



# Flexible Working and Time to Train:

Proposed extension of flexible working law.

Introduction of a new right to request time to train.

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# 1. Foreword

- 1.1. **Working families in Northern Ireland, as elsewhere in the United Kingdom, face huge challenges in balancing work and home commitments to ensure that their children have the best start in life. They also face tough demands in ensuring that their skills are properly honed and updated to meet today's rapidly changing working conditions.**
- 1.2. Many employers realise that in an increasingly competitive global marketplace – and the more so during the present economic downturn – businesses in Northern Ireland have much to gain where they are able to recruit and retain a skilled workforce. Many of them recognise that meeting this challenge means helping their employees to balance work and family life, and grasping opportunities to develop core workforce skills that contribute both to the health of the business and the prospects of the individual.
- 1.3. By way of this consultation, the Department for Employment and Learning is asking for your views on two key issues. Firstly, should the right to request flexible working, which has already benefited many and has been generally well received, be expanded to cover wider groups than it does now? Secondly, do you agree with the proposal, designed to promote skills development, to introduce a new right for employees to ask their employers for time to train?

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## ***RIGHT TO REQUEST FLEXIBLE WORKING***

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- 1.4. In April 2003 a new right to request flexible working for those with parental responsibility for children under six (or 18, if the child has a disability) was introduced, with a further extension of this right to carers of adults coming into effect from 6 April 2007. Already we have seen parents and carers in Northern Ireland change their working hours, not only improving their quality of family life, but helping to ensure that the widest pool of skills and talent in the workforce is available to businesses. From April 2009, in the rest of the UK, the right to request flexible working has been extended to cover children aged 16 and under.
- 1.5. Employment law is a transferred matter and the Department, by way of this document, is now consulting on proposals to further extend the right to those with parental responsibility for older children (or indeed wider groups) so that a greater number of working families in Northern Ireland can have the opportunity to avail of a better work-life balance.

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## ***PROPOSED RIGHT TO REQUEST TIME TO TRAIN***

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- 1.6. Investing in talent is one of the most powerful things we can do to ensure that our employers and the Northern Ireland economy as a whole can compete in this global economic age, and help us build a society where everyone has the opportunity to rise as far as their talents will take them. Workforce skills can have a direct and measurable impact on the efficiency and profitability of an organisation and it is right that we do all in our power to encourage their development.
- 1.7. The Department for Employment and Learning has sought to do so in a number of ways, not least by way of Success through Skills, the Skills Strategy for Northern Ireland, which provides an overarching framework for the development of skills in Northern Ireland. The Department continues to work with course providers to ensure delivery of effective learning, and the recent appointment of Bill McGinnis OBE as Northern Ireland Adviser on Employment and Skills and as the Northern Ireland Commissioner on the UK Commission for Employment and Skills is a signal of our ongoing commitment to the skills agenda.
- 1.8. While there is much that is already being done, there is no room for complacency. This consultation also aims to explore whether there are other ways in which we can encourage employers and employees to access the benefits of upskilling in the workplace.
- 1.9. Following consultation in Great Britain by the Department for Innovation, Universities and Skills (DIUS) and in Wales and Scotland by the respective devolved administrations, in this document we are therefore seeking views on a new right to request time to train, which we believe will help raise employees' awareness and aspirations in relation to skills and encourage employers to invest in the skills of their employees. We believe that this will help improve business performance and productivity and contribute towards securing a prosperous future for our economy over the coming years.

## 2. Introduction

2.1. The purpose of this consultation document is to seek the views of interested parties on:

- *the proposal to extend the right to request flexible working*
- *a proposed new right to give employees in Northern Ireland the right to request time to train.*

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### **SIMILARITIES BETWEEN THE PROPOSALS**

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2.2. The Department is conducting a consultation on both issues as the right to request flexible working and the proposed right to request time off to train are framed in very similar ways.

#### ***SIMILARITIES BETWEEN THE RIGHT TO REQUEST FLEXIBLE WORKING AND THE PROPOSED RIGHT TO REQUEST TIME OFF TO TRAIN***

- *The employee makes a request to his or her employer, providing appropriate details and suggesting how the employer might accommodate it.*
- *The employer is under a duty seriously to consider the request.*
- *Where the employer has genuine business reasons to turn down a request, the employer is entitled to do so. A specified list of appropriate business grounds is provided in the legislation.*
- *The employee can appeal to the employer where a request is turned down and, ultimately, if the employer has not adhered to proper processes, can take a case to an industrial tribunal.*

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### **STRUCTURE**

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2.3. The document is structured into two separate parts, each dealing with different aspects of proposals to improve the rights of employee.

- *Part 1 deals with the proposal to extend the right to request flexible working;*
- *Part 2 deals with the proposal to give employees in NI the right to request time to train.*

2.4. You may wish to respond to either part of the consultation or to both.

- 2.5. The consultation will run for a period of 12 weeks. Written responses must be with the Department no later than Friday 23<sup>rd</sup> October 2009. Details of how you can respond are set out on [page 9](#).

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## **SUMMARY**

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### ***Part I: Extending the right to request flexible working***

- 2.6. In April 2003, legislation came into effect in both Great Britain and Northern Ireland which gave those with parental responsibility for children aged under six and parents of children under 18 who have a disability a right to request flexible working. Under the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations (Northern Ireland) 2007<sup>1</sup> this right was extended further to include carers of adults, from 6 April 2007.
- 2.7. The Department has previously noted<sup>2</sup> that there is some support for extending to parents of older children the right to request flexible working arrangements. We are mindful that many parents of older children need support in finding hours to match their work and caring responsibilities and we also know that businesses value the ability to refuse requests on business grounds.
- 2.8. The Department commissioned research during 2003 to establish the attitudes and practices that existed at that time in relation to flexible working. The research, carried out amongst employers and employees, was designed to act as a baseline to help inform future policy development. The findings of that research are available from the Department for Employment and Learning website at [www.delni.gov.uk/erresearch](http://www.delni.gov.uk/erresearch).
- 2.9. With the introduction of the Work and Families (Northern Ireland) Order 2006 and its proposed extension of the right to request flexible working, it was appropriate to carry out a follow-up study. The Department therefore commissioned during 2006 a further survey on the attitudes of both employers and employees towards flexible working practices, and on the extent to which they were in use.<sup>3</sup> On both occasions, flexible working was generally perceived favourably by the majority of employers and employees. Indeed, 94% of respondents in 2003 and 95% in 2006 agreed that people worked best when they can balance their work with other aspects of their lives. Although there are costs to

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<sup>1</sup> S.R. 2007 No. 53.

<sup>2</sup> 'Public consultation on work and families: choice and flexibility: Departmental response' (Department for Employment and Learning (DEL), November 2005), pp 25-6; 'Work and families: choice and flexibility – Departmental response to consultation on flexible working regulations' (DEL, November 2006), pp 9-11.

<sup>3</sup> *Flexible working patterns: comparison of employee and employer surveys conducted in 2003 and 2006* (DEL, March 2007).

employers in terms of procedures and making adjustments to working arrangements, 68% and 69% of employers respectively surveyed in both 2003 and 2006 said that flexible working practices had a positive effect on employee relations, with approximately half of employers stating that such arrangements had a positive effect on labour turnover, absenteeism, productivity, and recruitment.<sup>4</sup>

- 2.10. In November 2007 the Prime Minister announced a further extension of the right to request flexible working to cover parents of older children. Ms Imelda Walsh (HR Director, J Sainsbury plc) was appointed to lead a review on the issue. The review analysed the ages of children at which most parents were requesting the right and also considered whether the right to request should be linked to a particular stage in the child's education. Having considered all the arguments, the review recommended that the legal right to request flexible working should be extended to include parents of children aged 16 or under.
- 2.11. On the foot of this review in GB the Department for Employment and Learning considers this an opportune time to debate whether changes should be made to the right to request in Northern Ireland. The Department is conscious that stakeholders in Northern Ireland will hold a range of views on whether there should be an extension to flexible working arrangements and its extent. Being conscious of this, the Department has sought, in expanding the options, to explore a range of alternatives and seek the views of stakeholders on the way forward in Northern Ireland. Any decision on the final shape of the regulations must be a balanced one, taking account of the needs of both parents and employers.

## *Part II: A new right to request 'time to train'*

- 2.12. In June 2008 the Department for Innovation, Universities and Skills (DIUS) published a separate public consultation, in England only, seeking views on the proposed introduction of a new right, modelled on the right to request flexible working, which would enable an employee to request from his or her employer time off for the purposes of undertaking training<sup>5</sup>. Similar consultations were also carried out by the Scottish Executive and Welsh Assembly Government during the period September-November 2008 on whether this right should be extended to employees in Scotland and Wales.
- 2.13. Based on the success of the right to request flexible working, the Department for Employment and Learning believes that the introduction of the same right in Northern Ireland will lead to more opportunities for upskilling the workforce and improving productivity and

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<sup>4</sup> Ibid., pp 6, 7.

<sup>5</sup> 'Consultation on the right to request time to train for employees in Scotland' ([www.scotland.gov.uk/Consultations](http://www.scotland.gov.uk/Consultations)); 'Consultation on the right to request time to train for employees in Wales' ([www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations)).



competitiveness. We are seeking the views of employers and employees on the introduction of a right to request time off to train here.

- 2.14. The core of the proposal is that employees in Northern Ireland should have a right to ask their employer to give them time to undertake training. This right would apply to employees working in both the public and private sectors.
- 2.15. To make it easier for employers to manage the new right, the Department proposes to base the processes associated with it on the established model of the right to request flexible working. The Department proposes making it a condition that an employee must have worked for their employer for a reasonable period of time before being able to make a request for time to train. Under the existing flexible working arrangements, employees are eligible to apply to vary their contracts of employment if they have been continuously employed by their employer for a period of not less than 26 weeks. The Department considers this a reasonable period of prior continuous employment to render an employee eligible for the right to request time to train.

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## ***IMPACT ASSESSMENT***

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- 2.16. Integrated Impact Assessments have been prepared in respect of each of the proposals and are provided in **Chapters 6 and 7**. In summary, the assessment relating to flexible working concludes that extending the right would be beneficial but that there would be a need to guard against unintended impacts on those groups of employees who would fall outside the scope of the extension. Costs to employers would be outweighed by benefits accruing to them in terms of productivity, reduced staff turnover and reduced absenteeism. The impact assessment relating to time to train finds that the right would raise the profile of training and thereby benefit both the recipients of training (in terms of learning/career outcomes) and those who employ them (with benefits outweighing costs). Consultees are invited to comment on the Department's analysis of the impacts.

## 3. How to Respond

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### **SUMMARY OF QUESTIONS**

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- 3.1. **The Department is using this consultation to obtain the public's views on a number of questions in respect of**
- (i). **extending the right to request flexible working; and**
  - (ii). **a proposed new right to request time to train.**
- 3.2. A question and answer booklet is provided in **Chapter 7.45** to assist you in responding. However, you need not use the booklet and can respond in the format that you consider most appropriate.

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### **RESPONDING TO THE CONSULTATION**

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#### **Closing date**

- 3.3. If you wish to respond to the consultation, you are asked to make your views known to the Department no later than Friday 23<sup>rd</sup> October 2009.

#### **Contact details**

- 3.4. Responses may be submitted to the Department by post, e-mail or fax. Contact details are as follows.

**Post:** Maria Cummins

Employment Relations Policy and Legislation Branch  
Room 203  
39-49 Adelaide Street  
BELFAST  
BT2 8FD

**E-mail:** [employment.rights@delni.gov.uk](mailto:employment.rights@delni.gov.uk)

**Telephone:** 028 902 57534

**Fax:** 028 902 57555

- 3.5. If you have any specific questions about the detail surrounding any of the issues raised in the consultation, please contact Dr Alan Scott at the address above or by telephoning 028 902 57531.

### ***Consultee information***

- 3.6. The list of those who have received copies of the consultation can be found on the Departmental website at [www.delni.gov.uk/consultation-zone](http://www.delni.gov.uk/consultation-zone).
- 3.7. If you think that there are any other organisations or individuals who are likely to have an interest in this consultation, please let us know their contact details.
- 3.8. Please indicate in your response whether the views you are expressing are your own individual views or those of the organisation you represent.

### ***Other ways to participate***

- 3.9. Officials from the Department are willing to meet with interested individuals and organisations during the consultation period to discuss issues arising from this consultation. If you think that a meeting would be helpful, please use the contact details on [page 9](#) to get in touch.

### ***Alternative formats***

- 3.10. This consultation document and other Departmental publications may be made available in alternative formats upon request.

### ***Confidentiality***

- 3.11. The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation. The Department will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.
- 3.12. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

3.13. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- *the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;*
- *the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and*
- *acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.*

3.14. For further information about confidentiality of responses please contact the Information Commissioner's Office or see the website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). For further information about this particular consultation please contact the consulting branch as above.

### ***Summary of responses***

3.15. The summary of responses will be published on the Department's website ([www.delni.gov.uk](http://www.delni.gov.uk)) towards the end of 2009.

### ***How responses will be used***

3.16. Responses to this consultation will be analysed and taken into consideration in preparing a Departmental policy response, which will be published on the Department's web-site ([www.delni.gov.uk](http://www.delni.gov.uk)) early 2010.

## 4. Extending the right to request flexible working

- 4.1. **Flexible working regulations provide a formal process that both enables an employee to make a request to change his/her working pattern, and places a duty on the employer to consider it seriously. The Department is proposing an extension of the existing right to request flexible working to cover wider groups of employees and is seeking your views on whether, and to what extent, such an extension should be applied.**
- 4.2. As of 6 April this year, following a review and subsequent public consultation, the right to request flexible working was extended in Great Britain to cover parents of children aged 16 and under. This is in addition to the groups previously covered, namely parents of children aged up to six, parents of children with disabilities aged up to 18, and carers of adult dependants. In Northern Ireland, the Department is seeking views on whether the same course of action should be taken forward, whether some alternative extension is preferable, or whether there should be no change at all to the law on flexible working.

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### **WHAT IS FLEXIBLE WORKING?**

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- 4.3. Flexible working arrangements can be any working pattern other than the normal working pattern in the organisation, adapted to suit the employee and employer, and cover a wide variety of working arrangements.

#### ***EXAMPLES OF FLEXIBLE WORKING PATTERNS:***

- ***Part-time working:*** working less than the normal hours, perhaps by working fewer days per week.
- ***Job-sharing:*** sharing a job designed for one person with someone else.
- ***Flexi-time:*** choosing when to work (there is usually a core period during which you have to work).
- ***Compressed working hours:*** working your agreed hours over fewer days.
- ***Staggered hours:*** different starting, break and finishing times for employees in the same workplace.
- ***Annualised hours:*** your hours are worked out over a year.
- ***Working reduced hours:*** for a limited period.

This list is not exhaustive and there may be other forms of flexible arrangement that are better suited to individual needs

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## ***THE RIGHT TO REQUEST FLEXIBLE WORKING***

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- 4.4. The right to request flexible working was introduced in April 2003, following a report in 2001 by the Work and Parents Taskforce in Great Britain, 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 ask their employer for a change to their working pattern (examples of types of changes are given above) and to have the request seriously considered by their employer.
- 4.5. The key Taskforce recommendation in the light of the many representations it received 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 children with a disability. This recommendation was accepted by Government.
- 4.6. The legal basis for the right to request comes from the Employment Rights Act 1996 and the Employment Rights (Northern Ireland) Order 1996 (as amended). Following public consultation in both Great Britain and Northern Ireland, specific regulations were introduced<sup>6</sup>, coming into effect on 6th April 2003 and giving those with parental responsibility for children aged under six (or under 18 for children with a disability) the right to request flexible working.
- 4.7. During 2003, research was carried out on behalf of the Department for Employment and Learning to establish attitudes and practices that existed in relation to flexible working. The findings, subsequently detailed in the 'Flexible Working Employees and Employers Survey' report (December 2005)<sup>7</sup> painted an encouraging picture of the usefulness and effectiveness of flexible working practices.
- 4.8. Following further public consultation and follow-up research which reinforced the positive view of flexible working<sup>8</sup>, changes were made to the legislation in both Great Britain and Northern Ireland<sup>9</sup> so that, from 6th April 2007, the right to request was extended to include carers of

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<sup>6</sup> In Northern Ireland, these were the Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 174) and the Flexible Working (Procedural Requirements) Regulations 2003 (S.R. 2003 No. 173)

<sup>7</sup> The report can be downloaded from [www.delni.gov.uk/erresearch](http://www.delni.gov.uk/erresearch).

<sup>8</sup> Research was carried out during 2006 as a follow-up to the 2003 study. It showed that attitudes towards flexible working had not changed significantly, and remained generally positive.

<sup>9</sup> The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations (Northern Ireland) 2007 were introduced following changes made by the Work and Families (Northern Ireland) Order 2006.

adult dependants. This group was considered a priority demographic to whom more assistance could be given.

- 4.9. In the Department's responses to previous consultations, it was noted that consultees, as well as supporting the extension of the right to request to cover carers, were broadly in favour of extending it to parents of older children.

*"We strongly support the extension of the law relating to flexible working to carers, we are however disappointed that the Department at this time has not, at least as an incremental step, extended the law on flexible working to parents of older children."*

**NIC ICTU**

*"In the interest of enhancing work and family balance, we concur that the right to request flexibility in work be extended to parents of older children."*

**Women's Support Network**

- 4.10. While a majority of consultees favoured an extension of this kind, however, critics of the proposal (and some supporters) argued for a gradualist approach. The largest employer organisation (the CBI) argued:

*"The right to request flexible working has been a success to date – its future success rests on extending it to new groups gradually."*

**CBI NI**

- 4.11. The Department recognised concerns about the impact that overly rapid change might have and took onboard arguments for a gradual expansion of the right, over time, to wider groups<sup>10</sup>. A gradualist approach, it was felt, would allow business to adapt to change at a manageable speed. As the Department stated then, and still believes, any decision on the groups covered by the regulations must be a balanced one, taking into account the needs of both parents and employers.

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## ***THE CURRENT POSITION***

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- 4.12. The current legislation sets out a procedure which needs to be followed by both parties (employee and employer) in order to ensure that a proper application is made by the employee and that it is considered seriously by the employer.

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<sup>10</sup> 'Public consultation on work and families: choice and flexibility – Departmental response' (DEL, November 2005), pp 25-26; 'Work and families: choice and flexibility – Departmental response to consultation on flexible working regulations' (DEL, November 2006), pp 9-11.

- 4.13. The initial onus is on the employee to explain why he, or she, wishes to change their work pattern. The application then triggers a formal process which is designed to facilitate discussion, enabling both parties to gain a clear understanding of each other's thinking and needs.

#### **APPLICATION REQUIREMENTS**

An application under the statutory procedure **must**:

- *be in writing;*
- *state that the application is being made under the statutory right to request a flexible working pattern;*
- *confirm **either** that the employee has or expects to have responsibility for the upbringing of a child under six or a child with a disability under 18 and is either the child's mother, father, adopter, guardian, special guardian, foster parent, private foster carer or a person who has obtained a residence order in respect of the child; or is married to, the partner or the civil partner of one of these*

or

- *that the employee has or expects to have responsibility for the care of an adult aged 18 or over and is either that person's spouse, partner, civil partner or relative, or lives at the same address;*
- *explain what **effect**, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with;*
- *specify the **flexible working pattern** applied for;*
- *state the **date** on which it is proposed the change should become effective;*
- *state **whether a previous application has been made** to the employer and, if so, when it was made; and*
- *be dated.*

- 4.14. **The law does not provide an automatic right for parents (or carers) to work flexibly** but rather a right to ask their employer to agree to flexible working arrangements. This reflects the reality of the modern workplace where, particularly in the current economic climate, inevitably, business needs will occasionally make it difficult for an employer to agree to an employee's desired work pattern. In such circumstances, the flexible working legislation specifies the legitimate business grounds under which a request can be refused by the employer. These grounds are listed below. Where a request is



rejected the employee can appeal that decision. The process can take up to 14 weeks to complete.

***BUSINESS GROUNDS FOR REJECTING A FLEXIBLE WORKING REQUEST***

- *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*
- *Insufficiency of work during the periods the employee proposes to work*
- *Planned structural changes*

4.15. The majority of employers in Northern Ireland are SMEs (Small and Medium-sized Employers). In these businesses, the relationship between employer and employee tends to be on a more personal level than in larger companies, and the employer is likely to be more aware of any changing circumstances in an employee's life that might lead to him / her requesting different hours. Often these discussions will take place without recourse to a formal procedure. The Department is aware of and welcomes good practice of this kind.

4.16. In Northern Ireland micro businesses (those businesses with less than 10 employees) account for 88.8%<sup>11</sup> of businesses, and there is some suggestion that these firms may experience more difficulty than their larger counterparts in accommodating flexible working requests<sup>12</sup>. However as the current guidance on the right to request flexible working suggests, trial periods, in particular, can help where employers have doubts about how a request will impact on the business, and provide an opportunity, without commitment, to test a particular work pattern. Ultimately, of course, an employer is under no obligation to agree to a request to work flexibly. However, for many employers in Northern Ireland, the benefits of flexible working are clear. Research shows that a high proportion of requests are accepted by employers and that businesses realise the value of promoting a flexible working culture:

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<sup>11</sup> 'Facts & Figures from the Inter Departmental Business Register (IDBR) Edition Ten' (Department of Enterprise, Trade and Investment, June 2008), p. 1.

<sup>12</sup> Before the introduction of the right to request in 2003, businesses with 5-9 employees were more likely (17%) than businesses with 50 or more employees (6%) to have no flexible working policies – 'Flexible Working Employees and Employers Survey' (DEL, December 2005) .p. 20.

- *19 in 20 employers agree that people work best when they can balance their work and other aspects of their lives.*
  - *Over two-thirds of employers feel that flexible working arrangements have a positive effect on employee relations.*
  - *Approximately half of employers say that flexible working practices have a positive effect on labour turnover, absenteeism, productivity and recruitment.*
  - *According to employees surveyed, around three-quarters of requests to work flexibly are agreed in full by employers.<sup>13</sup>*
- 4.17. The current legislation, for sound policy reasons, does prioritise certain groups of employees (carers, parents of young children or children with disabilities) over other employees. The aim to date has been to target support and protection at those who experience particular difficulties in balancing responsibilities at home and at work.

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## ***DEVELOPMENTS IN GREAT BRITAIN***

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- 4.18. In November 2007, the Secretary of State for Business, Enterprise and Regulatory Reform (BERR) appointed Ms Imelda Walsh, HR Director of J Sainsbury plc, to lead an independent review to look at extending the right to request flexible working to a wider group. The right in Great Britain covered the same groups at that time as it did in Northern Ireland. The terms of reference for the Walsh review were tightly drawn, focusing on how the right should be extended to parents of older children, and to consider whether the increase should be staged over a period of time.
- 4.19. The review team shared the view of the majority of employer and parent groups consulted, who argued that the age cut-off for the legislation should be linked to a significant point in the child's education, where the child needs more help and support from one or both parents. Using this as a starting point, the following three options for extending the right were identified for the review to consider:
- ***Extension to parents of children aged 12 or under*** – *this would cover the transition from primary to secondary school;*
  - ***Extension to parents of children aged 16 or under*** – *this would assist parents to support their children until the end of their secondary education and GCSEs;*

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<sup>13</sup> 'Flexible working patterns: comparison of employee and employer surveys conducted in 2003 and 2006' (DEL, March 2007), pp 3, 6-7

- *Extension to parents of children aged 18 or under – this would allow for support until the end of the sixth form or vocational education and training and would allow for consistency with the existing right for parents of disabled children.*
- 4.20. The review team consulted a range of stakeholders and sought the views of interested parties such as the British Chamber of Commerce, the Federation of Small Businesses, the Equality and Human Rights Commission and TUC.
- 4.21. The review also considered whether any extension to the age cut-off should be introduced in a single step, or be staged over a number of years. The views of businesses, both large employers and SMEs, were canvassed and a range of opinions were received on this question. Some argued that as long as the Government gave sufficient prior warning, and produced guidance to explain any change in the law, it would be simpler for both employers and employees if the change was made all at once. Others took a different view, and argued that this would not meet the needs of the small business sector. Still other interested parties argued that small businesses needed certainty, arguing for one change to the law rather than several.
- 4.22. Having considered all the arguments, the Walsh review recommended that the right to request flexible working should be extended to parents of children aged 16 and under and should not be staged in its introduction.
- 4.23. As a result of the review a number of principal and wider benefits (discussed further in the associated impact assessment in Chapter 6) were identified, namely:
- *reduced vacancy costs and increased skill retention;*
  - *increased productivity and profits;*
  - *reduced absenteeism rates;*
  - *better work-life balance for employees;*
  - *increased labour supply due to availability of more flexible working opportunities;*
  - *improved health and wellbeing of employees;*
  - *positive environmental impact, reducing the impact of traffic congestion at peak hours.*

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## **NORTHERN IRELAND PROPOSALS**

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- 4.24. The success of the flexible working arrangements introduced in 2003 and extended in 2007 has led the Department for Employment and

Learning to consider whether it is appropriate, once again, to look at extending their application in Northern Ireland. The Department is mindful that many parents of older children also need support in finding hours to match their work and caring responsibilities. A targeted approach of this nature could be designed to assist a group which is particularly in need of help in balancing work and home responsibilities.

4.25. However, in considering extending the right to request, a further possibility cannot be ignored – namely an extension of the right to request so that it covers all employees. There are arguments for and against this approach. Many employers already go beyond what the law requires of them by offering a right to request to their entire workforce. To offer the right to only parents and carers could generate a perception of inequality amongst colleagues who do not have a legal right to request to change their work patterns. On the other hand, granting the right to request flexible working to all employees could possibly lead to more requests being turned down for business reasons and burden employers with the difficulty of prioritising which requests to accept. Employers would have to think very carefully about the relative merits of potentially competing applications whilst weighing up business requirements, and could feel pressurised both in terms of administrative burden and the need to make a decision that is fair and, all-importantly, *seen to be* fair.

4.26. Stakeholders will unquestionably hold a range of views on whether now is an appropriate time to look at raising the cut-off age or perhaps extending the right to request to all employees. However, the Department believes that flexible working is beneficial, if sensibly and appropriately managed, and wishes to give full consideration to the range of possibilities available. We are therefore seeking views on the following options to extend the right to request flexible working:

- ***Extension to parents with children aged 12 or under.*** This would cover the age at which a child makes the transition from primary to secondary school. It is therefore a key point in time when parents may want to change their working patterns. Employers might also be comfortable with taking this greater step. It is relatively modest and they have experience of making the existing arrangements work.
- ***Extension to parents with children aged 16 or under.*** This would allow parents to support their children until the end of Key Stage 4 of their secondary education and GCSEs. Educational support is an increasing concern for parents. Exams are important stages of a child's educational development, and some parents will want to work more flexibly in order to help their child prepare for their exams.
- ***Extension to parents with children aged 18 or under.*** This would allow for support until the end of the sixth form or vocational education and training, as a consequence of such a change,

*separate provision would no longer be required to cover parents of disabled children.*

- ***Extension to all employees.*** *This approach would require a recasting of the right so as to allow employees in Northern Ireland, regardless of their reasons for doing so, the opportunity to request flexible working and potentially benefit from a better work-life balance. This would have the advantage of putting all employees on an equal footing so far as the law is concerned, but has the potential to create detrimental impacts on those groups (parents and carers) at which the right has been aimed to date, and would place employers in the difficult position of having to prioritise competing requests from parents/carers and those without dependants.*
- ***Maintaining the status quo.*** *The law as it stands is helping to bring about cultural change in Northern Ireland workplaces; employers could continue to embrace the challenge of providing for flexible hours while meeting the needs of their business and their customers. Non-statutory best practice guidance could be used to encourage employers to go beyond the minimum legal requirements and offer the right to request to their wider workforce.*

4.27. The present 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 find a solution that suits them both. An extension of the right would build upon this familiar and successful process whilst preserving the right of employers to reject requests on business grounds.

4.28. The Department is, of course, aware of the difficulties employers are facing in today's harsh economic climate. If changes are made, there will be costs to employers in terms of procedure and the necessary adjustments to working arrangements; however 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. There will also be additional benefits to employees and their families which are explored in the initial Integrated Impact Assessment in Chapter 6.

4.29. The Department is keen to maximise the benefits of flexible working by asking for views on what more we can do to assist businesses in implementing flexible working arrangements and to help employees approach requests in a realistic and constructive way. In commenting on how the effectiveness of guidance can be improved, consultees should have regard to the materials that are already available, for example on [nibusinessinfo.co.uk](http://nibusinessinfo.co.uk) or [nidirect.gov.uk](http://nidirect.gov.uk).

- 4.30. The Department does not have a preferred option at this stage; there are clear social benefits and benefits to employers to be derived from any extension of the right. We do recognise that extending the right to request to *all* employees would represent a significant alteration to the policy rationale which currently underpins the right to request, and could carry adverse consequences for existing beneficiaries. We would appreciate your views on how these could be minimised. However, as well as drawbacks, there are clear benefits to be derived from an extension of this nature. In addition to deploying the right to request, as at present, in support of those with caring responsibilities, the right would become a driver for a broader range of policy objectives, notably encouraging skills retention, promoting job creation, facilitating gradual retirement through job-sharing, and giving many more individuals real opportunities to fine-tune their working patterns to fit with other aspects of their lives.
- 4.31. Certainly there is an argument that emulating the approach adopted in Great Britain would have merit, in that it would maintain clarity and address potential confusion arising from potential differences between the laws in different parts of the UK. However, under devolution, other options can be explored and we are taking this opportunity to suggest the range of options outlined.
- 4.32. Your views are sought on the way forward. Whether you support or oppose significant extension of the right, please provide supporting arguments and evidence to substantiate your point of view, as this will assist the Department in making an informed decision on the way forward. Although you are not obliged to use it, a template for providing answers to key questions is provided in [Chapter 8](#).

#### **QUESTIONS**

- Q1.** *What are the arguments supporting an extension of the right to request flexible working?*
- Q2.** *What are the arguments against an extension of the right?*
- Q3.** *Which of the five options proposed in the consultation do you favour and why?*
- Q4.** *What can be done to improve the guidance available to employers and employees on the right to request flexible working?*

## 5. A right to request time to train

- 5.1. The Department is proposing that employees in Northern Ireland should have a right, modelled on the existing right to request flexible working, to ask their employer to give them time off work to undertake training. This right would apply to employees working in both the public and private sectors. By introducing the right, the Department aims to support the culture of lifelong learning within the workplace where:
- *employers and employees see the mutual benefits of training;*
  - *ongoing skills development and effective use of employees' skills are positively embraced; and*
  - *individuals and businesses have the knowledge and skills to flourish.*
- 5.2. Your views are sought on this proposal, which is being brought forward following a similar consultation process in England, Wales and Scotland. Consultation there resulted in a Government commitment to introduce the right to request time to train in Great Britain. It is helpful to preface this Northern Ireland consultation, therefore, with a look at developments across the Irish Sea.

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### ***DEVELOPMENTS IN GREAT BRITAIN***

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- 5.3. The Department for Innovation, Universities and Skills (DIUS) in England published a consultation paper in June 2008 seeking views on the introduction of a proposed new right in the workplace, the right to request time to train. Similar consultations were also carried out by the Scottish Executive and the Welsh Assembly Government to ascertain if this right should be extended to employees in Scotland and Wales.
- 5.4. The consultations sought views on whether the new right would help skills development; it also explored a range of policy questions including those below.
- *To whom should the right apply?*
  - *What sort of training should be covered?*
  - *What issues should employers consider when reviewing requests?*
  - *Would the new right be likely to change the behaviour of employers and their employees in respect of training?*

- 5.5. The closing date for responses was September 2008.
- 5.6. A total of 236 responses was received (England 155, Scotland 43, Wales 38) from a wide cross-section of employers, individuals and representative bodies. Overall the response to the consultation from all three jurisdictions was positive and revealed strong support for the proposal. Inevitably this support was not universal and a number of employers, particularly small businesses, were wary about the potential for increased costs and bureaucracy.
- 5.7. On the key question of whether a right to request time to train could help skills development in their organisation, 67% of respondents in England, 87% in Scotland and 73% in Wales answered in the affirmative.
- 5.8. All three consultations revealed strong support for the proposal not to limit requests only to nationally recognised and accredited training. Rather, there was support for requests to encompass any training agreed between the individual and employer that would improve the productivity of the business and the individual concerned.
- 5.9. The majority of respondents also agreed that all employers should be included within the scope of the proposed right. Support for this was strongest in Scotland with 81% of respondents believing there should be no exemptions.
- 5.10. In order to minimise the burden on employers, some respondents emphasised the need to set the right in the context of the current economic climate by offering support to enable businesses to utilise training while ensuring their competitiveness and survival was seen as critical.
- 5.11. Key organisations such as the CBI and the Federation of Small Businesses were supportive of the introduction of the right to request time off to train, but stressed their opposition to any element of compulsion. Trade unions welcomed and supported the proposals although they expressed disappointment that it did not offer a statutory right to paid time off.
- 5.12. Following a thorough analysis of the consultation responses, the Government concluded that respondents had given a clear mandate to go forward and had confirmed the view that the new right to request time to train will be a powerful driver of cultural change on skills in the workplace. At the same time, Government recognised the concerns expressed by small businesses and has made clear its commitment to keeping to a minimum the administrative burden associated with the right to request. Having based the time to train process on the existing model for the right to request flexible working, the Government is confident that employers' existing mechanisms can be easily adapted and extended to support the new right.



- 5.13. The UK Government, in agreement with the Devolved Administrations in Scotland and Wales, intends to proceed with legislating for a right for employees to request time to train. The new right will be for employees throughout Great Britain and is enshrined in Clause 39 of the Apprenticeships, Skills, Children and Learning Bill that is progressing through Parliament at the time of writing. The Government is working to develop clear, accessible time to train guidance similar to that in use for the right to request flexible working for use when the right comes into force, probably during 2010.

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### ***PROPOSED WAY FORWARD IN NORTHERN IRELAND***

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- 5.14. That Department is conscious that, given developments in Great Britain, it is desirable to avoid placing employees and employers in Northern Ireland at a disadvantage in relation to skills development. It is appropriate therefore to consider, by way of public consultation, the merits of introducing comparable provisions here. If Northern Ireland stakeholders believe that the right would be beneficial, the Department will take steps to introduce it in 2010-2011.
- 5.15. Under the proposed right, employers would have to consider requests from their employees for time to train fairly and seriously. To make it easier for employers to manage the new right, it is proposed to base the decision-making and administrative processes on the existing model for the right to request flexible working (discussed in the previous chapter). It is felt that these processes can be easily adapted and extended to support the proposed new right.
- 5.16. The right would be applicable to employees although, as with the right to request flexible working, it is proposed to make it a condition that an employee have a reasonable period, 26 weeks, of service before being able to make a request. This would mean that employers would only have to deal with requests from employees with whom they had developed a reasonable working relationship, and who had demonstrated a degree of loyalty to the business.
- 5.17. It is proposed that volunteers, where they are considered to be 'employees' should be covered by the new right.
- 5.18. It is also proposed to frame the right in terms that enable employees to request time to undertake training that will help them to be more productive and effective at work, thus helping their employer to improve productivity and business performance.
- 5.19. Under the right, employees would be able to request time to address a particular skills need as well as participate in qualification-bearing programmes such as National Vocational Qualifications (NVQs). This would mean that all employees – whatever their prior skills level attainment – could exercise the right, thereby increasing its potential as

a lever for cultural change while maximising its direct impact on the skills of the workforce.

### **Cost of training**

- 5.20. The Department for Employment and Learning has consistently championed the importance of boosting Northern Ireland's skills base by improving participation in education and training as vital elements in ensuring a strong economy. The Economic Vision for Northern Ireland (2005) and the Skills Strategy for Northern Ireland (2006) have reinforced this message. Many employers already recognise the benefits of a skilled workforce and invest significant resources in training for their employees. Upskilling efforts are supported through a number of schemes and funding opportunities made available by the Department<sup>14</sup>.
- 5.21. If a new right to request time to train is introduced, this situation will not change. Employers will not be compelled to pay for training when they grant a request for time to train. That said, many will certainly continue allocate significant resources to training and will want to align their spend with requests they receive from their employees.

### **Identifying training needs**

- 5.22. There are, of course, a wide range of ways in which an individual employee might identify a training need. This could be through discussion with a colleague, their line manager or by contacting their local Jobs and Benefits office or a service such as Learndirect.
- 5.23. Once an employee has identified the training need they believe will help them improve their skill level, and thereby help them become more productive and effective in the workplace, they will be able to submit a request for time to train to their employer.
- 5.24. It is proposed that, in making a request for time to train, employees should set out in writing to their employer the following information:
- *exactly what training it is they wish to undertake, taking full account of their training needs at the time;*
  - *what – if any – qualification(s) they would obtain as a result of successfully completing that training;*
  - *the amount of time involved in the training programme, and when it would start;*
  - *where and how they would like to undertake the training; and*

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<sup>14</sup> For more information on these, visit the Department's web-site ([www.delni.gov.uk](http://www.delni.gov.uk)) or Freephone 0800 0854573.

- *how they believe the training is related to their work, how it would help them be more effective and how it would help the employer improve business performance and productivity.*

5.25. It is proposed that employees should be entitled to be accompanied to any meeting with their employer regarding the request for time to train. The Department does not believe that there is a need to specify or limit who the companion might be. In practice however employees might want to be accompanied by a friend, colleague or their trade union learning representative (If applicable).

### ***The length of time involved in the training***

5.26. It would be for the employee and employer to agree how much time is taken. This would be a key element when any request is being considered and would, in most cases, be dictated by the particular skill the employee needs to develop and how they had chosen to do that. What is important is that an employee gets sufficient time to acquire the skills or qualifications that have been agreed with the employer as economically valuable to the business.

5.27. It is proposed to limit the number of requests to one request in any 12 month period. This is again in line with the flexible working arrangements. However, it would be possible for this one request to cover more than one type or course of training, depending on the needs of the employee. For example, an employee could ask to undertake a full level 2 course and have literacy or numeracy needs to be addressed also. What is important is that the request stimulates a proper dialogue between the employer and the employee about the employee's individual learning needs.

5.28. It will be for each employee and their employer to consider and agree what arrangements would work best for them. Employees might take time away from their main duties to undertake training at work, or they might agree with their employer that the training need would best be met by taking time off work to undertake the training. In cases where an employee undertook training away from the workplace this could be achieved through negotiating changes to working arrangements to accommodate the training, or by the employer agreeing to give the employee paid time off to undertake the training.

### ***The position of the employer***

5.29. The proposed new right to request time to train will not carry with it a requirement for the employer to accede to the particular request. As with the right to request flexible working, there will be a range of circumstances under which an employer will be able to reject a request. The Department proposes that these will be as follows.

### ***BUSINESS GROUNDS FOR REJECTING A REQUEST FOR TIME TO TRAIN***

- ***Relevance of training to business productivity and performance:*** where the employer does not believe that the training being requested would help the individual employee to become more effective and productive at work, or contribute to improved business productivity and performance in the short or long term.
- ***Suitable training is not available:*** where the training the employee has requested is either not available or not available at a location compatible with the effective running of the business.
- ***Burden of additional costs:*** where the costs associated with granting the request, for example arranging for cover of the employee's shifts whilst they undertake their training, are a burden the employer cannot afford to meet at that time.
- ***Detrimental effect on ability to meet customer demand:*** where granting of a request for time to train would have a negative impact on the employer's ability to conduct its normal business and meet the needs of their customers.
- ***Inability to reorganise work among existing staff:*** where, because of the amount of time being requested, it is not possible to reorganise the work among existing staff to enable a request for the time to train to be granted.
- ***Inability to recruit additional staff:*** where the employer is unable to recruit staff to provide cover for a member of staff to undertake training as a result of a request for time to train being granted.
- ***Detrimental impact on quality:*** where there would be a negative impact on the quality of output of the business as a result of a right to request time to train being granted.
- ***Detrimental impact on performance:*** where there would be a negative impact on the performance of the business as a result of the right to request time to train.
- ***Insufficiency of work during the periods the employee proposes to work:*** where an employee proposes working alternative hours to accommodate their time to train but they are not needed at these times as there is insufficient work.
- ***Planned structural changes:*** where the business will be undergoing changes which mean it is not clear whether a request for time to train could be granted.

- 5.30. Employers should be able to judge each individual request for time to train on its own merits. That may mean that they accept a request for time to train from one employee, but later reject an apparently similar request from a different employee because one of the business reasons outlined above is relevant in one case and not the other.
- 5.31. It is proposed that employees would have a right to appeal at two levels; in the first instance to their employer and, following that, to an industrial tribunal.
- 5.32. Appeals to an industrial tribunal would only be allowed where the employer has failed to follow the correct procedure, for example by not holding meetings with the employee; or where the employer had rejected an application on the basis of incorrect facts. In circumstances such as these, it is envisaged that the tribunal could require the employer to reconsider the application where it finds in favour of the applicant and could make an award of compensation within certain defined limits.

### **Benefits**

- 5.33. The Department believes that the introduction of time to train will be significant in empowering individual employees to have a serious conversation with their employer about their skills needs. It will encourage them to think about how improving their skills could help them realise their potential and progress in their careers. There is already a good deal of support available through the range of programmes<sup>15</sup> and funding supported by the Department and we believe that the right to request time to train will promote improved access to these, and indeed to all forms of training.
- 5.34. The new right will also serve as a reminder to some employers of the importance of skills to their business. Despite significant progress and investment in recent years, a survey carried out by the Department in 2006 revealed that only two-thirds (65.3%) of Northern Ireland employees received some form of training in the year prior to being surveyed. As many as 34.7% of employees, by contrast, had received no training at all during that period<sup>16</sup>. Overall, 20% of respondents registered a strong desire for future training and under a quarter (22.4%) were optimistic about their chances of getting training in the future<sup>17</sup>.

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<sup>15</sup> The Success through Skills and Apprenticeships NI programmes, for example, provide employers and employees with the kinds of opportunities that the right to request is designed to promote.

<sup>16</sup> Felstead, Alan and Green, Francis, 'Skills at Work in Northern Ireland 2006' (DEL, Jun 2006), p. 55

<sup>17</sup> 'Skills at Work in Northern Ireland 2006', p. 59

- 5.35. There is clearly still a need to expand and strengthen our skills base. To maintain our place in the highly competitive global economy we must invest in the skills and talents of our workforce. While many employers are, of course, already fully aware of the importance of developing skills within their workforce, the right will provide a straightforward universal framework within which they will be able to engage with their employees about how they can develop the skills needed to drive their business forward.
- 5.36. For those employers who already recognise the role that skills can play in increasing productivity, innovation and business performance the introduction of time to train will complement existing people strategies: for example, employers that have achieved recognition against the Investors in People (IIP) standard will already have policies and processes in place to support their employees to develop their skills. For other employers, the right to request will clearly signal Government's commitment to upskilling as a means of strengthening Northern Ireland's competitiveness.
- 5.37. As with the introduction of the right to request flexible working, which has stimulated a real change in cultural attitudes to flexible working arrangements, we believe that the introduction of a new right to request time to train could have an equally powerful effect on attitudes and behaviour in relation to the skills agenda. In practice, the impact that time to train has will depend on how employees and their employers respond, and how they use time to train to drive skills development in the workplace. It is hoped that many employers will see the business benefits of time to train, and will establish an ongoing dialogue between themselves and their employees which will focus on identifying learning and training opportunities that meet the needs of both the individual and the business.

#### **QUESTIONS**

- Q5.** *Could a request for time to train help skills development in your organisation? How?*
- Q6.** *Do you think the right to request time to train should cover any training that the individual and the employer agree or only training that is organised across Northern Ireland and accredited?*
- Q7.** *For which of the following reasons do you think an employer should be able to reject a request for time to train?*
- *Relevance of training to business productivity and performance;*
  - *suitable training is not available;*
  - *burden of additional costs;*

- *detrimental effect on ability to meet customer demand;*
  - *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;*
  - *none of the above.*
- Q8.** *Are there any other reasons you think the employer should be able to cite in rejecting a request for time to train?*
- Q9.** *Are there any circumstances in which an employer should be able to withdraw their support for an individual's time to train where they had previously granted a request?*
- Q10.** *Do you think any employers should be exempted from the right to request time to train? Why?*
- Q11.** *If you are an employee, and had a formal right to request time to train, would you be more likely to approach your employer about your training needs than you are now? Why?*
- Q12.** *If you are an employer, and a statutory right to request time to train was introduced, would this change your behaviour in terms of giving your staff time off to train? Why?*

## 6. Impact assessment: right to request flexible working

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### *INTRODUCTION*

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- 6.1. **The benefits of flexible working arrangements are generally recognised by employers as well as employees. As pointed out in the main body of the consultation document, 19 in 20 employers agree that people work best when they can balance their work and other aspects of their lives; over two-thirds of employers feel that flexible working arrangements have a positive effect on employee relations; approximately half say that flexible working practices have a positive effect on labour turnover, absenteeism, productivity and recruitment; and, according to employees surveyed, around three-quarters of requests to work flexibly are agreed in full by employers<sup>18</sup>.**
- 6.2. Requests to work flexibly are more likely to come from women than men, from parents than non-parents and from part-time than full-time employees. Childcare is the most popular reason for making a request, as might be expected given the focus of the existing statutory regime and the pressures that parents in particular face in balancing work and home commitments<sup>19</sup>. The Department, in its legislation to date, has targeted the right to request so that it applies to groups most likely to experience particular strains in balancing their work and home lives. Currently, the right is available to parents of children under six years of age, parents of children with disabilities under 18, and carers of adult dependants.
- 6.3. The consultation sets out five options in relation to possible extension to wider groups of the right to request. These are:
- *extension to parents with older children aged 12 or under; aged 16 or under; aged 18 or under;*
  - *extension to all employees;*
  - *no change.*

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<sup>18</sup> 'Flexible working patterns: comparison of employee and employer surveys conducted in 2003 and 2006' (DEL, March 2007), pp 3, 6-7.

<sup>19</sup> Figures from *ibid.* p. 8.



### *Parents of older children*

- 6.4. The purpose of the proposed extension of the right to request flexible working to parents of older children is to provide this group with greater choice and flexibility in balancing the competing responsibilities generated by work and family life. The rationale for the focus on parents is that this group faces particular difficulties in achieving work-life balance that are not experienced by those without dependent children<sup>20</sup>.
- 6.5. Of the nine equality categories set out under Section 75 of the Northern Ireland Act 1998, primary beneficiaries of an extension to the law to cover parents of older children would be likely to be within the 'gender', 'age' and 'dependants' groupings.
- 6.6. Women, who disproportionately have main familial caring responsibilities for children<sup>21</sup>, would be likely to benefit most from a change in the law given that they most often experience a tension between the demands of work and home. It is no coincidence that women of working age with dependent children have a five percentage point lower economic activity rate than those without dependent children<sup>22</sup>. Men, however, would also see benefit, albeit probably to a lesser degree than their female counterparts given the societal pressures and expectations surrounding the male familial role and employment<sup>23</sup>. Men remain considerably more likely than women to work full-time<sup>24</sup>, tend to earn more<sup>25</sup>, and are much less likely to fulfil the role of primary carer – all factors which tend to perpetuate male gravitation towards a working over a caring role.
- 6.7. By encouraging through example the development of a flexible working culture, extension of the right should additionally help jobseekers who are parents of young children, particularly lone parents and returners, to find a job that allows them to balance competing job and family responsibilities.
- 6.8. Children in the age-groups affected by the legislation could plausibly benefit from more time with their parents, less disruption to domestic

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<sup>20</sup> For example, 10.6% of the economically active (16 to pensionable age), who do not have children, work part-time; however, this figure rises to 20.4% where there is a dependent child in the household – NI Census statistics, [www.nisra.gov.uk](http://www.nisra.gov.uk).

<sup>21</sup> 2001 Census data reveals that just 1.6% of male economic inactivity is due to "looking after home / family", whereas for females, the figure is 14.9% – see [www.nisra.gov.uk](http://www.nisra.gov.uk).

<sup>22</sup> 'Women in Northern Ireland' (Department of Enterprise, Trade and Investment (DETI), Labour market statistics bulletin, February 2005).

<sup>23</sup> Devine, Paula, 'Mystery man?' (ARK, research update no. 38, June 2005) – [www.ark.ac.uk](http://www.ark.ac.uk).

<sup>24</sup> 8% of male employees work part-time, whereas for female employees the figure is 39% – 'Women in Northern Ireland', p. 7.

<sup>25</sup> *Ibid.*, p. 11.

arrangements, better educational outcomes and better parental supervision and support. It is also possible that better behaviour and improved career potential will see a contribution from increased familial involvement in the child's everyday life<sup>26</sup>. The case should not be overstated, however; flexible working would be unlikely to generate gains of these kinds in the absence of a generally supportive home environment.

- 6.9. Arguably, there may be negative impacts on groupings who do not benefit from the right, particularly those without dependants, in that these individuals could be asked to plug 'gaps' left by those having flexible working requests granted. Clearly, this is an undesirable outcome; however, some mitigating action is possible. There is a role for guidance in emphasising that employers, in considering a request, should ensure that they are appropriately equipped to deal with the consequences of granting it. It is also worth reinforcing the fact that employers are not under a duty to accept a request where valid reasons make it impractical to do so. The Department would welcome suggestions as to whether there is more that could be done to mitigate against this type of negative impact.

### *All employees*

- 6.10. A more far-reaching option, extending the right to all employees, is also mooted in the consultation as a way of bringing the benefits of work-life balance to the wider workforce.
- 6.11. Although persons without dependants do not face time pressures generated by parental responsibilities, there is an argument (see above) that extending the right to request to wider groups of parents, without extending it to all employees, would increase the number of new flexible working arrangements in a way that would place undue additional work pressures on those groups who remained without the right. One undoubted way of mitigating against this danger is to extend the right to request to all employees. This would have the additional advantage of delivering gains for groups currently having no statutory right to request (those without dependants), including individuals seeking to adjust working patterns to undertake educational activity or older employees wishing to facilitate partial retirement through a job-share arrangement (producing gains particularly for those in older age groups).

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<sup>26</sup> Some research has suggested that children with involved fathers, for example, tend to be more psychologically well-adjusted, do better at school and engage in less anti-social behaviour. 'Closeness' to fathers during childhood has been found to be positively related to adult children's educational and occupational mobility. It should be noted that there is ongoing academic debate on the role and influence of parental involvement on children's outcomes, and that flexible working, independent of other family circumstances, has not been shown to lead to the kind of advantages discussed here. See Buchanan, Ann, 'Father involvement and outcomes in adolescence and adulthood: end of award report' (October 2001) – [www.esrcsocietytoday.ac.uk/ESRCInfoCentre/ViewAwardPage.aspx?AwardId=1213](http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/ViewAwardPage.aspx?AwardId=1213).

6.12. However, there is the potential for such a significant extension to have negative repercussions for the groups to which the right already applies, namely parents and carers. Significant numbers of additional requests from the wider employee population could place pressure on employers' ability to accommodate employees' desired working arrangements, thereby potentially diluting the effectiveness of the right. The Department does not wish to see erosion of the benefits currently experienced by parents and carers facing particular work-life balance challenges and would therefore welcome views on how negative consequences of this nature could be avoided under an extension of the right to cover all employees.

### *Anticipated equality impacts by Section 75 category*

6.13. The anticipated equality impacts of the proposals are set out in Table 1.

**Table 1: Anticipated equality impacts of extending the right to request flexible working**

Equality Grouping	Likely impacts
Religious belief Political opinion Racial group	Cultural factors, such as attitudes towards a woman's role at work or in the home, may influence take-up of some rights amongst certain minorities. This can be mitigated to a large extent by ensuring that information on the extended right to request is widely available, including in alternative formats where appropriate. However, people cannot be forced to avail of the rights, merely encouraged to do so.
Age	It is possible that greater involvement by parents in the lives of children in the affected age-groups, following a successful request, will be beneficial to outcomes for those children.
Marital status	Lone parents, who often face greater demands at home than do parents in a couple, are likely to benefit indirectly from the growth of a more permissive flexible working culture.
Sexual orientation	Extended flexible working rights will be made available regardless of a person's sexual orientation. There is therefore no equality impact arising.
Gender	The proposals benefit both men and women, though the most positive equality impact falls upon women, who are more likely to be the primary provider of childcare.
Disability	There is a marginal benefit to individuals with disabilities if the right to request is extended to cover parents with children aged 18 and under. Currently, the right for parents who have children with disabilities to make a request only applies where the child is aged <i>up to</i> 18.

### *Next steps*

6.14. If the consultation shows significant support for an extension of the right to request flexible working, the Department would envisage introducing regulations which would become effective from April 2010. In the run-up to the introduction of any new right, the Department will set in place a communication strategy to promote raised awareness.

6.15. Monitoring and evaluation of the extension of the right will be carried out by way of future employment relations research amongst employers and employees.

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## **HEALTH IMPACT**

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- 6.16. **Extending the right to request flexible working so that it covers wider groups will promote better work-life balance and thus address some of the mental stresses that can be associated with the difficulties of balancing responsibilities at home with those in the workplace. Some benefit, in terms of increased mental wellbeing, is likely to be seen by employees who make successful requests and any individuals who benefit directly from the request e.g. a child who can, as a result, spend more time with his or her parent. Some research shows that positive outcomes can be associated with parental involvement in a child's life (although academic debate is ongoing on the extent of such influence and no definitive claims can be made).**
- 6.17. **As also outlined in the equality impact assessment, there is a need to guard against placing additional stresses, by way of increased workload, on those who do not have statutory access to the right to request. Views are sought on how this can be achieved.**

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## **REGULATORY IMPACT**

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- 6.18. The proposal to extend the right to request flexible working is an attempt to increase the reach of what has been a successful employment right whilst at the same time maintaining the 'light touch' approach that seeks to avoid placing significant new burdens on business, particularly important in the current difficult economic climate.
- 6.19. The methodology adopted for estimating the costs and benefits associated with the consultation options is similar to that used in earlier impact assessments concerning the right<sup>27</sup>. Take-up is likely to differ between mothers and fathers and also by current working pattern (full or part-time); however, since detailed statistical information of the kind presented in the Great Britain Regulatory Impact Assessment<sup>28</sup> is not available for Northern Ireland, simplifying assumptions have been used. Firstly, it is assumed that there are some 279,000 working age employees with dependent children<sup>29</sup> (broken down in Table 2).

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<sup>27</sup> See, in particular, the methodology explained in 'Work and families: choice and flexibility – consultation on regulations and policy' (DEL, April 2006).

<sup>28</sup> 'Extending the right to request flexible working to parents of older children: Government response to consultation on implementing the recommendations of Imelda Walsh's independent review' (BERR, March 2009).

<sup>29</sup> Labour Force Survey (LFS), October-December 2008. The figure is based on the head or partner of the head of family unit only i.e. those who have a responsibility for the dependant child. It does not include family members who are of working age but who do not have parental responsibilities such as an elder sibling. A dependant child refers to all children under 16 and those aged under 19 who are still in full-time education. Working age refers to

**Table 2: Number of working age employees by age of youngest dependant child**

Age of child	Number of working age employees
0-4	111,000
5-11	90,000
12-18	78,000
<b>Total</b>	<b>279,000</b>

**Table 3: Number of employees eligible to request flexible working under each of the proposed new arrangements**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Base figure <sup>30</sup>	212,143	256,714	279,000	632,000
Excluding parents of children aged 0-5 <sup>31</sup>	88,286	132,857	155,143	508,143
Excluding parents of children with disabilities aged 6-17 <sup>32</sup>	85,016	129,587	151,873	504,873
Having six months' service <sup>33</sup>	77,364	117,924	138,204	459,434
Excluding carers of adult dependents <sup>34</sup>	66,401	101,213	118,619	394,327

6.20. These figures presented in Table 2 are then broken down, in Table 3, to fit the age profiles of dependent children falling within the proposals'

females age 16-59 and males aged 16-64. Please note that the LFS is a sample survey and that figures are subject to sampling error.

<sup>30</sup> As an example, to ascertain the base figure for the age group 0-12, the following calculation is used: figure for employees with children aged 0-4 + figure for employees with children aged 5-11 + one seventh of figure for employees with children aged 12-18 i.e. 111,000 + 90,000 + (1/7 x 78,000) = 212,143. Note: the one-seventh figure for 12-18 year olds is arrived at on the basis of the simplifying assumption that each age group contains equal proportions of children of each age, in this case 1/7 x 78,000 = 11,143 (rounded).

<sup>31</sup> Parents of children aged 0-5 are covered by the existing right to request. The number of employees with children in this group (123,857) is calculated using the same methodology as above.

<sup>32</sup> Parents of children with disabilities aged 6-17 are also covered by the existing right. The total number of employees with children aged 6-17 (worked out in line with the methodology above) is scaled down to 2.3%, to reflect the proportion of children in this age group likely to have a claim for Disability Living Allowance (DLA). The 2% figure is derived by comparing the number of children aged 0-17 claiming DLA with the relevant mid-year population estimate – in this case for 2007. At this time, there were around 10,000 DLA claimants aged 0-17 and just over 430,000 children within this age group in Northern Ireland. Sources: Table A: Resident population estimates mid-2007: quinary age groups by sex (NISRA); All persons claiming Disability Living Allowance at August 2007 by 1992 geographic boundaries, gender and age bands (Department for Social Development).

<sup>33</sup> As in the Northern Ireland RIA of April 2006 (which dealt with extending the right to carers), it is assumed that 91% of employees have accumulated six months' service with their employer, a pre-requisite for entitlement to make a request.

<sup>34</sup> As noted in the April 2006 impact assessment dealing with carers and the right to request, the 2001 Census revealed that there were 82,902 carers in Northern Ireland who were employees. This figure represented just over 14.2% of the 585,000 employees in Northern Ireland in the Spring of 2001. For the purposes of this RIA, it is assumed that this proportion of employees who might otherwise benefit from extension of the right to request are already covered as carers.

scope i.e. 0-12, 0-16 and 0-18. The figure for all employees in Northern Ireland<sup>35</sup> is also included. All of these base figures are then adjusted to arrive at the number of additional eligible employees under each option. The 'do nothing' scenario is excluded from the table (and subsequent tables) as it would result in no change.

6.21. The Great Britain RIA estimated that 6.9% of eligible employees would make a flexible working request<sup>36</sup>. It is reasonable to make the same assumption in respect of Northern Ireland. We also assume, as in the 2006 Northern Ireland RIA, that 80% of requests will be accepted at stage one<sup>37</sup> (encompassing a written request from the employee, deliberation by the employer both before and after a meeting with the employee, and preparation of a decision); that half of rejected requests are appealed; and that approximately 20% of appeals are accepted. Finally, it is assumed that 2% of unsuccessful appellants will take their case to an industrial tribunal, and that 20% will be successful. Calculations on the basis of these assumptions are set out in Table 4.

**Table 4: Total number of flexible working requests expected**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Eligible to request	66,401	101,213	118,619	394,327
Number of stage 1 requests	4,552	6,938	8,131	27,032
<b>Successful stage 1 requests (80%)</b>	<b>3,642</b>	<b>5,550</b>	<b>6,505</b>	<b>21,626</b>
Unsuccessful stage 1 requests (20%)	910	1,388	1,626	5,406
Appeals (50% of all rejected at stage 1)	455	694	813	2,703
<b>Successful appeals (20% of all appeals)</b>	<b>91</b>	<b>139</b>	<b>163</b>	<b>541</b>
Unsuccessful appeals (80% of all appeals)	364	555	650	2,162
Tribunal claims (2% of rejected appeals)	7	11	13	43
<b>Successful tribunal claims (20% of claims)</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>9</b>
Unsuccessful tribunal claims (80% of claims)	6	9	10	34
<b>TOTAL REQUESTS ACCEPTED</b>	<b>3,734</b>	<b>5,691</b>	<b>6,671</b>	<b>22,176</b>

<sup>35</sup> Labour Force Survey, October-December 2008.

<sup>36</sup> Number of new employees entitled to make a request (4,493,000) / number of additional requests (308,000).

<sup>37</sup> This is lower than the GB estimate in recognition of the greater proportion of small employers in the Northern Ireland economy. It is assumed that small employers find it more difficult to grant a flexible working request.

## Benefits

- 6.22. Where flexible working enables parents to remain in the labour market rather than give up employment to manage home responsibilities, 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.
- 6.23. A similar analysis can be applied to groups other than parents and carers, who would benefit from the right were it to be extended more generally. These are groups who might leave the labour market or change jobs if unable to request flexible working. These groups could include employees seeking to devote more time to activities outside work, including those wishing to reduce their hours as they come near the end of their working lives.
- 6.24. As with the Great Britain impact assessment, we have drawn upon the latest CIPD survey on recruitment, retention and turnover, which estimated a UK labour turnover rate of 17.3%. It is assumed that, of this 17.3%, 11.8% leave their employer either to have or to look after children,<sup>38</sup> that 5% of employees who otherwise would have left their jobs to look after family members will not do so as a result of the extension, and that the cost of filling a post that becomes vacant is £6,032<sup>39</sup>. When these assumptions are applied, the benefits in Table 5 can be calculated as shown.
- 6.25. An alternative calculation has been applied to the option of extending the right to request flexible working to all employees. Here, we factor in the number of parents of children aged 18 and under who might request flexible working due to childcare reasons (as above) and add to it a figure for employees who may do so as a result of workload

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<sup>38</sup> Due to data quality issues, this assumption is based on an average over the previous four years in the data series. Since 2002, the CIPD has 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](http://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 percentage that left their employer either to have or to look after children. This might explain why the figure of 27% for that year shows a dramatic increase over previous years. To provide a more robust figure for this impact assessment, an average of the previous four years has been taken, hence the 11.8% figure.

<sup>39</sup> The CIPD annual survey on recruitment and turnover also asks about the costs of labour turnover and of recruitment. Relatively few organisations provided information on the former but figures for 2005 (£8,200) and 2006 (£7,750) showed dramatic increase on previous years for no apparent reason. However, the 2007 figure is more in line with previous estimates. For this NI impact assessment, as in GB, the 2007 figure of £5,800 was used with an annual growth rate of 4% applied to update for 2008 prices.

stresses. To reach this latter figure, we have used a four-year average derived from CIPD surveys, reflecting the percentage turnover attributed to level of workload. We have further made the assumption that, if all employees have a right to request, 5% of non-parents who otherwise would leave their job because of high workload will decide not to. Final figures rest on the simplifying assumption that there is no overlap between the reasons for leaving cited by parents and the reasons cited by non-parents; it is assumed that parents leaving work due to childcare needs will cite this rather than heavy workload as their reason for leaving work.

**Table 5: Estimated savings in recruitment costs as a result of lower labour turnover**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Employees remaining in work (parents) <sup>40</sup>	68	103	121	121
Employees remaining in work (non-parents) <sup>41</sup>	N/A	N/A	N/A	280
Savings (parents)	£408,821	£623,155	£730,321	£730,321
Savings (non-parents)	N/A	N/A	N/A	£1,690,301
<b>TOTAL SAVINGS<sup>42</sup></b>	<b>£408,821</b>	<b>£623,155</b>	<b>£730,321</b>	<b>£2,420,622</b>

6.26. Evidence has shown that flexible working arrangements can have a beneficial effect in terms of increased productivity and ultimately profits<sup>43</sup>. In Northern Ireland, the research suggests that 50% of employers believe flexible working has a positive effect on productivity, while 6% believe it has a negative effect<sup>44</sup>. Given the generally positive views associated with flexible working, the following assumptions have been used to calculate the benefits of extending the right under the various options proposed, with the results presented in Table 6.

- *44% of new flexible working arrangements result in increased productivity<sup>45</sup>;*
- *output per worker is £80,897<sup>46</sup>;*

<sup>40</sup> Number of parents eligible to request x percentage labour turnover x percentage leaving their employer to have or look after children x percentage choosing not to leave work as a result of change in law.

<sup>41</sup> Number of non-parents eligible to request x percentage labour turnover x percentage leaving their employer due to workload x percentage choosing not to leave work as a result of change in law.

<sup>42</sup> Savings as a result of parents remaining in work + savings as a result of non-parents remaining in work = (number of parents remaining in work x recruitment and labour turnover cost) + (number of non-parents remaining in work x recruitment and labour turnover cost).

<sup>43</sup> See, for example, 'Flexible working patterns: comparison of employee and employer surveys conducted in 2003 and 2006' (DEL, March 2007).

<sup>44</sup> Data from 2006 flexible working survey of employers.

<sup>45</sup> Calculated on by subtracting the 6% who believe flexible working has a negative effect on productivity from the 50% who feel that it has a positive effect.



- *a notional 5% output gain would be achieved for the new working arrangements that result in increased productivity. A 5% 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% 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 economy<sup>47</sup>.*

**Table 6: Increased profits as a result of increased productivity**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Requests accepted	3,642	5,550	6,505	21,626
New working arrangements that increase productivity (44%)	1,643	2,504	2,935	9,757
Output before flexible working <sup>48</sup>	£132,910,535	£202,569,324	£237,452,110	£789,347,624
Output gain as a result of flexible working (5%)	£6,645,527	£10,128,466	£11,872,606	£39,467,381
<b>EXTRA GROSS PROFITS P.A. (14%)</b>	<b>£1,023,411</b>	<b>£1,559,784</b>	<b>£1,828,381</b>	<b>£6,077,977</b>

6.27. This assessment makes an assumption that flexible working allows employees to reduce incidences of absenteeism. Evidence shows that 51% of employers believe that flexible working arrangements can have a beneficial effect on absenteeism while 3% believe that it has a negative effect<sup>49</sup>. Benefits resulting from reduced absenteeism have been calculated on the basis of the following assumptions.

- *48% of new working arrangements will result in lower absenteeism<sup>50</sup>. As in the GB RIA, we are using a constant rate of people being absent even though we recognise that different factors (such as the age of an employee's child or varying ability to cope with high levels of workload) will affect the likelihood of absence.*

<sup>46</sup> We have drawn on the data provided in the GB RIA here. To calculate output per worker, that RIA used ONS labour market statistics (MGRZ) February 2009, which indicate that 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% is applied to UK output to update for 2008, we divide by the number of workers to give an output per employee of £80,897.

<sup>47</sup> Again, the GB methodology has been 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%.

<sup>48</sup> Number of new working arrangements that increase productivity x output per worker.

<sup>49</sup> Data from 2006 flexible working survey of employers.

<sup>50</sup> Calculated on by subtracting the 3% who believe flexible working has a negative effect on absenteeism from the 51% who feel that it has a positive effect.

- *The cost of absenteeism prior to making a request is £666 per year; after a request is accepted, the cost is assumed to fall by 10% (£66.60).*

**Table 7: Savings in absence costs**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Requests accepted	3,642	5,550	6,505	21,626
Cases where positive effect on absenteeism	48%	48%	48%	48%
Saving per request	£66.60	£66.60	£66.60	£66.60
<b>TOTAL SAVINGS FROM REDUCED ABSENTEEISM P.A.<sup>51</sup></b>	<b>£119,369</b>	<b>£181,930</b>	<b>£213,259</b>	<b>£708,922</b>

## Costs

- 6.28. The principal costs to business can be categorised under implementation costs, procedural costs and the costs of accommodating accepted requests.
- 6.29. Implementation costs are assumed to be negligible. Firms are already familiar with how to process a request for flexible working. The cost of communicating the change in eligibility criteria to employees will be negligible and it is assumed that firms will already have a method of communication in place that will merely require updating. Most of these costs will be incurred when any changes to the law come into operation.
- 6.30. As regards the procedural costs of handling requests for flexible working under a revised law, as in the 2006 RIA, it is assumed that the principal cost of dealing with requests will be in the time taken both by management and employees.
- 6.31. By way of reminder, a request to work flexibly can encompass several stages, the first of which involves a written request from the employee, deliberation by the employer and preparation of a decision. The following assumptions, which are the same as those used in the 2009 GB RIA, are applied.
- *Employees prepare requests in work rather than in their own time.*
  - *It takes three hours of management time<sup>52</sup> and two hours of employee time<sup>53</sup> on average to process a formal request.*

<sup>51</sup> Number of requests accepted x percentage of new working arrangements resulting in lower absenteeism x saving per request.

<sup>52</sup> According to the Annual Survey of Hours and Earnings (ASHE) for 2008 (DETI, 2008), personnel, training and industrial relations managers (SOC code 1135) on average earned £17.86 per hour. Factoring in 21% for non-wage labour costs (the assumption applied in

- *It takes one-and-a-half hours for an employer and half-an-hour for an employee to deal informally with a request.*
  - *80% of requests are dealt with formally or discussed at length, and 20% are dealt with informally.*
- 6.32. There will, of course, be considerable variation in the time this process takes depending on 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 employees have to be consulted).
- 6.33. Experience has also shown that 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, again significantly reducing the procedural costs. However, if we accept that these assumptions represent an average, then we can conclude that it is likely to cost £84.85<sup>54</sup> to process a request at the first stage.
- 6.34. The appeal stage involves 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. As in the final Great Britain RIA, it is assumed that it takes 5.29 hours of employee time and 7.93 hours of management time to deal formally with an appeal, and that it takes 2.14 hours of employee time and 6.43 hours of management time to deal with an appeal informally. Applying the same methodology as that used to calculate the cost at the first stage, we can conclude that dealing with a request at the appeal stage will cost, on average, £237.90.
- 6.35. We then take into account the cost to an employer of an application to an industrial tribunal. The Survey of Employment Tribunal Applications 2003 was used to estimate a benchmark figure for Great Britain of

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Great Britain's final RIA, p. 35) produces a figure of £21.61 (£17.86 + £3.75). An assumption is made that this cost will have increased by 4% per annum by 2010, so that by then, average hourly earnings for SOC code 1135 will be £23.37 (subject to rounding).

<sup>53</sup> Average hourly earnings for SOC code 4122 are calculated in the same way: average hourly earnings in 2008 (£9.77) + non-wage labour costs (21% or £2.05) = £11.82, scaled up by 4% per annum until 2010 to a figure of £12.79.

<sup>54</sup> To reach this figure, the cost of a formal request is first calculated: (management time per formal request x management time per hour) + (employee time per formal request x employee time per hour) i.e. (3 x £23.37) + (2 x £12.79) = £95.69. The same formula is then applied to informal requests: (1.5 x £23.37) + (0.5 x £12.79) = £41.45. The figure of £84.85 is the result of taking into account the percentage of requests which are formal and the percentage which are informal i.e. (80% x £95.69) + (20% x £41.45).

£4,980<sup>55</sup>, and there is no reason to assume that the situation differs significantly in Northern Ireland. The same figure is therefore used.

- 6.36. The final procedural cost is adjusted, as in the Great Britain RIA, to reflect the impact of better guidance. Procedural costs that are net of administrative burdens are calculated as 25% of the total and it is assumed that 25% of *this* figure, in turn, is saved as a result of better guidance reducing the time businesses spend on processing flexible working requests<sup>56</sup>.
- 6.37. On the basis of the above information, we have presented estimates of the total procedural cost of extending the right to request flexible working as shown in Table 8.

**Table 8: Total estimated procedural cost<sup>57</sup>**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Requests at first stage	4,552	6,938	8,131	27,032
Cost <sup>58</sup>	£386,222	£588,666	£689,888	£2,293,575
Appeals	455	694	813	2,703
Cost	£108,246	£165,104	£193,415	£643,051
Taken to industrial tribunal	7	11	13	43
Cost	£34,860	£54,780	£64,740	£214,140
<b>Total procedural cost</b>	<b>£529,328</b>	<b>£808,550</b>	<b>£948,043</b>	<b>£3,150,766</b>
<b>Adjusted to account for better guidance</b>	<b>£496,245</b>	<b>£758,016</b>	<b>£888,790</b>	<b>£2,953,843</b>

- 6.38. Employers may also face costs in accommodating requests. These might derive, for example, from reorganising work schedules or making adjustments to IT systems (e.g. to permit flexible rostering). In some cases, for example where another employee must be recruited to cover for an employee reducing their working hours, the potential costs could be more substantial.
- 6.39. Employers can, of course, reject requests on the basis of cost, but that is not to suggest that where extra costs are involved, employers will always choose to do so. For the purposes of this assessment, the assumption is made that it will cost the equivalent of three days' wages to accommodate a request to work flexibly<sup>59</sup>.

<sup>55</sup> GB RIA, p. 34.

<sup>56</sup> For example, under the 'Children 12 & under' option, the total procedural cost before adjustment is £529,328. 25% of this is £132,332, and 25% of this, in turn, is £33,083. £529,328 - £33,083 = £496,245.

<sup>57</sup> Costs are calculated on the following basis: cost per request at stage s x number of requests at stage s. Calculations are subject to rounding.

<sup>58</sup> Number of first stage requests x cost of processing a first stage request. A comparable formula is used to calculate the cost of appeals and tribunal cases.

<sup>59</sup> The assumption, as in Great Britain, is that 50% of requests are for part-time working and that the remaining 50% are for less significant adjustments to working arrangements. The cost of accommodating a part-time working request is assumed to be one week's wages (or 2% of annual labour costs); the cost of accommodating a less far-reaching request is

6.40. The cost of accommodating a request accepted at stage one is estimated at £254.70. This is based on the £12.79 average hourly earnings for SOC code 4122 calculated previously, multiplied by the average number of hours worked per day by employees falling within this group, 6.64<sup>60</sup>, and the estimate of three days' wages required to accommodate a request (£12.79 x 6.64 x 3). It is likely that requests accommodated at the appeal stage, or at the external dispute resolution stage, will be more finely balanced and, therefore, the first stage figure is multiplied by factors of 1.5 and 2 respectively for the appeal and tribunal stages respectively. This results in a cost per successful appeal of £382.06 and per successful external resolution of £509.41. The estimated costs of accommodating requests are presented in Table 9.

**Table 9: Cost of accommodating requests<sup>61</sup>**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Requests accepted at first stage	3,642	5,550	6,505	21,626
Cost	£927,632	£1,413,608	£1,656,850	£5,508,231
Requests accepted at appeal	91	139	163	541
Cost	£34,767	£53,106	£62,275	£206,692
Requests accepted following tribunal	1	2	3	9
Cost	£509	£1,019	£1,528	£4,585
<b>TOTAL COST OF ACCOMMODATING A REQUEST</b>	<b>£844,089</b>	<b>£1,287,020</b>	<b>£1,507,976</b>	<b>£5,013,596</b>

6.41. The sectoral impact of implementation is likely to be minimal and reflect the situation identified in the GB assessment, which is set out below.

- *In hotels and catering, there is less likelihood of employees falling into any of the eligible parental categories identified in the assessment.*
- *In public administration, education and health, there are likely to be disproportionately high numbers of eligible parents.*

6.42. In spite of these caveats, the changes will not be such as to affect the competitiveness of any particular sector. Nor will they be likely disproportionately to affect SMEs, which play such an important part in

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assumed to be one day's wages. (50% x 5 days) + (50% x 1 day) = 2.5 + 0.5 = 3 days' wages.

<sup>60</sup> ASHE 2008.

<sup>61</sup> Costs presented in the table are subject to rounding.

Northern Ireland's economy<sup>62</sup>. Small firms may find it more difficult to accommodate some types of request than larger firms in similar lines of work. For example, there may be less scope to re-allocate duties. However, where this is in practice a significant problem, these are already valid grounds for a refusal. Where requests can be accommodated, firms should benefit from increased morale and productivity, and will potentially retain valuable employees who might otherwise be unable to continue in their original work pattern. Small employers who cannot accommodate requests, like their larger counterparts, will be able to turn down a request where there are genuine business reasons for so doing.

6.43. As noted previously, 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 provided, he or she can appeal to the employer. If, following the appeal, the employee still does not think that the employer has given the matter serious consideration, he or she can seek resolution through an external dispute resolution mechanism and ultimately through an industrial tribunal. The number of industrial tribunal claims made to date has been small, and an extension of the right is not expected to lead to a significant increase in claims.

6.44. The total costs and benefits of the options are set out in Table 10.

**Table 10: Total estimated costs and benefits**

	Children 12 & under	Children 16 & under	Children 18 & under	All employees
Savings in recruitment costs	£408,821	£623,155	£730,321	£2,420,622
Increased productivity/ profits	£1,023,411	£1,559,784	£1,828,381	£6,077,977
Savings from reduced absenteeism	£119,369	£181,930	£213,259	£708,922
Savings from reduced absenteeism	Better work-life balance; increased labour supply due to availability of more flexible working opportunities; better skills retention.			
<b>TOTAL BENEFITS</b>	<b>£1,551,601</b>	<b>£2,364,869</b>	<b>£2,771,962</b>	<b>£9,207,521</b>
Implementation costs	Negligible			
Procedural costs of handling requests	£529,328	£808,550	£948,043	£3,150,766
Cost of accommodating a request	£962,908	£1,467,733	£1,720,653	£5,719,508
<b>TOTAL COSTS</b>	<b>£1,492,236</b>	<b>£2,276,283</b>	<b>£2,668,696</b>	<b>£8,870,274</b>
<b>TOTAL COSTS/ BENEFITS</b>	<b>£59,365</b>	<b>£88,586</b>	<b>£103,266</b>	<b>£337,247</b>

<sup>62</sup> Whereas in the UK as a whole, Small and Medium sized Enterprises (SMEs – defined as any business with zero to 249 employees) account for 58.7% of employment, the figure for Northern Ireland sits at 81%. Likewise, large firms in Northern Ireland account for only 19% of employment, compared to 41% for the UK as a whole. See 'Northern Ireland Economic Bulletin 2007' (DETI), pp 82, 11.

## OTHER IMPACTS

6.45. The Department has also carried out preliminary screening for impacts under the categories set out in Table 11 and has reached the conclusions set out therein.

**Table 11: Result of preliminary impact assessments of proposed extension of the right to request flexible working**

Category	Result of screening exercise
Crime	No impacts identified.
Community Safety & Victims	No impacts identified.
Human Rights	Convention rights are not engaged by the proposals.
Rural	No differential impacts identified. The right will apply to all employees, regardless of where in Northern Ireland they are located.
Social inclusion	Lone parents, who often face greater demands at home than do parents in a couple and who can face social exclusion as a result, are likely to benefit indirectly from the growth of a more permissive flexible working culture as flexible working practices spread. Any impact is likely to be small but positive.
Economic Appraisal	Not appropriate.
Economic	The economic impacts are largely explored in the regulatory impact assessment above. The wider benefits to the economy are set out as part of the remainder of the assessment.
Legal Aid	No impacts identified.
State Aid Compliance	No impacts identified.
Environment	A reduction in traffic on the roads at peak times as flexible hours become more prevalent may be expected to ease strains on the roads infrastructure.
	Not appropriate.

6.46. It should be noted that this is a preliminary impact assessment and that the Department is seeking your views, through the consultation process, on any impacts that you may foresee as a result of any of the proposals being taken forward. A further impact assessment will be published alongside the Department's response to the consultation, and will seek to take account of views expressed during the consultation process.

## 7. Impact assessment: proposed new right to request time to train

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### *INTRODUCTION*

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- 7.1. **The Department is proposing legislation to give employees the right to ask their employer for time off work to train. The proposed right is modelled on the existing and successful right to request flexible working, which requires an employer to give serious consideration to a request, with the possibility of rejecting it only on the basis of sound business reasons.**
- 7.2. We recognise that if Northern Ireland is to continue to compete in the global marketplace, we must work to create conditions that foster investment in our talent. To maximise our skills base, we need to invest in the skills of people already in employment. While the Department is already taking a leading role in a number of initiatives to achieve this end, we believe that introducing a right to request time to train will further raise the profile of workplace skills development and enhance opportunities available to our workforce.
- 7.3. The clear rationale behind our proposal is that a better skilled workforce is a more productive and innovative workforce, better able to adapt to new ways of working and the introduction of new technologies. Investing in skills helps individuals to find and stay in work, enhances their career prospects, and their earnings potential. People with poor literacy and numeracy skills are more likely to find themselves claiming benefits; basic skills in these areas have significant positive effects on an individual's career prospects. Figures cited in the Great Britain impact assessment suggest that the average graduate earns over £100,000 more than an otherwise similar individual whose highest qualification is at level 3<sup>63</sup>.
- 7.4. We have considered three options in respect of helping employees to secure appropriate time to undertake training:
- *do nothing;*
  - *pursue a voluntary approach to encouraging increased employer engagement;*
  - *legislate to give eligible employees in Northern Ireland a new right to request time to train.*

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<sup>63</sup> 'Initial impact assessment of the right to request time to train' (DIUS, June 2008), p. 5



- 7.5. In relation to the first of these options, doing nothing, the Department already has in place a significant programme of work to support and encourage employers and individual citizens to invest in upskilling and reskilling. However, there can be little room for complacency, particularly in today's difficult economic circumstances. Whilst existing programmes will assist many in acquiring skills and qualifications, there remains a potential gap occupied by a group of employees who wish to undertake training but who do not feel sufficiently empowered to do so. Doing nothing would also put these employees at a disadvantage *vis à vis* their counterparts in the rest of the UK, where the right to request time to train is due to be introduced. This would have potentially detrimental implications for Northern Ireland skills and, ultimately, regional competitiveness, and would seem to send out the wrong message about our priorities.
- 7.6. In relation to the second option, a voluntary approach, it would certainly be possible for the Department to focus on best practice guidance promoting the value of workplace conversations between employees and employers about skills training. Many such conversations already take place between employers and employees, and the Department could seek to build on this existing activity through an advertising campaign designed to encourage employees to approach their employer with requests for time to undertake training and employers to give requests serious consideration.
- 7.7. To assess the costs of this option to the employer, we have used figures from the RIA for the extension of the flexible working arrangements, which identifies the costs of an informal conversation between employers and employees. This is felt to be a representative figure that can be used to cost this option as it reflects the intention that an employee and an employer will meet to discuss training. This cost is cited as £41.45 per employee informally asking for training. This is based on the assumption that an informal conversation involving employee and employer will take approximately half an hour, with an hour's additional management time required to consider the request<sup>64</sup>.
- 7.8. Advertising would be likely to increase short-term awareness of the policy, although a sustained campaign would be needed to maintain longer-term awareness levels. In assessing this option, the DIUS stated that it was not possible to forecast how far awareness raised through advertising would translate into actual requests for time to train. The Department for Employment and Learning is not in possession of any additional information that would allow such a judgement to be made for Northern Ireland. We are therefore unable to make an accurate assessment of the impact on the take-up of training from such an advertising campaign. It is, however, assumed that take-up would be less than under a statutory regime, which by setting down

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<sup>64</sup> As in the flexible working RIA, management time is estimated to cost £23.37 per hour and employee time £12.79 per hour.  $(0.5 \times £12.79) + (1.5 \times £23.37) = £41.45$ .

clear rules about non-compliance would encourage employees to have greater confidence in bringing forward requests and encourage employers carefully to consider them.

7.9. The third option, which is the focus of the public consultation, is the introduction of legislation giving eligible employees having 26 weeks' continuous service the right to request time to train. This would be structured in much the same way as the existing right to request flexible working and, as under that right, employers receiving a request would have to consider the matter fairly and seriously, and could reject it where one or more relevant business grounds applied. The proposed business grounds are:

- *relevance of training to business productivity and performance;*
- *unavailability of suitable training;*
- *burden of additional costs;*
- *detrimental effect on ability to meet customer demand;*
- *inability to organise 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; and*
- *planned structural changes.*

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## **EQUALITY IMPACT**

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7.10. The purpose of the proposed new right is to provide employees with a right to ask their employer for time away from normal working duties to undertake training and learning activities relevant to the workplace. The right is associated with a responsibility, placed on employers, to give proper consideration to requests, and permits an employer to turn down a request only where one of a set list of business criteria apply. The policy covers all employees and employers in Northern Ireland. A screening exercise has concluded that it will not disadvantage any one group in relation to another. Indeed, some groups may benefit.

7.11. Of the nine equality categories set out under section 75 of the Northern Ireland Act 1998, primary beneficiaries of the right would be likely to be drawn from the following groups:

- **Dependants** – the right to request time off to train would allow an individual with responsibility for the care of dependants (children or otherwise) the potential to train at more suitable times. For example, a single parent with a young child may experience difficulty in organising his or her schedule to accommodate night classes. Securing agreed time off during working hours would allow the individual to train during the day while the child is at school or daycare. The right will therefore indirectly promote greater family cohesion, by allowing for a better work/life balance.
- **Gender** – women are more likely than men to take on main responsibility for childcare or to act as carers<sup>65</sup>, and will therefore be likely to benefit disproportionately as people with dependants.
- **Marital status** – lone parents are likewise particularly likely to benefit from a successful request for time to train given the particular difficulties they are likely to have in timetabling training outside working hours.
- **Age** – in a fast-changing world where the importance of lifelong learning cannot be understated, the right would create potential opportunities for older employees in particular to re-train in areas where they may lack expertise and improve their skills/knowledge base to reflect the changes that have taken place over time in the workplace. For example, IT is an area to which many younger employees will have been exposed at school/college, whereas an older employee in many instances will not have had the same exposure. Given the importance of skills such as this in today's knowledge industries, retraining could be of considerable help to employees in this age bracket. Children as a group may also experience benefits as a result of better family cohesion (see above) and the trickledown effect of their parents' improved social mobility, career prospects and income.

7.12. No differential impacts have been identified in relation to any of the other Section 75 categories, namely religious belief, political opinion, racial group, sexual orientation and disability.

### **Next steps**

7.13. If there is support for the introduction in Northern Ireland of a right to request time to train, an appropriate legislative provision will be drafted and inclusion in a future Assembly Bill will be sought. The aim would be to introduce the necessary regulations in time for the right to

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<sup>65</sup> 2001 Census data reveals that just 1.6% of male economic inactivity is due to "looking after home / family", whereas for females, the figure is 14.9% – see [www.nisra.gov.uk](http://www.nisra.gov.uk). 19% of adult women in Northern Ireland have caring responsibilities, compared to 13% of adult men – *Caring for carers: recognising, valuing and supporting the caring role* (Department of Health, Social Services and Public Safety, 2006), p. 5.

become effective from April 2011. In the run-up to the introduction of any new right, the Department will set in place a communication strategy to promote raised awareness.

- 7.14. Monitoring and evaluation of the extension of the right will be carried out by way of future employment relations research amongst employers and employees.

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## **SOCIAL INCLUSION**

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- 7.15. Although the right to request time to train, in the form proposed, will be available to all employees in Northern Ireland, it is likely to deliver the greatest benefits to those currently lacking in essential skills, particularly those with lower previous educational attainment, who often tend to be drawn from poorer socio-economic backgrounds.
- 7.16. Higher skills/educational attainment are known to produce social mobility, which in turn can lead to higher income and will allow people to provide better support for their children to learn and develop. Furthermore, as the DIUS impact assessment points out, over a third of people with poor literacy and numeracy receive benefits, excluding pensions and child benefit, compared with less than one in ten of those with better skills<sup>66</sup>. Higher skills can increase social mobility, career opportunities and reduce dependence of benefits.
- 7.17. As a result of the foregoing, it is anticipated that the introduction of the right to request time to train will have a positive impact on social inclusion.

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## **REGULATORY IMPACT**

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- 7.18. Assessing the regulatory impact of a statutory right to request time to train is difficult. Impact will be largely dependent on how employees and employers react to the policy, once implemented. For the purposes of this impact assessment we have therefore had to make some key assumptions in order to produce the cost benefit analysis. These are set out below.
- *The time taken to make and consider a request for time to train will be the same as that for making a request under the flexible working arrangements.*
  - *It is appropriate to apply the costs model developed for the flexible working arrangements to this impact assessment.*

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<sup>66</sup> DIUS RIA, p. 5.

- 91% of employees have sufficient length of service to avail of the right<sup>67</sup>.
- Approximately 37% of this group currently do not receive any training<sup>68</sup> (are 'non-learners').
- 40% of non-learners would like to learn, and of this group 13% will potentially be interested in submitting a request for time to train<sup>69</sup>.
- We would expect, through advertising and promotion of the right, that somewhere around 5% of employees outside of the non-learners group may want to exercise their right to request time to train<sup>70</sup>.

7.19. The application of these assumptions results in the outcomes shown in Table 12.

**Table 12: Potential group from which requests would be likely to come**

	Number of employees
Base figure <sup>71</sup>	632,000
Having six months' service (91%)	575,120
Of which non-learners (37%)	212,794
Potential interested client group (40%)	85,118
Of which beneficiaries of new right (13%)	11,065
Outside potential interested client group <sup>72</sup>	490,002
Of which beneficiaries of the new right (5%)	24,500
<b>TOTAL POOL OF POTENTIAL BENEFICIARIES</b>	<b>35,565</b>

7.20. The Department does not envisage that the approximately 35,000 employees who might benefit from the right would make requests for time to train in a single year. Instead, we have assumed that somewhere in the region of 30% of these employees would come forward with requests for time to train in any year. This would equate to 10,670 employees.

<sup>67</sup> This is the figure used in the flexible working RIA.

<sup>68</sup> In the absence of specific Northern Ireland data, the DIUS RIA has been used to work out this figure. That assessment cited approximately 8,140,000 who did not receive training of a total 22,000,000 employees.

<sup>69</sup> These are the assumption used in the DIUS RIA, and are based on data from the National Adult Learner Survey. The 13% figure is comprised of 9% who say that they would like to learn if they could have time off from work to train and 4% who say that they would like to learn if they were able to do so at work. Directly comparable figures for Northern Ireland are not available.

<sup>70</sup> This is the DIUS assumption. It seems reasonable to apply the same assumption to Northern Ireland.

<sup>71</sup> This is the number of working age employees from the Labour Force Survey (LFS), October-December 2008. Working age refers to females age 16-59 and males aged 16-64. Please note that the LFS is a sample survey and that figures are subject to sampling error.

<sup>72</sup> Total number of employees having sufficient length of service – total number within potential interest group.

- 7.21. Given that we are using the same application process as that used to request flexible working, and that requests made under time to train are likely to be for shorter, more fixed periods as compared to those made under flexible working, we think it is fair to assume that a similar proportion of applications will be successful. We make the assumption that around 80% of requests for time to train will be successful at the first stage; that half of all unsuccessful requests are appealed; that 20% of appeals lead to a request being accepted; that 2% of unsuccessful appeals are taken to an industrial tribunal; and that 20% of tribunal cases result in a request being accepted. These assumptions are the same as those used in the flexible working RIA in Chapter 6.
- 7.22. Table 13 illustrates potential interest and take up at 20%, 30% and 40% of the total estimated demand. Our assumed maximum take up of 30% in any year is highlighted.

**Table 13: Potential take-up in any one year**

	Take up at 20%	Take up at 30%	Take up at 40%
Eligible to request	35,565	<b>35,565</b>	35,565
Number of stage 1 requests	7,113	<b>10,670</b>	14,226
<b>Successful stage 1 requests (80%)</b>	5,690	<b>8,536</b>	11,381
Unsuccessful stage 1 requests (20%)	1,423	<b>2,134</b>	2,845
Appeals (50% of all rejected at stage 1)	712	<b>1,067</b>	1,423
<b>Successful appeals (20% of all appeals)</b>	142	<b>213</b>	285
Unsuccessful appeals (80% of all appeals)	570	<b>854</b>	1,138
Tribunal claims (2% of rejected appeals)	11	<b>17</b>	23
<b>Successful tribunal claims (20% of claims)</b>	2	<b>3</b>	5
Unsuccessful tribunal claims (80% of claims)	9	<b>14</b>	18
<b>TOTAL REQUESTS ACCEPTED</b>	5,834	<b>8,752</b>	11,671

## Benefits

- 7.23. Wide-ranging benefits accrue to employers from having a workforce with increased skills. As the DIUS RIA notes<sup>73</sup>, it is estimated that a 1% increase in the proportion of workers trained in an industry leads to a 0.3% increase in industry wages and a 0.6% increase in value added

<sup>73</sup> DIUS RIA, p. 14.

per worker. There is also limited evidence for a positive link between training and profitability.

- 7.24. The regulatory impact assessment in respect of flexible working in Chapter 6 cites the benefits of having flexible working arrangements in terms of reduced vacancy costs and increased skills retention; increased productivity and profits; and reduced absenteeism. It is reasonable to suggest that some of these benefits will also apply if the right to request time to train is introduced. After all, better skills help people find work, stay in work and progress. However we are unable to quantify these benefits at this stage.
- 7.25. To assess the benefits for the purposes of this impact assessment, we have considered only people studying at level 2 and level 3. The DIUS assessment suggested that this group would account for around 30% of additional learning that takes place as a result of the right – 20% at level 2 and 10% at level 3<sup>74</sup>. Table 14 draws on these assumptions, and the low, medium and high take-up estimates set out in Table 13, to estimate the number of training arrangements that will deliver benefits.
- 7.26. The DIUS RIA observed that the remaining 70% of training will be undertaken at other levels, in the area of lower level skills or in unaccredited non qualification bearing courses. DIUS concluded, and this Department concurs, that some economic and wider socio-economic benefits are likely to result from this general increase in learning. Given the data available, these benefits cannot specifically be quantified, although we share the DIUS view that they are likely to be significant<sup>75</sup>.
- 7.27. We have confined our assessment to the benefits of level 2 and 3 qualifications. For simplicity, we have used the standard adult completion rates cited by DIUS (66% for level 2 and 56% for level 3)<sup>76</sup> we have calculated the numbers of level 2 and 3 qualifications that would result from these additional learner numbers in Northern Ireland. These figures have then been used to calculate the benefit that would result from the additional learning. DIUS suggests that the Net Present Value (NPV) for a level 2 qualification is £13,000 and that the corresponding figure for a level 3 qualification is £34,000<sup>77</sup>. Applying this to the number of qualifications produces the results shown in Table 14.

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid., pp 14-15.

<sup>76</sup> Ibid., p. 15.

<sup>77</sup> Ibid.

**Table 14: Benefits of time to train**

	Take up at 20%	Take up at 30%	Take up at 40%
Total requests accepted	5,834	8,752	11,671
Number studying at level 2 (20%)	1,167	1,750	2,334
Number studying at level 3 (10%)	583	875	1,167
Number of additional level 2 qualifications (66%)	770	1,155	1,541
Number of additional level 3 qualifications (56%)	327	490	654
<b>TOTAL BENEFITS</b>	<b>£21,094,000</b>	<b>£31,675,000</b>	<b>£42,256,000</b>

## Costs

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

- *implementation costs of the proposals;*
- *procedural costs arising from exercise of the right to request time to train;*
- *the costs of accommodating such requests (when they are accepted).*

7.29. These are considered in turn. As the time to train procedure mirrors the processes for the flexible working arrangements we have based the costs on those in the RIA in Chapter 6 dealing with the proposed extension to the right to request flexible working.

7.30. Implementation costs are one-off costs which will largely be incurred around the time the legislation comes into operation. It is assumed that these costs will be negligible because firms are already familiar with the very similar process for dealing with a request to work flexibly. The cost of communicating the right to employees will be small as it is assumed that firms will already have a method of communication in place that will simply require updating.

7.31. To derive the cost of handling a formal request, we have considered the cost at each stage of the process (application, appeal and tribunal) and the numbers of requests reaching each stage. The first stage encompasses a written request by the employee, deliberation by the employer both before and after a meeting with the employee and, finally, preparation of a decision. The principal cost will be the time of both management and employees. Clearly, there will be considerable variation in the time this process takes but, as in the flexible working RIA, we have calculated that the cost per request at this stage is £84.85<sup>78</sup>.

7.32. The next stage, appeal, involves 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

<sup>78</sup> The derivation of this and other figures quoted in this section can be found in Chapter 6.



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. As in the flexible working RIA, we have concluded that dealing with a request at the appeal stage will cost, on average, £237.90.

7.33. Finally, we take the figure of £4,980 as the cost of dealing with a tribunal case.

7.34. On the basis of the above information, we have presented estimates of the total procedural cost of extending the right to request flexible working in Table 15.

**Table 15: Total procedural cost**

	Take up at 20%	Take up at 30%	Take up at 40%
<b>Requests at first stage</b>	7,113	<b>10,670</b>	14,226
<b>Cost</b>	£603,521	<b>£905,282</b>	£1,207,043
<b>Appeals</b>	712	<b>1,067</b>	1,423
<b>Cost</b>	£169,387	<b>£253,842</b>	£338,535
<b>Taken to industrial tribunal</b>	11	<b>17</b>	23
<b>Cost</b>	£54,780	<b>£84,660</b>	£114,540
<b>TOTAL PROCEDURAL COST</b>	£827,688	<b>£1,243,784</b>	£1,660,118

7.35. Employers may also face costs in accommodating a request for time to train, and although they may choose to reject a request on grounds of cost, this will by no means be the expected norm. Examples of costs arising out of accommodating a request might include re-organising work schedules or adjustments to IT systems (e.g. to permit flexible shift scheduling). 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 to undertake training). These examples should not be considered as exhaustive.

7.36. For the purposes of this assessment, as in the flexible working RIA, the cost of accommodating a request is estimated as follows:

- *£254.78 per successful stage one request;*
- *£382.17 per successful appeal;*

- £509.56 per successful external resolution<sup>79</sup>.

7.37. We have also included costs for loss of productivity to employers in granting time to train requests. We have expressed this in terms of foregone earnings for the level 2 and 3 qualifications gained which we have used as the primary source of the benefits. The foregone earnings figures adopted are the same as those used in the DIUS RIA i.e. £5,000 per qualification.

7.38. The estimated costs of accommodating requests are presented in Table 16.

**Table 16: Cost of accommodating requests**

	Take up at 20%	Take up at 30%	Take up at 40%
Requests accepted at first stage	5,690	8,536	11,381
Cost	£1,449,266	<b>£2,174,154</b>	£2,898,787
Requests accepted at appeal	142	213	285
Cost	£54,252	<b>£81,378</b>	£108,886
Requests accepted following tribunal	2	3	5
Cost	£1,019	<b>£1,528</b>	£2,547
Cost of accommodating requests (subtotal)	£1,504,537	<b>£2,257,060</b>	£3,010,220
Total learners studying at levels 2 and 3 <sup>80</sup>	1,750	2,625	3,501
Lost productivity (expressed as foregone earnings) <sup>81</sup>	£8,750,000	<b>£13,125,000</b>	£17,505,000
<b>TOTAL COST OF ACCOMMODATING A REQUEST</b>	<b>£10,254,537</b>	<b>£15,382,060</b>	<b>£20,515,220</b>

7.39. The DIUS RIA made additional assumptions about the cost to Government and the individual, as well as to employers. These assumptions<sup>82</sup> have been adopted for the purposes of this assessment, and are as follows.

- *We assume that it costs each individual around £100 to study for a qualification (travel, books, subsistence, etc.).*
- *The cost to Government, employer and/or individual for tuition is assumed to be £2,466 for level 2 and £2,672 for level 3.*

7.40. When these assumptions are applied, the results in Table 17 are obtained.

<sup>79</sup> The derivations for these figures are set out in paragraph 6.40 on page 44.

<sup>80</sup> See Table 14 for numbers of learners at each of levels 2 and 3.

<sup>81</sup> Total learners studying at levels 2 and 3 x lost productivity per individual (expressed as foregone earnings of £5,000).

<sup>82</sup> DIUS RIA, p. 19.

**Table 17: Costs of study and tuition**

	Take up at 20%	Take up at 30%	Take up at 40%
Learners studying at level 2	1,167	<b>1,750</b>	2,334
Learners studying at level 3	583	<b>875</b>	1,167
Cost per individual at level 2	£100	<b>£100</b>	£100
Cost per individual at level 3	£100	<b>£100</b>	£100
Total individual cost at level 2	£116,700	<b>£175,000</b>	£233,400
Total individual cost at level 3	£58,300	<b>£87,500</b>	£116,700
<b>Cost to individual of study<sup>83</sup></b>	£175,000	<b>£262,500</b>	£350,100
Cost to Government at level 2	£2,466	<b>£2,466</b>	£2,466
Cost to Government at level 3	£2,672	<b>£2,672</b>	£2,672
Total Government cost at level 2	£2,877,822	<b>£4,315,500</b>	£5,755,644
Total Government cost at level 3	£1,557,776	<b>£2,338,000</b>	£3,118,224
<b>Cost to Government of tuition<sup>84</sup></b>	£4,435,598	<b>£6,653,500</b>	£8,873,868

7.41. As it is not anticipated that any particular group of employees will be more likely than another to generate requests for training, it is estimated that the changes will not affect the competitiveness of any particular sector. Nor will they be likely disproportionately to affect SMEs. While small firms may in practice find it more difficult to accommodate time away from work, they will not have to face the consequences of accommodating difficult requests as they will be able to reject them on business grounds.

7.42. As with flexible working requests, employees trigger the employer's 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 provided, he or she would be able to appeal to the employer. If, following the appeal, the employee still does not think that the employer has given the matter serious consideration, he or she can seek resolution through an external dispute resolution mechanism and ultimately through an industrial tribunal. The number of industrial tribunal claims made to date in respect of the right to request flexible working has been small, and while the numbers covered by the right to request time to train would be large, even if the number of requests is in line with our higher estimate, under 25 tribunal cases per annum are expected to result.

7.43. A summary of the likely costs and benefits for the proposed right is set out in Table 18.

<sup>83</sup> Costs are calculated as follows: ( number of level 2 learners x cost of individual tuition at level 2 ) + ( number of level 3 learners x cost of individual tuition at level 3 ).

<sup>84</sup> Costs are calculated as follows: ( number of level 2 learners x cost to Government of individual tuition at level 2 ) + ( number of level 3 learners x cost to Government of individual tuition at level 3 ).

**Table 18: Total estimated costs and benefits**

	Take up at 20%	Take up at 30%	Take up at 40%
<b>TOTAL BENEFITS</b>	£21,094,000	<b>£31,675,000</b>	£42,256,000
Procedural costs	£827,688	<b>£1,243,784</b>	£1,660,118
Cost of accommodating a request	£10,254,537	<b>£15,382,060</b>	£20,515,220
<b>Total costs to employers<sup>85</sup></b>	£11,082,225	<b>£16,625,844</b>	£22,175,338
<b>Total costs to individuals</b>	£175,000	<b>£262,500</b>	£350,100
<b>Total costs to Government</b>	£4,435,598	<b>£6,653,500</b>	£8,873,868
<b>TOTAL COSTS</b>	£15,692,823	<b>£23,541,844</b>	£31,399,306
<b>TOTAL COSTS/BENEFITS</b>	£5,401,177	<b>£8,133,156</b>	£10,856,694

## OTHER IMPACTS

7.44. The Department has carried out preliminary screening for additional impacts under the categories set out in Table 19 and has reached the conclusions set out therein.

**Table 19: Result of preliminary impact assessments of proposed right to request time to train**

Category	Result of screening exercise
<b>Crime</b>	To the extent that poverty is linked with crime and upward social mobility is linked with reduced poverty through increased skills, time to train may have minor impacts in addressing the social conditions that can contribute to crime.
<b>Community Safety &amp; Victims</b>	No impacts identified.
<b>Health</b>	There are associated health benefits from possessing a higher qualification. For example, we know that higher skilled workers are less likely to suffer from depression and obesity <sup>86</sup> .
<b>Human Rights</b>	Convention rights are not engaged by the proposals.
<b>Rural</b>	No differential impacts identified between rural and other areas.
<b>Economic Appraisal</b>	Not appropriate.
<b>Economic</b>	The economic impacts are largely explored in the regulatory impact assessment above. The wider benefits to the economy are set out as part of the remainder of the assessment.
<b>Legal Aid</b>	No impacts identified.
<b>State Aid Compliance</b>	No impacts identified.
<b>Environment</b>	No impacts identified.
<b>Strategic Environmental</b>	Not appropriate.

7.45. As with the corresponding integrated impact assessment in respect of the flexible working proposals, it should be noted that this is a preliminary assessment and that the Department is seeking your views, through the consultation process, on any impacts that you may foresee as a result of any of the proposals being taken forward. A further impact assessment will be published alongside the Department's

<sup>85</sup> Procedural costs + cost of accommodating a request.

<sup>86</sup> Various research reports by the Centre for Research on the Wider Benefits of Learning – [www.learningbenefits.net/Publications/ResearchReports.htm](http://www.learningbenefits.net/Publications/ResearchReports.htm).

response to the consultation, and will seek to take account of views expressed during the consultation process.

## 8. Question and answer booklet

### Your details

Your name:

**If you are responding on behalf of an organisation**

Name of the organisation:

Your position within the organisation:

### Part I: Extending the right to request flexible working

**Q1.** What are the arguments supporting an extension of the right to request flexible working?

**Q2.** What are the arguments against an extension of the right?

**Q3.** Five options are proposed in the consultation, as follows.

**OPTION 1: Extension to parents with children aged 12 or under**

This would cover the age at which the majority of children in Northern Ireland make the transition from primary to secondary school. Extending the scope to include parents of this age group therefore presents a key point in time when parents may want to change their working pattern. Employers might also be comfortable with taking a greater step given that the law is now established and that they have greater experience of flexible working.

**OPTION 2: Extension to parents with children aged 16 or under**

This would allow parents to support their children until the end of their secondary education and GCSEs. Educational support is an increasing concern for parents. Exams are important stages of a child's educational development, and some parents will want to work more flexibly in order to help their child prepare for their exams.

**OPTION 3: Extension to parents with children aged 18 or under**

This would allow for parents to support their teenage children until the end of the sixth form or vocational training and is consistent with the existing right for parents of disabled children.

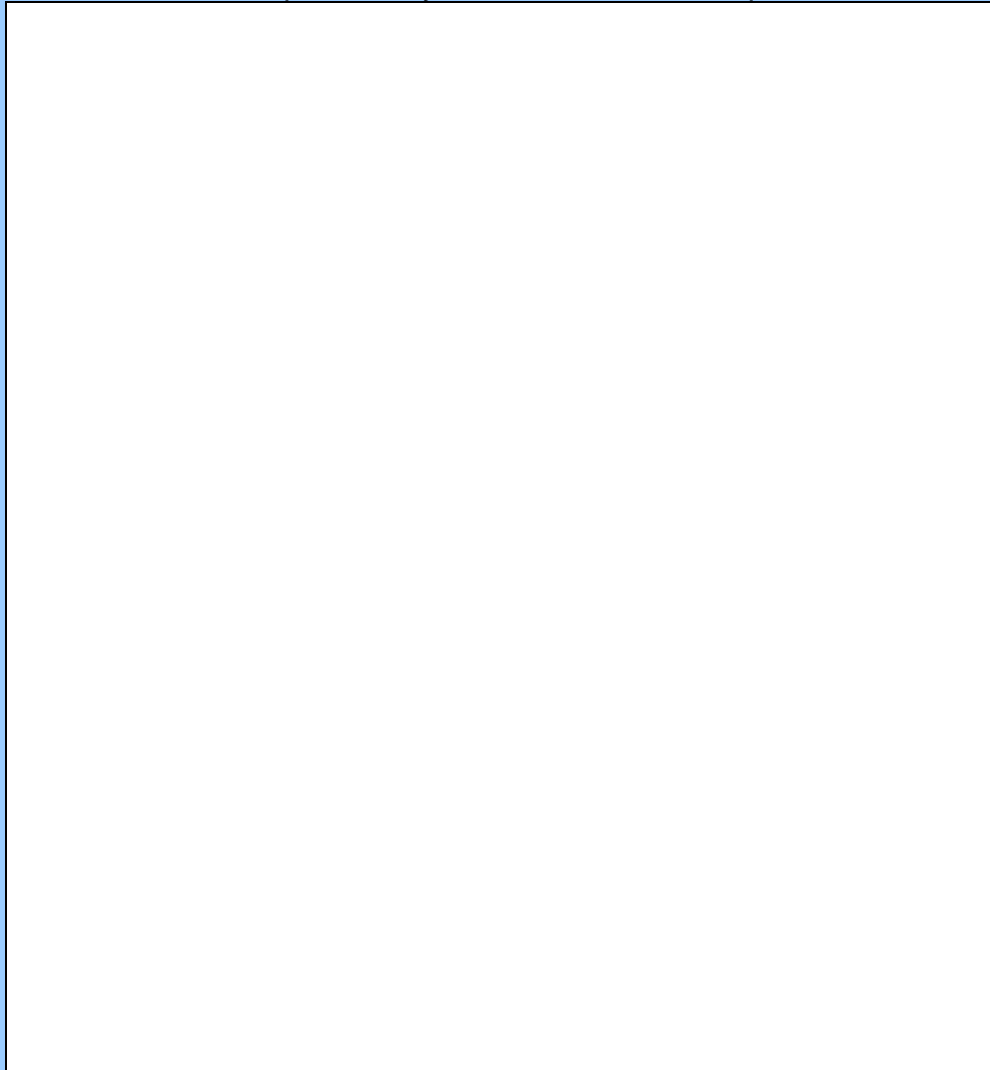
**OPTION 4: Extension to all employees**

This would allow all employees in Northern Ireland, regardless of whether they have childcare or other caring commitments, the right to request flexible working. This would give all employees the opportunity, where business needs allow, to benefit from a better work-life balance and allow for parity among all employees within the workplace.

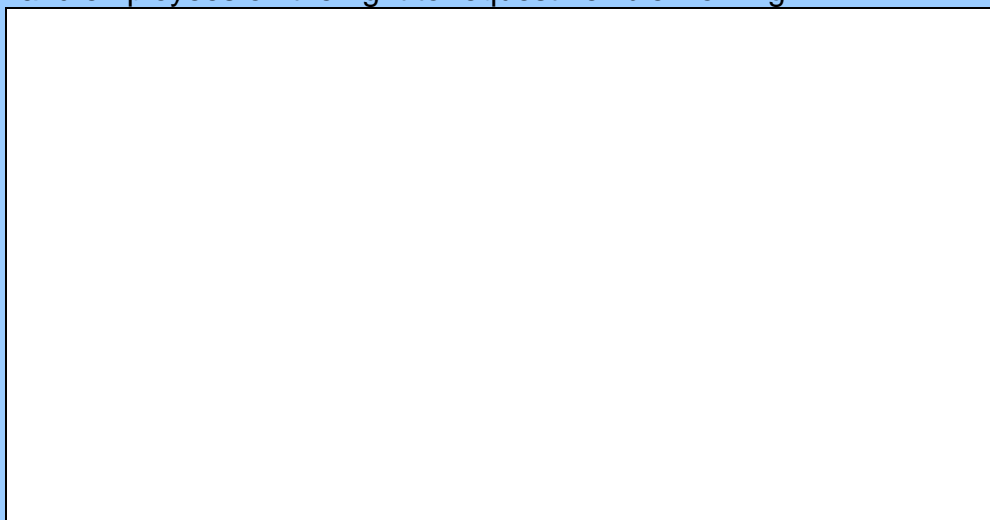
**OPTION 5: Maintaining the status quo**

The law as it stands is helping to bring about cultural change in Northern Ireland workplaces; employers continue to embrace the challenge of providing for flexible hours while meeting the needs of their business and their customers.

Which of the five options do you favour? Please explain.



**Q4.** What can be done to improve the guidance available to employers and employees on the right to request flexible working?





**Part II: A new right to request 'time to train'**

**Q5.** Could a request for time to train help skills development in your organisation? YES  NO

Please give reasons for your answer in the box below:

**Q6.** Do you think the right to request time to train should cover:  
*Any training that the individual and the employer agree?* YES  NO

*Only training that is organised across Northern Ireland and accredited?* YES  NO

**Q7.** For which of the following reasons do you think an employer should be able to reject a request for time to train?

Please tick all the reasons you think should be included.

*Relevance of training to business productivity and performance*

*Suitable training is not available*

*Burden of additional costs*

*Detrimental effect on ability to meet customer demand*

*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*

*None of the above*

**Q8.** Are there any other reasons you think the employer should be able to cite in rejecting a request for time to train?

YES  NO

Please give details in the box below:

**Q9.** Are there any circumstances in which an employer should be able to withdraw their support for an individual's time to train where they had previously granted a request?

YES  NO

Please give details in the box below:

**Q10.** Do you think any employers should be exempted from the right to request time to train?

YES  NO

If you answered 'yes' to question 10, which employers do you think should be exempt

**Q11.** If you are an employee, and had a formal right to request time to train, would you be more likely to approach your employer about your training needs than you are now? YES  NO

Please give reasons for your answer in the box below.

**Q12.** If you are an employer, and a statutory right to request time to train was introduced, would this change your behaviour in terms of giving your staff time off to train? YES  NO

Please give reasons for your answer in the box below.

All respondents, please use the box below for any comments you wish to make about the proposed right to request time to train.

A large, empty rectangular box with a black border, intended for respondents to provide comments. The box is positioned centrally below the instruction text and occupies most of the page's vertical space.

people:skills:jobs:



Department for  
**Employment  
and Learning**  
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