

**EXPLANATORY MEMORANDUM TO**  
**THE WORKING TIME (AMENDMENT) REGULATIONS 2007**

**2007 No. 2079**

**1.** This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These regulations amend the Working Time Regulations 1998 to introduce a statutory entitlement to 1.6 weeks' additional paid annual leave, in addition to the four weeks' annual leave entitlement already provided by the Working Time Regulations, subject to a maximum statutory entitlement of 28 days.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 The Working Time Regulations currently confer an entitlement to four weeks' paid annual leave on all workers. Some employers include any paid leave for bank holidays within the four week entitlement, reducing the amount of annual leave that can be taken at the worker's discretion. The Government proposes to amend the Working Time Regulations to introduce an additional leave entitlement to fulfil its manifesto commitment to make time off for bank holidays additional to the current four-week annual leave entitlement.

**5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

**6. European Convention on Human Rights**

6.1 The Minister for Employment Relations has made the following statement regarding Human Rights:

In my view the provisions of the Working Time (Amendment) Regulations 2007 are compatible with the Convention rights.

**7. Policy background**

7.1 The Working Time Regulations currently confer an entitlement to four weeks' paid annual leave on all workers. Some employers include any paid

leave for bank holidays within the four week entitlement, reducing the amount of annual leave that can be taken at the worker's discretion. In its election manifesto in 2005, the Government committed to make time off for bank holidays additional to the four-week annual leave entitlement currently given by the Working Time Regulations.

7.2 Research commissioned by the DTI indicates that around 6 million workers currently have a leave entitlement of less than 5.6 weeks' (equivalent to 28 days for those working five days a week). Those working part-time, younger workers, those from ethnic minorities, women and those working for small employers are more likely to receive less than 5.6 weeks' annual leave than other workers. If the Government does not intervene, the current inequality in holiday provision will be maintained; most employees and other workers will continue to receive contractual entitlements well in excess of the statutory minimum, whilst a minority will continue to receive only the four-week statutory minimum.

7.3 The Government conducted a twelve-week consultation in June-September 2006, seeking views of employers, workers, trades unions, representative organisations and others on a proposal to increase the holiday entitlement from four weeks to 5.6 weeks (from 20 days to 28 days for someone working full-time, pro rata for part timers), subject to a maximum statutory entitlement of 28 days. The Government proposed that the increase in the holiday entitlement should be phased, with the first increase occurring from 1 October 2007, and sought views on the timing for the introduction of the remaining holiday. The consultation also sought views on whether payment in lieu of leave ('buying out') or carrying over of unused leave entitlement to the following leave year should be permitted.

7.4 Over 340 responses were received to the initial consultation and, having considered the views expressed, the Government held a further twelve-week consultation in January – March on draft regulations to introduce an additional holiday entitlement of 0.8 weeks from 1 October 2007, with an additional 0.8 weeks from 1 October 2008. The draft regulations also permitted unused additional holiday entitlement to be carried forward to the following leave year but did not permit payment in lieu of the additional leave to be made.

7.5 Over 650 responses were received to the further consultation, with some employers that already give the equivalent of 5.6 weeks' annual leave expressing concern about inadvertent impacts on their leave arrangements. A number of employers, particularly from the residential care sector, said that the prohibition on payment in lieu of leave, combined with difficulties in recruiting sufficient staff and statutory requirements for staffing levels would give them significant problems in complying with the new regulations. The analysis of responses and Government responses to both the initial and further consultation exercise can be found at [www.dberr.gov.uk/employment/holidays/index.html](http://www.dberr.gov.uk/employment/holidays/index.html), and more details of the consultation process can be found in the Regulatory Impact Assessment attached to this Explanatory Memorandum.

7.6 The Government's preferred approach in the January 2007 consultation had been to introduce half of the additional holiday entitlement from October 2007, and the remaining half from October 2008. On further consideration of the cost pressures, in particular for the health and social care sector, the Government intends to delay the second increase in the holiday entitlement from 1 October 2008 until 6 April 2009. The initial increase will come into effect on 1 October 2007, as originally proposed.

7.7 The Government also proposes to provide a transitional period until 1 April 2009, during which payment in lieu of the additional leave entitlement may be made. The Government also proposes to give an incentive for early compliance by excluding from the regulations those employers that give their staff, by contract, at least 5.6 weeks' (or 28 days which ever is the lesser) annual leave, provided that payment in lieu of that leave is not permitted and any unused entitlement (above four weeks') may be carried over for a maximum of one year.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is detailed in the Regulatory Impact Assessment. Whilst the majority of public sector workers already receive at least the equivalent of 5.6 weeks' annual leave, public sector procurement may incur increased costs for contracted-in services to reflect the additional holiday entitlement for the staff providing those services. The Department of Health has estimated that the overall financial impact across the health and social care workforces may be in the region of £480m (£292m social care, £78m GP/dental and agency staff, £100m directly employed NHS staff). The Office of Government Commerce has estimated the increased costs of temporary and agency staff across the public sector would be £147m, on an agency spend of £3.9bn.

## **9. Contact**

Peter Stephens at the Department for Business, Enterprise and Regulatory Reform (telephone: 0207 215 3813 or e-mail: [peter.stephens@berr.gsi.gov.uk](mailto:peter.stephens@berr.gsi.gov.uk)) can answer any queries regarding the instrument.

## The Working Time (Amendment) Regulations<sup>1</sup> 2007

June 2007

<http://www.dberr.gov.uk/employment>

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<sup>1</sup> The Partial Regulatory Impact Assessment: Increasing the holiday entitlement can be found at <http://www.dti.gov.uk/files/file36457.pdf>

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## Executive summary

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

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

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

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

## Summary of costs

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

**Table 1. Summary of estimated policy and administrative costs**

Options	One	Two	Three
<b>Proposal</b>	Do nothing	Introduce a statutory right to take leave on eight bank and public holidays	Increase the statutory holiday entitlement to 28 days (5.6 weeks) to reflect the number of bank holidays
<b>Benefits to employees</b>	None	Around 4.4 million employees would stand to benefit	Around 4.4 million employees would stand to benefit
<b>Benefits to other workers</b>	None	Around 1.5 million other workers would stand to benefit	Around 1.5 million other workers would stand to benefit
<b>Total benefits<sup>2</sup></b>	None	Around 6 million people would stand to benefit	Around 6 million people would stand to benefit
<b>Policy costs<sup>3</sup> (including non-wage labour at 20%)<sup>4</sup></b>	None	Between £3.3bn to £4.4bn per annum	Between £3.3bn to £4.4bn per annum
<b>Administrative costs</b>	None	£138 million transitional costs £83 million ongoing administrative costs <sup>5</sup>	£140 million transitional costs £43 million ongoing administrative costs

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

The policy costs for options two and three are, likewise, expected to be the same. The overall cost of implementing a right to take paid leave on bank and public holidays is between £3.3 billion and £4.4 billion per annum. This represents 0.4% to 0.6% of the aggregate wages bill.<sup>6</sup>

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

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

<sup>2</sup> Details of the benefits of the proposals can be found in annex B.

<sup>3</sup> This includes both employees and workers. The majority of people in work are employees. A person is classed as an employee if they are working under a contract of employment. A worker is any individual who works for an employer, whether under a contract of employment or not, or any other contract where an individual undertakes to do or perform personally any work or services. For more details on employment status, please see:

[www.direct.gov.uk/Employment/Employees/EmploymentContractsAndConditions/fs/en](http://www.direct.gov.uk/Employment/Employees/EmploymentContractsAndConditions/fs/en)

<sup>4</sup> The 20% figure is a figure reflecting lower contributions and can be found at: [http://www.statistics.gov.uk/downloads/theme\\_labour/LabourCostSurvey2000/LCS2000.pdf](http://www.statistics.gov.uk/downloads/theme_labour/LabourCostSurvey2000/LCS2000.pdf) and [www.statistics.gov.uk/cci/article.asp?ID=1183](http://www.statistics.gov.uk/cci/article.asp?ID=1183).

<sup>5</sup> The ongoing administrative costs include the costs of demonstrating compliance (the administrative burden) estimated at £14 million for both options (based on 5 minutes management time per worker @£22.20 ph, including 20% non-wage costs).

<sup>6</sup> The cost estimates assume that the current level of compliance for holiday entitlement is maintained by employers affected by this regulation.

incurred in order to achieve the government departments' stated policy objective. They cover the activities that are necessary in order to overcome a market failure or to achieve an equity objective.

## Administrative costs

Extending the holiday entitlement will not affect the vast majority of British employers, who already give 28 days' (5.6 weeks) paid holiday or more. A provision in the draft regulations gives an incentive for early compliance; those employers who, by contract, give their staff an entitlement to at least 5.6 weeks' holiday<sup>7</sup> (or 28 days, whichever is the lesser) as at 1 October 2007 would be excluded from the regulations.

However those employers who do not currently give 5.6 weeks' holiday would face two sets of administrative costs. These are the *transitional* costs in calculating the increased entitlements and communicating them to staff and the ongoing *administrative* costs of managing an increased volume of leave requests. *Transitional costs* include:

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

It is proposed to extend the holiday entitlement in two phases of implementation, in October 2007 and April 2008. For option 2, the *transitional* administrative labour costs for introducing a statutory right to take leave on bank holidays using the proposed two-phase implementation are around £138 million.<sup>8</sup> The *ongoing* administrative element of the policy cost for option 2 is estimated to be around £83 million per year.<sup>9</sup>

For option 3 it is estimated that the transitional costs for increasing the current statutory holiday entitlement from 4 weeks to 5.6 weeks would be lower than option 2 on a per capita basis, as the calculation of entitlements for part-time employees and other workers is likely to be simpler than for introducing a statutory right to take leave on bank holidays. The overall *transitional* administrative

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<sup>7</sup> Provided that payment in lieu of holiday up to 5.6 weeks is not permitted, and any carry-over of unused holiday entitlement is limited to the following leave year.

<sup>8</sup> Based on 30 minutes management time per capita @ £22.20 (the median hourly wage from ASHE) x 6 million workers, plus 20% non-wage labour costs. Throughout this RIA we take the median hourly wage for managers of £22.20 per hour. This is based on the Annual Survey of Hours and Earnings 2006, ONS.

<sup>9</sup> This is calculated on the basis of 30 minutes per employee of management time at £22.20 per hour x 6 million, plus 20% non-wage labour costs.

labour cost for option 3 is estimated at around £140 million<sup>10</sup> for the two increases in the holiday entitlement. The *ongoing* administrative element of the policy cost for option 3 is estimated to be around £43 million per year<sup>11</sup>.

## Ministerial Declaration

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**Signed:** Jim Fitzpatrick

**JIM FITZPATRICK MP**

**Parliamentary Under-Secretary of State for Employment Relations**

**Dept of Trade and Industry**

**Date: 11th June 2007**

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<sup>10</sup> Based on 25 minutes management time per capita @£22.20per hour x 6 million workers.

<sup>11</sup> This is calculated on the basis of 10 minutes of management time for each staff member, at £22.20 per hour x 6.0 million – costs may be much less if maintaining cover not an issue, or significantly more if extensive re-rostering is required. A number of employers may also specify up front when the additional leave will be taken which would reduce the admin costs.

# The Working Time (Amendment) Regulations 2007

## Purpose and intended effect

### Objective

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

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

The Government intends to implement the first phase of 0.8 weeks' (four days for those working a five-day week) additional holiday in October 2007 and the second phase of the remaining 0.8 weeks' holiday in April 2009.

### Background

In its election manifesto, the Government proposed that it would extend the statutory entitlement to 4 weeks' paid holiday, making it additional to time equivalent to bank holidays, during its third term in office. This would be on a pro-rata basis for those working part time. At present, all workers, whether part time or full-time, are entitled to 4 weeks' paid annual leave, under the Working Time Regulations (1998). Holiday should allow an individual to be away from work for that period. A week's holiday should be the same amount of time as a working week – for example, if someone works a five day week, he or she is entitled to 20 days paid holiday; for a three day week the entitlement is 12 days. Whilst the overwhelming majority of employees and other workers currently enjoy a contractual holiday entitlement equivalent to at least four weeks with paid leave for bank holidays in addition, the statutory holiday entitlement is not additional to bank and public holidays. Although many employers provide paid leave on bank holidays (in addition to their four weeks statutory leave entitlement), some require people to count the bank and public holidays as part of their 4 weeks' leave entitlement. The DTI Paid Annual Leave Survey on annual and bank holiday entitlement shows that the lowest paid, including part-time employees, women and those from ethnic minorities are more likely to have bank and public holidays included in their four-week holiday entitlement (see Annex A for more details).

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

## Rationale for government intervention

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

If the Government does not intervene, the current inequality in holiday provision will be maintained; most employees and other workers will continue to receive contractual entitlements well in excess of the statutory minimum, whilst a minority will continue to receive only the four-week statutory minimum, and some will continue to receive less. Research by IDS<sup>12</sup> indicates that contractual holiday entitlements are increasing gradually year-on-year, hence it is likely that the gap between those receiving only the statutory entitlement and those receiving more generous contractual arrangements will continue to widen.

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

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

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

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<sup>12</sup> IRS Employment Review No. 817 11 February 2005.

## Consultation

### Within Government

In preparing the draft regulations, the sectors believed to be particularly affected have been consulted both to help assess the potential impact on those sectors and also to ensure that the sector is consulted in the most effective way. Early research indicated that the road transport, hospitality and care sectors were most likely to be affected, and as a result the relevant teams in the Department for Transport, Department for Culture, Media and Sport and the Department of Health have been consulted. The Department of Health and the Office of Government Commerce have provided cost estimates for the impact on the health & social care sectors, and on government procurement of temporary staff respectively; these are presented below.

The Home Office and the Ministry of Defence have been consulted in their roles as employers, and the Small Business Service and the Small Business Council Better Regulation Interest Group have been consulted because of the potential for a disproportionate impact on smaller businesses.

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

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

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

### Public consultation

A number of key stakeholders were approached to ensure that the consultation covered the full range of issues and was sufficiently clear. Those consulted included the TUC, CBI, EEF, CIPD, and representative bodies from the care, hospitality, road transport, retail and construction sectors. The initial consultation sought the views of respondents on the benefits to staff of increased holiday, the potential impacts on employers, the timetable for introducing the additional leave and the flexibilities that could be permitted in managing the additional holiday.

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

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

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

## **Further consultation**

On the basis of the responses to the initial consultation, the Government launched a further consultation on 12 January 2007, seeking views on draft regulations and a Partial Regulatory Impact Assessment, and on what guidance should support the implementation of the proposals. The consultation document asked seven questions, as well as respondent data to enable detailed analysis of the responses to be conducted. The questions were more open-ended than the questions in the initial consultation, seeking views on the details of implementation, rather than the broader principles addressed in the initial consultation.

The consultation launch was supported by a press notice and a dedicated webpage, attracting significant media coverage. Copies of the consultation documents were sent to over three hundred business and union stakeholders, including those who had responded to the initial consultation and who had asked to be kept informed of progress. Over the period of the consultation, the dedicated webpage attracted over 94,000 visitors and the electronic form of the consultation document was downloaded nearly 8,000 times. Following feedback from the initial consultation, the ability to respond online via a website questionnaire was provided. During the consultation period, 1,280 people registered on the

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<sup>13</sup> <http://www.dti.gov.uk/employment/holidays/index.html>

survey website either to receive further details or to respond to the consultation. Over 95% of responses to the consultation were made via the online facility.

As with the initial consultation, details of the further consultation were emailed to around 2,100 businesses on the Small Business Service's consultation database, and details were placed on the BusinessLink website. A number of representative organisations and unions also drew their members' attention to the consultation. Over the past year, the DTI website has offered to add those who wanted to be kept informed of the development of the proposals to increase the holiday entitlement to an email distribution list. This distribution list was used to draw attention to the consultation, to advertise the consultation meeting and to remind of the consultation closing date. By the end of the consultation, over 5,300 people had asked to be added to the distribution list.

To supplement the consultation process, a consultation meeting was held in London on 14 March 2007, attended by 76 business and union representatives, and individuals. The points raised in the consultation meeting, and in other meetings with individual stakeholders, have been included in the consultation responses.

## **Options**

### **Option One: Do nothing.**

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

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

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

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

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

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

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

## Benefits

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

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

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

## Costs

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

### Policy costs

We estimate from the DTI Paid Annual Leave Survey 2006, approximately 6 million people stand to benefit from extending the annual leave entitlement (those not receiving 28 days). It is hardly surprising that women stand to benefit more than men as they are less likely than men to get paid leave

for the 28 days given the proportion of women working part-time (this is described in more detail in Annex A).

It is anticipated that administrative costs would only be incurred by employers that do not currently provide 28 days' holiday entitlement (either as 'four weeks + bank holidays', or as 28 days' holiday, pro rata for part-timers). A provision in the draft regulations gives an incentive for early compliance; those employers who, by contract, give their staff an entitlement to at least 5.6 weeks' holiday<sup>14</sup> (or 28 days, whichever is the lesser) as at 1 October 2007 would be excluded from the regulations.

## Option 2

These estimates have been calculated using a similar methodology to that used to estimate the impact of the introduction of four weeks annual leave including bank holidays, in the Regulatory Impact Assessment for the Working Time Regulations (April 1998).<sup>15</sup> The estimates have been derived by taking the difference between the cost of Paid Annual Leave (PAL) including and excluding bank holidays. For example if a full-time person currently worked five days a week they could be getting 12 days holiday once bank holidays are excluded. Under the proposed option the same wage earner would be entitled to 20 days holiday and so their wage payer would, if all other factors remained the same, have to pay for an extra 8 days holiday. For those working part-time, entitlements have been allocated on a pro-rata basis. In order to calculate the additional employees who would benefit, as well as the additional costs associated with option 2, it was assumed that the holidays for employees who did not currently get paid leave on bank holidays, or worked on bank holidays, would be increased from twenty to twenty eight days.

The costs are based on the number of employees affected multiplied by the number of extra days they would be entitled to, multiplied by their estimated average wage and non-wage labour costs. Non-wage labour costs have also been estimated to increase the cost of paying an employee by 20% (this percentage is used in the Labour Cost Survey). An adjustment to wages has also been made to take into account the fact that employees with low levels of annual leave are more likely to be paid less than those with higher levels of annual leave. The differences between part-time/full-time and male/female wage rates have been taken into account.

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<sup>14</sup> Provided that payment in lieu of holiday up to 5.6 weeks is not permitted, and any carry-over of unused holiday entitlement is limited to the following leave year.

<sup>15</sup> See *1997-1998 Compendium of Regulatory Impact Assessments*, Employment Relations Research Series No. 67, DTI, London, URN 06/1840. Available from: <http://www.dti.gov.uk/employment/research-evaluation/errs/page13419.html>

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

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Number of employees who stand to benefit	4.5 million
Number of other workers who stand to benefit	1.5 million
Total number of people who stand to benefit	6.0 million
Estimated annual wage cost	£2.6bn to £3.5bn
Estimated annual labour cost (including non-wage labour at 20%)	£3.3bn to £4.4bn

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

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By making 8 bank and public holidays statutory approximately 6 million individuals will benefit. The estimated annual wage cost for implementing this is between £2.6bn to £3.5bn. However, once non-wage labour costs are included the estimates rise to an annual total labour cost of £3.3bn to 4.4bn.<sup>16</sup> A range is provided as we have considered the worst case and best case scenarios (for more details see Annex C); in other words we have considered the lowest and highest paid individuals and those who receive little paid leave and those who receive their full quota.

### Option 3

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

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

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Number of employees who stand to benefit	4.5 million
Number of other workers who stand to benefit	1.5 million
Total number of people who stand to benefit	6.0 million
Estimated annual wage cost	£2.6bn to £3.5 bn
Estimated annual labour cost (including non-wage labour at 20%)	£3.3bn to £4.4bn

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

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Increasing the holiday entitlement to 28 days will benefit 6 million individuals (4.4 million employees and 1.5 million workers). The associated annual policy cost is estimated between £2.6bn and £3.5bn in wages paid; however once non-wage costs are included (described in the methodology section below), the estimated total annual labour costs are £3.3bn to £4.4bn (at 20%). The costs equate to 0.4 - 0.6% of the total wages bill, although the impact in particular sectors may be more significant.<sup>17</sup>

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<sup>16</sup> This includes both employees and workers

<sup>17</sup>To illustrate the range of wage bill impacts, the cost for the hospitality sector (the sector most likely to be affected) is estimated in the range of 0.5 - 0.8% of the wage bill for each of the increases in 2007 and 2009, or 1.0-1.5% in total.

## Administrative costs

In summary, the transitional administrative costs of implementing the increased holiday entitlement in 2007 and 2009 are estimated at around £138 million for option 2 and £140 million for option 3.

The administrative element of the policy costs differ between the options, estimated to be around £83 million for option 2, and £43 million for option 3<sup>18</sup>. The basis for these calculations is set out below.

### Option 2

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

The transitional costs for option 2 (introducing a statutory right to take leave on bank holidays) are estimated to be approximately £83 million<sup>19</sup> for the first increase and £55 million for the second increase in the holiday entitlement.<sup>20</sup> Hence for the proposed two-phase implementation, the total transitional cost would be around £138 million.

These transitional costs include

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

The ongoing administrative costs for option 2 are estimated at £83 million<sup>21</sup>, more than under option 3. These on-going costs would in part reflect the complexity of making the 8 bank and public holidays statutory. For an employer this would involve more rostering and arranging cover for staff on holiday as well as the consequences of staff taking the actual bank holiday, for example loss of productivity or continuity of service. The ongoing costs are based on an estimate of 30 minutes of management time per member of staff to schedule and roster time to ensure adequate cover for staff holidays.

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<sup>18</sup> The ongoing administrative costs include the costs of demonstrating compliance (the administrative burden) estimated at £14 million for both options (based on 5 minutes management time per worker @£22.20 ph, including 20% non-wage costs).

<sup>19</sup> Based on 30 minutes management time per staff @ £22.20ph x 6 million workers.

<sup>20</sup> We assume that one-third of employers extend the full 8 day holiday entitlement in the first phase of implementation. This would increase their policy cost in the first year, but half their transitional administrative costs.

<sup>21</sup> This is calculated on the basis of 30 minutes per employee of management time at £22.20 x 6 million, plus 20% non-wage labour costs.

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**Table 4. Administrative costs of option two**

	Wage cost	Total labour cost
Transitional administrative costs	£110 million	£138 million
Ongoing administrative costs	£66 million per annum	£83 million per annum

Source: DTI estimates. Estimates are for Great Britain.

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### Option 3

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

The transitional cost for option 3 is estimated at around £94 million<sup>22</sup> for the first increase and £46 million for the second increase in the holiday entitlement. Hence for the proposed two-phase implementation, the total transitional cost would be around £140 million.

As described above, there would also be an ongoing administrative cost to employers of managing an increased holiday entitlement and ensuring sufficient cover for staff on holiday. Again, the costs will vary considerably depending on the cover requirements and the staffing levels of employers, but we estimate that the ongoing administrative element of the policy cost to employers of option 3 (an increased holiday entitlement) may be of the order of £43 million per year.<sup>23</sup>

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

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**Table 5. Administrative costs of option three**

	Wage cost	Total labour cost
Transitional administrative costs	£112 million	£140 million
Ongoing administrative costs	£34 million per annum	£43 million per annum

Source: DTI estimates. Estimates are for Great Britain.

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<sup>22</sup> Based on 25 minutes management time per staff @£22.20 x 6.0 million, plus 20% non-wage labour costs.

<sup>23</sup> This is calculated on the basis of 15 minutes of management time for each staff member, at £22.20 per hour x 6.0 million – costs may be much less if maintaining cover not an issue, or significantly more if extensive re-rostering is required. A number of employers may also specify up front when the additional leave will be taken which would reduce the admin costs.

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

## Estimated costs of phasing the introduction

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

The Government's preferred approach in the January 2007 consultation had been to introduce half of the additional holiday entitlement from October 2007, and the remaining half from October 2008. On further consideration of the cost pressures, in particular for the health and social care sector, the Government intends to delay the second increase in the holiday entitlement from 1 October 2008 until 1 April 2009. The initial increase will come into effect on 1 October 2007, as originally proposed.

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

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

## Simplification measures

In developing these proposals, the Government has sought to minimise the impact on employers by phasing the introduction, by providing a facility for carrying leave over, by capping the entitlement at a maximum of 28 days and by treating the additional holiday as non-working time for the purpose of calculating weekly working hours. A provision in the draft regulations gives an incentive for early compliance; those employers who, by contract, give their staff an entitlement to at least 5.6 weeks' holiday<sup>24</sup> (or 28 days, whichever is the lesser) as at 1 October 2007 would be excluded from the regulations.

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<sup>24</sup> Provided that payment in lieu of holiday up to 5.6 weeks is not permitted, and any carry-over of unused holiday entitlement is limited to the following leave year.

The Government has also sought to bring forward simplification measures. The draft regulations propose removing the requirement for the holiday entitlement to be rounded up to the nearest whole day during the first year of employment. Companies may wish to continue to round up holiday entitlements in the first year, but there would be no legal requirement to do so. Removing the rounding requirement may reduce the policy costs of the proposals by up to £100 million.<sup>25</sup>

The Government also proposes to provide an on-line tool to enable holiday entitlements to be calculated easily, both for the increase in entitlement and for people entering employment during a leave year. It is anticipated that this will reduce the amount of time required to calculate holiday entitlements for all staff, not just those benefiting from the increase in entitlement under these proposals. The potential administrative costs savings from the online calculator are estimated at around £5 million per year.<sup>26</sup>

Under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, part-time staff should receive a holiday entitlement pro rata to comparable full-timers. Where part-time staff do not usually work on days on which bank holidays fall (typically Monday or Friday), some employers have found the calculation of a pro-rata entitlement difficult. The approach in these proposals of treating time off for bank holidays in the same way as the statutory holiday entitlement should make the calculation of holiday entitlements for part-time staff much simpler. The administrative cost savings of this simpler approach are estimated at up to £2m<sup>27</sup> per year.

## Sectors and groups affected

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

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<sup>25</sup> Based on the assumption that around 10% of the workforce change employment in any one year. 0.3 days (impact of rounding) x £22.20p.h. x 5 hours (average working day) x 28 million workforce x 10% changing jobs in a year. 10 % may be an under estimate for job changes in some sectors such as hospitality, yet in other sectors it is likely to be an over estimate.

<sup>26</sup> Assuming a five-minute time saving from using the calculator for all new starters each year. 28 million x 10% changing jobs in a year x £22.20 p.h. x 5 minutes.

<sup>27</sup> Assuming an average seven minute time saving for all new part-time starters each year. 7 million part-timers x 10% changing job each year x £22.20ph x 7 minutes

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

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

Source: DTI Paid Annual Leave Survey 2006

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

However, Table 7 shows the greatest *number* of low leave<sup>28</sup> employees in wholesale/retail – approximately one million employees, which accounts for 22% of all low-leave employees. The industry with the second highest is health/social work, whose 0.7 million represents 15% of low-leave employees.

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

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

Source: DTI Paid Annual Leave Survey 2006

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

The Department of Health have provided estimates of the policy costs for the social care and health sectors. The total financial impact across the Health and Social Care Workforces is estimated to be in the region of £480 million (£292 million Social Care, £78 million GP/Dental and Agency staff, £110 million directly employed NHS Staff). Details of the methodology in deriving these costs can be found in Annex C.

<sup>28</sup> Low leave meaning less than 28 days leave

The Office of Government Commerce has provided estimates of the potential impact of the proposed increase in annual leave on public sector procurement of agency staff. The public sector currently spends around £3.9 billion a year on agency staff - £973 million in healthcare (which will be included in the Department of Health estimates above), £375 million in central government and £2.2 billion in local government. On the assumption that agency staff do not currently get more than the statutory minimum holiday entitlement, the cost of the increase in holiday entitlement on the public sector recruitment of agency staff would be around £124 million<sup>29</sup>.

## Impacts on firms and competition assessment

### The small firms' impact test

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

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

### Competition assessment

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

## Equity and fairness

All elements of the proposals contained in this RIA are intended to affect workers equally regardless of their age, race, sex, disability, religion or belief, or sexual orientation. The proposal applies to all employees and other workers.

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

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<sup>29</sup> Based on an additional cost of 3.2% of the total wages bill. This figure may be an overestimate as it assumes that all agency staff do not currently receive any paid holiday over the statutory minimum. Some employment agencies already provide agency staff with paid holiday over the statutory minimum, and in some workplaces, agency staff have the same holiday entitlement as permanent staff.

Results from the DTI Paid Annual Leave Survey 2006 (Annex A) indicate that the extension of the holiday entitlement would particularly benefit women, part-time employees and those aged less than 25 years.

The survey was not able to provide reliable estimates of the likely impacts by sexual orientation, disability or religion and belief. However, as people with disabilities are more likely to work part-time, they could benefit more than other employees from the increase in holiday entitlement. The consultations did not identify any equality issues regarding holiday entitlement on the basis of sexual orientation.

The increase in holiday entitlement is believed likely to have a positive impact on religious diversity as the proposals would put holy days of different religions on the same legal basis for holiday entitlement.

#### Race equality impact assessment

The DTI has assessed the likely impact of the policies contained in this RIA will have on people depending on their racial or ethnic category. Table A6 in Annex A shows that around 21% of non-white employees suffer from low leave levels, compared with 18% of white employees in Great Britain. These estimates are based on the DTI paid Annual Leave Survey 2006. This suggests that non-white employees are likely to benefit more than the average employee from the introduction of Option 2 or 3.

## Enforcement and sanctions

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

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

## Post-implementation review

A range of data sources will be used to monitor and evaluate the impact of the legislation on employees and other workers. A regular assessment of the legislation's impact will be undertaken through secondary analysis of the Labour Force Survey. However, given the known limitations of that survey, it will be necessary to supplement this with a second Paid Annual Leave Survey of workers in Great Britain.

DTI plans to commission the next Paid Annual Leave Survey within 18 months of the implementation of the holiday entitlement. Success will be evaluated by the number of workers taking at least 5.6 weeks' holiday a year. Evidence of additional benefits, such as reduced levels of absenteeism, greater parity on holiday entitlements between part-time and full-time staff, and increased clarity over holiday entitlements may also be sought as part of the post-implementation review.

## Contact details

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## ANNEX A: INCIDENCE OF LOW-LEAVE EMPLOYEES

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

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

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

Source: DTI Paid Annual Leave Survey 2006

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

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

Source: DTI Paid Annual Leave Survey 2006

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

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

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

Source: DTI Paid Annual Leave Survey 2006

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

	Full-time		Part-time		Total	
	millions	%	millions	%	millions	%
16-24	0.5	23%	0.3	49%	0.7	29%
25-34	0.7	16%	0.4	30%	1.1	19%
35-44	0.6	13%	0.5	28%	1.1	17%

45-49	0.3	12%	*	*	0.4	14%
50+	0.5	12%	0.6	31%	1.1	18%
Total	2.5	14%	1.9	31%	4.4	19%

Source: DTI Paid Annual Leave Survey 2006

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

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

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

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

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

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

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

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

## **ANNEX B: POTENTIAL BENEFITS OF INCREASED HOLIDAY**

### Economic benefits

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

### A better work life balance

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

### A more committed workforce

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

### Stress

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

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

### Reduction in sick leave

It is hard to determine the exact relationship between increased holiday entitlement and sickness absence; other factors (such as increased absence in some sectors) make it hard to isolate the impact of holiday entitlement from other variables. Research by the CBI puts the cost of sickness absence at £13.4 billion per year (of which 12% are believed to be bogus by employers). If the increase in holiday entitlement were to lead to a 5% reduction in sickness absence, the cost saving would be around £700 million per year; if the increase replaced the sickness absence believed by employers to be bogus, the saving would be £1.2 billion.

### Productivity

Two studies<sup>30</sup> have shown that staff that receive good terms and conditions feel valued by their employer and are happier and more motivated in their work.

### Family cohesion

Increased holiday will give people the opportunity to spend more time with their families, be it partners, children and other dependents or other family members.<sup>31</sup>

### Improved clarity over holiday allowance

There remains a good deal of confusion among both staff and their employers on annual leave. Over 10% of calls to the ACAS Helpline (100,000 calls) in 2005 were on holiday; working time and whether or not public holidays are included causes “particular confusion”. The proposals will provide clarity on the entitlements for all staff and in particular remove the existing ambiguities over entitlements for part-time staff. It is hoped that the increased clarity will reduce the number of workplace disputes and cases to Employment Tribunals, with resultant cost savings for employers. Provision of detailed guidance and an on-line calculator will further alleviate confusion. At present, around 28,000 Employment Tribunal cases are based on holiday disputes, with the average cost of an Employment Tribunal case to an employer of £9,000. If improved guidance, including an online calculator led to a 20% reduction in such cases, the total saving to employers would be of the order of £50 million.

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<sup>30</sup> Robert Taylor, *Britain's World of Work – Myths and Realities* (ESRC, 2002). [http://www.esrc.ac.uk/ESRCInfoCentre/Images/fow\\_publication\\_3\\_tcm6-6057.pdf](http://www.esrc.ac.uk/ESRCInfoCentre/Images/fow_publication_3_tcm6-6057.pdf)) and Nick Isles, *The Joy of Work?* (The Work Foundation 2004, [http://www.theworkfoundation.co.uk/Assets/PDFs/Joy\\_of\\_Work.pdf](http://www.theworkfoundation.co.uk/Assets/PDFs/Joy_of_Work.pdf))

<sup>31</sup> *Families and work in the twenty-first century*, (Joseph Rowntree Foundation September 2003) and *More time for families: tackling the long hours crisis in UK workplaces* (TUC/Working Families report August 2004)

### Greater flexibility for employers

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

## ANNEX C: COSTINGS METHODOLOGY

### Main data sources

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

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

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

### Costing methodology

These estimates have been calculated using a similar methodology to that used to estimate the impact of the introduction of four weeks annual leave including bank holidays, in the Regulatory Impact Assessment for the Working Time Regulations (1998).<sup>32</sup> The estimates have been derived by taking the difference between the cost of Paid Annual Leave (PAL) including and excluding bank holidays. For example, if a full-time person currently worked five days a week they could be getting 12 days' holiday once bank holidays are excluded. Under the proposed option the same wage earner would be entitled to 20 days' holiday and so their wage payer would, if all other factors remained the same, have to pay for an extra 8 days' holiday.

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<sup>32</sup> See *1997-1998 Compendium of Regulatory Impact Assessments*, Employment Relations Research Series No. 67, DTI, London, URN 06/1840. Available from: <http://www.dti.gov.uk/employment/research-evaluation/errs/page13419.html>

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

The costs are based on the number of employees affected multiplied by the number of extra days they would be entitled to, multiplied by the wage and non-wage labour costs. The non-wage labour costs are estimated to increase the cost of paying an employee by 20% (the percentage in the national Minimum Wage RIA).

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

### Ranges of wage costs

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

### Definitions and assumptions used in the costing

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

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

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

Costings for both options two and three assume full compliance with the current Working Time Regulations. We have assumed that those who are currently complying will continue to do so.

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

### Administrative costs

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

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

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

The total administrative costs, therefore, are:

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

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

### Department of Health estimates

#### **Methodology for the social care costing estimate**

The total cost to the Standard Industrial Classification 'Health and Social Work', which covers the social care sector, including 20% non-wage costs, is estimated to be in the range £381 to £591 million,

with a mid-point of £487 million. These are estimated using evidence from the Paid Annual Leave Survey 2006 to calculate the difference between current average annual leave and the new entitlement, multiplied by the average hourly wage in the sector. Due to the sample size, the figures within the standard industrial classification cannot be disaggregated further, so it is assumed that approximately 60 percent of the total cost relates to the adult social care sector, and the remainder to children's social care, health and any other small areas included in the classification 'Health and Social Work'. This gives an estimated cost to the social care sector of approximately £292 million.

### **Costing methodology for NHS services**

In terms of the Health Workforce, the key areas identified as being likely to be impacted by the new regulations were-:

- Agency staff
- GP Practice Staff
- NHS Dental Practices
- Contracted-out staff
- Social Enterprise
- Third Sector
- Independent Treatment Centres

Given the calculation for annual leave is as per the Employment Rights Act there may be some impact for directly employed NHS staff. The calculation for annual leave takes account of the Working Time Regulations for the 20 days, but a different methodology is used for the other days for directly employed NHS staff. Payroll specialists have identified that the additional cost is 0.48% for the staff groups that mainly do additional work such as overtime, on-call etc., which would be classed as part of “normal” earnings under the Working Time Regulations definitions. This would mean an additional £110 million for directly employed costs in this category.

In calculating the costs for practice staff, it has been assumed that 67% already receive the equivalent of 28 days or more, and 33% only receive 20 days. For agency costs, and for dentists and their staff, it has been assumed that all staff are on 20 days. The costings are a calculated cost/value of the extra days' leave; they are not estimates of extra expenditure that will be incurred. For GP practice staff, on a total pay bill of £1.96 billion, it is estimated that the extra annual cost will be £24 million. The projected spend on agency staff is £1.2 billion, with an additional cost of £41 million arising from the additional holiday entitlement. The staff costs for dental staff are estimated at £416 million, with the additional holiday entitlement adding a further £14 million, giving a total cost of £78 million for GP, dental and agency staff.



## **ANNEX D: SMALL FIRMS' IMPACT TEST**

### Consultation

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

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

Of the 344 responses received to the initial consultation 39 (11%) were received from firms employing up to 9 staff (micro) and 73 (21%) from those employing up to 50 (small). These figures exclude responses from intermediaries representing small companies and these are broken down by size of businesses and are the following: 22% from large businesses; 17 per from medium businesses; 38 % from small and 19 % from micro businesses. The survey revealed that incidences of low –leave employees are more prevalent in small firms. The figure of 61% is higher than anticipated and in large part due to a high proportion of part-time workers (71%). The figures are also unable to reflect the flexible leave arrangements many small firms operate. A similar approach was used in the further consultation; of the 668 responses received, 25% of responses came from businesses employing up to 9 staff (micro) and 43% from those employing up to 50 staff (small).

## Distribution and incidence by firm size

**Table D1. Distribution of low-leave employees by size of workplace<sup>33</sup> and employment status**

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

Source: DTI Paid Annual Leave Survey 2006

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

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

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

Source: DTI Paid Annual Leave Survey 2006

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

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

<sup>33</sup> Firm size: 1-49 = small; 50 –249 = medium; 250+ = large.

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

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

Source: DTI Paid Annual Leave Survey 2006

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

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

### Financial impact

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

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

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

### Need for guidance

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

### Need for flexibility

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

### Timing and approach of implementation

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

## **ANNEX E: COMPETITION ASSESSMENT**

### The market

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

### Substantially different effect on firms

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

The overall impact on a particular business will depend on the cost structure of that business. The impact will be greatest where wage costs amount for a significant proportion of the business' overall costs, such as in the hospitality and care industries. The phased introduction of the additional entitlement will reduce this differential impact, with the maximum impact being 1.6% of the total wages bill from 1 October 2007.

### Changes to market structure

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

### Penalising new firms

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

### Restrictions on firms

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

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

Finally, employers would not be able to provide payment in lieu of the additional leave, in the same way that payment in lieu of the current four-week statutory entitlement.

Whilst some staff may value payment in lieu of holiday as a means of increasing their earnings, others may prefer to receive the additional holiday. It is not believed, therefore, that this restriction would have any discernable effect on competition between firms.

### Summary assessment

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