary table for people aged between 16 and 17

Population	Total – extra pay (£m)	Employees' NICs (£m)
2,400	3.6	0.4

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

9. Summary table for people aged between 18 and 21

Population	Total – extra pay (£m)	Employees' NICs (£m)
700 – 9,100	1.7 – 13.7	0.2 – 1.5

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

10. Summary table for people aged 22 and over

Population	Total – extra pay (£m)	Employees' NICs (£m)
3,900 – 33,400	4.0 – 42.0	0.4 – 4.6

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

11. Summary table for people aged 16 and over

Population	Total – extra pay (£m)	Employees' NICs (£m)
4,500 – 44,800	5.7 – 59.2	0.6 – 6.5

NB: Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

Again, the increase in NICs for employees would be the same under option 1 and option 2. We assume that tips that are currently used in payment or part payment of the NMW are not currently subject to NICs, but because employers would have to increase wages to at least the NMW, that extra amount would become subject to NICs under both options 1 and 2.

Employees will see their *basic* pay increase by between £5.7 and £59.2 million.

4. Costs to the Government

Implementation costs

HMRC and BERR will have to inform employers and workers of the change to the law.

Enforcement costs are not expected to increase as a result of the amendment: HMRC investigates an employer when there is a complaint about possible non-payment of NMW and under their risk assessment programme. There is no evidence to suggest that the number of complaints will go up as a result of the changes. As is usual with NMW uprating, we would expect to see an increase in enquiries after commencement with stabilisation as employers and workers become accustomed to the new rules.

Implementation costs are assumed to be the same under option 1 and option 2 and to be small.

5. Benefits

N.B.: We have not attempted to quantify all the benefits as the population concerned by the proposed change in the Regulations is comparatively small.

- There may be increased retention of staff due to better pay for the worker and thus employers will retain skills.
- If employers pay tips on top of the NMW, there may be better quality of service because of greater incentivisation as tips become purely performance related
- Equalisation of sectors and employers establishing a clear playing field across tipping and non-tipping sectors and amongst employers within the tipping sectors
- Of the employees concerned by the change in the legislation, some of them may become eligible for contributory benefits (a person builds entitlement to contributory benefits once his/her earnings become greater than the “lower earnings limit”, currently set at £90 per week) but this benefit would be small and we do not attempt to quantify it.
- Greater Government revenues, which represent a transfer from employer and employees to the Exchequer, this is the sum of employees’ and employers’ NICs and would amount to up to between £1.4 and £14.0 million under both options.
- The time spent by employers calculating wage rates might lessen as the uncertainty over whether there will be enough tips to cover the difference between the basic pay and NMW will disappear.
- Increased consumer transparency may result in increased take-home pay for some employees as a result of fairer distribution of tips, and in customers making informed tipping decisions. The increase in take-home pay is estimated at up to between £5.7 and £59.2 million.
- Greater consumer confidence in tipping sectors.

F. Risks

The employers concerned by the amendments, and the data suggest that they are relatively few, may seek to offset the rise in their labour costs. The easiest way to do so would be to take a share or increase their existing share of the tips and discretionary service charges that they previously had not appropriated, thus possibly cancelling any increase in take-home pay for employees as a result of the increase in their basic pay.

If cover charges are allowed to count towards the NMW, employers could also introduce cover charges if they had not done so already. However, the impact of such action could potentially be very detrimental to the employers as customers may just go to their competitors' where charges are discretionary. Alternatively, firms may decide to increase prices. The 'price elasticity of demand' will determine the extent to which prices could rise. Price increases would lead to the cost being transferred to the consumer. A final risk is that firms could decide to offset increased labour costs by employing fewer staff.

Note: our upper-bound estimate (the number of people receiving a basic pay below the NMW) represents the *population that could be affected* and is an extreme estimate, but in the absence of any other data, it is our most meaningful upper estimate.

G. Enforcement

The enforcement resulting from the change in regulations of the proposed amendments will be the responsibility of HMRC. HMRC do not expect this to be significantly costlier. Initially, there may be an increase in complaints as the new legislation beds in, but once a certain period of time has passed and business and workers become familiar with the changes, we can assume that the number of NMW-related complaints will decrease

H. Summary table of costs and benefits

Below is a table outlining the costs and benefits of the proposed change to the legislation. Option 1 and 2 have similar costs and benefits although option 2 provides more flexibility for employers as cover charges can be included in the NMW.

12. Summary table of costs and benefits		Option 1	Option 2
Costs	Increase in employers' labour costs	Up to £6.5 - 66.8 million	Up to £6.5 - 66.8 million
	Increase in employees' NICs	Up to £0.6 - 6.5 million	Up to £0.6 - 6.5 million
	Increase in administrative costs	Small	Small
	Implementation costs	Small	Small
Benefits	Better quality of service, equalisation of NICs treatment across sectors, eligibility for statutory benefits and less administrative burden	Small - Not quantified because the number of people concerned is small	
	Transfer to the Exchequer	Up to £1.4 - 14.1 million	Up to £1.4 - 14.1 million
	Increase in pay	Up to £5.7 - 59.2 million	Up to £5.7 - 59.2 million

Figures have been rounded and totals may not sum to individual parts due to rounding

I. Implementation

BERR will work with HMRC to implement the new regulations during 2009.

J. Monitoring and evaluation

Each year the Low Pay Commission examines the impact of up-rating the NMW and publishes an annual NMW report. The Low Pay Commission will use this report to monitor the use of tips as part of the NMW.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annex A: Specific impact tests

Small Firms Impact Test

The Department has already consulted the Federation of Small Business (FSB) and will seek further views from the FSB and small businesses during the public consultation period. The proposed amendment to the regulations would apply to firms of all sizes. The table below presents the distribution of employees by firm size in tipping sectors and compares this to non-tipping sectors.

A1. Distribution of employees by firm size in the tipping and non-tipping sectors

Sector	1 to 49	50 to 249	250 and more	Total (m)
SIC 55 (restaurants)	80%	16%	4%	1.2
SIC 60.22 (taxis)	79%	18%	3%	0.03
SIC 92.71 (gambling)	63%	27%	10%	0.08
SIC 93.02 (hairdressing)	96%	3%	1%	0.1
Total – tipping sectors	81%	15%	4%	1.4
Total – non-tipping sectors	47%	25%	28%	23.7

Source: LFS

The table shows the general distribution of firm size in tipping sectors, but does not represent the firm size distribution of businesses that will be affected. We believe that although it may be more likely that larger businesses are currently benefiting from the NICs exemption and using tips and gratuities to pay part of the NMW, a significant proportion of small businesses will also be following this practice. We estimate that only about **4,500 and 44,800** employees will be affected and we believe there will not be a disproportional impact on small business in terms of costs or benefits.

Competition Assessment

The initial analysis of the competition filter test reveals that a detailed competition assessment is not considered necessary. The proposed legislation will apply to all firms and is a measure that will ensure a more level playing field between firms in the tipping sectors. At present some firms are using tips and gratuities to count towards the NMW and may be benefiting from the NICs exemption and others are not. The proposed legislation will change this so that all of the NMW will exclude tips from NMW pay for all firms. Table below gives the results of the competition filter test.

A.2. Results of the competition filter test – In any affected market, would the proposal:

Directly limit the number or range of suppliers?	No
Indirectly limit the number or range of suppliers?	No
Limit the ability of suppliers to compete?	No
Reduce suppliers' incentives to compete vigorously?	No

Equality Assessment

In line with better regulation best practice and the Equalities Duties we have considered the impact of changing the law by gender and race.

Who will be affected?

The Labour Force Survey indicates that around 40% of employees in the tipping sector are men and around 60% are women. We believe that there will be similar proportions of men and women who are directly affected by policy changes.

The table below shows that a higher proportion of ethnic minority employees work in tipping sectors than in all sectors:

A.3. Distribution of people by ethnic minority

	Total employees (%)	Employees in tipping sectors (%)
White	91.6	87.6
Mixed	0.6	0.8
Asian or Asian British	4.0	5.7
Black or Black British	2.1	1.8
Chinese	0.4	1.3
Other	1.5	2.8

Source: LFS Q1 2008

We estimate that up to **44,800** employees may receive tips to top up a pay below the NMW. This represents a weighted figure and it would not be sensible to attempt to disaggregate this figure further by ethnicity or disability as the results may not be reliable.

Consultation with stakeholders

BERR will be consulting with a variety of stakeholders and welcome all views on the proposed legislation.

Removal of barriers which hinder equality

The proposed changes reflect a broad policy and are designed to have a positive impact on all workers in tipping sectors regardless of their gender, race or disability. Therefore the proposed changes are unlikely to create any barriers to equality in terms of gender, race and disability.

Annex B: Estimating the number of people earning a basic pay below the NMW and receiving tips

N.B.: The available data does not differentiate between different categories of service charges so the calculation of the increase in labour costs will be the same under both option 1 and option 2, but it will be an overestimate in the case of option 2 as employers' NICs have always been due on cover charges used to pay part or all of an employee's wages.

Data on the number of people who earn a basic pay below the NMW and are paid tips to top up wages to the NMW is not collected. Therefore, we have used ASHE (Annual Survey of Hours and Earnings) to estimate the number of employees that could potentially be affected as ASHE is the best survey on pay available.

ASHE gives details on basic pay and other pay. For the three age groups, data could be obtained on the number of people earning less than their NMW band in basic pay and receiving some form of other pay (ASHE does not provide specific data on tips, therefore the "other pay" variable (which could encompass the following: tips, London or regional allowances, tax credits, etc) is the closest proxy on tips available) – See table B.1.

B.1. Breakdown of pay per age groups				
	16 - 17	18 - 21	22 and over	Total
Total employed in the tipping sectors	88,773	281,452	929,236	1,299,461
Receiving basic pay below NMW [#]	2,325	8,939	32,980	44,244
Receiving other pay	0	663	3,808	4,471

Source: ASHE 2007. # This is an estimate. We have scaled down the number of employees receiving a pay less than the NMW by a factor of 0.64 to remove those who earn less than the NMW because of exemptions or non-compliance. Totals may not sum to individual parts due to rounding.

We are considering in our calculations only employees earning less than the NMW. The number of people also receiving some form of other pay, like tips, but less than the NMW, forms our lower-bound estimate and the number of people receiving a basic pay below the NMW our upper-bound estimate.

According to 2007 ASHE data, 5.3% (68,969) of employees in the tipping sector are on a basic pay below the NMW. The same database further indicates that 1.9% of employees in the low paying sectors are paid below the NMW due to either being exempted from the NMW or due to non-compliance. Assuming this percentage is the same in the tipping sector (exempted from NMW or non-compliance), 24,725 employees will be unaffected by this regulation, as non compliant employers will not change behaviour and those exempted from the NMW will be unchanged. As a result, our upper estimate on the number of employees who earn less than the NMW in basic pay is 44,244 (68,969 – 24,725).

The latest ASHE survey was carried out in spring 2007; therefore numbers were inflated by 1.3% to reflect general employment growth between April 2007 and May 2008 (which we assume reflects employment growth in the whole economy). That brings the total number of people receiving a basic pay below the NMW and other pay to **4,500**, and receiving a basic pay below the NMW to **44,800** – See table B.2 and B.3.

B.2. Employees earning less than their respective NMW rates and receiving other pay, by age groups and sectors – estimate for 2008

Sectors	18 - 21	22 and over	Total
SIC 55	391	3,392	3,783
SIC 60.22	0	0	0
SIC 92.71	0	119	119
SIC 93.02	281	347	627
Total	672	3,858	4,529

Source: ASHE and BERR estimates.

B.3. Employees earning a basic pay less than their respective NMW rates, by age groups and sectors – estimate for 2008

Sectors	16 - 17	18 - 21	22 and over	Total
SIC 55	418	5239	29064	34722
SIC 60.22	0	0	514	514
SIC 92.71	0	284	1177	1461
SIC 93.02	1938	3532	2653	8123
Total	2356	9055	33408	44819

Source: ASHE and BERR estimates. Totals may not sum to individual parts due to rounding.

Table B.4 below summarises the information above and gives a range of estimates for the population concerned by the proposed amendments to the Regulations.

Note: the number of people also receiving some form of other pay, like tips, forms our lower-bound estimate and the number of people not receiving other pay but less than the NMW our upper-bound estimate.

B.4. Estimates of the population concerned by the proposed amendment to the Regulations

Sectors	16 - 17	18 - 21	22 and over	Total
SIC 55	0 – 400	400 – 5,200	3400 – 29,100	3,800 – 34,700
SIC 60.22	0	0	0 – 500	0 – 500
SIC 92.71	0	0 – 300	100 – 1,200	100 – 1,500
SIC 93.02	0 – 1,900	300 – 3,500	300 – 2,700	600 – 8,100
Total	0 – 2,400	700 – 9,100	3,900 – 33,400	4,500 – 44,800

Source: ASHE and BERR estimates. Figures have been rounded and totals may not sum to individual parts due to rounding

Annex C: Estimating the increase in labour costs

It has been assumed that all the employees are earning more than the earnings threshold of £105 a week (thus liable for NICs). Also, for ease of calculation, we have not adjusted for the NICs exemption on earnings below the earnings threshold.

First, we estimate the differential between basic pay and the NMW, and then the increase in labour costs.

Estimating the differential between basic pay and NMW

The 2007 ASHE survey provides figures about the wage differential, i.e. the difference between NMW and basic pay for the category of people earning less than NMW but receiving other pay. We assume later that this differential (in percentage) does not change in 2008.

C.1. Basic pay as a percentage of the NMW rate applicable (%)

Sectors	16 - 17	18 - 21	22 and over
SIC 55	80	83	85
SIC 60.22	-	-	86
SIC 92.71	-	73	87
SIC 93.02	68	71	78

Source: ASHE

Another element to take into account before estimating the increase in labour costs is the amount of time worked by employees.

C.2. Hours worked

Sectors	Mean basic paid hours per week
SIC 55	28.7
SIC 60.22	28.8
SIC 92.71	30.9
SIC 93.02	30.1

Source: ASHE 2007

Increase in labour costs

C.3. For employees aged between 16 and 17 – central estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	400	0.65	28.7	0.4	0.1	0.5
SIC 93.02	1,900	1.05	30.1	3.2	0.4	3.6
Total	2,400	-	-	3.6	0.5	4.1

NB: wage differential = NMW – basic pay; Employers' NICs is set at 12.8% of total extra pay

NB: due to sample size, we only estimate a central estimate. Figures have been rounded and totals may not sum to individual parts due to rounding

Source ASHE

C.4. For employees aged between 18 and 21 – lower bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	400	2.97	28.7	1.7	0.2	2.0
SIC 93.02	300	0.02	30.1	0.0	0.00	0.0
Total	700	-	-	1.7	0.2	2.0

NB: wage differential = NMW – basic pay; Employers' NICs is set at 12.8% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

C.5. For employees aged between 18 and 21 – upper bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	5,200	0.76	28.7	5.9	0.8	6.7
SIC 92.71	300	1.21	30.9	0.0	0.0	0.0
SIC 93.02	3,500	1.29	30.1	7.2	0.9	8.1
Total	9,100	-	-	13.1	1.7	14.8

NB: wage differential = NMW – basic pay; Employers' NICs is set at 12.8% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

C.6. For employees aged 22 and over – lower bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	3400	0.71	28.7	3.6	0.5	4.1
SIC 92.71	100	0.40	30.9	0.1	0.0	0.1
SIC 93.02	300	0.55	30.1	0.3	0.0	0.3
Total	3900	-	-	4.0	0.5	4.5

NB: wage differential = NMW – basic pay; Employers' NICs is set at 12.8% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

C.7. For employees aged 22 and over – upper bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employers' NICs (£m)	Total increase in labour costs (£m)
SIC 55	29,100	0.81	28.7	35.3	4.5	39.8
SIC 60.22	500	0.73	28.8	0.6	0.1	0.6
SIC 92.71	1,200	0.70	30.9	1.3	0.2	1.5
SIC 93.02	2,700	1.16	30.1	4.8	0.6	5.4
Total	33,400	-	-	42.0	5.4	47.4

NB: wage differential = NMW – basic pay; Employers' NICs is set at 12.8% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

Annex D: calculating the increase in NICs for employees

D.1. Increase in NICs for employees aged between 16 and 17 – central estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	400	0.65	28.7	0.4	0.0
SIC 93.02	1,900	1.05	30.1	3.2	0.4
Total	2,400	-	-	3.6	0.4

NB: wage differential = NMW – basic pay; Employees' NICs is set at 11% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

NB: due to sample size, we only estimate a central estimate.

Source: ASHE

D.2. Increase in NICs for employees aged between 18 and 21 – lower bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	400	2.97	28.7	1.7	0.2
SIC 93.02	300	0.02	30.1	0.0	0.0
Total	700	-	-	1.7	0.2

NB: wage differential = NMW – basic pay; Employees' NICs is set at 11% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

D.3. Increase in NICs for employees aged between 18 and 21 – upper bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	5,200	0.76	28.7	5.9	0.7
SIC 92.71	300	1.21	30.9	0.6	0.1
SIC 93.02	3,500	1.29	30.1	7.2	0.8
Total	9,100	-	-	13.7	1.5

NB: wage differential = NMW – basic pay; Employees' NICs is set at 11% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

D.4. Increase in NICs for employees aged 22 and over – lower bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	3400	0.71	28.7	3.6	0.4
SIC 92.71	100	0.40	30.9	0.1	0.0
SIC 93.02	300	0.55	30.1	0.3	0.0
Total	3900	-	-	4.0	0.4

NB: wage differential = NMW – basic pay; Employees' NICs is set at 11% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

D.5. Increase in NICs for employees aged 22 and over – upper bound estimates

Sector	Population	Wage differential for 2008 (£)	Average hours worked per week	Total extra pay (£m)	Employees' NICs (£m)
SIC 55	29,100	0.81	28.7	35.3	4.6
SIC 60.22	500	0.73	28.8	0.6	0.1
SIC 92.71	1,200	0.70	30.9	1.3	0.2
SIC 93.02	2,700	1.26	30.1	4.8	1.7
Total	33,400	-	-	42.0	6.5

NB: wage differential = NMW – basic pay; Employees' NICs is set at 11% of total extra pay. Figures have been rounded and totals may not sum to individual parts due to rounding

Source: ASHE

Summary: Intervention & Options

Department /Agency: BERR	Title: Review of Commission Directive 94/45/EC on European Work Councils for the purpose of informing and consulting employees.	
Stage: Government Response	Version: FINAL	Date: 20 November 2008
Related Publications: Government Response to Public Consultation		

Available to view or download at:

Contact for enquiries: Tim Harrison/Marleen Jannink

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

A Commission review of the European Works Council Directive identified a number of problems with respect to the practical application of the Directive with regard to the information and consultation of employees; legal certainty, and coherence between EWCs and national level procedures, with a significant market failure noted in the form of information asymmetry between employer and employee. Although a non-regulatory approach involving additional promotion of best practice would produce some economic and social benefits, it would entail some additional costs for the EU budget. Moreover, this approach is unlikely to tackle the objectives of legal certainty and coherence in Community legislation. The Commission has therefore published a legislative proposal to amend the EWC Directive which seeks to address the problems set out above.

What are the policy objectives and the intended effects? The Commission's objectives for amending the Directive are:

- to improve the effectiveness of information and consultation of employees in existing EWCs;
- to increase the number of EWCs being established;
- to improve legal certainty in the setting up and the operation of EWCs (for example during mergers and acquisitions); and
- to enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

What policy options have been considered? Please justify any preferred option.

There are three policy options considered by the Commission: (1) Do nothing: leave Directive unchanged; (2) Non-legislative approach to encourage best practices; (3) Legislative Review of existing Directive. As the Commission rules out the first option and judges the second option would, alone, fail to achieve the objectives of the current Directive review, the preferred policy option is (3) – for a review of existing legislation – supplemented by aspects of (2), by encouraging best practices through improved dialogue. Given a non-regulatory approach is not viewed as a viable option to achieve the review's objectives, this Impact Assessment will solely assess legislative review, as in the consultation document, compared with a benchmark of Option (1): Do nothing.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Article 14 of the Directive requires a review by the Commission five years after the revised Directive comes into force. The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS). The Central Arbitration Committee (CAC) is currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999.

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State for Employment Relations and Postal Affairs Date: 20 November 2008.

Summary: Analysis & Evidence

Policy Option: 2

Description: Implement proposed review to the Directive.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Direct costs are increased costs borne by existing EWCs and indirect costs capture the cost of additional take-up. One-off costs are estimated at £1.98m over 3 years (as 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £4.09m and £5.06m depending upon scenario considered.
	One-off (Transition)	Yrs	
	£ 1.98m	3	
	Average Annual Cost (excluding one-off)		
	£ 4.09 – 5.06m	10	
Total Cost over 10 years (PV)			£ -40m – -48.1m
Other key non-monetised costs by 'main affected groups' There are a number of negligible costs relating to Admin Burdens detailed within individual articles.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. It was not possible to quantify benefits, given their intangible nature.
	One-off	Yrs	
	£ n/a	0	
	Average Annual Benefit (excluding one-off)		
	£ n/a	10	
Total Benefit (PV)			£ n/a
Other key non-monetised benefits by 'main affected groups' More effective information & consultation of employees, if achieved, has the potential to demonstrate a positive commitment to employees and to enhance understanding of management, employee-management relationship and the impact of restructuring on employees.			

Key Assumptions/Sensitivities/Risks.

Please refer to Sections E and F, which detail assumptions made and risks identified.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ -40m – -48.1m	NET BENEFIT (NPV Best estimate) £ -40m – -48.1m
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		Unknown - consultation		
Which organisation(s) will enforce the policy?		CAC		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ negligible	Decrease of	£ 0
Net Impact		£ negligible	

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

A: Strategic overview

Existing Government initiatives

The European Works Council (EWC) Directive was adopted in September 1994, with an implementation date of September 1996. At the time, the UK Government had not signed the social chapter of the Maastricht Treaty 1992 and so the Directive did not apply to the UK. The Government accepted the social chapter in June 1997, and as a result the original Directive was extended to cover the UK and was given effect in UK law in January 2000 by the Transnational Information and Consultation of Employees (TICE) Regulations.

Implications for Administrative Burdens (AB)

Original PwC administrative burdens exercise estimated total post-BAU (Business as Usual) costs of just under £5.4m a year. This was based on an estimated 55 UK-based EWCs. The proposed changes to the Directive on EWCs has no potential to reduce admin burdens, as amendments increase the obligation to provide information in a number of areas. However, as detailed in more depth in Section E, the additional admin burdens are predicted to be negligible in each of the areas when admin burdens are affected.

B: The issue

The EWC Directive sets out requirements for informing and consulting employees at the European level in undertakings or groups of undertakings with at least 1000 employees across the Member States of the European Economic Area (EEA) and at least 150 employees in each of two or more of those Member States. The purpose of the Directive is to establish mechanisms for informing and consulting employees where the undertaking has been requested to do so in writing by at least 100 employees or their representatives in two or more Member States, or on the management's own initiative. This will entail the setting up of a European Works Council (or some other form of transnational information and consultation procedure). Where no request is received or where management does not initiate the process, there is no obligation to start negotiations or to set up an EWC.

Once a request has been made (or at the management's initiative) employee representatives¹¹⁰ are either elected or appointed to a Special Negotiating Body (SNB). Article 6 of the Directive requires the SNB to negotiate with central management to determine the scope, composition, functions of the EWC and the duration of the agreement. Negotiations can last up to three years but where agreement has not been reached after that period, or the undertaking has failed to initiate negotiations six months after receipt of the employees' request to establish an EWC, a set of minimum requirements will apply which are laid out in the Annex to the Directive, entitled the 'subsidiary requirements'. In practice few, if any, EWCs have been set up under these fall-back subsidiary requirements but it is understood that the provisions of many EWC agreements have been influenced by them.

Where a company had already in place arrangements to inform and consult all of its employees in the EEA prior to the Directive coming into force, such agreements are exempt from the provisions of the EWC Directive. These provisions are made at Article 13 of the Directive and apply to agreements concluded by 22 September 1996 (or 15 December 1999 for UK companies when the Directive was extended to the UK). Such voluntary arrangements are often referred to as 'Article 13 agreements' and make up approximately 40 per cent of the EWCs in operation in the EEA today.

Expenses related to the negotiations are borne by the employer, including the cost of one expert to advise the SNB. The operational cost of the EWC is also met by the employer. The Directive further sets out the procedures for the handling of confidential information and makes provisions to ensure that the employees' representatives do not suffer any detriment as a result of their role. Representatives are also entitled to time off with pay for attending SNB or EWC meetings.

Review of the EWC Directive

¹¹⁰ An employee representative attends the general 'annual' meetings of the EWC and has a duty to represent and report back to colleagues.

The European Commission is under a duty to review the operation of the EWC Directive. In April 2004, it started that review following which the Commission identified a number of problems in respect of the practical application of the Directive. The Commission has subsequently published a legislative proposal to amend the EWC Directive which seeks to address these problems.

The French Presidency and the European Commission are seeking political agreement from the Member States and the European Parliament on the revision of the EWC Directive by December 2008. The Commission's proposals have been subject to early and detailed consideration by the Council this autumn, with a series of Working Group meetings since mid-September 2008.

Proposed changes to Directive articles seek to address current problems in EWCs – which include ineffective information & consultation (I&C) of employees, lack of legal clarity on I&C issues and lack of coherence between national and transnational procedures – involve clearer definitions of I&C and the scope of EWC activities and purpose, provision for more balanced representation within EWCs, establishment of arrangements to link national-level procedures to those at Commission level (i.e. EWCs), increased obligation of reporting of information before and during the establishment of EWCs and the right to training without loss of wages for EWC members.

Consultation

Within government

These proposals have been developed in consultation with the following Government departments: Department for Work and Pensions, HM Treasury, the Cabinet Office, the Foreign and Commonwealth Office and the Devolved Administrations.

Public consultation

The Government conducted a public consultation on the issue in September 2008. The consultation closed on 6 October. A total of 29 responses were received, of which eight commented on the partial impact assessment. These are discussed below in section E on costs and benefits.

C: Objectives

Background

This Impact Assessment (IA) seeks to assess the impact of the proposed revision of Council Directive 94/45/EC, which allows for the provision and establishment of European Work Councils (EWCs) within companies of more than 1000 employees operating in two or more EU Member States. The aim of such councils is to improve employee understanding of management decisions in issues such as restructuring by encouraging effective information and consultation for employees in all operating countries. The European Commission is under a duty to review the Directive and, following a Commission review of its current failings, the objectives for amending the Directive are:

1. To improve the effectiveness of information and consultation of employees in existing EWCs
2. To increase the number of EWCs being established
3. To improve legal certainty in the setting up and operation of EWCs
4. To enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

The following analysis will review the impact the Directive has had on such companies with headquarters in the UK since its creation in 1994, as well as the likely effect on affected UK businesses of proposed changes to the Directive. The recent dialogue between Business Europe and ETUC, who are likely to agree on slightly amended changes to those proposed by the Commission, will also be taken into account for practical reasons.

D: Options identification

Option One: Do nothing

Once the directive is agreed at EU level, the UK will have to implement the necessary changes. Doing nothing therefore is not a viable option.

Option Two: Implement changes proposed by the draft Directive

The European Commission impact assessment suggests two possible approaches to achieving the four broad objectives set out above. The first is a non-regulatory approach which involves additional promotion of best practice. The second involves a review of existing legislation.

Although it is recognised that the former does produce some economic and social benefits, it does also entail some additional costs for the EU budget. Moreover, this approach is unlikely to tackle the objectives of legal certainty and coherence in Community legislation and the Commission IA¹¹¹ recognises that it would not yield the immediate and spectacular results it is seeking.

Therefore, the Commission's preferred approach is a review of existing legislation. This is being taken forward through a series of working groups during the autumn of 2008 and is therefore the basis on which this Impact Assessment is set out. As stated in the Government Response some aspects have progressed in the light of the Social Partners' changes to a limited number of the proposals. Should the Commission's proposal as amended by the Social Partners be adopted, the Government will undertake an Impact Assessment accordingly as part of its public consultation exercise on the implementing regulations.

The detail of the proposed changes was discussed fully in the consultation document¹¹² and is presented in summary form below in the section on costs and benefits.

Given a non-regulatory approach is not viewed as a viable option to achieve the review's objectives, this Impact Assessment will solely assess review to Directive legislation.

E: Analysis of options

Costs and Benefits

Assumptions

A number of information sources have been used to inform the cost-benefit analysis that follows. These include data on the current number of EWCs created across the EEA. Although there is no requirement to register EWCs, the European Trade Union Institute (ETUI) maintains a database of EWCs created since the early 1990s¹¹³, providing information such as date of creation, date ended (if the EWC is no longer effective), the article of the directive under which the EWC was established, the sector in which the undertaking operates, the number of meetings per year and the number of EWC members by country. These are the best available data to allow an up to date analysis¹¹⁴ of the current take-up of EWCs in both the UK and across the EEA.

More detailed information relating, amongst other things, to the costs of setting up and running EWCs are derived from two key sources. First, we revisit and, where necessary, revise original unit cost estimates used in the original DTI Regulatory Impact Assessment¹¹⁵ (RIA) which accompanied implementation of Directive 97/74/EC extending to the UK Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees. Much of the analysis used for that RIA was based on a study commissioned by DTI¹¹⁶.

¹¹¹ Commission Impact Assessment, 2008, page 62.

¹¹² <http://www.berr.gov.uk/consultations/page47622.html>

¹¹³ ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu/>

¹¹⁴ As of mid-August 2008

¹¹⁵ The Transnational Information and Consultation of Employees Regulations 1999, <http://www.berr.gov.uk/files/file34183.pdf>

¹¹⁶ Costs and benefits of the European Works Councils Directive, DTI, ERRS No.9. Tina Weber, Peter Foster and Kursat Levent Egriboz. URN 00/630; <http://www.berr.gov.uk/files/file11620.pdf>

More recent data and information have been taken from the European Commission Impact Assessment¹¹⁷ (IA) of July 2008 which underpins the proposal for the current draft directive seeking to amend the original directive. The European Commission IA itself drew on the findings of a preparatory study¹¹⁸ and we have used these data where appropriate.

It should be noted that these studies of EWCs are based on a case study approach and therefore the sample size for obtaining cost estimates is relatively small and may result in wide variations. This may be exacerbated by the fact that the recent European Commission studies report estimates based mainly on EEA averages. These may not always reflect the costs experienced in the creation and operation of UK-based EWCs. Therefore where suitable data exist, we use relevant UK cost estimates wherever possible.

The issue of differential costs by size of EWC was also raised in the consultation. While instructive to present costs with such a breakdown, the lack of reliable data at this level prevents this. Therefore costs in this IA remain based on the average across all sizes of EWC. The unit cost estimates for the set-up and operation of EWCs we have used in this impact assessment are presented in tables 1 and 2 below:

1. Set-up costs

The UK price estimates are derived from the ECOTEC study in 1999, which formed the basis of the UK Impact Assessment (1999), updated to 2008 prices. Details of how prices have been updated are noted below relevant tables. The 'Commission IA average', included for the sake of comparison, comes from the 2008 Commission Impact Assessment figure for the average cost of setting up an EWC agreement since 1996 (hence of Article 6 agreements).

Table 1: Average costs of setting up UK EWC (2008 prices)*

Element	Average setting up costs
management time	£18,796
employee time	£7,992
cost of venue	£8,639
Travel	£8,240
translation costs	£3,987
interpretation costs	£14,752
language and other	£10,632
admin support	£1,776
dissemination costs	£1,329
costs of experts -for employees	£3,848
costs of experts - for management	£5,328
documentation for meetings	£532
admin of ballot	£18,207
Total	£104,057
Commission IA average – 2008	£98,584

Source: UK EWC IA (1999).* All figures are updated using the RPI (CHAW) index (factor change of 1.329) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the Average Earnings Index, excluding bonuses (factor change of 1.48)

¹¹⁷ Impact assessment on the revision of the European Works Council Directive SEC(2008)2166 of 2 July 2008, http://ec.europa.eu/employment_social/labour_law/docs/2008/impact_assesment_part1_en.pdf

¹¹⁸ Preparatory study for an impact assessment of the European Works Council Directive, EPEC GHK, May 2008, http://ec.europa.eu/employment_social/labour_law/docs/2008/ewc_impact_assessment_preparatory_study_en.pdf

2. Operating costs

Table 2: Average costs of a UK EWC annual meeting (2008 prices)

Element	Running Costs (£)
management time	£6,497
employee time	£9,472
cost of venue	£19,908
travel	£15,301
translation costs	£6,725
interpretation costs	£14,167
admin support	£2,309
dissemination costs	£3,575
costs of experts - for employees	£2,782
costs of experts - for management	£7,770
documentation for IT	£1,289
TOTAL	£89,796

Source: UK EWC IA (1999) . * All figures are updated using the RPI (CHAW) index (factor change of 1.329) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the Average Earnings Index, excluding bonuses (factor change of 1.48).

Table 3: Total average annual running costs of a UK EWC (2008 prices)

Type of meeting	Average unit cost	Average annual frequency	UK average annual cost	Commission IA average
Annual meeting	£89,796	1.13	£101,470	£79,574
Extraordinary meeting				£79,574
Select Committee	£7,193**	1.6	£11,509	£20,208
Training	£34,440		£34,440	£34,440
Total			£147,418	£213,795

Source: UK EWC Impact Assessment (1999) and Commission IA (2008)

**Unit cost for Select Committee taken from Commission IA. The Commission IA total assumes there are 3 meetings per year.

The UK price estimates are again derived from the ECOTEC study in 1999, which formed the base of the UK Impact Assessment (1999), updated to 2008 prices and the 'European averages' come from the Commission IA (2008), converted from Euros at €1 = £0.7863¹¹⁹. The average annual frequency of general (plenary) meetings is derived from the ETUI EWC database data¹²⁰, in which UK EWCs list the number of general meetings held each year, whereas the Commission averages assume each EWC holds on average two full-size plenary meetings each year; one standard annual meeting along with one extraordinary meeting. The frequency of Select Committee meetings is calculated from the ECOTEC study (1999) assumption that 80 per cent of UK EWCs hold Select Committee meetings, of which each holds two per year.

Responses to the consultation noted that some of the unit costs derived from the ECOTEC study may have increased since enlargement of the EU from 2004 onwards. We have therefore revised the following unit costs to take account of this:

- the unit costs for travel and subsistence are now taken from the GHK study¹²¹ which shows an increase per meeting from £13,104 to £15,301
- the unit costs for Select Committees have also been taken from GHK such that per meeting the cost has increased from £2,326 to £6,733.

¹¹⁹ Source: Bank of England, Monthly average End month Spot Quarterly average, Spot exchange rate. Data for October 2008

¹²⁰ ETUI Database on European Works Councils Agreements <http://www.ewcdb.eu/>

¹²¹ Travel costs per meeting were estimated at EUR 15,300 and subsistence costs EUR 4,160

Costs related to translation and interpretation are approximately the same when comparing the GHK and updated ECOTEC estimates and have therefore not been revised further.

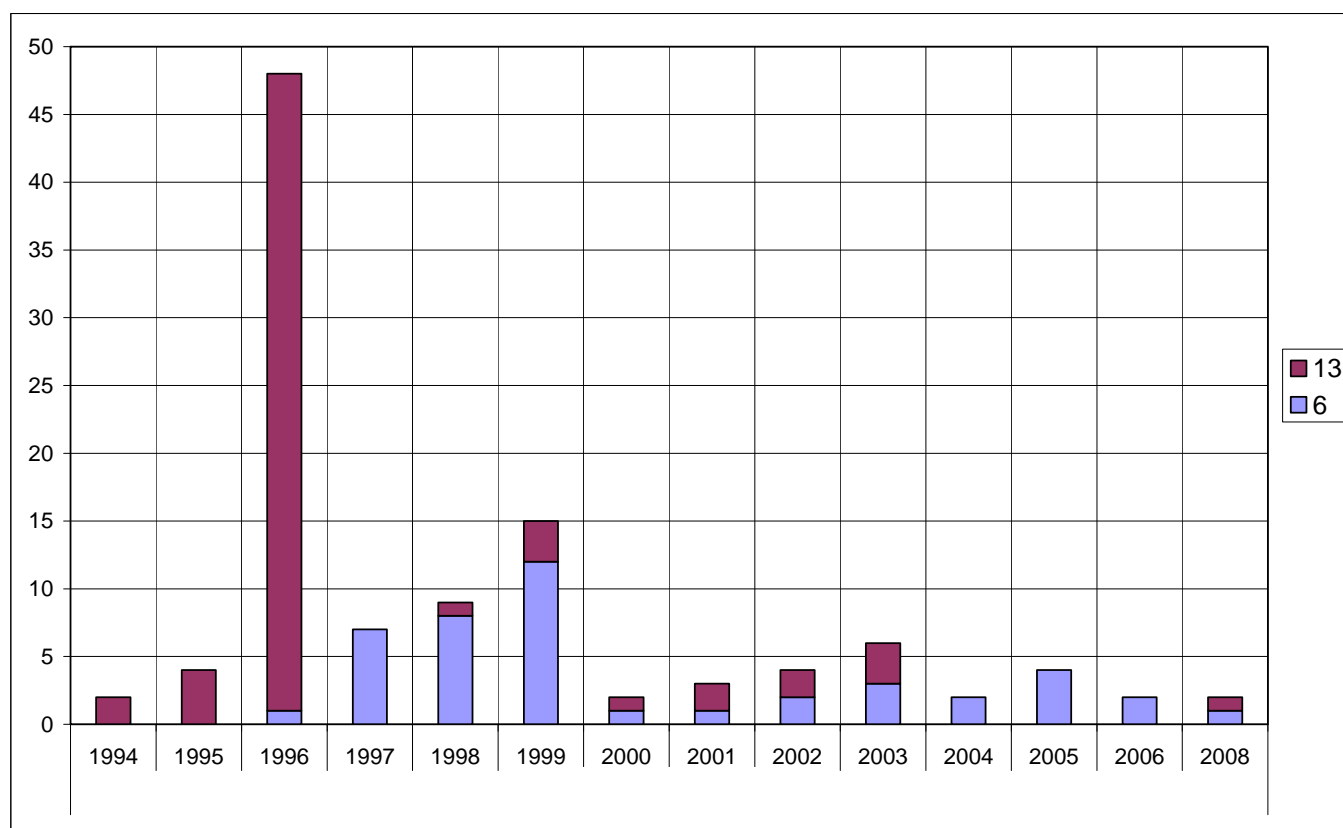
Otherwise, we believe the estimated costs and benefits remain broadly accurate.

Take-up of EWCs in the UK

Since the Directive was originally implemented across the EU in 1994 141 undertakings¹²² with headquarters in the UK had, according to the EWC database, been established by the end of August 2008. Of these 113 are currently effective.

Graph 1 below provides a summary of UK-based EWCs created by year. Around 60 per cent were created under Article 13 of the Directive, which allows companies to continue with agreements arranged before the Directive came into force, with the remaining 40 per cent having established newly formed council agreements under Article 6, which entails a specific procedure as set out by the Directive.

Graph 1: Creation of UK EWCs (those currently effective) by year and by Directive article.



There are an estimated 265 companies¹²³ with UK headquarters that could potentially fall within the scope of the Directive. This implies a current take-up rate of 43 per cent¹²⁴, which compares with the EEA average of 36 per cent.

Of the 28 UK EWCs which are no longer effective, 86 per cent were terminated due to Merger or Acquisition. Two thirds of those replaced by other EWCs remained in the UK, with the remainder relocating their headquarters outside of the UK. Furthermore none of the EWC agreements concluded since 2001 have ended.

Data from the ETUI EWC Database indicates that the majority of UK EWCs hold just one annual meeting (with an average of 1.1 meetings per year for UK EWCs), hosting an average of eight UK and eleven non-UK members. Beyond this, nearly all UK EWCs have provision for Select Committees to meet

¹²² At the time of updating this impact assessment the total was 146 and 116 of these were still effective. These new data will be used in the impact assessment to accompany the consultation on implementation due in the course of 2009.

¹²³ Commission Impact Assessment 2008, page 66, from ETUI-REHS, Brussels, 2006.

¹²⁴ Data from the EWC Database in November 2008 suggest that the UK take-up rate is just under 44%

before the annual meeting in order to prepare the agenda, currently with a maximum of three members, which is proposed to be increased to five members.

Under Directive 94/45/EC, companies are only obliged to set up an EWC at the request of 100 or more of its employees. This would remain the case under the 2008 amended Directive, though such amendments intend to allow EWCs to be created more easily, by obliging management to 'obtain and provide information to enable the commencement of negotiations...' Take up could also be increased following proposed improvements to current EWCs, in terms of the provision of more effective information & consultation, improved legal clarity and increased coherence between national and transnational procedures.

BENEFITS

It is extremely difficult to quantify benefits associated with EWCs, given their intangible nature, though it is still worth considering positive effects the establishment and maintenance an EWC may have for a UK company.

The potential benefits of the proposed amendments to the Directive largely mirror those set out during the establishment of Directive 94/45/EC, as the 2008 proposed revision aims to enhance the working of EWCs, by improving the effectiveness of information and consultation of employees.

Evidence from the ECOTEC study in 1999 identified a number of benefits perceived by a majority of companies surveyed, primarily a notion of 'symbolic value' of EWCs, wherein the presence of an EWC 'demonstrates a positive commitment to employees'. This was accompanied by a general consensus that the establishment of a EWC had increased ability to exchange information with employee representatives and had involved employees more closely in the business.

A number of sample companies also believed the EWC had improved employees understanding of reasons for management decisions.

GHK (2008)¹²⁵ drew similar perceived benefits from their survey of EWCs across Europe, with 81 per cent of surveyed EWCs agreeing or strongly agreeing that understanding of management decisions had been improved; 79 per cent that there was a better exchange of information trans-nationally and 75 per cent that relations between management and employees had improved. Such benefits, as with those found by ECOTEC, are surely a desirable consequence of the presence of an EWC, though it remains difficult to assess their economic impact and indeed to be certain that the perceived benefits mirror reality.

The Commission Impact assessment goes further in their benefit analysis, suggesting that associated improvements in legal clarity and effectiveness of information and consultation of employees – particularly on restructuring issues – is likely to improve the management of change within the company. From this, they suggest costs relating to labour disputes and legal processes in situations could be reduced; huge economic costs relating to redundancy payouts (of up to €220 000 per worker)¹²⁶ could thus be reduced, which could far outweigh the costs of the running of an EWC. However, BERR does not believe that there is sufficient evidence to support this proposed benefit; whilst effective information & consultation is highly desirable in effecting management of change, the presence of an EWC is unlikely to have such a direct impact on issues of this kind.

Given mixed evidence for company support for the merits of EWCs, the potential positive impact of EWCs on issues such as the management of change should not be overestimated. It seems more reasonable that, at best, the establishment and presence of an EWC may ameliorate the impact of restructuring on employees rather than achieving significant reductions in the cost of restructuring.

COSTS

The cost estimates presented below focus on two broad areas:

¹²⁵ A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007.

¹²⁶ 1999. Commission Impact Assessment, page 41.

- the direct effect of proposed changes to the directive that seek to improve the effectiveness of EWCs; and
- the indirect effect of these changes on the possible take-up of EWCs

Direct effect of proposed changes

The changes proposed by the draft Directive are presented in greater detail in the accompanying consultation document, but are summarised again below:

- More clearly defined and implemented information & consultation of employees (Article 1.2)
- EWCs to be limited to transnational issues only (Article 1.3/4)
- Information to be defined and consultation to be redefined (Articles 2f and 2g)
- Obligation on management to provide information to enable commencement of negotiations (Article 4)
- Changed rules on size and composition of Special Negotiating Body to ensure balanced representation of employees (Article 5.2.b)
- The SNB to be allowed to meet before and after any meeting with the central management, without presence of employee representatives (Article 5.4)
- Ensuring balanced representation of employees as EWC representatives (Article 6.2.b)
- Establishment of arrangements for linking EWC procedures with those of national employee representation bodies.
- Increase in maximum size of Select Committee; from three to five members (Article 6.2.e)
- Management and SNB able to amend and terminate agreement and date of entry into force (Article 6.2.g)
- Duty of employer to represent the interest of employees, with an entitlement to the 'means acquired to apply the rights' to this. (Article 10.1)
- Access to training without loss of wages for EWC and SNB representatives (Article 10.2 and 10.4)
- Requiring national and transnational arrangements to start in parallel (Article 12.3)
- Clarification that there is no obligation to renegotiate EWC agreements established under Article 6.
- In the case of 'significant changes in structure' taking place within the company, agreements must be renegotiated at the request of at least 100 employees or their representatives (Article 13.3)

The anticipated effect of each of these changes and their estimated costs are presented in turn below.

Article 1: Legal Clarity on EWC objectives and information & consultation.

Article 1 has been amended so that the arrangements for informing and consulting employees must be defined and implemented in such a way to ensure the effectiveness of the procedure and enable the undertaking to take decisions effectively.

The Commission Impact Assessment argues that the current lack of clarity on information and consultation leads to time-consuming and therefore costly disputes within companies, citing examples of EWC companies who have suffered greatly lengthened restructuring processes, which they claim to be partially as a result of such a lack of clarity. Therefore, it is argued that proposals to this Directive should reduce costs in this area, rather than increase them. However, BERR questions the extent to which a clarification of I&C would reduce costs associated with restructuring and prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

In addition, the Commission has proposed a new paragraph in order to clarify that the information and consultation procedures for consideration by EWCs is limited to transnational issues and thereby distinct to matters of national interest only. Thus, matters for the consideration of the EWC must concern the Community scale undertaking as a whole, or at least two undertakings or establishments situated in two different Member States.

Clarifying that EWC business should be limited to transnational issues only is unlikely to create any additional costs; conversely, it is likely to shorten EWC meetings by ensuring that the objectives of EWC meetings are understood.

Article 2: Definitions of information and consultation

The Commission has proposed a new definition for 'information' and has amended the definition for 'consultation', introducing the concept of time, fashion and content for the information and consultation procedures, in order to bring it into line with other Directives containing information and consultation provisions.

This is a very similar argument to part one of Article 1 (above), wherein more clearly defined information and consultation could improve company operations, for example by reducing costs resulting from lengthening of undertaking restructuring due to labour disputes. However, BERR prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

Article 4: Responsibility for the establishment of an EWC

The undertaking must make available information relating to the number of its employees. The new text also states that the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body (SNB); in particular to the structure of the undertaking and the size of its workforce.

The amendment to this article amounts to the provision of more information, which could involve additional management time. However, given the predicted four new UK EWCs per year (based on past growth in EWC numbers)¹²⁷, even if five hours are devoted to such a responsibility, the additional burden would only be $(5 \times £22^{128} \times 4) = \text{£}440$. At an estimated £110 per company, this is certainly a negligible cost, whatever the extent of aggregation.

Article 5: Special Negotiating Body

A number of changes are proposed for this Article:

- *Introduction of a simplified method for composition of the SNB*
- *Informing other bodies about SNB negotiations*
- *Entitlement for SNB to meet separately from central management*
- *Use of experts*

Introduction of a simplified method for composition of the SNB

The Commission has proposed a simplified method for the composition of the SNB which means that, subject to a minimum of 50 employees in one Member State, one SNB seat will be allocated per portion of employees employed in that Member State amounting to 10 per cent, or a fraction thereof, of the total number of employees of the undertaking in the EEA.

The Commission IA (2008) states that the change to SNB composition is not controversial and that this Directive update would have 'minimal impact on set-up costs' and lead to a 'limited increase in the number of SNB members and therefore in the costs'

Informing other bodies about SNB negotiations

Article 5(2) (c) currently requires that the central and local management must be informed about the composition of the SNB. This requirement has been expanded so that central and local management are also informed of the start of the negotiations.

The obligation to inform management about the start of negotiations is likely to take very little additional employee representative time. Even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13¹²⁹ per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average

¹²⁷ Taking into account the termination of certain agreements through M&A etc., there has been an average of four new EWCs established per year.

¹²⁸ Source: Annual Survey of Hours and Earnings (ASHE)

¹²⁹ Source: Annual Survey of Hours and Earnings (ASHE)

four new UK EWCs created per year, this gives an annual cost burden of only **£904**¹³⁰ to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

Entitlement for SNB to meet separately from central management

In order to enable employees' representatives to be able to cooperate together to define their positions in the negotiations, a new entitlement has been proposed to allow the SNB to meet before and after any meeting with the central management without the employers' representatives being present.

The entitlement for the SNB to meet separately will increase set-up costs of an EWC, by increasing the time and resources taken up by SNB negotiations. If it is assumed that, in addition to the one standard meeting with management there would be two additional meetings held solely by the SNB (one before meeting with management and one after)

Taking the cost break-down for setting up of an EWC, which in practice details the cost of the SNB meeting aimed to establish the EWC, the average daily cost of an SNB meeting of **£61,726** (excluding management time and costs of experts for management - which are not relevant, and excluding ballot costs – which should not be duplicated), giving a total average costs per SNB of £123 452¹³¹. For the estimated four newly established UK EWCs, this would give a total additional cost burden of **£0.49m**.

Use of experts

*Article 5(4) entitles the SNB to be assisted by experts of its choice; **the cost of one of which must be met by the undertaking**. The Commission seeks to recognise the role that trade union organisations can play in negotiating EWCs agreements. A further entitlement is created to allow the SNB to request an expert's presence at the negotiating meeting, where appropriate. The Commission has therefore amended the text to suggest that an appropriate Community level trade union could fulfil the role of an expert, although it should be noted that the choice remains one for the SNB to make. In order to enable the monitoring of new EWCs being established and the promotion of best practice, European trade union organisations and European employers' organisations have also been added to bodies to be informed about these matters.*

The amendment only extends the amendment so that 'an appropriate Community level trade union could fulfil the role of an expert'; 'the choice remains one for the SNB to make.' There is therefore little likely increase in costs related to the use of experts, rather a wider choice for the SNB.

Article 6: Content of the Agreement

EWC composition – size and representation

The current requirement, relating to the composition of the EWC, its size and how seats are allocated, has been expanded to include that, where possible, in the interest of the balanced representation of employees, its composition should also take into account the activities, category and gender of the employees of the undertaking.

It is unlikely that ensuring balanced member composition will involve any significant costs. Firms are only required to 'take in account' 'where possible' the composition of representation in terms of activities, categories and gender, which should not involve more than a simple consideration in the case of setting up a new EWC and perhaps a minor redistribution of representative members in the case of established EWCs.

Linking national and transnational provisions

The establishment of arrangements for linking of the EWC procedures with national employee representation bodies. This Article is closely related to the amendments made at Article 12 about the links between the EWC Directive and other Community and national provisions.

For this reason, the impact of linking of national and transnational provisions is detailed under Article 12.

¹³⁰ (£200 + (2 x £13 per hour) = £226 per EWC = total of £904

¹³¹ Assumed that SNB would meet without management twice.

Composition of the Select Committee

The number of members of the select committee has been increased from three members to a maximum of five members.

The current average number of members in a UK EWC Select Committee is four,¹³² - and the GHK EU average estimate is five¹³³ - so the amended article to limit the size of the Select Committee to a maximum of five is unlikely to have a large impact on set-up or operation costs. In fact, it is likely to reduce the size and therefore costs of a number of UK EWC Select Committees who currently have more than five members and who will be obliged to diminish the size of their Select Committees.

Article 10: Role and protection of Employees' Representatives

There would be a new duty on the members of the EWC to inform the employees of the content and outcome of an information and consultation procedure carried out in accordance with this Directive.

This duty to inform employees could take additional time of EWC members. However, as with the argument provided in Article 5, even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13 per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**¹³⁴ to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

Members of the SNB and EWC are to have access to training without loss of wages in so far this is necessary for their representational duties in an international environment.

The right of members of the SNB and EWC to training without loss of wages is likely to account for the largest increase in cost burden to UK EWCs, as both current and newly established EWCs will be affected.

Though evidence on current provision of training within EWCs is rather limited, the most recent study on EWCs (GHK, 2008) indicates that only around 36 per cent¹³⁵ of companies with EWCs currently provide training to all members. However, beyond this, another 43 per cent¹³⁶ of EWC companies provide training to at least one member of the EWC. Therefore, if an upper-limit estimation is taken by which 50 per cent of current UK EWCs do not provide any EWC members with training (and thus the remaining half provides full training: a simplification of the picture perceived by GHK), then 50 per cent x 113 = 56 UK EWCs would be obliged to provide training following the revision of the Directive. The GHK report (2007) on EWCs suggests that the European average that those who already provide training are spending is £34,440 (€43 800) per EWC.

If these 56 EWCs were to all immediately spend this average amount on training, then the total additional cost burden would be **£1.93m**, although this cost is divided amongst 56 transnational companies of more than 1000 employees.

It should also be noted that:

- a) There is likely to be some additional deadweight within this estimation, as in reality some proportion of the 'remaining 50 per cent of EWCs' not currently reported to provide training are likely to do so to some extent, to all or some members of their EWC.
- b) The average training figure per EWC may overestimate the true average amount an EWC will spend on training, because the figure used is taken uniquely from firms which are providing training on initiative and therefore are more likely to have a strong culture of training.

¹³² Average members in Select Committee of effective UK EWCs giving relevant data: ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu>

¹³³ A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007, page 17.

¹³⁴ (£200 + (2 x £13 per hour) = £226 per EWC = total of £904 (4 x £226)

¹³⁵ 46 per cent (fraction which provided training) x 79 per cent (companies which provided at least some training within their EWCs)

¹³⁶ 54 per cent (of companies providing training to less than all EWC members) x 79 per cent (of all EWC companies providing training) = 43 per cent.

In order to account for this issue, an alternative scenario - potentially closer to the true likely consequence of the Directive changes - could be added to the analysis above. If only 25 per cent of EWCs were to start fully training their EWC members following Directive amendments – taking into account the deadweight issue and the likelihood that there would not be a 100 per cent take-up of training, then only 28 EWCs will be subject to the training costs of £34,440. This would imply a cost burden of only **£0.96m**

This amendment is not said to be controversial in the eyes of the social partners, who recognise the benefit to the EWC of having a well-trained representative body, which would be extended to include EWCs not currently offering training to their employees.¹³⁷

Article 12: Links between this Directive and Other Community and National Provisions

National and transnational arrangements for information and consultation are required to start in parallel. Further to this, the SNB and management are required to establish the arrangements for linking the national and transnational arrangements on informing and consulting employees which exist within the company during the negotiating period.

The enforced linking and alignment of national processes with Community level provisions is a point of concern. If the amended Directive on EWCs were to spill over into national provisions on information and consultation, risking a re-opening of discussions on the UK Information and Consultation Directive, this would have large economic cost in terms of time and resources. This is not to be quantified at this stage, rather highlighted as an undesirable potential consequence resulting from amendments the Community Directive.

Article 13: Agreements in force

Article 13 enables companies to continue with agreements which were concluded voluntarily before the Directive came into force provided such agreements cover its entire workforce and provides for the transnational information and consultation of employees. Once the Directive came into force, EWC agreements were required to meet the more specific requirements laid out in Article 6. In other words, agreements in force on 22 September 1996 are exempt from the provisions of the EWC Directive. With regard to the UK where the Directive came into force on 15 December 1999 existing arrangements meeting the above criteria are similarly deemed exempt from the Directive.

The current proposal envisages that unless specific provisions exist in current Article 6 or Article 13 agreements, any *significant change to the structure* of an undertaking would result in the requirement for an EWC agreement to be renegotiated under the provisions of Article 6.

As the proposals do not define what constitutes a change in structure, we have assumed here that this would relate to mergers and acquisitions (M&A). Using data from the ETUI EWC database, of the 28 UK-based EWC agreements that are no longer effective 86 per cent - or 24 agreements - were because of mergers and acquisitions. Furthermore the results of these mergers and acquisitions indicate that a third of these re-located their headquarters outside of the UK. Therefore, overall, 16 of the 28 agreements that ended resulted in new UK-based EWCs. Since 1992 this averages at two UK-based EWCs a year that may undergo a merger or acquisition.

In the absence of detailed information concerning provisions for changes of structure within existing Article 6 or Article 13 provisions, we assume here that such provisions exist in half of all EWC agreements. From this we estimate therefore that the proposed changes to Article 13 would affect 1 UK-based EWC each year. Using the estimated set-up costs from table 1 above this would lead to an **increase in costs to business of around £0.1m a year.**

¹³⁷ Lessons learned on European Work Councils, 2005.

Table 4: Summary of estimated direct effect costs

	Estimated cost p.a £m
Article 1: Legal Clarity on EWC objectives and information & consultation.	Not quantified
Article 2: Definitions of Information & Consultation	Not quantified
Article 4: Responsibility for the establishment of an EWC	negligible*
Article 5: Special Negotiating Body	0.49
Article 6: Content of the Agreement	negligible*
Article 10: Role and protection of Employees' Representatives	0.96 - 1.93**
Article 12: Links between this Directive and Other Community and National Provisions	Not Quantified
Article 13: Agreements in force	0.1
Total	1.55 - 2.52

Source: BERR estimates, 2008. Estimated increased cost burden of £110 and £425 respectively per new UK EWC. **Depending on training scenario considered.

2. Indirect effect of new directive on take-up of EWCs

As noted above, the database of EWCs indicates that there are 113 effective UK headquartered EWCs and the most recent data available on the total number of companies covered by the Directive (ETUI-REHS, 2006) suggests there to be 265 with headquarters in the UK. This gives a UK take-up rate of 42.6 per cent, compared to the EEA average of 35.5 per cent, where 583 EWCs have been established from a potential 1642.

One objective of the proposed amendments to the existing Directive is to increase the take-up rate. An addition to Article 4 of the Directive states that 'the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body', which seems to be the most direct attempt to encourage take-up. Proposed improvements to EWCs – through improved effectiveness of information and consultation, legal clarity and coherence – could also be seen as an indirect method for inciting eligible companies to establish a new EWC.

However, it seems unlikely that the 152 eligible UK companies are currently without an EWC agreement solely due to a lack of guidance on information provision; in other words it is questionable whether amendments of this nature are likely to greatly increase the current take-up of EWCs in the UK. As it is only 28 new UK-based EWCs have been created since 2001.

Further to this, evidence from the Commission Impact Assessment suggests that the establishment of an EWC depends upon factors such as the sector the company operates in (41 per cent average take-up rate in the metals sector compared to only 24 per cent in the services sector) and the presence of employees in certain EEA member states (for instance, over half of eligible companies operating in Sweden have established an EWC).

Perhaps most essentially, it will remain the case that the establishment of an EWC agreement is voluntary and company management are only obliged to do so at the request of at least 100 employees,

hence the proposed changes to the Directive are unlikely to have any marked impact on the take-up rate.

In light of this, it is worth considering the additional cost burden which would be borne if the UK take-up rate were to increase. For illustrative purposes we have assumed an increase in the take-up rate to 50 per cent from the current level of 42.6 per cent, which would result in 132 UK-based EWCs, or 19 new UK EWCs. It seems reasonable to assume that the creation of these new EWCs would be spread over a number of years following the amendment to the Directive. We assume here a 3-year period for creation of the 19 new EWCs with seven established in the year following the Directive amendment and six more established in each of the following two years. On this basis the estimated additional costs to the set-up and running of UK EWCs would be as follows:

Table 5: Indirect costs, per year, envisaged as a result of additional take-up of EWCs (current prices followed by Present Values)

	Number of new EWCs				TOTAL	Average per year – over 10 years
Discount Rate	3.50%					
Year following change	1	2	3	4 etc.	over 10 year	10 years
Set-up costs	£728,399	£624,342	£624,342	£0	£1,977,083	£197,708
Running costs	£1,031,926	£1,916,434	£2,800,942	£2,800,942	£25,355,896	£2,535,590
Set-up costs (PV)	£703,767	£582,830	£563,121	£0	£1,849,718	£184,972
Running costs (PV)	£1,031,926	£1,851,627	£2,614,709	£2,526,289	£21,486,018	£2,148,602

Source: Impact Assessment (1999) and BERR estimates.

Table 6: Summary of quantifiable costs

2008 Prices	Direct Costs £m	Indirect Costs £m	Total £m
One-off costs £m*	0	1.98	1.98
Running costs £m #	1.55 - 2.52	2.54	4.09 - 5.06

Source: Impact Assessment (1999) and BERR estimates. *One-off costs are spread over 3 years. # average running costs over 10 years.

F: Risks

The estimates of costs and benefits presented in this impact assessment are based upon actual data sources where they exist. Beyond this a number of assumptions have been made where there are gaps in the data. Furthermore there is inevitably a degree of uncertainty surrounding the indirect and direct effects of the changes proposed by the draft directive. Moreover further changes may result as the draft directive continues to be negotiated at EU level during the autumn of 2008. We will continue to firm up our estimates as new data and information become available and present these with the impact assessment to accompany the consultation on implementation during the course of 2009, should the proposals be adopted.

Please also refer to the potential cost related to amendments to Article 12 in Section E, which details the risk of re-opening of discussions on UK Information & Consultation Directive.

G: Enforcement

The Central Arbitration Committee (CAC) is currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999. It is therefore likely that the enforcement of any amendments to the EWC Directive will fall to the CAC. The number of cases brought before the CAC under the Transnational Information and Consultation of Employees Regulations to date has been minimal, suggesting that compliance is high. Therefore there is no reason to believe that these proposed changes are likely to have a significant impact.

H: Recommendation and summary table of costs and benefits

Table 7 below presents a summary of the estimated quantifiable costs and benefits. These costs and benefits reflect the policy option of implementing amendments set out by revised Community Directive 94/45/EC on European Work Councils.

Scope of law, £m	Annual Costs (ongoing)	One off costs	Annual Benefits (£m p.a.)
Direct Effect of Changes Proposed by Directive (i.e. on existing EWCs)	1.55 - 2.52	0	Not quantified – please refer to EWC Benefits description in Section E.
Indirect effect of increased take-up of EWCs	2.54	1.98	Not quantified – please refer to EWC Benefits description in Section E.

Source: BERR estimates. Figures have been rounded

I: Implementation

It is likely that any legislative changes to the EWC Directive will be implemented by way of a revision of the Transnational Information and Consultation for Employees Regulations 1999 which transposed the provisions of Directive 94/45/EC on the establishment of a European Works Council. However, the Government will prepare a further public consultation to seek stakeholders' views on the implementation of the revised Directive.

J: Monitoring and evaluation

A review of the EWC Directive will be undertaken by the European Commission five years after the Directive comes into force.

The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS) (expected to be completed in 2010) which provides an integrated picture of employment relations, including information and consultation arrangements.

The Government monitors the cases brought before the CAC under the Transnational Information and Consultation for Employees Regulations 1999, which are published annually in the CAC's Annual Report. It will continue to do so following the implementation of the revised EWC Directive.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annex A: SPECIFIC IMPACT TESTS

1. Competition Assessment

Business sectors affected

Table A1 below presents the distribution of currently effective EWC's with UK headquarters. All of these EWCs are in the private sector.

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A2 below). The proposed legislation will apply to all undertakings with at least 1,000 employees within EU member states and, given the relatively small magnitude of the costs, is unlikely to affect the competitiveness of any particular sector.

Table A1: Distribution of currently effective UK-based EWCs by sector

% distribution	Effective
Building and Woodwork	3%
Chemicals	20%
Food, hotel, catering and agriculture	15%
Graphical	5%
Metal	24%
Other services	10%
Public services	0%
Services Commerce	5%
Services Finance	7%
Services IBITS	2%
Textile	2%
Transport	7%

Source: EWC Database, ETUI**

**Online database accessible through <http://www.ewcdb.eu/>. Data accessed and retrieved on 20 August 2008

Table A2. Competition assessment.

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BERR

2. Small Firms Impact Test

Undertakings with fewer than 1,000 employees across the EEA and fewer than 150 employees in any member state are not affected by the provisions of this directive.

3. Equality Impact Assessment

In line with better regulation best practice and the Equalities Duties we have considered the impact of changing the law by gender, race and disability.

The Commission Impact Assessment has not identified any negative impacts on equality which would result as a consequence of a revision to this Directive.

In addition, the proposed amendment to Article 6, detailed in Section E, stipulates 'balanced representation of employees within the EWC', taking the 'activities, category and gender' of employees of the undertaking into account.

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