

EXPLANATORY MEMORANDUM TO
THE FLEXIBLE WORKING (ELIGIBILITY, COMPLAINTS AND REMEDIES)
(AMENDMENT) REGULATIONS 2009

2009 No. 595

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform (BERR) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument amends the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002. It extends the scope of the right of certain employees to request a variation in their working pattern to include employees with parental responsibility of children aged up to and including 16. (At present the right applies to employees with parental responsibility for children aged up to and including 5.)
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The statutory right to request a flexible working contract variation is set out in section 80F of the Employment Rights Act 1996 (inserted by the Employment Act 2002). The Flexible Working (Eligibility, Complaints and Remedies Regulations) 2002 set out which employees are entitled to exercise this right. The Flexible Working (Procedural Requirements) Regulations 2002 set out the procedure which should be followed when a qualifying employee requests a contract variation.
 - 4.2 Employees are entitled to request a contract variation in order to care for a dependent child or to care for an adult in certain circumstances. If the request is made in order to care for a child, it must be made before the child's 6th birthday (or the 18th birthday in the case of a disabled child). This instrument amends the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002, so that a request must be made before the child's 17th birthday. (The age limit in the case of a disabled child is unchanged.)
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England, Wales and Scotland.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Policies aimed at achieving a better work-life balance involve a considerable change of culture. The Government has sought to encourage uptake of flexible working through promoting the spread of best practice alongside targeted, light touch legislation.

7.2 The Employment Act 2002 introduced new rights for working parents and provides a statutory right for a qualifying employee to apply to his employer for a change in his terms and conditions of employment to facilitate childcare.

7.3 At present employees with caring responsibilities for children under 6 or (where the child is disabled) 18 and carers of certain adults have a statutory right to request a variation to their working pattern and employers have a statutory duty to seriously consider such requests and only reject them against good business grounds

7.4 In November 2007, the Government commissioned a review by Imelda Walsh, HR Director, J Sainsbury plc to consider how the right to request should be extended to parents of older children and the upper age limit which should apply. Ms Walsh published her report in May 2008 recommending that the right to request flexible working should be extended to employees with parental responsibility of children aged 16 and under. Government accepted the recommendations in full.

7.5 Extending the right to request flexible working to parents of older children will introduce greater fairness and equity amongst working parents. The policy aims 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.

7.6 In December 2008 the Government confirmed its decision to proceed with the extension from April 2009. The extension will mean that a further 4.5 million employees will be eligible under the right.

Consolidation

7.7 There are no plans to consolidate at present.

8. Consultation outcome

8.1 On 26 August 2008 BERR published a consultation document and Partial Impact Assessment that included this proposal. The consultation closed on 18 November 2008 and received a total of 93 formal responses from a broad spectrum of interests including individuals, unions, business representative organisations, individual businesses and local and central Government. Eighty-one per cent of those who responded in relation to the timing of implementation were supportive of the Government's proposal to implement the extension in April 2009. Respondents believed that delaying implementation would send out the wrong message to parents

about the possibility of combining work with childcare responsibilities, and would suggest to employers that flexible working may be a burden on business - evidence shows that the economy had benefited from increasing the pool of available labour and skills and that flexible working has led to improvements in employee commitment and productivity. Those opposed to the timing of implementation, questioned the need to increase the burden on employers at a time of economic uncertainty.

9. Guidance

9.1 The guidance and interactive tools have been published on both the Business Link and direct.gov websites to take account of the change with the recommended 3 month gap between the guidance being published and the regulations coming into force.

9.2 Publicity campaigns to inform business will also promote the information available to both employers and employees in the run up to implementation in April. In addition, BERR is continuing to work to enhance the guidance and tools available to both business and individuals on the Business Link and direct.gov websites.

10. Impact

10.1 The new regulations have an impact on business.

10.2 An Impact Assessment is attached to this memorandum (see Annex).

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people BERR is enhancing the guidance and tools available to both business and individuals on the Business Link and direct.gov websites. We will seek to improve the guidance on successfully managing flexible working and to link into toolkits and guidance provided by other organisations as well as also seeking to provide more detailed information on the legal aspects of flexible working (e.g. sex discrimination) about which employers may have concerns. Publicity campaigns in the run up to April will highlight the information available on the direct.gov and Business Link.gov websites.

11.3 The basis for the final decision on what action to take to assist small business is based in part on the fact that the law was originally designed with small businesses in mind. Small businesses can and do benefit from flexible working as much as larger employers. Furthermore evidence shows that small employers are most likely to accept request for flexible working. In the attached Impact Assessment the Small Firms Impact Test Annex 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.

12. Monitoring & review

12.1 The Government will continue to monitor the operation of the law and keep it under review. 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 extension to the right to request flexible working.

13. Contact

Alan Martin at the Department for Business, Enterprise and Regulatory Reform (BERR). Tel: 020 7215 1123 or email: alan.martin@berr.gsi.gov.uk

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: Final	Version: FINAL	Date: 9 March 2009
Related Publications: Consultation document and Recommendations of Imelda Walsh's Independent Review		

Available to view or download at:

Contact for enquiries: Ian Rutherford/Alan Martin

Telephone: 020 7215

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. The quantifiable costs to employers are in terms of procedure and making adjustments to working arrangements. While the quantifiable benefits to firms are in terms of savings in recruitment costs, lower staff turnover and absenteeism and increased productivity and profits. There are also wider unquantifiable 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.

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

Beyond doing nothing, the option considered is to extend the right to request to parents of older children. Three age cut-offs were considered and 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. In August 2008 the Government consulted on how best to implement these recommendations. In light of the responses received, the Government decided not to implement the deregulatory measure but extend the right to parents of children aged 16 and under and provide relevant implementation support and guidance to business, especially small business.

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: 9 March 2009

Summary: Analysis & Evidence

Policy	Description: Baseline case - extend to parents of children aged 16 & under and implementation assistance to business
---------------	---

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Additional procedural costs to employers of £48m (including £36m of admin burdens, 2008 prices) plus £43m in costs of making adjustments to working patterns. There is also a 3m cost savings from implementation assistance to business in the form of guidance and support (see Section I)
	One-off (Transition)	Yrs	
	£ 0	10	
	Average Annual Cost (excluding one-off)		
	£ 88m		Total Cost (PV) £ 757m
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 (£60m), lower labour turnover (£28m) and reduced absenteeism (£6m)
	One-off	Yrs	
	£ 0	10	
	Average Annual Benefit		
	£ 94m		Total Benefit (PV) £ 809m
Other key non-monetised benefits by 'main affected groups' - better work-life balance for employees, increased labour supply and improved health, wellbeing and positive environmental impacts for both parents and children.			

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. A linear relationship is assumed between both the costs and the benefits of extending the right to request flexible working and the age of the child.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ 52m	NET BENEFIT (NPV Best estimate) £ 52m
-------------------------	-------------------------	--	--

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	£ 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 £16	Small £138	Medium £766	Large £2928
Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase	£ 32m	Decrease	£ 0	Net £ 32m increase

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

A: Strategic overview

Existing Government initiatives

The right to request flexible working was introduced in April 2003 following a report¹ 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 consultation² 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. In 2008, the Department commissioned ORC International to conduct a survey to measure progress in relation to its objective to reduce administrative burdens associated with employment law³. 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 using the latest information from the ORC exercise and a comparison between the admin burden per request as measured by PwC and then ORC can be found in Annex B.

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.

¹ Published as *About Time: Flexible Working* in November 2001.

² *Work and Families: Choice and Flexibility – A Consultation Document*, published February 2005, URN 05/847.

³ Published report and technical summary on BERR website, <http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employ-law-guidance/index.html>

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

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. A full public consultation was launched in August seeking views on implementation.

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. In addition there will be cost savings from providing implementation assistance to business. 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 refused⁴.

BERR's Third work-life balance employee survey⁵ 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

⁴ 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.

⁵ The Third Work-Life Balance Employees Survey, March 2007, Employment Relations Research Series No.58

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. 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

Option 1: do nothing

Keep flexible working legislation unchanged. Continue to allow parents of children under 6 or disabled children under 18 and carers of adults the right to request flexible working, but not extend it any wider.

Option 2: raise the age limit to cover more parents

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”⁶.

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.

Policy options on the implementation went to public consultation in August with a version of this impact assessment. Views were sought specifically on:

- the guidance available on the Businesslink.gov website and what more the Government could do to assist businesses, and small businesses in particular, in implementing this extension to the flexible working right.
- And a possible deregulatory measure to streamline the process of the right to request flexible working.

The proposed deregulatory measure meant to simplify the request procedure and remove the obligation for the employer to write notifying the employee of his agreement to a revised working pattern unless the employee specifically requested it. The obligation to write would not be removed for those employers refusing a request.

Feedback to the consultation was overwhelmingly (75%) against the proposal. A number of respondents who agreed with the measure in principle felt however that any benefits might be outweighed by the risk of ambiguity with the lack of written evidence of decisions and that a formal letter provided formality and consistency. Others commended the Government’s intention to lower admin burdens but felt that there would be little cost saving in practice to business.

Additionally, the ORC survey of the administrative burden associated with employment law found the total cost of this information obligation was £20 million compared with £171 million found by the earlier PwC study. Taking 80 per cent for non-business as usual requests and 65 per cent of the result as savings, predicted in the consultation impact assessment, means the total benefit from the proposed deregulation measure fell from £89 million to £10 million in light of the new ORC figures.

E: Analysis of option

⁶ Children and Young Persons Act 1933

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 below⁷.

PART 2: Second, the cost-benefit analysis addresses the benefit of implementation assistance to business in the form of additional guidance and support.

The introduction of a deregulatory measure will not be taken forward as a result of feedback from the consultation stage. For information on the associated costs and benefits see the consultation impact assessment⁸.

⁷ 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.

⁸ Consultation impact assessment on www.berr.gov.uk/files/file47434.pdf

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 adults⁹.

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.

⁹ 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

This impact assessment uses data from the Second Work-Life Balance Survey¹⁰ to estimate take-up rates and degree of deadweight requests. Updates of these assumptions from the Third Work-Life Balance Survey are under revision and not yet available. Apart from the deadweight cost, any new assumptions on take-up would change the level of costs and benefits but not alter the ratio between them.

A linear relationship is assumed 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.

Accounting for disabled children aged under 18

The existing legislation covers disabled children aged under 18 and these are negligible and hence not included in the cost-benefit analysis¹¹.

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 unquantifiable 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 impact¹²
- Better quality upbringing/home life for children

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 children. We estimate extending the right to parents of children aged 16 and under will result in 308,000 additional requests¹³ of which we estimate that 270,000 will be accepted.

¹⁰ The Second Work-Life Balance Employees Survey, March 2004, Employment Relations Research Series No.27

¹¹ 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.

¹² For instance a reduction in commuting as a result of enabling more employees to work from home

¹³ Details in Appendix C, Table C4

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

Scope of law	Derivation	Number of entitled employees (000s)	Number of new requests (000s)	New working arrangements (000s)
Parents of children under 6	A	3,512	503	441
Parents of children aged 16 and under	B	8,005	811	711
Parents of youngest child aged 6-16	A - B	4,493	308	270

Source: LFS Q2 2007, BERR estimates. Figures have been rounded.

The chart on the next page 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. Data from the Second Work-Life Balance Survey is used to estimate take-up rates and degree of deadweight requests, 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 retention. 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.

The latest CIPD survey on recruitment, retention and turnover estimated a UK labour turnover rate of 17.3 per cent, of those 27 per cent left their employer either to have or to look after their children. Due to issues with the data quality of the 27 per cent figure, an average is taken over the previous 4 years in the data series, see assumptions below.

The following three assumptions are made to calculate savings made through lower recruitment costs:

- 11.8 per cent of those who left their employer did so either to have or look after their children¹⁴, which means we estimate just over 2 per cent of labour turnover is due to competing child care responsibilities.
- The introduction of a right to request flexible working for parents of older children will prevent 5 per cent of employees leaving their jobs to look after family members.
- The cost of filling a post that becomes vacant is assumed to be £6,032¹⁵.

The three assumptions made above are applied to the number of entitled parents to calculate savings and this is presented in the Table 2 below.

¹⁴ Since 2002, the CIPD have carried out an annual survey on recruitment and turnover covering between 715 and 905 UK organisations (www.cipd.co.uk/subjects/recruitment/general/_recruitretnt.htm). Each year the survey calculates the rate of staff turnover in these organisations and asks the reasons given for staff leaving the employer. In the 2007 survey, only 69 organisations provided information on the per cent that left their employer either to have or to look after their children. This might explain why the figure of 27 per cent shows a dramatic increase on previous years. To provide a more robust figure for this impact assessment an average of the previous 4 years is taken which gives 11.8 per cent.

¹⁵ The CIPD annual survey on recruitment and turnover also ask about the costs of labour turnover and costs of recruitment. Relatively few organisations provided information on the cost of overall labour turnover and figures for 2005 (£8,200) and 2006 (£7,750) showed dramatic increases on previous years for no apparent reason. However, the 2007 figure is more in line with earlier estimates. For this impact assessment the 2007 figure of £5,800 was used with an annual growth rate of 4 per cent applied to update for 2008 prices.

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

Scope of law	Number of entitled employees (000s)	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)	Savings made by employers as a result of reduced recruitment costs (£ Million)
Parents of youngest child aged 6-16	4,493	91	5	£28

Source: LFS Q2 2007, BERR estimates. Figures have been rounded.

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, based on responses from 1,456 managers, asked what the effects of flexible working had at their establishment on six criteria; productivity, employee relations, motivation and commitment, recruitment, labour turnover and absenteeism. On productivity, the survey found 48 per cent of employers thought flexible working and leave arrangements had a positive effect while 12 per cent reported negative effect with the remainder reporting no impact¹⁶. We then assume 36 per cent as the net positive impact on productivity¹⁷.

For the most part, employers in the survey 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. Other survey evidence supports this view showing 8 per cent of employers provide staff with flexible working opportunities to improve productivity¹⁸. Only morale/staff retention/recruitment (41 per cent), a better work life balance for employees (37 per cent) and improve services to customers (20 per cent) were given more times in the survey as reason.

The following four assumptions are made to calculate increased gross profit as a result of improved productivity:

- 36 per cent of new flexible working arrangements result in increased productivity.
- Output per worker is £80,897¹⁹
- A notional 5 per cent output gain would be achieved for the new working arrangements that result in increased productivity. A 5 per 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.
- Improved productivity leads to higher output and 15.4 per cent of the increased output will represent gross profit. This figure represents the ratio of gross operating surplus to domestic output of product for the entire economy²⁰.

¹⁶ We redistribute the 13 per cent of employers who did not or refused to answer perceived along the same proportions as those who did provide an answer, thereby assuming they perceived the same effect on productivity as those that did answer.

¹⁷ We assume the magnitude of average productivity gains is broadly similar to the magnitude of losses, so the net gain is 36 per cent (48 per cent – 12 per cent).

¹⁸ Future of work: employers & workplace transformation, Smeaton V. et al (Working Paper series No.56, 2007)

¹⁹ To calculate output per worker the following sources and calculation are used. From ONS Labour market statistics (MGRZ) February 2009, there were 29,361 million workers in the period October-December 2008. From the ONS Blue Book 2006, UK output was £2,151,833 million in 2004 (latest available on this basis). After an average growth rate of 2.5 per cent is applied to UK output to update for 2008, we divide by the number of workers giving an output per employee of £80,897.

²⁰ To calculate the proportion of profits to output the following sources and calculation are used. From ONS Economic Accounts series (ABNF) 2008 Q3, gross operating surplus or profit was £330,960 million in 2004. From before, UK output was £2,151,833 million in 2004 (latest available on this basis). We divide profit by output and assume the same ratio still applies in 2008 giving the proportion of profits to output as 15.4 per cent.

The four assumptions made above are applied to the number of new working arrangements to calculate the increased gross profit as a result of improved productivity and this is presented in the Table 3 below.

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

Scope of law	New working arrangements ('000s)	Additional number of new working arrangements that increase productivity ('000s)	Output before flexible working (£ Million)	Increased Output after flexible working (£ Million)	Extra gross profits (Total) p.a. (£ Million)
Parents of youngest child aged 6-16	270	97	£7,862	£393	£60

Source: LFS Q2 2007, BERR estimates. Figures have been rounded.

3. Reduced absenteeism rates

Evidence also shows that flexible working arrangements can have a beneficial effect on absenteeism. BERR's third work life balance survey found 44 per cent of employers thought flexible working and leave arrangements had a positive effect while 10 per cent reported negative effect with the remainder reporting no impact²¹. We then assume 34 per cent as the net positive impact on absenteeism²².

It is assumed that the absenteeism cost falls because flexible working allows employees to reduce the incidences of absence per year. The following three assumptions are made to calculate savings made by employers as a result of lower absenteeism:

- 34 per 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.
- The cost of absenteeism prior to making a request is £666 per year²³
- and after a request is accepted the cost of absenteeism falls by 10 per cent.

The four assumptions made above are applied to the number of new working arrangements to calculate the savings made by employers as a result of lower absenteeism and this is presented in the Table 4 below.

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

Scope of law	New working arrangements ('000s)	Additional number of new working arrangements that reduce absenteeism (000s)	Cost of absence before flexible working (£ Million)	Savings in absence costs (£ Million)
Parents of youngest child aged 6-16	270	91	£61	£6

Source: LFS Q2 2007, BERR estimates. Figures have been rounded.

Summary of quantifiable benefits

Table 5 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).

²¹ We redistribute the 13 per cent of employers who did not or refused to answer perceived along the same proportions as those who did provide an answer, thereby assuming they perceived the same effect on productivity as those that did answer.

²² We assume the magnitude of average productivity gains is broadly similar to the magnitude of losses, so the net gain is 34 per cent (44 per cent – 10 per cent).

²³ According to the latest CIPD absence management report 2008 (www.cipd.co.uk/subjects/hrpract/absence/absmagnet.htm), the average cost of an employee being absent is £666.

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

Benefit	Total additional quantifiable benefits (£ Million)
Reduced Labour turnover	£28
Increased productivity	£60
Reduced absence	£6
Total	£94

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 & administrative burdens

It is important to note procedural costs are not wholly 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.

In terms of administrative burdens these will fall on employers only. 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.

The administrative burden is based on the 2008 ORC Employment Law survey exercise. This provides per request, the cost of the information obligation placed on employer by the current flexible working legislation. This cost includes wage costs as well as external costs like goods and services. This information updates an earlier survey in done by PwC, and a comparison between the two sources is provided in Annex B. 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.

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 the introduction of the formal right to request creates a culture change in the workplace and an acceptance of the procedure leading to many applications being made on a more informal basis which again significantly reduces the procedural costs.

The ORC survey tells us it takes 68 minutes (1.13 hours) or £26.74 per hour of management time to administer a first stage request. With external goods and services included this means the administrative cost per request is £88. For the overall procedural cost, we assume 3 hours of management time is allowed for a request dealt with formally and 1 ½ hours if dealt with informally²⁴. Employee time taken is assumed as a proportion the management time taken, so that it takes 2 hours of employee time for a formal request and ½ an hour of employee time for a informal request²⁵. This works out at approximately £116 per request in total, with external goods and services included.

It is likely in practice that for 'deadweight' requests, i.e. those where employees are already allowed to work flexibly, the average procedural and administrative 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 that such a request represents a third of the cost a notional procedural cost of £39 is assumed for each deadweight request, of which £29 is administrative burden²⁶.

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.

The ORC survey tells us it takes 334 minutes or £20.84 per hour of management time to administer a decision to uphold a refusal without holding an appeal meeting. With external goods and services included this means the administrative cost per request is £329.84. Since this cost does not take account of the lengthier administrative burden in instances where a meeting is held to discuss the appeal and the employee is afterwards notified of the outcome, an additional ½ hour of management time is added. This means it takes 364 minutes to administer a request at the appeal stage at a cost of £340, again with additional external goods and services included.

We assume 6 hours and 26 minutes of management time is allowed for on a request dealt with formally and 7 hours and 56 minutes of management time for an appeal dealt with formally²⁴. Employee time taken is again assumed as a proportion the management time taken, so that it takes 5 hours and 17 minutes of employee time for a formal request and 2 hours and 8 minutes of employee time for a informal request²⁵. This works out at approximately £392 per request in total, again with additional external goods and services included.

²⁴ On top of the administrative burden, we assume 112 additional minutes spent in management time on formal requests and 22 additional minutes on informal requests, both charged at the same hourly management rate of £26.74.

²⁵ We assume employee time spent as two-thirds of management time taken for formal requests and a third of management time taken for informal requests.

²⁶ Deadweight is one third of administrative cost (£88) and procedural cost (£116)

In summary, the management and employee time spent processing a request for each stage/type of request is given in Table 6. This is broken down further by the administrative burden time.

Table 6. Estimated time to process a request

Type/Outcome of request		unit cost (hours)		of which admin burden (hours)	
		formal	informal	formal	informal
Average time to processing requests at first stage (accepted)	Management time	3.00	1.50	1.13	1.13
	Employee time	2.00	0.50	0.00	0.00
Average time to processing requests at first stage (rejected)	management time	3.00	1.50	1.00	1.00
	Employee time	2.00	0.50	0.00	0.00
Average time to processing requests at first stage (deadweight request)*	Management time	1.00	0.50	0.38	0.38
	Employee time	0.67	0.17	0.00	0.00
Average additional time per request taken to appeal stage**	Management time	7.93	6.43	6.07	6.07
	Employee time	5.29	2.14	0.00	0.00

Source: BERR estimates. * Assumed to be one third of a new request. ** Assumed appeal stage will take 112 and 22 minutes more of management time than formal and informal requests made respectively at the first stage. Employee time assumed two third and a third of this formal and informal management time at appeal stage.

2.3 Average cost of external dispute resolution stage

The average cost to an employer of an application to an Employment Tribunal - £4,980²⁷ - 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.

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 time and £99 for female part time²⁸. 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

²⁷ Source Survey of Employment Tribunal Applications 2003

²⁸ All the wage figures above are based on 60 per cent of average gross weekly earnings plus 21per cent of non-wage labour costs.

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.

Summary of costs

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.

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

Scope of law	Derivation	Total procedural cost (£ millions)	Total costs of making adjustments to working patterns (£ millions)	Total cost to employer (£millions)*	Of which administrative burdens	
					2008 Prices	2005 Prices**
Parents of youngest child aged 6-16	A - B	48	43	91	36	32

Source: BERR estimates. Figures have been rounded *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

Part 2: 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 employees 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 are working on campaigns to increase awareness of the right among both employees and employers. The campaigns 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.

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 research²⁹ 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,

²⁹ "Flexible Working and Performance", Cranfield University School of Management, April 2008

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 Governments sought views as to what more Government could do to assist businesses in implementing flexible working arrangements, having regard to the existing guidance and templates available on BusinessLink.gov.uk³⁰ 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 £12m in this case, and assume that improved guidance will result in business reducing these costs by 25 per cent, or by **£3m**.

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.

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.

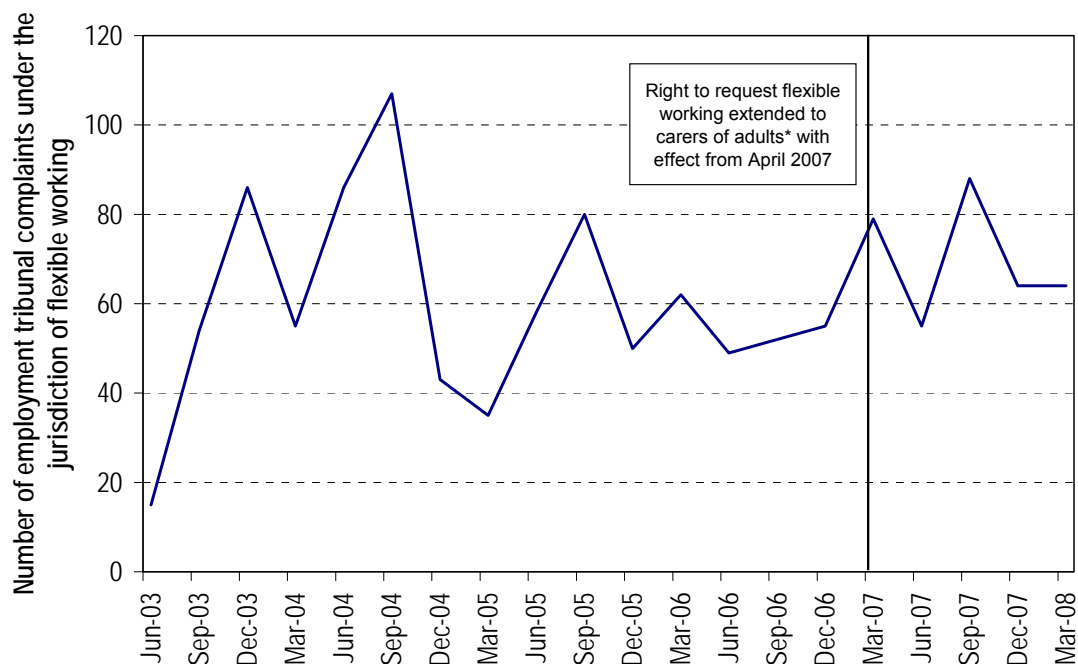
If the employee still does not think the employer has given the matter serious consideration, he/she can seek resolution through an external dispute resolution mechanism and ultimately through an employment tribunal.

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.

³⁰ www.businesslink.gov.uk/bdotg/action/layer?r.l2=1073858926&r.l1=1073858787&r.s=tl&topicId=1073931239

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 of policy proposal:

Table 8. Summary of quantifiable costs and benefits for policy proposal

Scope of law		Annual Costs (£m)	Annual Benefits (£m)
Part 1: Parents of youngest child aged 6-16	A	91	94
Part 2: implementation assistance to business	C	-3	0
Policy proposal: Right-to-request extended to parents of children aged 16 and under & implementation assistance to business	A + C	88	94

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.

I: Implementation

The amended regulations will be introduced in April 2009. We consulted 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. The majority of respondents provided positive feedback on the guidance available on the BusinessLink website and there was general agreement that it was particularly useful for small businesses. However some respondents felt that the information on the Business Link site was not comprehensive enough. Many respondents thought that more could be done to promote the benefits of flexible working to employers. This might include the use of case studies based on different size and types of organisations demonstrating how the needs of employees and employers can be accommodated.

The Government will continue to work to enhance the guidance and tools available to both business and individuals on the BusinessLink and direct.gov websites. In response to the specific suggestions made in the consultation we will seek to improve the guidance on successfully managing flexible working and to link into toolkits and guidance provided by other organisations. We will also seek to provide more detailed information on the legal aspects of flexible working (e.g. sex discrimination) which may worry employers.

Publicity campaigns in the run up to April will highlight the information available on the direct.gov and BusinessLink.gov websites.

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 2007³¹ and the Work-Life Balance Employer Survey in December 2007³². 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.

³¹ The Third Work-Life Balance Employees Survey, March 2007, Employment Relations Research Series No.58

³² 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

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

Source: LFS Q2 2007. Proportions may not add to 100 due to rounding

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

		Number of entitled employees (000s)	Number of new requests (000s)*	New working arrangements ('000s)
Scope of law				
Parents of children under 6	A	949	157	137
Parents of children aged 16 and under	B	2,555	278	243
Parents of youngest child aged 6-16	A - B	1,606	121	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

		Number of entitled employees (000s)	Number of new requests (000s)*	New working arrangements ('000s)
Scope of law				
Parents of children under 6	A	2,559	346	303
Parents of children aged 16 and under	B	5,443	533	467
Parents of youngest child aged 6-16	A - B	2,884	187	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

	Parents of youngest children aged 6-16	Total employees
1-10	19per cent	20per 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	19per cent	18per 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. Proportions may not add to 100 due to rounding

3. Equality Impact Assessment

The equality impact assessment suggests there would not be any disproportionate effects by gender, race or disability. Table A6 presents the distribution of estimated eligible parents and compares this to the distribution of all employees by ethnicity. The indication is that no particular ethnicity would be disproportionately affected.

Table A6 Estimated additional eligibility by ethnicity of employees

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

Source: LFS Q2 2007. Proportions may not add to 100 due to rounding

Parents with work-limiting or DDA disability account for around 12% of the parents with youngest child aged 6 – 16, while similarly it is about 13% amongst total employees. This indicates an employee with a disability would not be disproportionately affected by the extension of the right to request.

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, includes estimates of cost and time taken per request from PwC and ORC studies in 2005 and 2008 respectively.

ID	IO Description	Information Metric	PwC 2005 survey			ORC 2008				
			Time taken (minutes)	Total wage cost	Other costs (goods & services)	Cost per request	Time taken (minutes)	Total wage cost	Other costs (goods & services)	Cost per request
30371 (Stage 1 obligation)	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	-	£748	£0	£748	68	£30	£57	£88
30411 (Appeal stage obligation)	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	946	£915	£34	£949	334	£116	£214	£330
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.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
30415 (Appeal stage obligation)	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	30	£11	£0	£11	n/a	n/a	n/a	n/a
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	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Source: BERR Employment Law Admin Burdens Survey 2008, Main report

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	0.30	0.50	0.50	0.05	0.10	0.30	0.30
1	0.05	0.20	0.10	0.10	0.05	0.05	0.05	0.05
2	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
3	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
4	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
5	0.03	0.20	0.05	0.05	0.03	0.05	0.05	0.05
6	0.03	0.20	0.05	0.05	0.03	0.05	0.05	0.05
7	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
8	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
9	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
10	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
11	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
12	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
13	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
14	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
15	0.03	0.10	0.05	0.05	0.03	0.05	0.05	0.05
16	0.03	0.10	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	0.40	0.25	0.25	0.15	0.20	0.20	0.20
1	0.25	0.10	0.15	0.15	0.05	0.15	0.05	0.10
2	0.17	0.10	0.15	0.15	0.05	0.05	0.05	0.10
3	0.22	0.15	0.20	0.20	0.05	0.05	0.05	0.10
4	0.17	0.10	0.15	0.15	0.05	0.05	0.05	0.10
5	0.22	0.05	0.20	0.20	0.07	0.10	0.05	0.10
6	0.27	0.10	0.20	0.15	0.07	0.10	0.05	0.10
7	0.17	0.10	0.15	0.15	0.03	0.05	0.05	0.10
8	0.17	0.10	0.15	0.15	0.03	0.05	0.05	0.10
9	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
10	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
11	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
12	0.12	0.05	0.10	0.10	0.03	0.05	0.05	0.10
13	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10
14	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10
15	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10
16	0.07	0.00	0.05	0.05	0.01	0.02	0.05	0.10

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	Derivation	Parents of children under 6	Parents of children aged 16 and under	Additional new requests
No. of new requests	A	503	811	308
Proportion accepted at first stage (0.87=87per cent)	B	0.87	0.87	0.87
No. of requests accepted at first stage	C = A x B	438	705	268
Proportion of requests taken to second stage (0.25=25per cent)	D	0.25	0.25	0.25
No. of second stage requests	$E = (A - C) \times D$	16.4	26.4	10
Proportion accepted at second stage (0.2=20per cent)	F	0.2	0.2	0.2
No. of requests accepted at second stage	G = E x F	3.3	5.3	2
No. of requests turned down by employer	$H = E - G$	13	21	8
Proportion referred to external dispute resolution (0.02=2per cent)	I	0.02	0.02	0.02
No. of additional external dispute resolution cases	$J = H \times I$	0.26	0.42	0.2
Proportion successful at external dispute resolution stage	K	0.2	0.2	0.2
No. of requests accepted at external stage	L = J x K	0.05	0.08	0
No. of requests unsuccessful at external stage	$M = J - L$	0.21	0.34	0.1
Total no. of new working arrangements	N = C + G + L	441	711	270