



HM Government

CONSULTATION ON MODERN WORKPLACES

Modern Workplaces Consultation - Government Response on Flexible Working: Impact Assessment

NOVEMBER 2012

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Title: Extending the Right to Request Flexible Working to All IA No: BIS0281 Lead department or agency: BIS Other departments or agencies:	Impact Assessment (IA)		
	Date: 01/03/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Andrew Death/Kate Millward			
Summary: Intervention and Options			RPC Opinion: AMBER

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£116.66m	-£104.47m	-£11.79m	Yes IN

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

The diversity of working arrangements in the labour market has been growing, with benefits to employers, employees and wider society. While much of this has been determined directly between employer and employee, the introductions of the Right to Request Flexible Working for parents of young children (in 2003), for carers (in 2007) and for parents of older children (in 2009) played important parts in this cultural change. The Government has committed to extending these Rights to all. This will stimulate the employer-employee dialogue that reveals opportunities for changing working practices, increase take up, remove the current two-tier system and the stigma of working flexibly and thereby extend the benefits more widely.

What are the policy objectives and the intended effects?

- To facilitate the employee-employer information exchange that can increase the availability and take-up of flexible working, helping employees to better reconcile their work and non-work lives, and employers to secure the business benefits of flexible working.
- To provide all employees with the same access to flexible working, eliminating the perception that flexible working is only for parents/carers and the associated stigma, whilst ensuring businesses have the flexibility to refuse requests on business grounds.
- To improve the functioning of the labour market by facilitating a diverse pattern of working arrangements.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Do nothing.
- Non-regulatory approach: Non-statutory code of practice with supporting publicity campaign.
- Regulatory extension to the right to request flexible working (preferred option).

The regulatory extension is the preferred option because it will: increase take-up and availability of flexible working (by securing serious consideration of potential changes in working arrangements that can benefit both employer and employee); and remove the existing two-tier system and thereby help to eliminate perceptions that flexible working is for parents/carers only and the associated stigma. In so doing, it will achieve the objectives outlined above, unlike the 'do nothing' and non-regulatory approaches, which will not have the same impact.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: 04/2019					
Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

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

Signed by the responsible SELECT SIGNATORY:

Date

Summary: Analysis & Evidence

Policy Option 1

Description: Extending the Right to Request Flexible Working legislation to cover all employees using a duty on employers to consider requests reasonably, supported by a statutory code of practice.

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £116.66m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£15.3m	£39.8m	£358.3m

Description and scale of key monetised costs by 'main affected groups'

Annual procedural costs to employers of £24m (including £3.9m admin burden), £15.8m annual costs of making adjustments to working patterns, plus one-off familiarisation costs of £15.3m. Annual cost to Exchequer from increased employment tribunals of £45,000. Average annual is an average taken over a ten-year period.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Negligible	£55.8m	£474.9m

Description and scale of key monetised benefits by 'main affected groups'

Average annual benefit to employers from higher productivity (£36.8m), lower labour turnover (£8.4m), and reduced absenteeism (£1.4m), over a period of ten years (total £46.6m), plus annual savings to employers from moving to a statutory code of practice (£9.1m). Subsequent years include benefits accrued from the previous year's new working arrangements, which leads to a total net present value of benefits over the 10 years of £474.9m.

Other key non-monetised benefits by 'main affected groups'

Over time there are likely to be wider benefits to the economy through increased labour market participation. Improved work-life balance for employees is likely to impact positively on general health and wellbeing, and family life. Employers may also benefit from reduced wage bills and accommodation costs savings (e.g. through reductions in office costs from those opting to work at home).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Cost-benefit figures and admin burden totals are based on working assumptions about take-up rates and 'deadweight' requests, as well as assumptions regarding retention, recruitment and absenteeism benefits from non-parents/carers. To calculate the total benefit value over ten years, it has been assumed that there is a policy effect of 3 years. For OIIO purposes, the cost of accommodating requests, exchequer costs, and productivity, absence and lower turnover benefits are assumed to be indirect.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIIO?	Measure qualifies as
Costs: £18m	Benefits: £6.2m	Net: -£11.79m	Yes	IN

Summary: Analysis & Evidence

Policy Option 2

Description: Promote flexible working to those not covered by the Right to Request through a non-statutory code of practice with supporting publicity campaign.

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £9m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£10.4m	£20.6m	£188.2m

Description and scale of key monetised costs by 'main affected groups'

Annual procedural costs to employers of £12.6m (including £1.7m admin burden), £7.8m in annual costs of making adjustments to working patterns, plus one-off familiarisation costs of £10.4m. Average annual is an average taken over a ten-year period. There will also be a £2.25m cost for an awareness raising campaign. *Transition costs consist of one-off familiarisation costs of £10.4m plus half of the costs of the publicity campaign in year one and half of the publicity costs in year 2.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£23.2m	£197.2m

Description and scale of key monetised benefits by 'main affected groups'

Average annual benefit to employers from higher productivity (£18.3m), lower labour turnover (£4.2m), and reduced absenteeism (£0.7m). Productivity and reduced absenteeism benefits are cumulative (see chart 5) over a period of ten years such that the average annual benefit over ten years is £23.2m. Subsequent years include benefits accrued from the previous year's new working arrangements.

Other key non-monetised benefits by 'main affected groups'

Over time there are likely to be wider benefits to the economy through increased labour market participation. Improved work-life balance for employees is likely to impact positively on general health and wellbeing, and family life. Employers may also benefit from reduced wage bills and accommodation costs savings (e.g. through reductions in office costs from those opting to work at home).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Cost-benefit figures and admin burden totals are based on working assumptions about take-up rates and 'deadweight' requests, as well as assumptions regarding retention, recruitment and absenteeism benefits from non-parents/carers. To calculate the total benefit value over 10 years, it has been assumed that there is a policy effect of 3 years. For OIIO purposes, the cost of accommodating requests, exchequer costs, and productivity, absence and recruitment benefits are assumed to be indirect.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIIO?	Measure qualifies as
Costs: £9.7m	Benefits: £0	Net: -£9.7m	Yes	IN

Evidence Base (for summary sheets)

Problem under consideration

Flexible working is a label for a wide range of working practices, including part-time, flexi-time, compressed hours, and working from home. Flexible working is essentially an agreement between an employer and employee for the employee to work in a way that best fits their other responsibilities whilst also ensuring that the job gets done. It has tangible benefits for both the individual and employer.

For businesses, holding onto experienced and skilled staff is important in maintaining quality and containing costs. Offering flexible working can help retain staff and widen the talent pool, so employers are able to recruit people with more skills; it can also increase commitment and loyalty of staff members. This can in turn translate into improved productivity and by extension improved profitability.

For employees, flexible working allows them to better balance their work life with their family responsibilities or other commitments. In today's society, both men and women want to find a balance between work, family and caring responsibilities.

Many of the challenges facing society; reducing the deficit, increasing employment and decreasing benefit dependency relies, in part, on enabling more access to - and better functioning of - the labour market. In the current financial climate, any actions that can be taken to aid recovery clearly have value. Dismantling some of the barriers to work for people with caring responsibilities, enabling flexible retirement so older workers can gradually decrease their working hours and enabling those working below their potential due to lack of quality part-time or flexible work to fully utilise their skills, will have a positive impact on the economy.

The current right to request flexible working has enabled many parents and carers to integrate their work and family responsibilities. However because of the current right to request restrictions, it has created the belief that flexible working is only of benefit to parents and carers and consequently for women, as they continue to deliver the majority of the caring role. As a result some groups of employees are concerned that working flexibly is not for them and will harm their career prospects, and so are less likely to apply. This has also resulted in a stigma being attached to those who do work flexibly, resulting in a negative impact on their labour market positions in terms of career progression and standing within an organisation.

This culture also means that many businesses aren't recognising the benefits of flexible working so do not offer it for all employees equally and are not considering flexible working when they advertise jobs. Opening up flexible working to all employees will address this information and equality market failure, change perceptions around flexible working, and create more flexible working opportunities.

Rationale for Intervention

Flexible working is most concentrated amongst women and mothers and at lower level jobs. It is frequently perceived as a benefit for parents; or more often a benefit for mothers, because they are often the primary carer. Flexible working is also often seen as a concession to employees and illustrates a reduced commitment to the workplace with negative impacts on the labour market position of those who work this way.

Whilst employers who have embraced flexible working have seen – and frequently report – the benefits, many others have told the Department for Business through informal consultation that they do not provide the ability to work flexibly because they are not aware of the benefits it can bring, or believe that the benefits are restricted to parents, carers or lower level jobs. Rectifying this information failure and changing cultural expectations is the main policy aim of this initiative. The proposed extension to the right to request flexible working prompts both employees and employers to review current working practices and exchange information about what working arrangements might be possible. This happens because employers are required, under the legislation, to seriously consider requests, and employees are confident that this will be the case should they approach their employer. The resulting improvement in the flow of information between both parties leads to better-informed decisions and enhanced outcomes for both employees and employers.

Currently employers may receive requests to work flexibly from employees who do not have a legislative right, and can accept or decline these requests with little consideration. So an employer could accept a request from a valued member of staff in order to retain them without considering the full range of flexible working options that may suit the employer better (e.g. accepting a request to work part-time when a more suitable solution for the employer would be a compressed week). Or, an employer might refuse a request because of the disruption to the business, when a proper discussion of the options could highlight a compromise approach that would benefit both parties.

Better flexible working discussions created by the right to request flexible working encourages employers and employees to consider alternative ways of working they might not previously have thought of, or been aware were possible, and find mutually beneficial solutions.

Box 1: The Evidence

It could be argued that the use of flexible working amongst male employees is lower because there is no demand for it. The Third Work Life Balance Employee Survey (WLB3)¹ found that, of all male employees, around a fifth indicated that they would like to work from home, flexi-time, a compressed working week or use annualised hours, but that these options were not available to them. For male parents these figures were higher. In the more recent survey² 13% of male employees said they had not made a request to work flexibly due to business reasons including that it would not suit their job, their employer would not allow it, and concerns about their career, job security and the effect on colleagues.

The Fair Treatment at Work Survey³ examines employees' knowledge of employers' legal obligations. The right to request flexible working for parents of children was identified by only 54% of employees (a small increase on the 2005 figure). The figure was only 35% for the right to request for carers. The survey also identified areas where employees had experienced problems at work. Problems relating to the number of hours or days worked or asking the employer about working more flexible hours were among the more commonly cited problems (ranking 6th and 7th and identified by 6% of respondents). The most common was with pay, cited by 10% of respondents.

Consultation Process

On the 16th May 2011, the Government launched the Modern Workplaces consultation, which included a section on the extension to the right to request flexible working. The consultation ran for 12 weeks until 8th August and received 200 completed responses.

The consultation was analysed on the basis of the yes/no responses to the questions and an analysis of common themes mentioned in the free text boxes after each question. This was then analysed on the basis of whether the respondent represented the views of 'business' or 'non business'. The full Government response to the consultation is published alongside this impact assessment.

Alongside the open consultation the Department for Business ran a number of consultation workshops with employer and employee representative groups as well as some employers. One of the workshops was specifically focussed on testing the assumptions made in the consultation stage impact assessment and gathering additional evidence on the benefits and costs of the right to request flexible working. As a result of these discussions, this impact assessment has been amended where there was strong disagreement with assumptions made at consultation stage. Where there was agreement or no opinion on assumptions, these were retained. Stakeholder feedback on other aspects of the consultation stage impact assessment have been reflected throughout this revised version.

¹ Third Work-life Balance Employee Survey: Main Findings, BIS, March 2007.

² Fourth Work-life Balance Employee Survey: Main Findings, BIS, July 2012.

³ *Fair Treatment at Work Report: Findings from the 2008 survey*, Ralph Fevre, Theo Nichols, Gillian Prior and Ian Rutherford, Employment Relations Research Series, No. 103, BIS September 2009.

Policy Objectives

The Coalition Agreement: Our programme for Government committed to 'extend the right to request flexible working to all employees, consulting with business on how best to do so'. From this commitment we have identified the following policy objectives:

- Increase the availability and uptake of flexible working to enable individuals to manage their work alongside other commitments and to help employers realise the benefits flexible working can have on their business.
- Provide all employees with the same access to flexible working as are available to parents and carers, whilst ensuring that businesses have the flexibility to refuse requests on business grounds.
- Remove the cultural expectation that flexible working only has benefits for parents and carers, encouraging wider take-up and demand.
- Improve the functioning of the labour market through a more diverse provision of working patterns.

Options Identification

This impact assessment considers three options:

- Do nothing;
- Non-regulatory approach; Non-statutory code of practice with supporting publicity campaign (option 2);
- Regulatory extension to the right to request flexible working (option 1).

(i) Do nothing

The coalition Government is committed to increasing the availability of flexible working as a feature of delivering Government policies to support parents, carers and older workers, and reduce child poverty. Doing nothing would not increase the availability of flexible working, nor would it change current perceptions that flexible working is only for parents or carers, and hence largely women. Consequently, this option was discounted as it would not deliver the coalition agreement commitment.

(ii) Non-regulatory approach: Non-statutory code of practice with supporting publicity campaign.

A non-regulatory approach to stimulating flexible working would involve creating a non-statutory code of practice to encourage employers to offer increased flexible working to their employees and to highlight good practice. The non-statutory code would cover all employees, specifically targeting those without caring or parental responsibilities, as the existing regulations would continue to govern flexible working requests from parents and carers. There would thus be a two-tier system.

The non-statutory code of practice would be a voluntary code providing good practice guidance, advice on flexible working and potentially case studies from employers who have already embraced flexible working. We believe that there are a number of significant difficulties with this approach.

Efficacy of a 'Good Practice' approach

Traditionally, codes of practice are used to govern single-sector compliance, or processes where interaction with a regulating body is involved, requiring employers to sign up to the principles of the code when they operate in the sector, or in their interactions with the regulator. Neither of these are true for flexible working, where every sector of the UK economy needs to be covered and no central reporting is required.

Many good practice guides on flexible working already exist, including from the Businesslink.gov website. However these have not been successful in creating the significant change to flexible working desired by the Government.

In contrast, the legislative extension to the right to request flexible working, by requiring employers to consider requests seriously and giving employees the confidence that they will do so, would a) help to bring about the employee-employer conversation and resulting exchange of information; and b) be enforceable by employees who have the ability to appeal to an employment tribunal if their request is not considered seriously.

Failure to tackle cultural stigma

The non-statutory approach would not help to resolve the stigma currently attached to flexible working as there would be a two-tier system. Parents and carers would continue to be a distinct group with the legislative right to request whereas other employees would need to rely on publicity surrounding the non-statutory code of practice and associated encouragement to their employers to consider requests. Non-parent/non-carers would not have the additional confidence to make a request that a statutory approach provides, and those employers who perceive flexible working to be an arrangement only for employees with caring commitments, rather than a positive change for their business, would continue in this belief. Similarly, perceptions amongst some employees that they shouldn't ask for flexible working unless they have a specific caring need will remain. The non-statutory route would also perpetuate the resentment felt by some employees that parents' work-life balance is more important than their own; whilst parents/carers have a legislative right to request flexible working, they do not, and before making a request they must have the confidence that their employer won't hold it against them. All of these factors mean that current perceptions that flexible working is a concession for parents who are no longer focussed on their careers will not be addressed. The stigma attached to flexible working will remain, as will the detrimental effects it has on the career progression and organisational standing of workers who have flexible working arrangements.

In contrast, the regulatory extension to the right to request flexible working (the preferred option), in asserting that flexible working is good for business regardless of the reason for requesting it, provides everyone with an equal legislative right and will not make any group of people distinct from others.

For all of these reasons, we believe a legislative extension will tackle the cultural stigma currently attached to flexible working, whilst a non-statutory approach will not.

Failure to reach resistant employers

A major challenge that the policy aims to overcome is reaching and convincing those who are resistant to change. It is unlikely that a promotion campaign and voluntary code would convince these individuals whereas the pressure of change in the businesses' operating environment would. Analysis of the Work Life Balance Surveys contained in this impact assessment demonstrates that previous extensions to the right to request flexible working (through legislative changes) have resulted in increased take-up. On the other hand, there is no evidence that a non-statutory code approach to the extension would yield the same result.

In contrast, the legislative extension to the right to request flexible working (option 1) requires employers to consider requests seriously. Regardless of how resistant they might be to flexible working practices, an employer would need to discuss flexible working with the requesting employee and consider the request fully before making a decision. This will ensure that employers are provided with new information on possible working arrangements, and consider them fully in the context of how they might work for their company before making a decision. It also gives employees the confidence to make a request in the knowledge that it will be taken seriously.

Additional complexity

Alongside these difficulties, a non-statutory code of practice added to the existing legislative provisions will add complexity to flexible working requests because of the two-tier system it creates. Employers will need to identify whether the employee is requesting flexible working using the statutory procedure or under the non-statutory code of practice before they process the request.

A legislative extension to the right to request flexible working (option 1) would make no distinction between the rights of parents and carers, compared to other employees, which will enable employers to treat all requests the same and not add complexity to the regulation in this area.

Stakeholder opinion

Many stakeholders during the consultation did not favour the non-statutory route⁴. It was felt that a statutory code was necessary to kick-start the employee-employer conversations and the culture change desired, which would not happen through a non-statutory route. The statutory approach ensures that employers consider requests properly, is more likely to increase take-up in those groups not currently covered by the Right, and in so doing change attitudes towards diverse working practices.

Reduced benefits

Detailed calculations are provided for costs and benefits in this impact assessment. In summary, we have assumed that take-up under a non-statutory code of practice will be half that associated with a legislative extension; since it is unlikely to generate the cultural change or encourage the bridging of the information gap that would come with the legislative option (details on the assumptions used for estimating take-up are provided in the assumptions section below). Thus new requests will fall from 81,000 under a legislative extension to 40,500 under a non-statutory code of practice. Under these assumptions the number of new working arrangements, that is existing employees who switch to flexible working, is estimated to be 31,800; a fall from 64,000 under the legislative option. Whilst the costs fall from £39.8m to £20.6m, there is also a significant fall in the benefits; on an annual basis from £55.8 with the legislative option to £23.2m under a non-statutory code of practice.

Publicity

The non-statutory code of practice would need to be publicised to ensure that employers are aware of it and convinced by it. It would also need to have support from business representative bodies. Based on consultation responses from the British Chambers of Commerce and the Federation of Small Businesses we can be confident that this support would be forthcoming. Because of the voluntary nature of the code the publicity campaign would need to be significant in order to create a step change in attitudes towards flexible working and a significant increase in availability.

The Department would therefore need to run a sustained marketing campaign aimed at both employees and employers. Changing cultural attitudes takes time, suggesting on past experience the need to run the campaign for between 18 months and 2 years. This would include high-profile and sustained PR activity, stakeholder engagement, the creation of regional and sector-based networks and best practice forums, a programme of conferences, sector-specific activities, online activity (such as search optimisation and banner advertising) and radio and other forms of advertising. The campaign would also need to be piloted and evaluated effectively to ensure maximum impact, which would add to costs.

In 2002 the then DTI ran a similar campaign to promote the benefits of work-life balance costing in the region of £2.25m. It is difficult to assess the direct effect of this campaign because it was accompanied by the introduction of the right to request flexible working for parents of children under 6. It is nevertheless likely that a campaign of similar scale and cost would be required for a non-regulatory approach to extending the right, depending on the profile Ministers want to achieve relative to other Government priorities.

Encouraging flexible working requires culture change on two fronts: employers and employees. Employers need to be convinced that flexible working works for their business and delivers real benefits and employees need to be convinced that if they make a request it will be taken seriously. A publicity campaign to deliver this message to both groups would need segmented messaging and would consequently be very costly with no guarantee of success.

The legislative extension to the right to request flexible working would not require a publicity campaign on the same scale. The legislative extension will generate significant media interest in its own right and the obligation it places on employers to consider requests fully (or face an employment tribunal claim) gives employees the confidence to make a request regardless of whether their employer is convinced of the case for flexible working at this point. With the legislative option, it is the conversation between employer and employee which sets out the case for flexible working, and in the context of the business in question. With a non-legislative option, however, it is more likely that employers will need to be

⁴ 80% of Modern Workplaces consultation respondents were in favour of the extension to the right to request flexible working; 65% of business respondents favoured the extension compared to 90% of non-business respondents (question 1: *Should the Government legislate to extend the right to request flexible working to all employees?*).

convinced of the case for flexible working before their employees are willing to make a request and they are willing to discuss it fully. Hence the need for an extensive publicity campaign.

Delivering against the policy objectives

A non statutory approach to extending the right to request flexible working to all employees would fail to deliver, or deliver less effectively against all of the policy objectives. This approach would fail to increase the availability and uptake of flexible working, because it will not influence culture change amongst both employees and employers. Whilst some employers may be convinced that flexible working is good for their business, employees would not have the confidence to make a request as their employer is not required to consider the request in any way. It would also fail to provide all employees with the same access to flexible working, as parents and carers would continue to have a legislative right, whereas other groups would have to have confidence that their employers will consider their request before they make one. This would fail to remove the potential resentment felt by employees without the right, and perpetuate the perception that flexible working only has benefits for parents and carers. We do not believe that a non legislative approach to extending the right to request flexible working will create the significant cultural shift to flexible working desired by Ministers.

(iii) Regulatory extension to the right to request flexible working [preferred option]

The Government has committed to *'extend the right to request flexible working to all employees, consulting with business on how best to do so.'*⁵

The intention of the proposed legislation is to ensure that employers give serious consideration to requests for flexible working arising from all employees irrespective of whether they are parents or carers.

Encouraging flexible working requires culture change on two fronts: employers and employees. Employers need to be convinced that flexible working works for their business and delivers real benefits and employees need to be convinced that if they make a request it will be taken seriously. The legislative extension to the right to request flexible working impacts both of these cultures. It delivers the messages to employers that flexible working works for their business, and ensures that they consider it in the context of their own business when a request is made and it reassures employees that their request will be taken seriously and won't have a detrimental effect on their career.

The duty to consider will encourage dialogue between employers and employees; it prompts the conversation between employer and employee through which both parties review current working practices and exchange information about what alternative arrangements might be possible. This happens because employers are required, under the legislation, to seriously consider requests, and because employees are confident that this will be the case should they make a request. The resulting improvement in the flow of information between both parties leads to better-informed decisions and enhanced outcomes for both employees and employers.

During the consultation process, stakeholders tended to agree that regulation was important because it protected those who cannot access flexible working. It encourages those employers who do not heed the strong business case to consider requests fully. It was seen as an important back-stop for stimulating culture change.

Stakeholders also welcomed the suggested approach to the extension of enabling employers to use their own processes to consider requests. Business representatives preferred the more non-prescriptive approach to the process, in particular the ability to set a more relaxed timetable for considering requests so long as they could show that it is 'reasonable'. On the other hand, some felt that the legislation might force firms to seek expensive external advice to ensure they are compliant. This is dealt with later in the IA.

The 2003 introduction of the right to request flexible working increased both the availability and the take-up of flexible working (see Table 1 below). We believe this further extension to the right will sustain and encourage further increases in flexible working.

As outlined below, a number of surveys have been undertaken just prior to and since the introduction of the right to request. Whilst comparing the results is sometimes difficult, due to changes in methodology

⁵ The Coalition: our programme for Government (2010).

and differences in the questions asked, they provide some indication about the effect of the previous legislation.

Impact of Previous Legislation

Table 1 presents a series of survey findings during the period that previous rights to request flexible working were introduced. The 2nd Work Life Balance Employee Survey was conducted in 2003 as the first right to request flexible working was introduced, and therefore acts as a baseline measure for this Right. It was followed by the 1st Flexible Working survey later on in 2003, which (looking at the approximate annual rates for comparison purposes) showed a dramatic increase in flexible working requests. The 2003 introduction of the right to request flexible working was accompanied by an extensive publicity campaign, which could account for some of the increase, but the figures nevertheless indicate that the legislation did impact on take-up. The second Flexible Working survey was conducted in 2005, and shows a drop in requests (to approx 7% per year), which could be explained by the fact that many employees took advantage of the right to request when it was first introduced, thus leaving less demand in subsequent years.

The 3rd Work Life Balance Employee Survey was conducted in 2006 and shows a return to previous demand levels (approx 8.5% per year). Interestingly, the 4th Work Life Balance Survey shows another spike in take-up, reflecting the major extension to the right in 2009 when parents of older children were given the right to request. The 2009 extension was accompanied by limited publicity, so the spike shows a 'pure' legislative effect on take-up.

Table 1. Survey Results on Requests to Work Flexibly

Employees	All Employees		Employed parents of children under 6	
	% making a request	Approx annual rate %*	% making a request	Approx annual rate %
Work Life Balance Survey of Employees 2 (Jan–Mar 2003) (requests over 2 years)	17	8.5	24	12
Flexible Working Survey 1 (Sept–Nov 2003) (requests in last 6 to 9 months)	13	21	24	38
Flexible Working Survey 2 (Jan 2005) (requests over 2 years)	14	7	22	11
Work Life Balance Survey of Employees 3 (Feb–Mar 2006) (requests over 2 years)	17	8.5	24	12
Work Life Balance Survey of Employees 4 (Feb–Mar 2011) (requests over 2 years)	22	11	34	17
Source: Work Life Balance Surveys of Employees and Flexible Working Surveys, BIS & DTI * Estimated request rate per year.				

Delivering against the policy objectives

The legislative extension to the right to request flexible working will deliver all of the policy objectives stated above. As the above evidence and chart 1 shows, by providing all employees with the same legislative right to request flexible working it will remove the distinction between parents and carers and other groups of employees; this in turn will help to remove the cultural stigma associated with making a flexible working request. Greater uptake of flexible working practices will improve labour market participation as individuals are able to undertake work in a way that works for them as well as their employer. For these reasons we believe that the legislative extension to the right to request flexible working is the best approach.

Consideration of other approaches: Micro business exemption

We have considered exempting micro businesses from this extension to ensure that we do not overload them with regulation. Given the policy objectives, and the evidence outlined below, we do not propose such an exemption in this IA.

The Third Work Life Balance Employer survey found that small firms were less likely than larger firms to provide flexible working for their employees. Seven per cent of the smallest workplaces (5 to 9

employees) had no forms of flexible working. Virtually all firms employing over 100 employees had some form of flexible working available to employees. Micro businesses were also less likely to have received requests to work flexibly. Only 28 per cent of the smallest workplaces had received requests compared with 94% of the largest workplaces.

Similarly, evidence from the Fourth Work Life Balance Employee survey shows that the request rate for flexible working within micro-sized employers is lower compared to larger-sized employers (see table 2 below).

Table 2. Requests to work flexibly*

Firm size	Request rate (over 2 years)
Single site: 1-9	14%
Single site: 10-49	23%
Single site: 50-249	18%
Single site: 250+	26%
All employees	22%

Source: Tipping et al, Fourth Work Life Balance Survey of Employees: Main Findings, BIS forthcoming

*Requests have been measured over a two year period. Firm size data presented in this table refers to respondents who work in a single site. There are also respondents who work in multi site organisations. The 'All employees' statistic uses the entire sample as the base.

This evidence suggests that excluding micro businesses would exacerbate the existing inequity in flexible working across the workforce, and greatly inhibit the labour market and cultural change sought.

If micro businesses were excluded from the extension (using a statutory code), we have estimated that this would reduce new requests by 6,100. The overall annual costs would fall by £3.0m from £39.7m to £36.7m. The benefits would also fall by £3.5m, from £55.8m to £52.3m⁶. Based on this we believe that small businesses can also benefit from flexible working in the same way larger businesses do, and in particular from the mutually beneficial conversations prompted by a formal extension to the Right.

The Parental Leave Directive requires that employees returning from parental leave have the right to request flexible working from their employer. For this reason we have only considered whether to exclude micro businesses from the *extension*, instead of from the right to request entirely. This approach would add to the complexity of the system for small employers and maintain the different status between those with caring responsibilities and those without, which would do nothing to remove the stigma attached to flexible working in those firms.

During consultation workshops, some stakeholders questioned the need for the legislation to include the smallest firms; it was said that many small firms handle requests informally and have very high acceptance rates. As demonstrated above, however, survey evidence seems to question this assertion showing that flexible working is less common in small firms. It was also argued that small firms find it hard to familiarize themselves with new legislation and will resort to expensive external legal advice. These issues are dealt with in the costs sections below.

Consideration of other approaches: Sunset clause.

We have also considered whether the right to request flexible working should be subject to a sunset clause. Given the focus, in the policy objectives, on cultural change we consider this extension to be a good candidate for a sunset clause in due course. We believe that the legislation would need to run for a minimum of 10 years to achieve its aims but could be repealed following this period. We therefore propose that the legislation includes a sunset clause that would require a review and further justification within 5 years of implementation.

⁶ We have calculated this by adjusting downwards the costs and benefits of the regulatory extension option to reflect the share of employment within micro businesses (11.8% according to BIS 2011 SME statistics) and to account for employees having a lower request rate in micro businesses (14% over two years compared to 22% for all employees, WLB 4 employee data). Figures have thus been reduced by a factor of 0.08 (= 0.118 * (14 / 22)). Note that the micro business exemption does not affect the £9.1m statutory code savings estimate.

Costs and Benefits of a Regulatory Approach

Cost and benefit estimates are provided for both the [preferred] regulatory extension to the right to request flexible working to all employees and a non-regulatory approach. The regulatory extension includes the removal of the existing statutory procedure and the new right being accompanied by a statutory code of practice.

Estimates of the non-statutory approach and publicity campaign are provided after those for the regulatory approach.

1. Background

Since April 2009, the law provides those with caring responsibility for adults, and for children aged 16 and under or disabled children under 18 the right to apply to work flexibly, with a statutory duty on employers to consider such requests according to a set procedure.

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

The law does not provide an automatic right for parents and carers to work flexibly. This reflects the reality of the workplace where there will sometimes be circumstances when an employer is unable to accommodate an employee's desired work pattern. There are eight business grounds specified in legislation under which a request can be refused⁷.

2. Eligibility

To be eligible to make a request under the current Right for parents of children aged 16 and under (of children aged under 18 if the child is disabled) and carers of adults, a person must satisfy the following criteria:

General

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

Parents

- Be the parent, or have caring responsibility, for a child aged under 17
- Have responsibility for the upbringing of the child and be making the application to enable them to care for the child
- Be either:
 - the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has been granted a residence order in respect of a child; or

⁷ Section 80(G)(1)(b) of the Employment Rights Act 1996 list the following eight grounds for refusal of a request for flexible working:

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

- married to, or the partner or civil partner of, the child’s mother, father, adopter, guardian, special guardian, foster parent or private foster carer or of a person who has been granted a residence order in respect of a child.

Carers

- Either:
 - live with the person they have caring responsibility for, or
 - be a relative of the individual they have caring responsibility for.

Under the new right, only the general criteria will apply.

Assumptions

1. Earlier impact assessment work

The methodology adopted for estimating the costs and benefits associated with the extension of the right to request flexible working follows closely, and builds upon, that used for the development of earlier policy in this area. Specifically, this relates to impact assessment work carried out in 2008 for parents of children aged 6 to 16, in 2010 for those with caring responsibility for children aged 17 and under⁸ and the recent consultation stage IA⁹.

For the calculations of costs, the parents of 17 year olds are included along with employees with no caring/parenting responsibilities. For benefits calculations, they are treated separately since benefits were assumed to be slightly greater for the first group than for employees with no caring/parenting responsibilities. This is dealt with in more detail in the following sections.

2. Deadweight

Among requests overall, we have assumed that some should be regarded as ‘deadweight’ i.e. requests that would have occurred in the absence of any Government intervention. We know from survey evidence that many employers already provide flexible working to all their employees. It is not straightforward to estimate the deadweight effect.

We have used a similar approach to the consultation stage IA to estimate the deadweight. The estimates have been updated as a result of more recent data from the 2011 4th Work Life Balance Survey (WLB4) results that have become available since the consultation period.

Details are provided in Table 3 below, which shows estimates of deadweight both for those who already have the Right (from previous legislation) and for those who would receive the Right under the proposed extension. We need to make deadweight assumptions for the former group in order to calculate the value of benefits resulting from the removal of the statutory procedure and its replacement with a code of practice (which reduces the time employers will need to spend on requests relative to the current system).

3. New requests in addition to deadweight

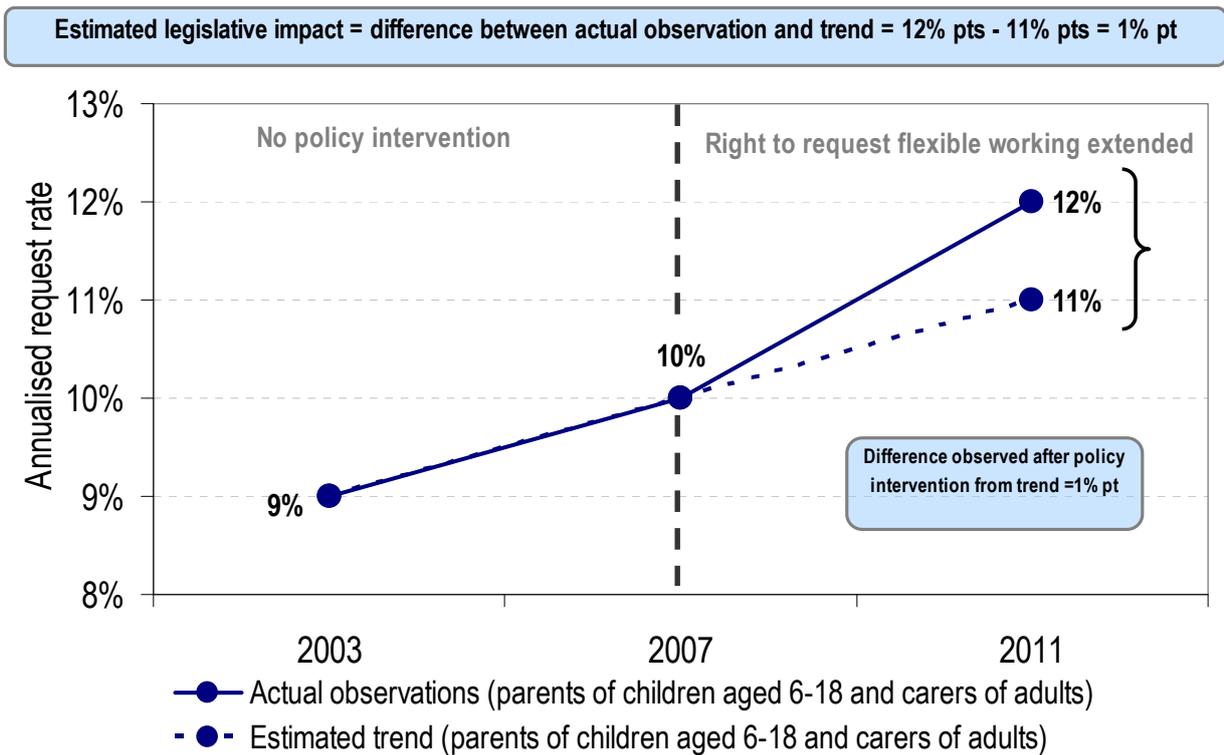
Among requests overall, and on top of the deadweight, there are ‘additional’ requests that result from the legislation; both existing legislation (for those who already have the Right) or proposed (for those who would be affected by the proposed extension of the Right). It is very difficult to estimate the precise number of these additional requests, but the trend analysis outlined below provides a basis for our estimates.

⁸ See respectively ‘Imposing a Duty on Employers to Seriously Consider Requests for Flexible Working from the Parents of Young and Disabled Children’, 2002 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 40, www.berr.gov.uk/files/file11440.pdf, and ‘Extending the Scope of the Right to Request Flexible Working (Full)’, 2006 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 74, www.berr.gov.uk/files/file38874.pdf, and ‘Amending and Extending the Right to Request Flexible Working to Parents of Older Children’, March 2009, and ‘Extending the Right to Request Flexible Working to Parents of Children aged 17’, October 2010.
⁹ <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/e/11-744-extending-right-to-request-flexible-working-impact.pdf>

Trend analysis of the effect of previous extensions to inform take-up rate assumptions

Chart 1 below shows an extrapolated trend line of take-up for carers of adults and parents of children aged 6-18 years old in the period 2007-2011, as well as actual take up. From this we estimate the policy impact of the extension of the right to request to these groups in 2007 (carers) and 2009 (parents of older children), to inform our assumptions of likely take up as a result of the proposed extension. This analysis suggests that the extension of the right to request boosted take-up of these groups by 1 percentage point from trend. This boost was not observed in non-care groups who do not have the legislative right (see Annex F).

Chart 1. Trend analysis of request rates (of parents of children aged 6-18 and carers of adults) to inform take-up rate assumptions



Source: BIS analysis of 2nd, 3rd and 4th Work Life Balance Surveys of Employees

Stakeholder consultation

Many stakeholders participating in the consultation workshops felt that the current legislation had had an effect on parents – particularly women but less so for fathers and carers because of their low awareness. Stakeholders felt that the proposed extension would increase take-up of the Right although it could be slow at first, rising over time; there would be a boost in take-up in those groups currently not covered, an increased awareness of the right overall, and from that a boost to those already covered by the legislation as well (although we do not account for this latter effect in our calculations). The extension could also lead to fathers being more honest about their reasons for taking time off for working flexibly as the stigma described earlier reduces over time.

Whilst stakeholders had no evidence to support the estimates of take-up we use below, some suggested they were low and that they may be higher with more promotion and awareness.

Take up assumptions

Given this evidence, and that outlined in the Options Identification section earlier, we assume that the proposed extension to the right to request to all employees is likely to lead to increases in requests to work flexibly. The text below outlines our assumptions of the magnitude of these increases.

For the purposes of calculating benefits resulting from the removal of the statutory procedure (and replacement with a code of practice) in relation to those who already have the Right, we need to make assumptions about the effect previous legislation is having on current and future request rates. Using the evidence above, for parents of children aged 0 to 5 we assume the request rate overall remains the same as that reported in the WLB4 survey for this group, and that the majority is deadweight with only 1.25% for mothers and 0.75% for fathers being 'additional' requests resulting from previous Government intervention (1% overall, in line with the trend analysis). These assumptions have also been applied in relation to employees who are carers and parents of older children.

For the other groups of employees (who have not yet been the subject of government intervention on flexible working and would be affected by the proposed extension to the right) we have taken WLB4 survey request rates to be the deadweight (i.e. those requests which would take place in the absence of legislation). We have further assumed that the proposed extension would increase these rates (over and above the deadweight) by a cautious 1.25 percentage points for mothers of children aged 17 and a 0.75 percentage point increase for fathers of children aged 17. As before, these assumptions are based on the trend analysis outlined above.

For non parents or those with no caring responsibility we have assumed a slightly more cautious approach and estimated that the new right will result in a 0.75 percentage point increase in requests overall. This small proportion of additional requests reflects the fact that many businesses currently provide flexible working and that this legislation is targeting those groups of employees who are less likely to work flexibly, less likely to make requests and less likely to have their requests accepted.

Details are provided in Table 3 and Charts 2 and 3 below. In its March 2012 Opinion, the RPC suggested we provide more evidence and analysis to support our assumptions regarding take-up rates. We have therefore amended the preceding sections to clarify how we have arrived at these.

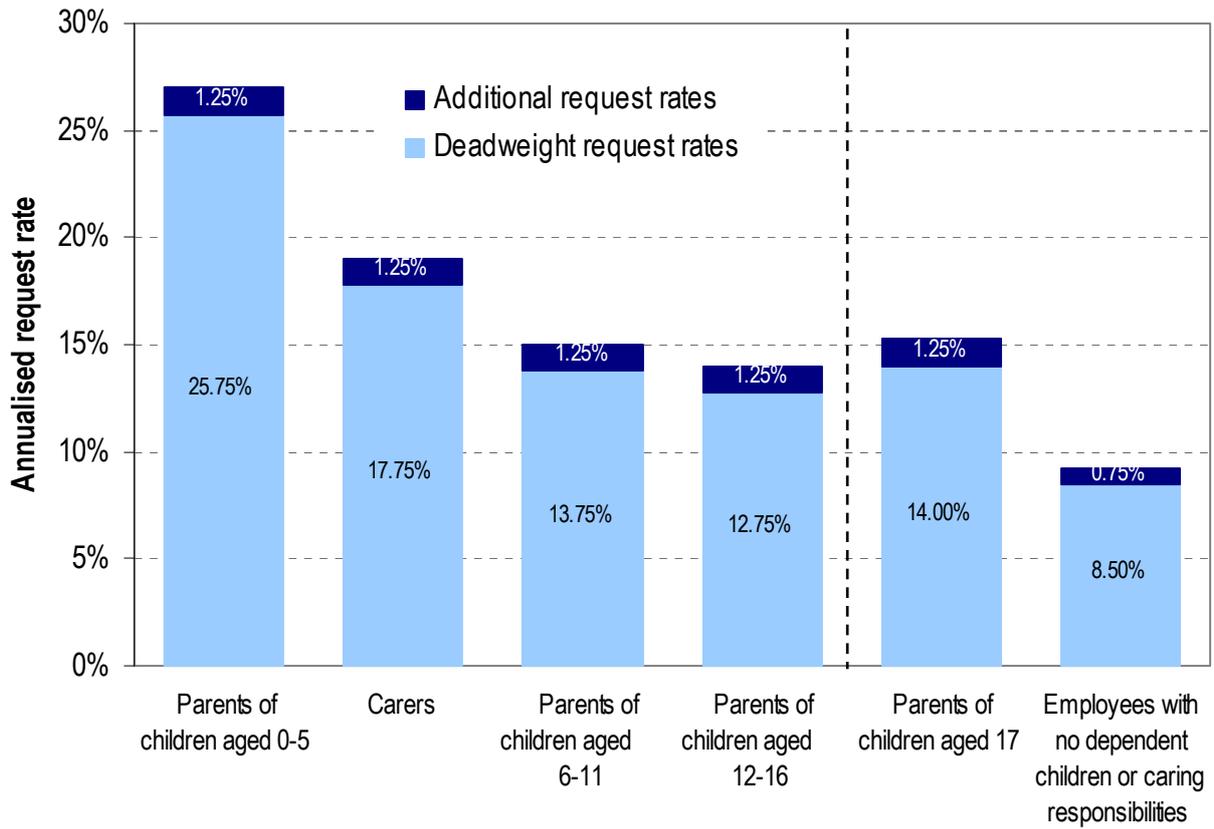
Table 3. Estimated annual deadweight request rates and additional requests

Employees	Estimated Deadweight Request Rate %		Estimated Additional Requests %	
	Females	Males	Females	Males
Parents of children aged 0 – 5 ^a	25.75	8.75	1.25	0.75
Carers ^a	17.75	7.25	1.25	0.75
Parents of children aged 6 - 11 ^a	13.75	5.25	1.25	0.75
Parents of children aged 12 - 16 ^a	12.75	5.75	1.25	0.75
Parents of children aged 17	14.00	6.50	1.25	0.75
Employees with no dependent children or caring responsibilities	8.50	8.50	0.75	0.75

Source: BIS estimates based on 4th Work Life Balance Survey of Employees, 2011

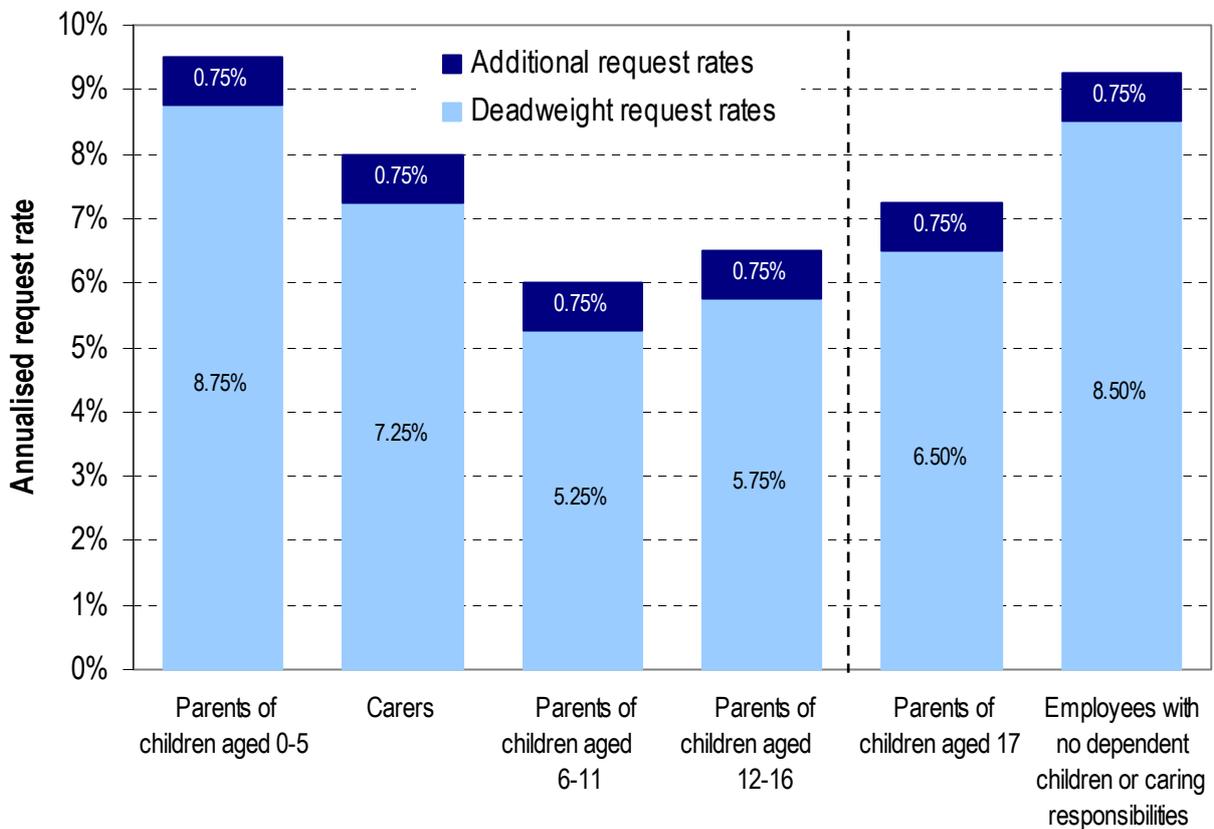
^a Estimated deadweight and additional requests included here to inform calculation of benefits resulting from removal of statutory procedure.

Chart 2. Estimated annual deadweight and additional request rates for women



Source: BIS estimates based on 4th Work Life Balance Survey of Employees, 2011

Chart 3. Estimated annual deadweight and additional request rates for men



Source: BIS estimates based on 4th Work Life Balance Survey of Employees, 2011

4. Estimated eligibility and new working arrangements

Table 4 below shows the number of entitled employees, the number of requests (overall, deadweight, and additional) and the estimated number of new working arrangements per annum expected from employees, by parental or caring responsibilities.

Table 4. Estimated number of entitled employees and of new working arrangements per annum*

	Number of entitled employees (millions)	Number of requests overall (000s)	Number of deadweight requests (000s)	Number of additional requests (000s)	Additional number of new working arrangements p.a.* (000s)
Scope of law					
Parents of children aged 0 to 5	4.0	704,000	665,000	39,000	31,000
Parents of children aged 6 to 11	2.3	250,000	227,000	24,000	19,000
Parents of children aged 12 to 16	1.8	198,000	179,000	19,000	15,000
Parents of children aged 17	0.3	39,000	35,000	3,400	2,700
Carers	1.8	265,000	246,000	19,000	15,000
Employees with no dependent children or caring responsibility	10.3	957,000	879,000	78,000	61,000
Total	20.6	2,412,000	2,230,000	182,000	144,000
Total (from the proposed extension)	10.7	996,000	915,000	81,000	64,000

Source: LFS Q2 2011, 4th Work-life Balance Survey of Employees, BIS estimates.

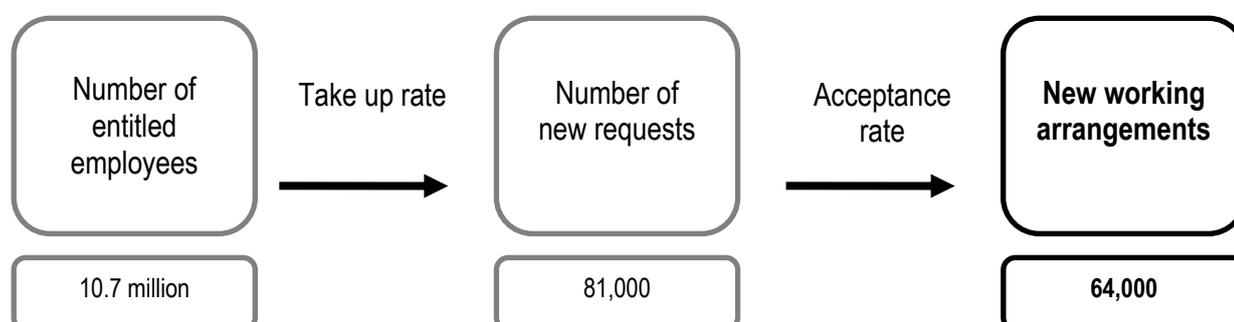
*Excluding deadweight.

Figures have been rounded. Total may not sum to individuals parts due to rounding.

Note: Since the consultation stage IA BIS has refined the methodology used to extract data from the LFS micro data set. Respondents who classify themselves as a child within a household unit have been excluded from the estimated number of entitled employees, which has led to a reduction in total eligible employees from 22.9 million to 20.6 million.

The figure below illustrates the relationship between newly-entitled employees and number of new working arrangements. New working arrangements refer to when an existing employee switches to flexible working.

Figure 1. Relationship between entitled employees and number of new working arrangements



Source: BIS estimates using LFS data and Work Life Balance Surveys of Employees

We estimate that following an extension of the right to request flexible working to all employees there would be 2.4 million requests per annum overall (around 12% of eligible employees), but of these the majority would be deadweight and the remainder (182,000) would be *additional* requests arising because

of the existing right and the proposed extension to this. Those without parenting or caring responsibilities represent 78,000 of these new requests and 3,400 come from parents of 17 year olds.

The estimates for the numbers of new working arrangements are based on the Work Life Balance Employee surveys which suggest that 78 per cent of requests are accepted at a first stage. This may be an underestimate since at the time of the surveys a number of requests (between 5 and 8 per cent) were yet to be decided. Also, employer data suggests that acceptances are higher. For example, in the 3rd Work Life Balance Employer survey 90 per cent of employers indicated that they accepted all requests. We have nevertheless taken a cautious approach and assumed in this impact assessment that only 78 per cent of requests are successful at first stage. These rates vary very little by whether or not employees had parental or caring responsibilities.

The 3rd Work Life Balance employee survey also found that of those employees whose request was denied, 25 per cent went on to appeal. Of those, 20 per cent were successful. The same percentages have been used in the calculations providing the estimates in Table 4 and have not changed from the consultation IA. Details are provided in Table C1 in Annex C. Of the 78,000 additional (non-deadweight) requests from employees with no caring responsibility it is estimated that 61,000 will lead to new working arrangements. For parents of 17 year olds, of the 3,400 additional requests, 2,700 will result in new working arrangements.

Benefits

1. Research evidence

A number of research studies have been carried out in recent years which have sought to measure the impact on employees and/or employers as a result of flexible working arrangements. This includes research commissioned by BIS and business organisations, and academic research.

i) Benefits to business

Box 1: Why is flexible working good for employers?

The right to request flexible working provides significant benefits to employers not only through recruitment, retention and morale, but also in terms of enabling a more responsive business. For example, employers are able to negotiate with their employees to use flexible working practices to extend their operating hours, through staggered start and finish times; or respond to peaks and troughs in demand, by allowing employees to work fewer hours during quiet periods and more in busy periods.

Whilst employers who have embraced flexible working have seen these benefits, many other employers have told the Department for Business through informal consultation that the reason they do not provide the ability to work flexibly is because they are not aware of the benefits it can bring, or believe that the benefits are restricted to parents, carers or lower level jobs. Rectifying this information failure and changing cultural expectations is the main policy aim of this initiative. The proposed extension to the right to request flexible working prompts both employees and employers to review current working practices and exchange information about what working arrangements might be possible. This happens because employers are required, under the legislation, to seriously consider requests, and employees have the confidence that this will be the case should they approach their employer.

The resulting improvement in the flow of information between both parties leads to better-informed decisions and enhanced outcomes for both employees and employers. As an example, currently, an employer could accept a request from a valued member of staff in order to retain them without considering the full range of flexible working options that may suit the employer better (e.g. accepting a request to work part-time when a more suitable solution for the employer could be a compressed week). Or an employer might refuse a request because of the disruption to the business, when a proper discussion of the options could highlight a compromise approach that would benefit both parties.

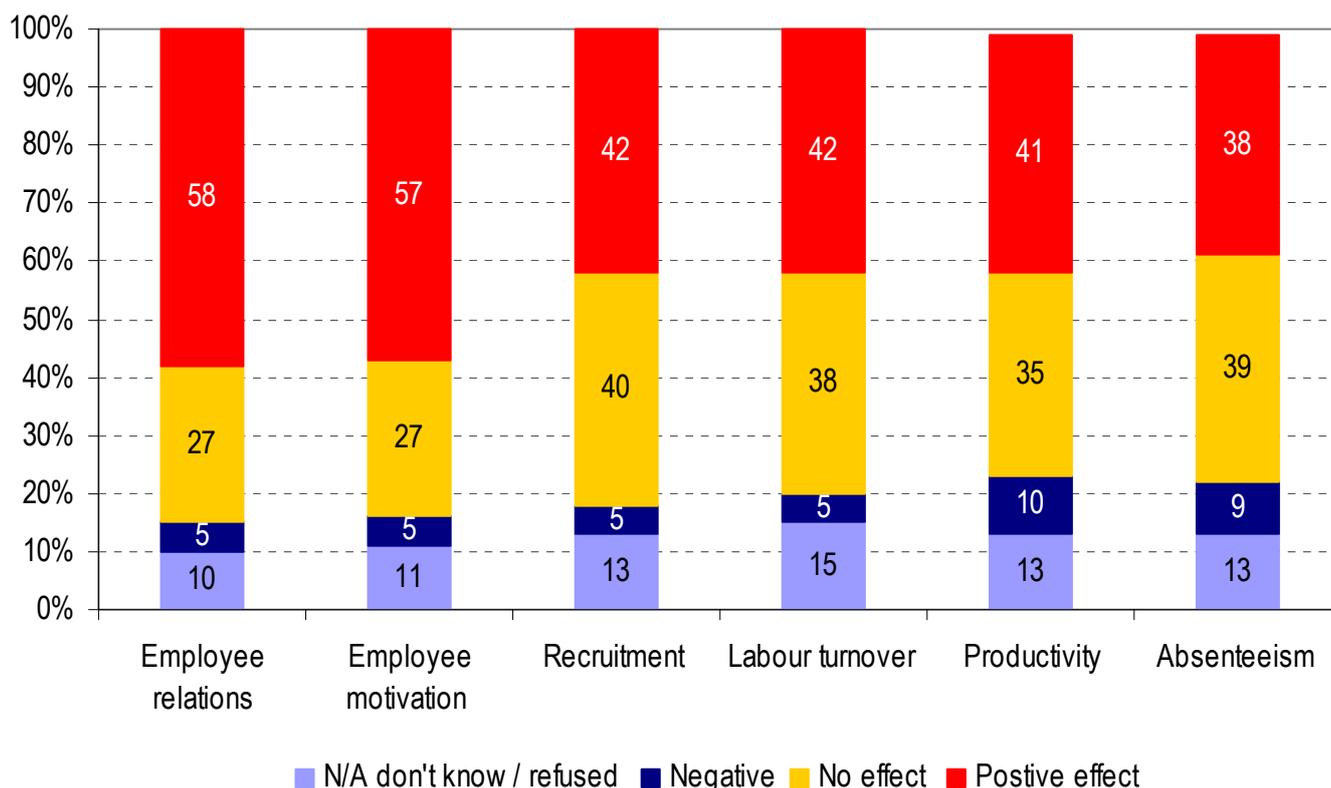
Since the introduction of the right to request flexible working a number of surveys of businesses have been undertaken exploring their perceptions of the benefits. These are summarised briefly below.

Third Work-Life Balance Employer Survey (BIS)

The Third Work Life Balance Employer survey asked respondents about the effect flexible working practices had on employees and human resource management. For each of six criteria, employers were asked whether they thought flexible working and leave arrangements had a positive, negative or no effect. Details are shown in Chart 4 below.

Over half of workplaces felt that flexible working had had a positive effect on employee relations and motivation and commitment at the workplace. Just over 40 per cent felt effects on recruitment, labour turnover and productivity had been positive whilst 38 per cent perceived a positive effect on absenteeism.

Chart 4. Employers' perceived effects of flexible working



Source: BIS Third Work-life Balance Employers Survey (2007)

CBI Employment Trends Survey

More recently, the CBI Employment Trends Survey (Navigating Choppy Waters, 2011) also explored the impact of flexible working on businesses. When asked about the impact on their business of granting requests to work flexibly, a clear majority (74 per cent) of employers saw a positive impact on employee relations, with only a few (four per cent) noting a negative impact. Recruitment and retention were also affected positively by employers offering more diverse working patterns; 61 per cent noting a positive impact.

In addition, 38 per cent of employers reported a positive correlation between granting requests to work flexibly and lower absenteeism rates, and 37 per cent noted improved productivity. The figures for absentee rates and productivity show a slight increase on the 2010 survey results.

The 2011 CBI employment trends survey did highlight wariness amongst employers over the extension to the right to request flexible working. Some respondents anticipated a negative impact on productivity, customer service and labour costs (32%, 35% and 38% respectively). We consider that this is driven by the fear of additional burdens on business. We believe that some of these concerns will be mitigated by the move from a statutory procedure to the statutory code of practice, which will enable employers to

consider requests in an informal way. Moreover, these concerns are not supported by the consultation responses¹⁰.

British Chambers of Commerce

A British Chambers of Commerce survey¹¹ of employers found that over 70 per cent of respondents noted some or significant improvement in employee relations as a result of offering flexible working arrangements compared with only 26 per cent who noted no improvement.

IRS Employment Review

Flexible working surveys conducted by IRS Employment Review in 2009 and 2010 found that the majority of businesses surveyed cited improved retention (73% of employers), flexibility of cover (65%) and increased employee engagement (63%). In addition, cost savings is a well-recognised benefit of flexible working with almost half the organisations surveyed (42%) citing this advantage.¹²

Additional benefits

Additional benefits to employers were highlighted during the consultation and consultation workshops in the form of reduced wage bills for employees who reduce their working hours, as well as reduced costs of office space, where employees are working from home or working flexible shift patterns. These benefits have not been monetised as there is insufficient evidence to estimate them accurately.

(ii) Benefits to employees

Box 2: Why is flexible working good for all employees?

The current right to request is restricted to parents and carers, but flexible working can be used to support people for many reasons. Small changes to working patterns or hours of work can enable employees to accommodate their responsibilities outside of work, and hence stay in work, or (re-)enter the labour market.

- Many individuals have caring responsibilities but do not meet the narrow definition in the current flexible working legislation. Grandparents are a traditional support mechanism for parents who need help with childcare in order to return to work; but as older individuals increasingly have longer working lives we need to help them balance these two commitments.
- In keeping with the Big Society, we need more people to give their time and expertise to support their community. Many individuals will only be able to do this if they can secure greater flexibility from the other responsibilities in their life.
- An ageing society means that more people than ever before will have caring responsibilities, and will be looking for support from many different places. Friends and neighbours can help with caring for people, but often only if their working patterns allow.

Employees report a range of benefits from flexible working. In the 4th Work-life Balance employee survey, almost nine in ten employees (93 per cent) working flexibly believed there were positive consequences of working this way, while just 5 per cent said there were none. Amongst the most frequently cited positive consequences of taking up flexible working were having free time in general (20 per cent) and having more time to spend with family (18 per cent).

Some employees also mentioned various aspects of their lives improving as a result of taking up flexible working arrangements. The responses included 'improved relationships', 'not suffering from as much stress', 'improved health', 'improved work-life balance' and 'enjoying work more/being happier'.

It has also been found that flexible workers (40 per cent of full-time flexible workers) were significantly more likely than non-flexible workers (31 per cent) to be very satisfied with their current working

¹⁰ 80% of Modern Workplaces consultation respondents were in favour of the extension to the right to request flexible working; 65% of business respondents favoured the extension compared to 90% of non-business respondents (responses to question 1: *Should the Government legislate to extend the right to request flexible working to all employees?*).

¹¹ *Work and Life; How business is striking the right balance*, British Chambers of Commerce (2007).

¹² *IRS flexible working survey 2010 and 2009*, Charlotte Wolff, IRS.

arrangements¹³. Also, employees who were using some form of flexible working were more committed to their employer and reported better psychological health.¹⁴

A CIPD survey¹⁵ found that employees who are satisfied with their work-life balance and those who are able to work flexibly are more engaged with their work than those who are dissatisfied or not working flexibly. It found that those on flexible contracts tend to be more emotionally engaged, more satisfied with their work, more likely to speak positively about their organisation and less likely to quit than those not employed on flexible contracts.

In a qualitative study of SMEs, employees of those organisations that offered flexible working valued their employers' approachability, and expressed appreciation of the fact that their employer would listen to their requests with an open mind and a flexible outlook. Employees said that flexibility made good business sense, promoted motivation and effort, and deserved a reciprocal response.¹⁶

Finally, 89 per cent of all employees thought that 'having more choice in working arrangements improves workplace morale'.¹⁷

Many participants in the consultation workshops felt that there was clear evidence of benefits to business. These included improved morale, improved retention, less absenteeism, help for older workers and the use of availability of flexible working as a recruitment tool. They also argued that there were secondary effects on those who do not use flexible working; although they do not benefit in a direct way, they may have better morale because they feel they work for a more supportive organisation.

During the consultation many stakeholders provided detailed case studies setting out the benefits accrued to the individual firm studies. Some of these were substantial e.g. British Telecom¹⁸.

The Department also commissioned a literature review of academic studies, which was less conclusive¹⁹. Whilst many of the studies covered found a link between work-life balance practices and the various benefits highlighted here, a number only found a small effect or found that the effect to be neutral.

Box 3: Why is flexible working good for society?

The acceptance of a culture of flexible working will enable more people to participate in the workplace and support a number of the Government's key policies:

- **Child Poverty.** Enabling low income households to utilise the earning power of both parents (or in single parent households sole earning power), without the need for expensive childcare can help families out of poverty.
- **Single parents.** DWP recently announced that from 21 May 2012 single parents will be required to seek work when their child is 5. However parents are allowed to restrict their job search to school hours only. The availability of flexible jobs is critical to the success of this policy.
- **Carers.** The UK relies on individuals to care for their relatives and loved ones, to avoid the need for the NHS to take on full-time caring responsibility. However, if a carer is unable to remain in employment, then they will be dependent on benefits to maintain the caring role. Changing the culture around flexible working and increasing its availability will enable more individuals to remain in employment whilst caring.
- **Older workers.** Many employees are choosing to work for longer but employees and employers will continue to have discussions about retirement. Flexible working is an option to enable people to stagger their retirement instead of creating a 'cliff edge' retirement. It can also help employers to manage the transition.

¹³ *Fourth Work Life Balance Employee Survey: Main Findings*, S Tipping et al, BIS forthcoming.

¹⁴ *Attitudes to flexible working and family life*, Houston, D. and Waumsley, J (2003), Joseph Rowntree Foundation.

¹⁵ *Working life: employee attitudes and engagement*, Truss, C., Soane, E. and Edwards, C. (2006). Chartered Institute of Personnel and Development research report London.

¹⁶ *Smaller organisations and flexible working arrangements*, Dex, F and Scheibl, F (2002). Joseph Rowntree Foundation/Policy Press.

¹⁷ Hooker, H., Neathey, F., Casebourne, J. and Munro, M. (2007) *Third Work Life Balance Employee Survey: Main Findings*. Department for Business, Innovation and Skills, Research series No. 58.

¹⁸ Flexible Working: Can your company compete without it?, BT, 2007.

¹⁹ Costs and Benefits to Business of Adopting Work-life Balance Working Practices: A Literature Review, Smeaton, D, Ray, K and G Knight, 2012, BIS, forthcoming.

- **Encouraging Shared Parenting.** Shared parenting means involving both parents in the care of a child. The current right to request flexible working is targeted to parents and carers, which many people interpret as women. Making flexible working a mainstream practice will remove this interpretation and encourage more fathers to use it, enabling a greater sharing of the childcare responsibility.

2. Analysis of Benefits

Using the findings from above, our analysis of the benefits resulting from the extension of the right to request flexible working includes calculations for:

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

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

It is likely that these benefits will be realised for subsequent years. This assessment also examines the potential stream of benefits from employees working flexibly from previous years as a result of successful additional requests to work flexibly.

(i) Reduced vacancy costs and increased skill retention

Where flexible working enables employees to remain with their employers, there will be benefits in terms of reduced staff turnover costs and increased skill retention. At present, many employees have some form of flexible working pattern, but to achieve this, a proportion will have had to change their job at some cost to their original employer.

As indicated above, many employers report experiencing a positive impact of flexible working on recruitment and retention of employees, e.g. in the 2011 CBI Employment trends survey, 61 per cent said that flexible working practices had a positive effect on recruitment and retention.²⁰

There are no reliable figures on the cost to fill a post that becomes vacant. In order to find a suitable measure, for the purposes of this IA, we have assumed a cost of £6,315²¹.

In 2011, CIPD estimated an overall labour turnover rate of 12.5 per cent²². The CIPD 2009 survey found that 9% of employees changing jobs left their job for reasons relating to their hours. We have assumed, therefore, that for non parents/non-carers that change jobs, a proportion leave for reasons that may have been prevented by availability of flexible working which could have addressed issues relating to hours. In particular, we assume that, for non-parent/non-carers, the introduction of a right to request flexible working will prevent 1 per cent of the 9 per cent planning to leave for reasons relating to hours from actually doing so. This proportion is half that used in previous IAs relating to parents since the benefit is assumed to be lower for the non-parent group. The savings made through lower recruitment costs are presented in the table below.

For the parents of 17 year olds, we assume slightly higher percentages. The 2009 CIPD survey found that of those leaving their jobs, 21 per cent²³ left either to have - or look after their - children²⁴. To

²⁰ *Employment Trends Survey: Navigating choppy waters*, Confederation of British Industry (CBI) (2011).

²¹ Since 2004 CIPD have carried out an annual survey on recruitment and turnover covering between 715 and 905 UK organisations. The survey asks about the costs of labour turnover and costs of recruitment. In its latest (2009) survey, the average cost of labour turnover per employee was £6,125. This has been updated to 2010 prices by applying a growth rate of 3% per annum. It should be noted, however, that the CIPD figure is based on relatively few organisations providing information on the cost of overall labour turnover.

²² CIPD, Recruitment and turnover survey 2009.

²³ CIPD, Recruitment and turnover survey 2009. In 2009 21 per cent of people who left their job, did so to have, or look after, their children. In 2007 the figure was 18 per cent and in 2008 it was 27 per cent.

estimate the effect of the policy for this group of employees, it is thus assumed that the introduction of a right to request flexible working will prevent 2 per cent of the 21% planning to leave for reasons relating to looking after children from leaving their jobs.

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

Scope of law	Estimated number of employees who leave their job	Estimated number of employees who decide to remain with their existing employer as a result of the scope of law being extended	Employer savings in recruitment costs as a result of extending scope of law
Parents of 17 year olds	8,500	170	£1.1m
Non-parents/non-carers	116,000	1,200	£7.3m
Total			£8.4m

Source: LFS Q2 2011 and BIS estimates. Figures have been rounded.

Stakeholders participating in the consultation workshops were unable to provide further evidence to help refine the IA assumptions on recruitment benefits. However, they did feel that access to flexible working could be ‘make or break’ for someone if they have caring responsibilities.

Stakeholders reported evidence of fathers changing jobs to suit caring responsibilities, but often not admitting this to employers. Thus employers do not get an opportunity to discuss flexible working possibilities with key staff and miss opportunities to keep them. It was felt that if there is a culture change, there may be more openness in discussions preventing some moves.

(ii) Increased productivity and profits

How do the Productivity Benefits Occur?

As highlighted earlier, the proposed extension to the right to request flexible working will prompt both (non-parent/non-carer) employees and employers to review current working practices and exchange information about what working arrangements might be possible. This happens because employers are required, under the legislation, to seriously consider requests, and employees are confident that this will be the case should they approach their employer. Both parties consider alternative ways of working they might not previously have thought of, or been aware were possible.

The new working practices that result impact positively on productivity in 2 ways: first, through the effect on the morale, motivation and effort of the employee whose new working arrangement suits them better; and second, through the ‘better business model’ established, i.e. changes in employee working arrangements that directly improve the ‘method of production’.

There is a considerable body of evidence in support of this. Much of this research focuses on the transmission mechanisms leading to the first effect and on those with caring responsibilities (in part because of the focus of existing legislation), but other evidence looks directly at the link between flexible working and productivity. Annex G summarises this research, which has largely been corroborated by our consultations with businesses and their representative bodies.

As noted in Annex G, there are several routes through which the first effect described above comes about. The starting point is a working arrangement that suits the employee better; that better enables them to reconcile their work and non-work lives. For example, as some of the literature reported in Annex G highlights, flexible working arrangements can have a positive impact on work-family conflict; reduced work-family conflict and the associated pressure leads to a workforce that is more satisfied, engaged or committed, and has higher morale. The same process applies to those without caring responsibilities who are also better able to reconcile home and work commitments. For both groups, changes to working arrangements make them more motivated to work hard and perform well because they are more contented or driven at work. An alternative route, also tested in the literature, focuses on employees with new flexible working arrangements feeling duty bound to work hard as a reciprocal act in exchange for the work-life balance their employer is facilitating.

²⁴ These findings are supported by the British Social Attitudes Survey (BSAS). In 2002 it found that 26% of men in paid employment have at some point changed their hours or working arrangements to look after someone (mainly children), with 9% giving up work altogether for this purpose (British Social Attitudes Survey, 2002).

All these changes in attitudes and performance impact on establishment level outcomes such as productivity and financial performance. For those who take up the new Right, a combination of these factors is likely to produce the increase in productivity that many surveys and stakeholder groups report.

There may also be more general improvements in productivity resulting from the new working arrangements fitting the needs of the business more. For example, an employee's request to change their working hours may fit better with peak periods in the business; improving the quality of 'delivery' during these times, and hence productivity.

Calculating the productivity benefit

Analysis of survey data in this area supports the view that productivity improvements result from flexible working. For example, research²⁵ comparing the results of the 1998 and 2004 Workplace Employment Relations Surveys in this area found that:

Workplaces in which the incidence of family-friendly provisions increased over the time period were more likely to be identified by managers as having improved in financial performance relative to others in the field. This finding was consistent while controlling for the effect of market factors and the presence of management techniques potentially associated with improved financial performance. Although the association does not provide evidence of causality, it does counter arguments that adopting family-friendly policies is a luxury that will have negative consequences for financial performance, suggesting instead a compatibility between both outcomes²⁶.

More recent research, produced separately by BIS, the CBI and the BCC, provide further evidence on the proportions of businesses reporting a positive impact of flexible working arrangements on firm productivity. The Third Work Life Balance Survey of Employers found that 12 per cent of employers thought that flexible working and leave arrangements had a negative effect and 47 per cent reported a positive effect, with the remainder reporting no impact²⁷. Overall, therefore, in net terms, 36 per cent of firms reported a positive impact on productivity²⁸. The Third Work Life Balance Survey was based on responses from 1,456 managers. These findings are supported by later CBI survey results. In addition, research from the British Chambers of Commerce found that 58 per cent of small to medium sized enterprises reported improvements in productivity from offering flexible working patterns or leave arrangements (46 per cent said 'some improvement' and 12 per cent 'significant improvement').²⁹ Annex G summarises the wider body of research in this area.

The methodology we follow to estimate the productivity benefits to business for both parents of 17 year olds and non-parents/non-carers starts with this calculation of the net proportion of businesses – 36 per cent – reporting an improvement in productivity from flexible working arrangements. Although the research evidence provides considerable backing for a productivity effect, it does not provide a measure of this productivity gain overall, at an individual level, or in terms of the distribution across businesses. We have therefore assumed that a 5 per cent output gain would be achieved for the 36 per cent of new working arrangements (existing employees who switch to flexible working) that result in increased productivity. A 5 per cent level was chosen as a modest rise, but one sufficient for employers to have noticed it and reported a positive productivity impact from flexible working. We have conducted sensitivity analysis on this 5% assumption to show what the profits benefit would be under 3% and 10% assumptions (see table 6b). Since we apply this only to a subset of the new working arrangements resulting from the extension, it is equivalent to an average increase in productivity of 1.8% across all the new working patterns that result from the extension. This assumption was also tested with stakeholders – see below.

This increase in productivity would lead to higher output. Using national accounts data we estimate that, of this increase in output, around 32 per cent is accounted for by gross operating surplus (profits)³⁰. Figure 2. below illustrates the methodology used to estimate the impact on profit of parents of 17 year

²⁵ Whitehouse, G. et al, "Reassessing the 'family-friendly workplace'; Trends and influences in Britain, 1998-2004", BIS Employment Relations Research Series No.76, July 2007.

²⁶ Ibid. p.4

²⁷ We assumed that the 13 per cent of employers that did not answer or refused to answer (as shown in Chart 4) perceived the same effect on productivity as those who did answer.

²⁸ 47.2 per cent – 11.5 per cent = 35.7 per cent ~ 36 per cent.

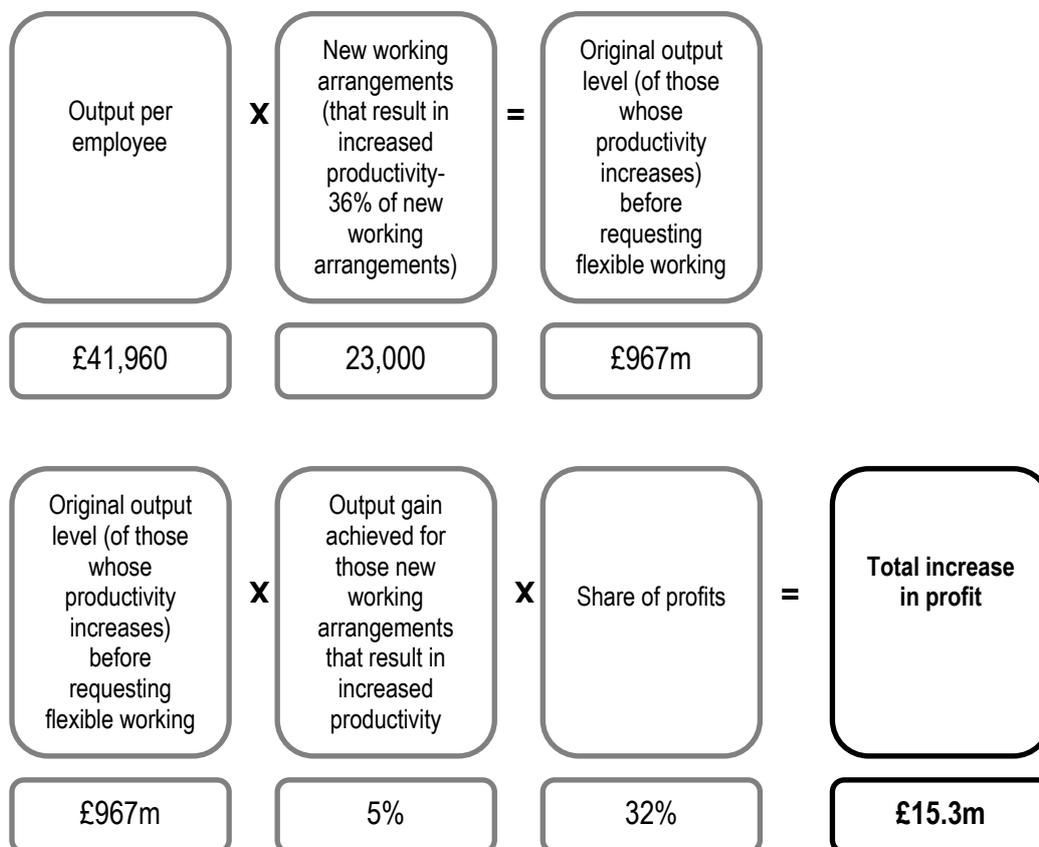
²⁹ British Chambers of Commerce (2007) Work and Life: How Business is striking the right balance.

³⁰ Compensation of employees (wages) accounts for around 60 per cent of gross value added. Gross value added and gross operating surplus are taken from the United Kingdom Economic Accounts: The Blue Book (2009)

http://www.statistics.gov.uk/downloads/theme_economy/BB09.pdf. See table 2.2.

olds and non-parent/non-carer employees being more productive after a request for flexible working is accepted.

Figure 2. Estimated impact on profits



Source: BIS estimates. Some figures have been rounded.

Table 6a presents the estimated increase in profits in year one as a result of a subset of employees affected by the proposed extension to the Right (parents of 17 year-olds and those with no dependent children or caring responsibilities) being more productive after a request for flexible working is accepted.

Table 6a. Increased profits as a result of increased productivity for year one* – Parents of 17 year olds and those with no dependent children or caring responsibilities

New working arrangements	64,000
Arrangements with increased productivity	23,000
Total extra gross profits per annum	£15.3m

Source: BIS estimates. Figures have been rounded. * Subsequent years include benefits accrued from previous years new working arrangements.

Table 6b. Increased profits from increased productivity for year one – sensitivity analysis

Productivity Gain (%)	Productivity Benefit (year 1)
3%	£9.2
5%	£15.3
10%	£30.6

Source: BIS estimates. Figures have been rounded.

Stakeholder consultation

During the consultation, stakeholders were unable to provide any further evidence to suggest we should refine these productivity assumptions. Some felt that 5% was an underestimate when the indirect benefits of morale, motivation and commitment are considered. It was argued that there must be some productivity benefits because they are so often identified by employees and employers in both surveys and case study work. Following the consultation we further tested these productivity assumptions with stakeholders. The following is a selection of quotes from business:

Citi Group

“At Citi we have a range of Flexible Working options available to our employees which provide many benefits for the organisation, amongst which is personal productivity. We think the estimate of a gain of 5% in personal productivity is in fact conservative.”

GlaxoSmithKline.

“GSK would support the view that 5% is a reasonable assessment of a gain that would be noticeable, and confirm that the gain from Flexible Working is noticeable.”

Ernst and Young LLP

“Ernst and Young LLP recognises that our more engaged employees are noticeably more productive and our more engaged employees are often those who feel empowered to manage how and when they do their work. We confirm that the gain from flexible working is noticeable and that five per cent increase in productivity is a reasonable assessment of the gain.”

Centrica

“Centrica is in a highly competitive industry and our people make a real difference in achieving success. Seeking and retaining the best people is crucial to us. Providing opportunities for flexible working motivates our people and has improved our performance. 55% of flexible workers feeling that their productivity had increased. We have also seen a drop in unscheduled absence and improved retention which we believe has saved the business in the region of £40 million.”

Chwarae Teg

“Our experience is that Flexible Working contributes significantly to productivity gains and feedback from our clients indicates that 5% is a reasonable if not conservative estimate. It would be good to see further research in to this and the many other benefits for employers of Flexible Working.”

Wales & West Housing Association

Whilst it is difficult to measure productivity increases we agree that 5% is a reasonable assessment of a gain that would be noticeable, and confirm that the gain from Flexible Working is noticeable. In the year following the introduction of flexible working we saw a noticeable reduction in sickness absence and therefore productivity would have followed naturally.

Given the body of evidence supporting a productivity impact from flexible working and the testing of our assumptions with stakeholders we believe that 5% (applied to a subset of the new working arrangements that result from the extension) is a reasonable assessment of this benefit, although we recognise that it may be conservative.

In its March 2012 Opinion, the RPC suggested we provide more evidence and analysis to support our assumptions regarding the productivity increase. Annex G contains the evidence we have found to date,

but this will be supplemented as the policy evolves, more evaluations are carried out, and further evidence comes to light.

(iii) Reduced absenteeism rates

The Third Work Life Balance Survey of Employers showed that a net of 33 per cent of firms report a positive effect on absenteeism as a result of flexible working and leave arrangements³¹. In the later 2011 CBI survey, 38 per cent of employers reported such an effect. A CIPD survey found that, on average, the cost of an employee being absent per year is £600³².

For parents of 17 year olds, we have assumed that 22 per cent of new working arrangements will result in lower employee absenteeism. This figure represents two-thirds of the Work-life Balance Survey findings. We have made this adjustment downwards to reflect that parents of older children will have lower levels of absenteeism compared to parents of younger children (but higher than employees with no caring responsibilities) and therefore use of the average effect is not appropriate.

For those with no dependent children or caring responsibilities, we have assumed that 15 per cent of new working arrangements will result in lower absenteeism. This figure represents just under one-half of the Work-life Balance Survey findings. Again this adjustment is to reflect that employees with no dependent children or caring responsibilities are likely to have lower levels of absenteeism compared to parents or carers.

A further assumption has been made that the cost of absenteeism prior to making a request is £600 per year (in line with the CIPD estimates) and after a request is accepted this falls by 10 per cent. It is assumed that absenteeism costs fall because flexible working allows employees to reduce the incidences of absence per year. Table 7 below presents the savings made by employers as a result of lower absenteeism in year one.

Table 7. Savings in absence costs for year one* – Parents of 17 year olds and those with no dependent children or caring responsibilities

	Those with no dependent children or caring responsibilities	Parents of 17 year olds
New Working arrangements	61,400	2,700
Arrangements where absence falls (15% or 22%)	9,200	600
Saving of 10% on absence costs	£0.55m	£35,000
Total	£0.55m	£35,000

Source: BIS estimates. Figures have been rounded. * subsequent years include benefits accrued from previous years new working arrangements.

(iv) Summary of quantifiable benefits

The table below provides a summary of the quantifiable benefits in year one adding together the savings in recruitment cost (Table 5), the quantifiable benefits of increased productivity (Table 6a) and the quantifiable savings in absence costs (Table 7).

³¹ After controlling for those employers that did not answer (the 13% shown in Chart 4) we have 10.4 per cent of employers thinking that flexible working has a negative effect on absenteeism and 43.7 per cent thinking that it has a positive effect.

³² *Absence Management – Annual Survey Report 2010*, CIPD. The cost of absence in 2010 was estimated by CIPD to be £600.

Table 8. Total additional quantifiable benefits in year one* — Parents of 17 year olds and those with no dependent children or caring responsibilities

Benefits to non-parents/non-carers and parents of 17 year olds	
Reduced labour turnover	£8.4
Increased productivity	£15.3m
Reduced absenteeism	£0.6m
Total Benefits	£24.3m

Source: BIS estimates. Figures have been rounded. * subsequent years include benefits accrued from previous years new working arrangements.

(v) Sensitivity analysis of assumptions made to estimate benefits

The table below shows the effect on benefits of changing a particular assumption by 10 per cent. The three most uncertain assumptions used to estimate the benefits were chosen for sensitivity analysis.

Table 9. Summary of sensitivity analysis

Benefit	Assumption	+/- 10 per cent change in assumption leads to +/- change in benefit
Savings in recruitment costs as a result of lower labour turnover	1 per cent of non-parents/non-carers* (who would otherwise leave their job due to working hours) do not leave their job	£843,000
Increased profits as a result of increased productivity	5 per cent increase in output for those new working arrangements resulting in increased productivity	£1,532,000
Savings in absence costs	Cost of absenteeism falls by 10 per cent for new working arrangements where absenteeism is expected to fall	£58,800

Source: BIS analysis. Figures have been rounded. *We assume 2% for parents of 17 year olds.

(vi) Aggregation of Benefits

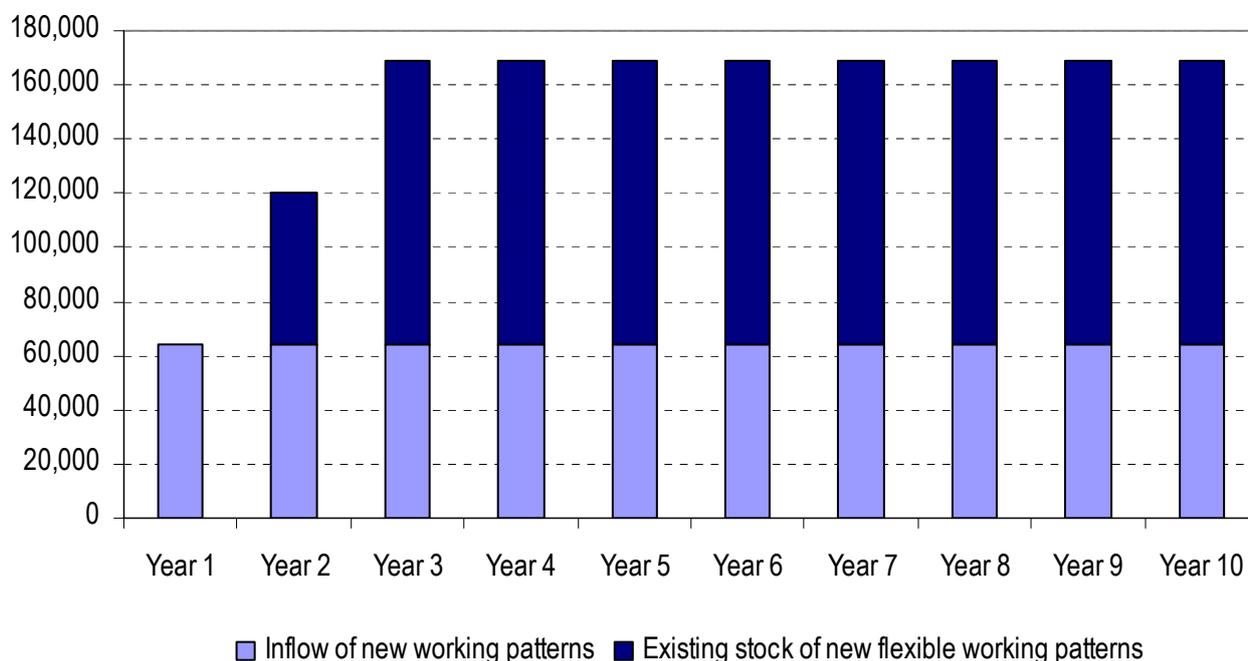
In calculating the benefits over a ten year period, we assume that the positive impacts of increased morale, job satisfaction and loyalty (reduced absenteeism and increased productivity) do not stop after one year, but continue for a number of years. Many employees are likely to continue working for their employer for several years after adjusting their working patterns so it would be an extreme approach – and an underestimation of the benefits – to assume only one year’s worth of productivity and absenteeism benefits. This impact assessment accounts, therefore, for the ongoing stream of benefits arising from the new working arrangements resulting from the extension to the Right.

Our assumption is to cumulatively add up the absenteeism and productivity benefits of the existing stock of workers who have adopted new working patterns to the benefits from the annual inflow of new working patterns. This means that from year 2, the calculation adds the productivity and absence benefits accruing from those workers who have already adopted new working patterns as a result of the extension to the annual inflow of these benefits from new working patterns begun each year. Account is taken of employees moving jobs by the use of CIPD turnover rates (allowing for reduced turnover resulting from the policy) – 12.5% of employees who change their working patterns are assumed to leave their job per annum. To factor in the likelihood that the magnitude of benefits will diminish over time we assume the policy effect stops 3 years after an employee changes their working patterns. This assumption, by definition, constrains the anticipated growth in the flexible working policy effect.

Chart 5 below plots the cumulative number of new working patterns for non-parents/non-carers and parents of 17 year olds, which still yield a policy effect (annual inflow of 64,000 plus share of existing stock from the previous year). In year one, the total stock of new working patterns equals the annual inflow of new working patterns. For year 2, the stock of working arrangements yielding a policy effect

increases to 120,000³³. The stock stabilises in year 3 and remains at 169,000 in years 3 to 10 (this assumption by definition ensures that the stock of flexible workers yielding a policy effect does not continuously grow).

Chart 5. Stock of new flexible working patterns including annual inflow over 10 years



Source: BIS estimates

Adjusting the absence and productivity benefits stream over 10 years to incorporate existing stocks of (extension-prompted) new working arrangements leads to a total net present value of benefits of £475m over 10 years³⁴ for option 1.

It should be noted that the total benefits over ten years figure is affected by our assumptions on how long the policy effect lasts (in this case, 3 years) and the level of benefits in each year. For simplicity, we have assumed that the 'unit benefit' (the benefit per new working pattern as a result of the policy) remains constant irrespective of the time elapsed from the date the request was accepted. For example, the unit benefit one year after a request is accepted is the same as the benefit two years on and so on.

We tested the accumulation of benefits assumptions during the consultation workshops. Participants were satisfied with the assumptions although were unable to provide any evidence to corroborate them. They did identify as incorrect the assumption at consultation-stage IA that benefits for parents of 17 year olds would accumulate for longer than other workers and should thus be adjusted to be consistent with that of all workers. We have taken account of this in the calculations above.

³³ Allowing for the 12.5% of employees who leave their job each year.

³⁴ This total figure includes the reduced vacancy costs benefits and also the savings from the move to a statutory code of practice (from a statutory procedure) for those currently covered by the right to request.

Costs

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

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

These are considered in turn.

1. Implementation costs

The extension of the right to request flexible working may result in one-off implementation costs for business. For this IA it is assumed that since this is an extension of an existing law, these will be relatively small; in general, most firms are already familiar with how to deal with a request for flexible working. The cost of communicating the change in eligibility to employees will thus be very little as firms will already have a method of communication in place that will simply need updating.

That said, there are two factors associated with firm size to take into account:

- a) the difference between large and small firms in terms of the magnitude of requests; larger firms will need more time to update HR policies and disseminate information to a larger workforce;
- b) the difference between large and small firms in terms of their experience of flexible working; smaller firms are more likely than larger firms to have no experience of flexible working.

We have taken both these factors into account in our calculations. For a) we have assumed larger firms require more management time than smaller firms for implementation, e.g. 1 hour for those with between 50 and 499 employees relative to 0.5 hours for those with between 1 and 49 employees. For b) using data from the 3rd Work-life Balance Employer Survey, we have estimated that a proportion of small firms *will not* have experience of flexible working and will need more management time for familiarisation than similar firms that *do* have experience, i.e. 1 hour versus half-an-hour.

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

The cost will primarily be in management time. The relevant assumptions are set out in the table below. For all firms time has been valued for HR managers (SOC Code 1135) at half an hour, one hour or two hours at £26.21 per hour.

Table 10. Implementation costs

Firm size (number of employees)	Number of firms with flex working	Average management cost (hours)	Number of firms with no flexible working*	Average management cost (hours)	Estimated total cost to business (£m)
1-4	555,057	0.5	41,778	1	£8.3
5-9	214,691	0.5	16,160	1	£3.2
10-19	113,572	0.5	3,513	1	£1.6
20-49	66,382	0.5	2,053	1	£1.0
50-99	22,067	1	223	2	£0.6
100-199	10,085	1	0	-	£0.3
200-249	2,070	1	0	-	£0.1
250-499	4,010	1	0	-	£0.1
500+	4,580	2	0	-	£0.2
Total	992,514		63,726		£15.3

Source: BIS estimates based on 2011 SME Statistics (Small Business Service) and Annual Survey of Hours and Earnings 2010 (ONS). *Proportions taken from 3rd Work Life Balance Employer Survey. Note: HR time is valued at £26.21. Figures have been rounded. Total may not sum to individual parts due to rounding.

During consultation workshops, stakeholders suggested that, because this was an incremental change, our cost assumptions for implementation/familiarisation were about right. The 2008 ORC Admin Burdens Study estimated that employers spend around 14 minutes familiarising themselves with current flexible working conditions. We have estimated more time than this to account for businesses needing to familiarise themselves with the new code of practice and identify the most suitable way to consider flexible working requests within their own organisation.

Some stakeholders were concerned about the opportunity costs of owner-managers familiarising themselves with the legislation. This has been accounted for by our assuming that more time is needed for SMEs with no experience of flexible working and using the ASHE wage data for Personnel, Training and Industrial Relations Managers (SOC 1135), which has higher wage rates than Managers and Proprietors in other services (SOC 123).

2. Procedural Costs

Throughout the formal consultation and stakeholder workshops little evidence was produced to suggest that consultation-stage time estimates on procedural costs were too high or too low. These have been calculated as outlined below.

i) Average cost of handling first-stage and deadweight requests

Under current legislation, the first stage encompasses a written request from the employee, deliberation by the employer both before and after a meeting with the employee, and then preparation of a decision. The principal cost here is the time of both management and employees (it is assumed that employees prepare requests during work rather than in their own time). Since the process is the same for both parents of 17 year olds and non-parents/non-carers, the costs per request for each group will be the same.

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

Based on estimates from the Work Life Balance Surveys and 2008 ORC Admin Burdens Study (see section iv) below)³⁵, previous IAs assumed that 80% of requests were handled informally and 20% were managed on a more formal basis. Experience has shown that as a result of the formal right to request accelerating culture change in the workplace, many applications are now considered on a more informal basis, which significantly reduces procedural costs.

Furthermore, under the new legislation, the prescribed procedure will be removed and replaced with a duty on employers to consider requests 'reasonably' and 'within a reasonable period of time'. A statutory code of practice will explain what we consider reasonable to mean as well as providing additional guidance to employers on how to manage flexible working. As discussed, we have previously estimated that, in the presence of the statutory procedure, 80% of requests are considered informally. In this IA, with a statutory code of practice instead, we assume there will be a shift towards more informal processes such that 90% of requests will be dealt with informally and 10% formally. This reflects the increased choice and flexibility open to employers in how they manage requests. This is supported by evidence from the 2008 ORC Admin Burdens Study (see section iv) below) which concluded that whilst respondents valued the structure that the legislation provided, some felt it was too formal and that left to their own devices some would adopt a more informal approach.

These savings arise because employers will be able to manage flexible working requests in a way that suits them best and in line with other existing procedures, instead of having to follow the current prescribed process for considering requests.

³⁵ *Employment Law Admin Burden Survey 2008*, ORC International December 2008.

During the consultation workshops some employers stated that whilst they already offer the right to request flexible working to all employees, they use the formal process for considering requests from employees with the legislative right and an informal process for other employees. They felt that the replacement of a statutory procedure with a statutory code of practice would enable them to consider all requests in a more informal way in the first instance and only use formal processes for appeals.

The procedural changes will not affect the ability of an employee to appeal a flexible working request, lodge an employment tribunal claim or reduce the protections afforded by the right; it simply enables employers to consider requests in a way that works with their existing business practices.

We have assumed that formal requests take 2 hours of employee time and 3 hours of management time. Informal requests take half an hour of employee time and one-and-a-half hours of management time. Details on the time taken to process a request are provided in table 11 below. Translating this into cost-per-request provides a figure of approximately £55 for the first stage.

Table 11 includes estimates of time taken to process deadweight requests (for the purposes of calculating savings from the new code of practice – see section 5 below). It is likely in practice that for 'deadweight' requests, i.e. those where employees are already allowed to work flexibly, the average procedural cost will be much less. That said, even where flexible working is guaranteed, the cost of any existing procedure for changing working patterns – however informal - must be allowed for. Adopting the methodology used in earlier impact assessments a notional cost of £16.35 for informal deadweight requests and £37.12 for formal deadweight requests is used.

As with the initial request stage, it has been assumed that with a statutory code of practice, more deadweight request will be handled informally. For this IA, 90% of deadweight requests are handled informally.

Table 11. Estimated time to process a request[#]

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

Source: BIS estimates. * Assumed to be one-third of a new request. **Assumed to be double that of a new request. # in hours

(ii) Average cost of appeal or internal grievance stage

The appeal stage will involve a written statement of appeal by the employee, a meeting (where the employee may be represented) and a written response by the employer. Where requests reach this stage, it is likely that both employees and managers take more care and attention over their written communications. The meeting may also be longer and more wide-ranging. It is therefore assumed that the average cost is double that of the first stage, namely £110 per request. Details on the time taken to process an appeal are provided in table 11 above.

As with the first stage, under the new legislation, the prescribed procedure would be removed and replaced with a code of practice. It has again been assumed in this IA that this will result in a shift towards more informal processes. Thus, for the calculations here, 90% of appeals are dealt with on an informal basis whilst only 10% are handled through formal procedures.

(iii) Average cost of external dispute resolution stage

The average cost to an employer of a hearing at an Employment Tribunal - £5,900³⁶ - is used as a benchmark figure. This cost excludes any awards paid at hearing and is representative of more expensive discrimination-type claims (we use this jurisdiction as flexible working claims are likely to be multiple jurisdictional claims including a discrimination element). The cost to the employer excludes any financial or non-financial costs borne by the employee at this stage. Other sources of dispute resolution, e.g. the ACAS arbitration scheme, may be cheaper for both parties. The number of requests likely to be taken to external dispute resolution as a result of this extension is fairly small – probably less than 150. Based on cost data from HM Courts Service we estimate that the cost to the Exchequer from an extra claim entering the employment tribunal system is £420 and that in total the increased cost per annum to the Exchequer will be £45,000.

This assumption is supported by evidence from employment tribunal (ET) claims data. Overall, the number of claims for the flexible working jurisdiction has been relatively small, accounting for less than 0.1 per cent of all ET claims since the first right to request flexible working was introduced in early 2003. Furthermore, following the extension of the right to request to carers of adults in April 2007, there was not a significant increase in claims: in the year to March 2007, there was a total of 235 ET claims, whereas in the year to March 2008 there were 271 ET claims. Again, when the right to request was extended to parents of children aged between 6 and 16, claims relating to flexible working rose only slightly from 266 in March 2009 to 350 in March 2010.

The total procedural cost per annum, based on the assumptions outlined above, is presented in table 12.

The consultation³⁷ and consultation workshops raised concerns that the change to the duty to consider requests reasonably would add a level of subjectivity to flexible working requests that would increase the risk of tribunal. Additionally, employers have raised the concern that the increase in the number of requests will force employers to prioritise conflicting requests, which will also result in increased tribunal claims for discrimination. We have adjusted the proportion of declines that result in a tribunal claim to reflect these concerns.

(iv) Administrative burdens

In 2008, BERR commissioned ORC International to replicate elements of the PricewaterhouseCoopers (PwC) 2005 Administrative Burdens Measurement Exercise ABME study. The 2008 ORC study found a downward shift in the administrative burdens for all the information obligations (IOs) examined. For flexible working applications the estimate was reduced from £150.6m in 2005 to £21.22m in 2008³⁸.

This study focussed on three IOs relating to Flexible working which were:

- Approved/refused a request for flexible working – 30371
- Had an employee appeal your refusal for flexible working – where you have upheld your refusal – 30411
- Withdrawn an employee's application for flexible working on the basis of their poor behaviour – 30463

Previous IAs have used these studies to identify and separate out from the procedural costs those activities likely to impose an information obligation on employers.

³⁶ Source BIS analysis based on *Findings from the Survey of Employment Tribunal Applications 08*, Employment Relations Research Series No 107, BIS. Estimate is based on the Tribunal system prior to any reform.

³⁷ 3% of respondents commented that the change to a code of practice would increase the risk of tribunal and 11% commented that the change would add complexity and insecurity for employers and employees.

³⁸ *Employment Law Admin Burden Survey 2008*, ORC International December 2008.

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

As the underlying unit cost (i.e. the hourly rate for management and employee time) is the same for admin burdens and policy costs, the differential is effectively the time allocated to each. These breakdowns are set out in table 11.

We have assumed that administrative burden costs apply to all formal and informal requests, although it is reasonable to assume that informal requests may not always result in formal written notification from the employer. Since this impact assessment assumes that 90 per cent of requests are informal under the new system, it is likely that only a small proportion of employees will request written confirmation of the decision.

During consultation discussions some employers stated that whilst they already offer flexible working to all employees, they treat requests from employees with the legislative right differently to those without. They consider requests from employees with the legislative right under the formal process whereas they consider other requests informally. These employers welcomed the change in the process for considering requests for flexible working, stating that it would allow them to consider requests from all employees informally.

The ORC report also explored the use of external goods and services relating to IOs, which largely consisted of paid sources for information and guidance on employment law. The most-used information source were solicitors, followed by accountants and employment consultants. External goods and services also covered expenditure on postage, printing, software, technical equipment and prepared guidance materials.

Stakeholders expressed concern about the costs of external legal advice firms would incur as a result of the extension. However, in the absence of further evidence it is difficult to improve on the ORC study estimates so we have continued to use these.

For flexible working the study found that the use of goods and services was relatively low since the process was regarded as easy. Firms used external services more for refusals and appeals, however, which was consistent with the notion that for more complex labour issues businesses seek bespoke guidance. For the flexible working IOs the use of external goods and services amounted to £57.45 for first stage requests and £214 for requests taken to appeal.³⁹

Qualitative feedback from the case studies undertaken by ORC indicated that some businesses liked to consult free advice in the first instance to familiarise themselves with the requirements of an IO and then progress to seek confirmation of the procedure from their paid professional service.

We have assumed that for the new system using a code of practice, the use of external goods and services as set out in the ORC report will no longer be necessary for the first stage of requests which are handled informally. The use of external goods and services has been assumed not to change from the current system under the new system for formal requests and requests taken to the appeal stage.

The resulting costs of administrative burdens to employers are presented in table 12 below and reflect the split between formal and informal requests outlined above.

3. Cost of accommodating requests for flexible working

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

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

³⁹ In calculations these figures have been updated to 2010 prices.

On average, accommodation costs might be a week of HR time, split between HR manager and HR clerk, for requests to work part time. For other types of requests, we have assumed the equivalent of one day of HR time to accommodate the request. Another assumption is that around a quarter of all requests are to work part time, hence the average cost of accommodation is two days wages. We have assumed that half a day will be needed by the HR manager and a day and half of clerk time.

Using average earnings from the 2010 Annual Survey of Hours and Earnings and allowing for 21 per cent non-wage labour costs produces costs of £98.46 for half a day of HR manager time and £147.81 for a day and a half of HR clerk time⁴⁰. The annual cost of adaptation is assumed to be constant for each of the various proposals because evidence from the LFS suggests that the stock of parents who work flexibly is approximately constant over time.

4. Summary of costs

Total procedural costs and total accommodation costs for the first year are presented in the table below (columns 2 and 3). Also shown in the final two columns are a) the total additional cost to employers per year due to the extension; and b) of this, the administrative burdens.

Table 12: Summary of one-off costs and annual procedural costs and cost of accommodating requests*

Scope of law	One-off cost	Annual recurring costs			
	Total one-off costs (£ millions)	Total procedural cost (£ millions)	Total costs of making adjustments to working patterns (£ millions)	Additional annual cost to employer (£millions)	Of which admin burdens (£ millions)
Parents of 17 year olds and those with no dependent children or caring responsibilities – new code of practice	15.3	24.0	15.8	39.7	4.1

Source: BIS estimates. *This table excludes the annual £45,000 cost to the Exchequer from increased employment tribunal claims. Figures have been rounded.

During the written consultation and consultation workshops stakeholders suggested that most employers experience few problems with accommodating requests so these costs are minimal. It was suggested that most unmet demand seems to be for flexibility rather than part-time work, and it's the latter which is more costly to accommodate.

There were concerns expressed that there had been no estimate included for other employees having to take up 'the slack' for those working flexibly. Others argued that in most cases there would be no slack since this would be avoided by organisational changes for which costs have been estimated.

5. Code of practice – procedural savings

As outlined above the new legislation will remove the current legislative procedure and introduce a duty on employers to consider requests 'reasonably' and within a reasonable period of time, alongside a statutory code of practice to explain what we consider to be reasonable. This will result in savings for employers handling requests for parents and carers who are already eligible to request flexible working. This is the only part of the proposed legislative changes which will affect employees who already have the right to request.

These savings arise because employers will be able to manage flexible working requests in a way that suits them best and in line with other existing procedures, instead of having to follow the current prescribed process for considering requests.

⁴⁰ All the wage figures above are based on 40 per cent of average gross weekly earnings plus 21 per cent of non-wage labour costs i.e. total cost of accommodation in days = 0.25 x 5 days + 0.75 x 1 day = 2 days (this equates to (2/5) of a weeks wages).

In order to calculate these savings, the costs for this group have been estimated under the current statutory procedure and then under a statutory code of practice. Estimates of the take-up and deadweight for parents and carers were provided in Table 4 and set out in the Assumptions section above. In summary, it has been assumed that there will be 1.42m requests per year from parents or carers, of which 1.3m are deadweight and 101,000 are additional requests.

It has been assumed in this IA that the use of a code of practice, rather than the statutory procedure, will result in a shift towards more informal processes. Thus, under a code of practice, 90% of deadweight requests, new requests and appeals will be dealt with on an informal basis, whilst only 10% will be handled through formal procedures, which reflects the increased choice and flexibility open to employers in how they manage requests. This compares with our assumption that 20% of requests are handled formally under the current legislation. For those currently covered by the legislation, savings will thus be made in the time spent handling requests. Previously, for formal requests, 3 hours would be spent by managers and 2 hours by employees, but with the new code of practice, for 10% of these requests the time spent falls to 0.5 hours employee time and an hour and a half employer time as they move from formal to informal. This produces a saving of £63 per request for all ‘additional’ (non-deadweight) requests by parents and carers. For those appeals moving from the formal to the informal approach, the time is reduced from 6 hours of management time and 4 hours of employee time to 3 hours and 1 hour respectively. This represents a saving of £125 for each appeal affected. The equivalent saving per deadweight request is £21 for each request that moves from the formal to the informal approach.

We have also assumed that for the new system with a code of practice the use of external goods and services as set out in the ORC report will no longer be necessary for first-stage requests handled informally. The use of external goods and services remains the same for formal requests and requests taken to the appeal stage, however. Thus, for 10% of first-stage requests from parents and carers, £62 per request will be saved on external goods and services.

The details of the costs under both systems are given in Table 13 below. This suggests that a saving of £9.1m will be made by employers.

Stakeholders at the consultation workshop did not express that they disagreed that the statutory code could create procedural savings for employers. They felt that the replacement of a statutory procedure with a statutory code of practice would enable them to consider all requests in a more informal way in the first instance and only use formal processes for appeals.

Table 13: Summary of annual procedural costs savings*

Scope of law	Total procedural cost (£ millions)	Total costs of making adjustments to working patterns (£ millions)	Additional cost to employer (£millions)
All parents/carers – current legislation	£42.1	£19.6	£61.7
All parents/carers – new code of practice	£33.0	£19.6	£52.6
Saving with new code of practice			£9.1

Source: BIS estimates. *This table excludes the annual £45,000 cost to the Exchequer from increased employment tribunal claims.

Risks

The estimates of costs and benefits presented in this impact assessment are necessarily based upon a number of assumptions that relate, among other things, to possible take-up, deadweight and the procedural and accommodation costs associated with the right to request flexible working.

Enforcement

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

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

We saw earlier that the number of ET claims for the flexible working jurisdiction has been relatively small, accounting for less than 0.1 per cent of all ET claims since the first right to request flexible working was introduced in early 2003. Furthermore, following the extension of the right to request to carers of adults in April 2007, there was not a significant increase in claims: in the year to March 2007 there were a total of 235 ET claims relating to flexible working, whereas in the year to March 2008 there were 271 ET claims for the flexible working jurisdiction. Again, when the right to request was extended to parents of children aged 16 and under, claims relating to flexible working rose from 266 in March 2009 to 350 in March 2010 for the flexible working jurisdiction.

We therefore assume that an extension of the right to request to parents of 17 year-olds and non-parents/non-carers will have a marginal effect on the number of ET claims. We have nevertheless increased the percentage we assume will use ETs relative to the consultation IA following concerns raised by stakeholders about increased tribunals due to the 'reasonableness' test and increased discrimination claims when an employer prioritises one request over another.

Recommendation and summary table of costs and benefits

Table 14 presents a summary of the estimated quantifiable costs and benefits.

Scope of law	Costs (£m)	Benefits (£m)
Non-parent/non-carer employees & parents of 17 year olds	£39.7	£24.3
One-off costs	£15.3	
Annual Procedural savings		£9.1

Source: BIS estimates. Figures have been rounded * subsequent years include benefits accrued from previous years new working arrangements. This table excludes the annual £45,000 cost to the Exchequer from increased employment tribunal claims.

Non-monetised benefits

In addition to the benefits quantified above, we also recognise that there are likely to be wider benefits of this policy, such as better work-life balance for employees, increased labour supply due to availability of more flexible working opportunities, improved motivation and commitment.

Additional benefits that potentially accrue to employers who provide flexible working opportunities include reduced wage costs and buildings/energy cost savings. After the Modern Workplaces consultation ended BIS commissioned a literature review of costs and benefits to business of adopting work life balance practices⁴¹. This reported research which found that the availability of practices such as flexible working, family leave and policies supportive of dependent care can be associated with a compensating reduction in salaries. There is also literature to suggest building costs can fall as a result of the introduction of flexible working. BT introduced flexible working 20 years ago as part of a business strategy and now reports that annual office estate costs are down by over €725m⁴².

Finally, we have not monetised in this impact assessment benefits that are associated with an improved flow of information between employees and employers which can lead to more informed decision making and a better outcome for deadweight requests.

One-in, one-out rule

The Coalition Government Agreement made a commitment to “cut red tape by introducing a ‘one-in, one-out’ (OIOO) rule whereby no new regulation is brought in without other regulation being cut by a greater amount”. For OIOO purposes only direct costs and benefits to business are counted.

For this impact assessment, and this option, the direct benefits to business are procedural savings from the removal of the legislative procedure and its replacement with a code of practice. The benefit comes as businesses move to more informal processes for dealing with the requests of those who already have the Right; for those currently covered by the legislation, savings will be made in the time spent handling requests.

Increased productivity is deemed to be an indirect benefit. Many employers report increased productivity following the implementation of flexible working, but it is difficult to establish whether flexible working was the only factor behind the increase. It is therefore not included for OIOO purposes. The benefits of reduced absenteeism and labour turnover are now assumed to be indirect following the RPC judgement on this.

Direct costs include procedural costs and familiarisation costs. Procedural costs are direct because the right to request flexible working states that the request must be seriously considered and certain processes should be followed to show that consideration. The cost of accommodating accepted requests is an indirect cost because the legislation only gives the right to make a request and have it considered;

⁴¹ *Costs and Benefits to Business of Adopting Work Life Balance Working Practices: A Literature Review*, Smeaton D, Ray K and Knight G, 2012, BIS forthcoming.

⁴² *Flexible Working: Can your company compete without it?*, British Telecom, 2007.

it does not prescribe how requests should be accommodated. Also, the cost of accommodation is a secondary impact and firms will be able to 'recover' some of these costs in the future (for example ICT investment in laptops for remote working will retain some value for the business irrespective of whether the laptop is used to assist flexible working).

Using data from BIS Business Population Estimates for 2011 we estimate that 96% of one-off costs will fall on business. Based on Labour Force Survey 2011 Q2 data we estimate that 70% of the recurring costs and benefits will be incurred by businesses. Further details can be found in Annex E.

Table 15 shows the direct impact to firms (excluding employers in the public sector). The equivalent annual costs to firms will be £18.0 million and the equivalent annual benefit is £6.2 million. Therefore, the net annual direct cost to business is £11.8 million.

Compensatory out: The extension to the right to request flexible working will be offset by the reductions in the costs to business achieved through the Resolving Workplace Dispute measures as well as the small firms audit exemption measures.

Table 15: Summary of Equivalent Annual Cost and Benefit (direct impact on employers excluding public sector)

Scope of law	Equivalent annual cost (£m)	Equivalent annual benefit (£m)	Equivalent net cost (£m)
Non-parent/non-carer employees and parents of 17 year-olds	£18.0	£6.2	£11.8

Source: BIS estimates. Figures have been rounded. For one-in, one-out purposes the Department is seeking an out of equal measure.
 Note: Excludes employers in the public sector.

Costs and Benefits of a Non-Regulatory Approach

This IA has also examined an alternative non-regulatory approach to stimulating flexible working. This would be to create a non-statutory code of practice to encourage employers to offer increased flexible working to their employees and to highlight good practice. The non-statutory code would cover all employees without caring or parental responsibilities, as the existing regulations would continue to govern flexible working requests from parents and carers (except parents of 17-year olds who would be covered by the new non-statutory code).

The non-statutory code of practice would not be supported by legislation. This would mean that the code of practice would be entirely voluntary and would not be enforceable. Essentially, the code of practice would form a good practice guide on flexible working.

Assumptions

1. Earlier impact assessment work

As with the legislative option, the methodology adopted for estimating the costs and benefits associated with the non-legislative option builds upon that used for the development of earlier policy in this area. For the calculations of costs and benefits, the parents of 17 year olds are now included along with employees with no parenting/caring responsibilities.

2. Take-up of flexible working arrangements and deadweight

We have assumed that, under a non-statutory code of practice for those affected by the legislation (non-parent/non-carer employees and parents of 17 year olds) the take-up of the Right will be lower than that of a legislative approach. As outlined in the 'Options Identification' section earlier, this is because we feel that a non-legislative approach is unlikely to generate the cultural change or encourage the bridging of the information gap that the legislative option can.

For the legislative option we estimated, cautiously, for increases in take-up rates (over and beyond deadweight) of 1.25 percentage points for mothers of children aged 17 and 0.75 percentage point for fathers of children aged 17. For non-parents or those with no caring responsibility we assumed a slightly more cautious approach and estimated that the new right would result in a 0.75 percentage point increase in requests both for men and women.

Under a non-legislative approach we have assumed increases in take-up rates (over and above deadweight) of 0.625 percentage point for mothers of 17 year olds and 0.375 percentage points for fathers of 17 year olds and non parents/non-carers.

As in the previous option, we have assumed that some requests will be regarded as 'deadweight' i.e. requests that would have occurred in the absence of any policy change.

Whilst stakeholders had no evidence to support these take-up assumptions, we did not receive an overwhelming view that there was disagreement with the assumption of halving the take-up rates of the regulatory option for the non-regulatory approach.

3. Estimated eligibility and new working arrangements

Table 16 below shows the number of newly-entitled employees, the number of requests (overall, deadweight and additional) and the estimated number of new working arrangements per annum, by parental or caring responsibilities.

Table 16. Estimated number of newly-entitled employees and of new working arrangements*

Scope of law	Number of entitled employees (millions)	Number of requests overall (000s)	Number of deadweight requests (000s)	Number of additional requests (000s)	Additional number of new working arrangements p.a.* (000s)
Parents of children aged 17	0.3	36,900	35,200	1,700	1,300
Employees with no dependent children or caring responsibility	10.3	918,100	879,400	38,800	30,500
Total	20.6	2,372,000	2,281,000	90,900	71,600
Total (from the proposed extension)	10.7	955,000	914,500	40,500	31,800

Source: LFS Q2 2011, BIS estimates. *Excluding deadweight requests Figures have been rounded. Total may not sum to individual parts due to rounding. Since the consultation stage IA BIS has refined the methodology used to extract data from the LFS micro data set. Respondents who classify themselves as a child within a household unit have been excluded from the estimated number of entitled employees which has led to a reduction in total eligible employees from 22.9 million to 20.6 million.

Applying the same methodology as that used for the legislative option, based on responses from the Work Life Balance surveys, we have estimated that the non-legislative option will produce 2.4 million requests overall, but of these the majority will be deadweight and the remainder (90,900) will be *additional* requests arising because of the existing Right and the proposed introduction of the non-statutory code of practice for those not currently covered. Non-parents/non-carers represent 38,800 of these additional requests and 1,700 come from parents of 17 year olds. This compares with 78,000 and 3,400 new requests under a statutory code.

The legislative option assumptions on the proportion of requests that are successful, the proportion taken to appeal and the proportion denied are also used for the non-statutory approach. Of the 38,800 additional requests from employees with no caring/parenting responsibility it is estimated that 30,500 will lead to new working arrangements. For parents of 17 year olds, 1,700 new requests will result in 1300 new working arrangements. Under a statutory code the figures are 61,000 and 3,000.

Benefits

1. Analysis of Benefits

As for the legislative option our analysis of benefits resulting from the introduction of a non-statutory approach to encompassing those not currently covered by the legislation assumes the following are included:

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

Since the methodologies here are the same as for the legislative option the following section does not repeat the reasoning behind the assumptions, but simply provides the tables summarising the monetised benefits.

(i) Reduced vacancy costs and increased skill retention

Where flexible working enables employees to remain in the labour market there will be benefits in terms of reduced staff turnover costs and increased skill retention. We have assumed that a non-legislative code of practice will have less influence than the statutory code so will lead to fewer employees discussing flexible working options with their employer when considering a job move. This means that a smaller number are prevented from leaving their jobs. Under the statutory code option it was assumed that 1 per cent of non-parents/non-carers and 2 per cent of parents of 17 year olds planning to leave for reasons relating to hours would remain in their jobs as a result of the extension to the Right. For the non-

statutory code we assume a lesser effect; 0.5 and 1 per cent respectively. The associated vacancy cost savings are estimated to be £4.2m, as outlined in Table 17.

Table 17. Estimated savings in recruitment costs as a result of lower labour turnover

Scope of law	Estimated number of employees who leave their job	Estimated number of employees who decide to remain with their existing employer as a result of the scope of law being extended	Employer savings in recruitment costs as a result of extending scope of law
Parents of 17 year olds	8,500	85	£0.5m
Non-parents	116,000	580	£3.7m
Total			£4.2m

Source: LFS Q2 2011 and BIS estimates. Figures have been rounded.

(ii) Increased productivity and profits

As with the statutory approach, the methodology for calculating the impact on productivity and profits was based on the net proportion of businesses – 36 per cent – reporting an improvement in productivity as a result of flexible working and the assumption of a notional level of 5 per cent output gain being achieved for the 36 per cent of new working arrangements that result in increased productivity. This yields productivity gains under the non-legislative approach of £7.6m. Details are given in Table 18.

Table 18. Increased profits as a result of increased productivity for year one* – Employee parents of 17 year-olds and non-parent/non-carer employees

Scope of law	Extra gross profits (Total) p.a.
New working arrangements	32,000
Arrangements with increased productivity	11,500
Increase in profits	£7.6m
Total	£7.6m

Source: BIS estimates. Figures have been rounded. * subsequent years include benefits accrued from previous years new working arrangements

(iii) Reduced absenteeism rates

Again, we have used the same methodology for calculating reduced absenteeism as we adopted for the statutory approach. Thus, for parents of 17 year olds, we assume that 22 per cent of new working arrangements will result in lower employee absenteeism and for non-parents/non-carers the figure is 15 per cent. For the non-statutory approach generating 32,000 new working arrangements the benefits from absence reduction will therefore be £292,000. Details are provided in Table 19.

Table 19. Savings in absence costs for year one* – Employee parents of 17 year-olds and non-parent/non-carer employees

Scope of law	Savings in absence costs – non-parents/non-carers	Savings in absence costs – parents of 17 year olds
New Working arrangements	30,500	1,300
Arrangements where absence falls (15% or 22%)	5,000	300
Saving of 10% on absence costs	£270,000	£20,000
Total savings	£270,000	£20,000

Source: BIS estimates. Figures have been rounded. * subsequent years include benefits accrued from previous years new working arrangements

(iv) Summary of quantifiable benefits

The table below provides a summary of the quantifiable benefits in year one adding together the savings in recruitment cost (Table 17), the quantifiable benefits of increased productivity (Table 18) and the quantifiable savings in absence costs (Table 19).

Table 20. Total additional quantifiable benefits in year one* – Employee parents of 17 year-olds and non-parent/non-carer employees

Scope of law	Benefits to non-parents/non-carers and parents of 17 year olds
Reduced labour turnover	£4.2m
Increased productivity	£7.6m
Reduced absenteeism	£0.3m
Total Benefits	£12.1m

Source: BIS estimates. Figures have been rounded. * Subsequent years include benefits accrued from previous years new working arrangements.

(v) Sensitivity analysis of assumptions made to estimate benefits

The table below shows the effect on benefits of changing a particular assumption by 10 per cent. The three most uncertain assumptions used to estimate the benefits were chosen for sensitivity analysis.

Table 21. Summary of sensitivity analysis

Benefit	Assumption	+/- 10 per cent change in assumption leads to +/- change in benefit
Savings in recruitment costs as a result of lower labour turnover	0.5 per cent of non-parents/non-carers* (who would otherwise leave their job due to working hours) do not leave their job	£420,000
Increased profits as a result of increased productivity	5 per cent increase in output for those new working arrangements resulting in increased productivity	£761,000
Savings in absence costs	Cost of absenteeism falls by 10 per cent for those new working arrangements where absenteeism is expected to fall	£29,000

Source: *We assume 1 percent for parents of 17 year-olds.

(vi) Aggregation of benefits

We have again, as with a legislative approach, assumed that there will be some aggregation of benefits, albeit on a lower number of inflows due to the lower level of requests made. Thus, in year one the total stock of new working patterns equals the annual inflow of new working patterns. For year 2 the stock of workers increases to 60,000. The stock stabilises in year 3 and remains at 84,000 in years 3 to 10 (this is by design and ensures that the stock of flexible workers does not continuously grow).

Adjusting the benefits stream over 10 years to incorporate inclusion of existing stocks of flexible workers leads to a total net present value of benefits of £197m over 10 years.

Costs

The principal costs to business, as with the legislative approach, fall under three headings:

- Implementation costs of the proposals;
- Procedural costs arising from processing requests for flexible working;
- The costs of accommodating such requests (when they are accepted).

These are considered briefly in turn.

1. Implementation costs

Even with a non-legislative approach there may be some one-off implementation costs for business given that they will need to spend some time becoming familiar with the non-legislative code. We have assumed that these will be less than those accompanying the legislative option since employers will be less concerned with becoming fully acquainted with the non-statutory approach.

The cost will primarily be in management time. The relevant assumptions are set out in the table below. For all firms time has been valued for HR managers (SOC Code 1135) at one-third of an hour, half an hour or one hour at £26.21 per hour.

As with the legislative option, our assumptions of the amount of time firms spend on familiarisation take account both of firm size, and experience of flexible working.

Table 22. Implementation costs

Firm size (number of employees)	Number of firms with flex working	Average management cost (hours)	Number of firms with no flexible working*	Average management cost (hours)	Estimated total cost to business (£m)
1-4	555,057	0.33	41,778	1	£5.8
5-9	214,691	0.33	16,160	1	£2.3
10-19	113,572	0.33	3,513	1	£1.1
20-49	66,382	0.33	2,053	1	£0.7
50-99	22,067	0.5	223	1	£0.3
100-199	10,085	0.5	0	-	£0.1
200-249	2,070	0.5	0	-	£0.03
250-499	4,010	1	0	-	£0.1
500+	4,580	1	0	-	£0.1
Total	992,514		63,726		£10.4

Source: BIS estimates based on 2011 SME Statistics (Small Business Service) and Annual Survey of Hours and Earnings 2010 (ONS). *Proportions taken from 3rd Work Life Balance Employer Survey. Note: HR time is valued at £26.21. Figures have been rounded. Total may not sum to individual parts due to rounding.

2. Procedural Costs

Throughout the consultation and stakeholder events there was little evidence produced to suggest that the time estimates set out below were too high or low.

(i) Average cost of handling first-stage and deadweight requests

As with the legislative option it is assumed that 90% of requests will be handled informally and 10% formally (in comparison to 80% and 20% respectively under the old statutory procedure). Formal requests are estimated to take 2 hours of employee time and 3 hours of management time to process. It is assumed that informal requests take half-an-hour of employee time and one-and-a-half hours of management time. Details on the time taken to process a request are provided in table 23 below. It is

likely in practice that for 'deadweight' requests, i.e. those in organisations where employees are already allowed to work flexibly, the average procedural cost will be much less; this has been allowed for in lower process times for deadweight requests as detailed in table 23.

(ii) Average cost of appeal or internal grievance stage

As with the legislative code option, it is assumed that the appeal stage will cost double that of the first stage, namely £110 per request. Details on the time taken to process an appeal are provided in table 23 below.

We also assume, as with the previous option, that 90% of appeals are dealt with on an informal basis whilst only 10% are handled through formal procedures.

(iii) Average cost of external dispute resolution stage

Under the non-statutory approach we have assumed that there will be no Employment Tribunal costs since this option will not give employees the right to contest an employer's decision at a tribunal.

(iv) Administrative burdens

As with the legislative code option, we have looked at the administration burdens and the use of external goods and services.

As the underlying unit cost (i.e. the hourly rate for management and employee time) is the same for admin burdens and policy costs, the value of each is effectively the time allocated to them. These breakdowns are set out in table 23 below.

Table 23. Estimated time to process a request[#]

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

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

Following the findings of the ORC Study⁴³, for a non-legislative route the use of goods and services is assumed to be relatively low given that the process is regarded as easy. There is a higher incidence of external service purchased for refusals and appeals, however; consistent with the notion that for more complex labour issues businesses seek bespoke guidance. For the flexible working Information Obligations in the ORC study, the use of external goods and services amounted to £57.45 for first stage requests and £214 for requests taken to appeal.⁴⁴

We have assumed that for the new system using a non-statutory code of practice, the use of external goods and services as set out in the ORC report will no longer be necessary for the first stage of

⁴³ *Employment Law Admin Burden Survey 2008*, ORC International, December 2008.

⁴⁴ In calculations these figures have been uprated to 2010 prices.

requests which are handled informally. There are still external goods and services costs for first-stage formal requests (£57.45) and for requests taken to appeal (£214).

The resulting costs of administrative burdens to employers are presented in table 24 below and reflect the split between formal and informal requests outlined above.

3. Cost of accommodating requests for flexible working

Employers may face costs in accommodating a request for flexible working. Examples might include re-organising work schedules or adjustments to IT systems (e.g. to permit flexible rostering). In some cases, the potential costs could be more substantial (e.g. if another employee had to be recruited to cover for an employee reducing their working hours). These examples should not be considered as exhaustive. Our estimates of adjustment costs are in table 24 below.

4. Summary of costs

Total procedural costs and total accommodation costs for the first year are presented in the table below. Also shown in the final two columns are a) the total additional cost to employers per year due to the extension; and b) of this, the administrative burdens.

Table 24: Summary of annual procedural costs and cost of accommodating requests*

Scope of law	One-off costs	Annual recurring cost			
	Total one-off costs (£ millions)	Total procedural costs (£ millions)	Total costs of making adjustments to working patterns (£ millions)	Additional annual cost to employer (£millions)	Of which administrative burdens (£millions)
Parents of 17 year olds and those with no dependent children or caring responsibilities – new non-statutory code of practice	10.4	12.6	7.8	20.4	1.7

Source: BIS estimates. Figures have been rounded.

5. Cost of associated publicity campaign

Without extensive publicity it is unlikely that many employers would become aware of the code. Because of the voluntary nature of the code the publicity campaign would need to be significant in order to create a step change in attitudes towards flexible working and a significant increase in availability.

The Department would therefore need to run a broad-audience and sustained marketing campaign aimed at both employees and employers. Changing cultural attitudes takes time, suggesting on past experience the need to run the campaign for between 18 months and 2 years. It would need to include high-profile and sustained PR activity, stakeholder engagement, the creation of regional and sector-based networks and best practice forums, a programme of conferences, sector-specific activities, online activity (such as search optimisation and banner advertising) and radio and other forms of advertising. The campaign would also need to be piloted and evaluated effectively to ensure maximum impact, which would add to the costs.

In 2002, the then DTI ran a similar campaign to promote the benefits of work life balance costing in the region of £2.25m. It is difficult to assess the direct effect of this campaign because it was accompanied by the introduction of the right to request flexible working for parents of children under 6. It is nevertheless likely that a campaign of similar scale and cost would be required for a non-regulatory

approach, depending on the profile Ministers want to achieve relative to other Government priorities. We therefore allow for publicity costs to the Exchequer of £2.25m.

6. Code of practice – procedural savings

Under this option there would be no procedural savings since the legislative right would remain the same for those currently covered by the legislation.

Enforcement

This will not apply because the non-statutory approach does not provide a legislative right.

Recommendation and summary table of costs and benefits

Table 25 presents a summary of the estimated quantifiable costs and benefits.

Table 25. Summary of quantifiable costs and benefits for year one*

Scope of law	Costs (£m)	Benefits (£m)
Non parent/non-carer employees & parents of 17 year olds	£20.4	£12.1
One-off costs	£10.4	
Publicity Campaign	£2.25**	

Source: BIS estimates. Figures have been rounded. * Subsequent years include benefits accrued from previous years new working arrangements. **spread over year 1 and 2.

One-in, one-out Rule

For this consultation and this option, there are no direct benefits to business. Increased productivity is deemed to be indirect, and following the judgement of the RPC, reduced absenteeism and reduced labour turnover are now also assumed to be indirect. Direct costs include procedural costs and familiarisation costs.

Using data from BIS Business Population Estimates for 2011 we estimate that 96% of one-off costs will fall on business. Based on Labour Force Survey 2011 Q2 data we estimate that 70% of the recurring costs and benefits will be incurred by businesses. Further details can be found in Annex E.

Table 26 shows the direct impact to firms (excluding employers in the public sector). The equivalent annual costs to firms will be £9.7 million. With no equivalent annual benefit, the net annual direct cost to business is £9.7 million.

Compensatory out: The extension to the right to request flexible working will be offset by the reductions in the costs to business achieved through the Resolving Workplace Dispute measures.

Table 26: Summary of Equivalent Annual Cost and Benefit (direct impact on employers excluding public sector)

Scope of law	Equivalent annual cost (£m)	Equivalent annual benefit (£m)	Equivalent net cost (£m)
Parents of 17 year olds and those with no dependent children or caring responsibilities	£9.7	£0	£9.7

Source: BIS estimates. Figures have been rounded. For one in one out purposes the Department is seeking an out of equal measure.

Note: Excludes employers in the public sector

Annexes

Annex 1: Post Implementation Review (PIR) Plan

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>It is intended to extend the Right to Request to all employees in April 2014. The review of the extension will take place in April 2019 five years after introduction, when the new right has become established. The review will inform decisions on the sunset clause.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The review will examine whether the take-up of flexible working increases as a result of the extension of the right to request, especially for male employees. It will also explore the degree to which requests are accepted, employer attitudes to flexible working and the level of disputes via Employment Tribunal claims. It will seek to establish whether productivity increases with flexible working; whether labour turnover is reduced and whether absenteeism is reduced, in line with the assumptions made in this IA.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>It is planned that the Work Life Balance series of surveys will continue and these can be designed to form the central part of the evaluation process. In addition, data will be available from other survey sources such as the Workplace Employment Relations Survey 2011, future Fair Treatment at Work surveys, the Labour Force Survey and the Survey of Employment Tribunal Applications.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The 4th Work Life Balance survey of employees undertaken in 2011 is designed to provide a baseline on the use of the right to request flexible working by all employees. Additional baseline data will be provided by the 4th Work-life Balance survey of employers, which will be conducted in 2013. More general data on take-up of flexible working will be available from the Labour Force Survey.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Increase take-up of flexible working by all employees but particularly men</p> <p>Increased use of the right to request procedure</p> <p>Continued high levels of requests accepted</p> <p>Continued low levels of Employment Tribunal Claims regarding flexible working</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>The 4th Work Life Balance Survey of Employees, undertaken in 2011, is designed to provide a baseline of the use of the right to request for all employees prior to the new right being in place. The 4th Work-life Balance Survey of Employers, which will be carried out in 2013 will add to this. Data will also be available from the next Workplace Employment Relations Survey (2011) from employees and employers on availability and use of flexible working. Regular monitoring of future take-up of flexible working will be undertaken using Labour Force Survey data and future Work-life Balance Surveys of Employees and Employers. Employment Tribunal claims will also be monitored annually to assess whether disputes are rising.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Annex A: Specific impact tests

1. Competition Assessment

Business sectors affected

The table below shows the number of additional employees by broad sector who would be eligible to request flexible working if the current law was extended to those without dependent children. Overall the sectoral impact is likely to be minimal. The distribution of eligible employees across sectors is in fact very similar to the overall distribution of all employees.

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

	With dependent children	Without dependent children	All employees
A-B: Agriculture & fishing	1%	1%	1%
C,E: Energy & water	1%	1%	1%
D: Manufacturing	11%	12%	12%
F: Construction	5%	5%	5%
G-H: Distribution, hotels & restaurants	19%	19%	19%
I: Transport & communication	6%	6%	6%
J-K: Banking, finance & insurance etc	16%	16%	16%
L-N: Public admin, educ & health	36%	33%	34%
O-Q: Other services	5%	6%	5%
total	100 %	100%	100%

Source: LFS Q2 2010. Note: people that are eligible to request flexible working if the current law was extended may not necessarily reflect the actual take up rate

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A2 below). In the filter test, the issue of market share is not relevant because the proposals apply to all sectors of the economy and at the same time, with the total number of requests per year expected to be low, the likelihood of any particular employer being affected by a case is low.

The proposed policies will not affect market structure or the potential of new firms to enter markets nor are the proposals expected to have an impact on firms' production decisions.

The proposed legislation will apply to all firms and is unlikely to affect the competitiveness of any particular sector.

Table A2. Competition assessment.

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

Source: BIS

2. Small Firms Impact Test

The proposed amendment to the regulations would apply to firms of all sizes. It has been assumed that small businesses will be disproportionately affected in terms of the transition costs because some small firms have no experience of flexible working. This has been factored into the calculations such that additional costs associated with companies familiarising themselves with flexible working for the first time have been applied. This creates higher proportional costs for small firms than for large firms i.e. the cost per employee.

The reasons for declining a request may be more pertinent to small firms, meaning that they may be more likely to decline requests. However as we do not have reliable decline figures by business size we cannot calculate this. Additionally the costs and benefits of flexible working requests were calculated on the basis of the number of requests as opposed to 'per business' so this would not affect the overall costs and benefits calculation.

It could be argued that small businesses may experience a disproportionate impact on the running of their business when an individual requests to work flexibly, compared to larger businesses, particularly where small businesses do not have a dedicated HR function. However, as a group, small businesses are as likely to encounter requests to work flexibly as larger businesses, though individual small businesses will be less likely to be affected by the new entitlements, as they have fewer employees per business. Data from the Work Life Balance Employer survey indicates that fewer small firms provide flexible working and that a smaller proportion of smaller workplaces have received requests to work flexibly. These are shown in the Table A3 below.

It is also the case that businesses can refuse a request to flexible working if there are business reasons for doing so. Thus, if small firms feel the request is disproportionate, they can refuse it.

Table A3 Availability of flexible working and experience of requests

	% with No flexible working available	Those workplaces experiencing requests
1-9	7	28
10-24	3	40
25-49	3	51
50-99	1	71
100-249	*	77
250-499	*	91
500 or more	*	94
Total		

Source: Third Work Life Balance Employer Survey, Dec 2007

Evidence from the Fourth Work Life Balance Employee Survey shows that the request rate for flexible working within micro sized employers is lower compared to larger sized employers.

Table A4 Requests to work flexibly*

Firm size	Request rate (over 2 years)
Single site: 1-9	14%
Single site: 10-49	23%
Single site: 50-249	18%
Single site: 250+	26%
All employees	22%

Source: Fourth Work Life Balance Survey of Employees: Main Findings, BIS, July 2012.

* Requests have been measured over a two year period. Firm size data presented in this table refers to respondents who work in a single site organisation. There are also respondents who work in multi-site organisations. The 'All employees' statistic uses the entire sample as the base.

Finally, data from the Labour Force Survey suggests that small firms do not have a disproportionate share of non parents in their workforce. Table A5 presents the distribution of estimated eligible non-parents and compares this to the distribution of all employees by workplace size across the economy. The indication is that small and medium sized workplaces would not be disproportionately affected.

Table A5 Distribution of employees by workplace size

	With dependent children	Without dependent children	All Employees
1-10	19%	20%	19%
11-19	9%	9%	9%
20-24	5%	5%	5%
25-49	15%	14%	14%
50-249	25%	26%	26%
250-499	8%	8%	8%
500 or more	20%	18%	19%
Total	100 %	100%	100%

Source: LFS Q1 2012. Assuming that the "do not know but under 25" have the same distribution as the 1-10,11-19,20-24 groups, and the "do not know but between 50 and 499" have the same distribution as the 50-249 and 250-499 groups. Note: people that are eligible to request flexible working if the current law was extended may not necessarily reflect the actual take up rate.

3. Equality Impact Assessment

Gender

The current right to request is restricted to parents and carers, but flexible working can be used to support people for many reasons, including supporting individuals who wish to undertake voluntary activities.

The current right to request flexible working has enabled many parents and carers to integrate their work and family responsibilities. However because of the current right to request restrictions, it has created the cultural belief that flexible working is only of benefit to parents and carers and consequently for women, as they continue to deliver the majority of the caring role. This culture also means that many businesses aren't recognising the benefits of flexible working. It also means that employers aren't considering flexible working when they advertise jobs, and employees are concerned that working flexibly will harm their career prospects. In order to encourage flexible working amongst men it is important to remove this labelling from the legislation.

Opening up flexible working to all employees will change the cultural perceptions around flexible working, and create more flexible working opportunities. This policy supports a number of Government agendas, including reducing child poverty, and enabling single parents back into employment.

The intention of the proposed legislation is that employers give serious consideration to requests for flexible working arising from all employees irrespective of whether they are parents or carers.

However consultation respondents and attendees at the consultation workshops felt there was a risk that the extension to the right to request would prompt an influx of requests that would mean employers would be unable to accept all of them. Participants were concerned that this would mean parents and carers, who may have a greater need for flexibility, would have their requests declined, and but also that discrimination claims might follow⁴⁵.

This assumption is predicated on the theory that there is a fixed amount of flexibility available in the workplace, which is not supported by the examples given by employers who already offer flexible working to their entire workforce. Additionally we intend to include guidance within the code of practice setting out the impact of discrimination legislation on flexible working requests to enable employers to consider requests in a way that avoids discriminating against individual groups of employees.

Overall, the proposals will enhance equity and fairness since they provide all employees with greater flexibility. An initial equality impact assessment suggests there would not be any disproportionate effects by gender. Indeed, there is a slightly larger proportion of male employees without children currently not covered by the legislation, who now will be.

Table A5 Distribution of employees by gender

	With dependent children	Without dependent children	All employees
Male	49%	51%	51%
Female	51%	49%	49%
Total	100 %	100%	100%

Source: LFS Q2 2010. Note: people that are eligible to request flexible working if the current law was extended may not necessarily reflect the actual take up rate

⁴⁵ 9% of respondents stated in their response to the Modern Workplaces consultation that they were concerned that prioritising requests would increase the risk of discrimination and employment tribunal claims (responses to question 6: *Do you agree with our proposals on prioritisation of multiple flexible working requests that cannot all be accommodated?*). This concern was more prevalent amongst employers (18% of business respondents raised this as a risk).

Disability

Disabled individuals have the right to reasonable adjustments to accommodate their needs. This right effectively enables them to make flexible working requests under a stricter test than the right to request flexible working. An employer would need to show why it would be unreasonable to accommodate the request. It is not intended that this should supersede any case law in this area, so the discrimination by association issue would remain and would be something we would pick up through guidance.

However many individuals have health considerations or illnesses but do not consider themselves disabled or do not wish to identify themselves as such. The extension to the right to request flexible working will enable them to make a request without needing to give a reason for their request.

The proposed changes are thus unlikely to create any barriers to equality in terms of an employee's disability. Furthermore, we do not expect that employers employing individuals with disabilities will be unduly affected by the proposed extension.

Table A6 Distribution of employees by disability

	With dependent children	Without dependent children	All employees
Not disabled	89%	84%	86%
DDA disabled & work limiting disability	4%	6%	5%
DDA disabled	5%	7%	6%
Work limiting disability only	2%	3%	3%
Total	100 %	100%	100%

Source: LFS Q2 2010. Note: people that are eligible to request flexible working if the current law was extended may not necessarily reflect the actual take up rate

Ethnicity

It is important that the proposals outlined above do not have a disproportionate effect on any one ethnic group. Table A7 indicates that the distribution of ethnicity amongst newly-eligible non-parents is similar to that for all employees; so no ethnic groups will be disadvantaged from the extension.

Table A7 Distribution of employees by ethnicity

	With Dependent children	Without dependent children	All employees
White	89%	92%	91%
Mixed	1%	1%	1%
Asian or Asian British	6%	4%	5%
Black or Black British	3%	2%	2%
Chinese	0%	0%	0%
Other	1%	1%	1%
Total	100 %	100%	100%

Source: LFS Q2 2010. Note: people that are eligible to request flexible working if the current law was extended may not necessarily reflect the actual take up rate

Age

The extension of the right to request flexible working will be important in helping older workers remain in work. The removal of the Default Retirement Age enables people to work for longer, but employees and

employers will continue to have discussions about retirement. Flexible working allows people to stagger their retirement instead of creating a 'cliff edge' retirement. It can also help employers manage the transition.

The table below shows a slightly larger proportion of non-parent employees in the older age groups in comparison to the figures for all employees. They will therefore be positively affected by the legislation.

Table A8 Distribution of employees by age

	With dependent children	Without dependent children	All employees
16-20	6%	4%	5%
21-30	15%	26%	22%
31-40	35%	15%	23%
41-50	37%	19%	26%
51-60	7%	26%	19%
61-70	0%	9%	6%
70+	0%	1%	0%
Total	100%	100%	100%

Source: LFS Q2 2010. Note: people that are eligible to request flexible working if the current law was extended may not necessarily reflect the actual take up rate

Faith

It is important that the proposals outlined above do not have a disproportionate effect on any one faith group. Since the legislation will extend the right to request to all employees no particular faith will be disadvantaged. Table A9 indicates that the distribution of faiths among newly-eligible non-parents is similar to that for all employees and so no religious groups will be disadvantaged by the new provision.

Flexible working can support individuals of any faith in religious observance. For example, where an individual is required to fast during daylight hours, they would be able to request flexible start and finish times, or to work from home, to ensure that they can get home in time for sunset.

Table A9 Distribution of employees by faith

	With Dependent children	Without dependent children	All employees
Christian	70%	72%	71%
Buddist	0%	0%	0%
Hindu	2%	1%	2%
Jewish	0%	0%	0%
Muslim	3%	2%	2%
Sikh	1%	1%	1%
Any other religion	1%	1%	1%
No religion at all	23%	22%	22%
Total	100 %	100%	100%

Source: LFS Q2 2010. Note: people that are eligible to request flexible working if the current law was extended may not necessarily reflect the actual take up rate

Annex B: Outline of Admin Burden Information Obligations Relating to 2002 Regulations

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

ID	IO Description	Information Metric
30371	<p>Providing an employee with written notice of the decision relating to a request for a contract variation.</p> <p>Specifying in the written notice:</p> <ul style="list-style-type: none"> - the contract variation agreed to and date on which the variation is to take effect, where your decision is to agree to the application; or - the prescribed grounds for refusal where the application is turned down. 	No of requests for a contract variation in relation to flexible working.
30411	<p>Notifying the employee, in writing, when you uphold your decision to refuse an application to change working arrangements after the employee has appealed. The notice of your decision should specify the contract variation agreed to and stating the date from which the contract variation is to take effect.</p>	No of instances an employer upholds their decision to refuse an application to change working time arrangements after the employee has appealed.
30463	<p>Confirming the withdrawal of an application for a contract variation to change working arrangements to the employee in writing in certain circumstances, for example, where the employee has failed to attend meetings.</p>	No of withdrawals of an application for a contract variation to change working arrangements in certain circumstances, for example, where the employee has failed to attend meetings.
30415	<p>Notifying the employee of your decision following a meeting to discuss the appeal.</p> <p>Written notice stating:</p> <ul style="list-style-type: none"> - where you uphold the appeal, the contract variation agreed to and the date from which the variation is to take effect or; - where you dismiss the appeal, the grounds for the decision with a sufficient explanation as to why those grounds apply. 	No of appeals in connection with requested contract variations.
30363	<p>Requirement for an employer to notify an employee in writing within 28 days of an application for a contract variation of any agreed variation.</p> <p>Written notice specifying the contract variation agreed to and the date from which it is to take effect.</p>	No of instances where an employer agrees to an employee's application for a contract variation to provide for an alternative/flexible working arrangement

Annex C: Flexible working estimates

Numbers of requests accepted by employers

Requests can be accepted by employers at a number of stages: when a request is first made; at the appeal or internal grievance stage; and following recourse to external dispute resolution (either an Employment Tribunal or another form of dispute resolution). BIS's third work life balance employee survey showed that 78 per cent of new requests are accepted at first stage and 25 per cent of unsuccessful cases are taken to appeal stage. We have assumed that 20 per cent of requests that go to appeal are accepted at this stage, and that 3 per cent of those unsuccessful at appeal are referred to external dispute resolution, of which 2 per cent are successful.

It is therefore necessary to map the progress of requests through these various stages. This is done in Table C1.

Scope of law	All eligible employees
All employees who become eligible under proposed extension	10.7 million
1) No. of additional requests	81,000
2) Proportion accepted at first stage (0.78=78per cent)	0.78
3) No. of requests accepted at first stage =1x2	63,200
4) Proportion of requests taken to second stage (0.25=25per cent)	0.25
5) No. of second stage requests =(1-3)x4	4,500
6) Proportion accepted at second stage (0.2=20per cent)	0.2
7) No. of requests accepted at second stage =5x6	900
8) No. of requests turned down by employer= 5-7	3,600
9) Proportion referred to external dispute resolution (0.03=3per cent)	0.03
10) No. of additional external dispute resolution cases=8x9	107
11) Proportion successful at external dispute resolution stage	0.02
12) No. of requests accepted at external stage = 10x11	2
13) No. of requests unsuccessful at external stage = 10-12	105
14) Total no. of new working arrangements = 3+7+12	64,000

Annex D: Justice impact test

We estimate that as a result of introducing a statutory code of practice that there will be 107 additional employment tribunal claims that fall under flexible working jurisdiction. We estimate that the cost to an employer that reaches a hearing is £5,900 (this cost figure is based on data from the 2008 Survey of Employment Tribunal Applications for discrimination based claims).

The cost to the Exchequer is estimated at £420 per claim. This reflects the cost of receipt and allocation only. Aggregating across all additional claims results in a £45,000 cost per annum.

Annex E: Net Present Value and One-in-one-out calculations

The tables below explain the costs and benefits that were fed into the Better Regulation Executive (BRE) IA calculator to calculate the net present values and Equivalent Annual Net cost to Business (EANCB) scores for options 1 and 2.

Table E1: Costs and benefits of option 1, extending the right to request flexible working legislation to cover all employees using a statutory code of practice. All figures in £m. Best estimates.

Impact on business (%)	Direct impact on business	Cost or benefit	0	1	2	3	4	5	6	7	8	9	Nominal total	Present value total
		<u>Transition costs</u>												
96%	YES	Familiarisation cost	15.3										15.3	15.3
		<u>Annual costs</u>												
70%	YES	Procedural	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	240.0	206.6
70%	NO	Adjustment	15.8	15.8	15.8	15.8	15.8	15.8	15.8	15.8	15.8	15.8	158.0	136.0
0%	NO	Tribunal Exchequer	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.5	0.4
		<u>Annual benefits</u>												
70%	YES	Statutory code	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1	91.0	78.3
70%	NO	Recruitment	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	84.0	72.3
70%	NO	Absence	0.6	1.1	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	14.5	12.3
70%	NO	Productivity	15.3	28.7	40.5	40.5	40.5	40.5	40.5	40.5	40.5	40.5	368.0	312.0
		<u>Totals</u>												
		Total cost	55.1	39.8	39.8	39.8	39.8	39.8	39.8	39.8	39.8	39.8		
		Present value total cost	55.1	38.5	37.2	35.9	34.7	33.5	32.4	31.3	30.3	29.2		358.3
		Total benefit	33.4	47.3	59.6	59.6	59.6	59.6	59.6	59.6	59.6	59.6		
		Present value total benefit	33.4	45.7	55.6	53.8	51.9	50.2	48.5	46.8	45.3	43.7		474.9

Source: BIS estimates. For the purposes of OIOO, net cost to business are presented in 2009 prices. This IA has a 2010 price base year and the EANCB figures have been adjusted accordingly using HMT's GDP deflator. We have used the share of employees working in the private sector from the LFS 2011 Q2 to estimate percentage impact on business for annual costs and benefits. The percentage impact on business of transitions costs is based on the share of private sector enterprises from BIS 2011 Business population estimates.

Table E2: Costs and benefits of option 2, create a non-statutory Code of Practice to encourage employers to consider requests for flexible working to all employees. All figures in £m. Best estimates.

Impact on business (%)	Direct impact on business	Cost or benefit	0	1	2	3	4	5	6	7	8	9	Nominal total	Present value total
		<u>Transition costs</u>												
96%	YES	Familiarisation cost	10.4										12.6	12.6
		<u>Annual costs</u>												
70%	YES	Procedural	12.6	12.6	12.6	12.6	12.6	12.6	12.6	12.6	12.6	12.6	126.0	108.5
70%	NO	Adjustment	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	78.0	67.1
0%	NO	Publicity Exchequer	1.1	1.1									2.2	2.2
		<u>Annual benefits</u>												
70%	NO	Recruitment	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2	42.0	36.2
70%	NO	Absence	0.3	0.5	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	7.2	6.1
70%	NO	Productivity	7.6	14.3	20.1	20.1	20.1	20.1	20.1	20.1	20.1	20.1	182.7	154.9
		<u>Totals</u>												
		Total cost	31.9	21.5	20.4	20.4	20.4	20.4	20.4	20.4	20.4	20.4		
		Present value total cost	31.9	20.8	19.0	18.4	17.8	17.2	16.6	16.0	15.5	15.0		188.2
		Total benefit	12.1	19.0	25.1	25.1	25.1	25.1	25.1	25.1	25.1	25.1		
		Present value total benefit	12.1	18.4	23.4	22.6	21.9	21.1	20.4	19.7	19.1	18.4		197.2

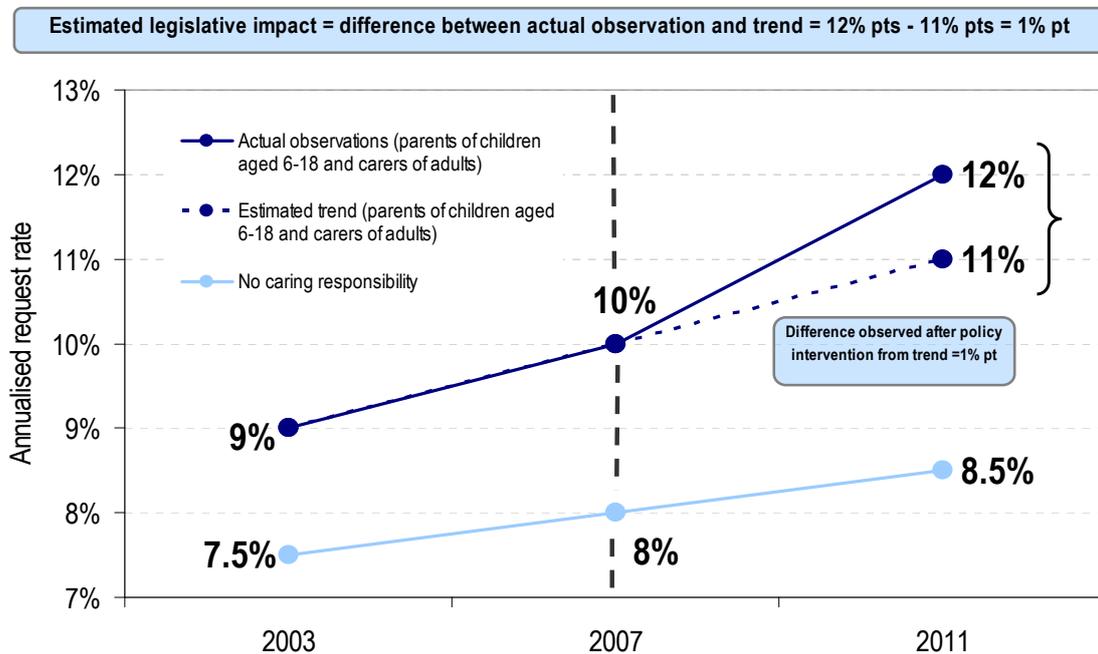
Source: BIS estimates. For the purposes of OIOO, net cost to business are presented in 2009 prices. This IA has a 2010 price base year and the EANCBS figures have been adjusted accordingly using HMT's GDP deflator. We have used the share of employees working in the private sector from the LFS 2011 Q2 to estimate percentage impact on business for annual costs and benefits. The percentage impact on business of transitions costs is based on the share of private sector enterprises from BIS 2011 Business population estimates.

Annex F: Take-up assumption analysis

To further inform the assumptions on take-up used within this IA we have extrapolated a trend line of take-up for carers of adults and parents of children aged 6-18 years old to estimate the policy impact of the extension of the right to request to these groups in 2007 (carers) and 2009 (parents of older children). From this we observed that the extension of the right to request boosted take-up to these groups by 1 percentage point from trend.

The deviation from trend is not observed in employees without caring responsibility; who do not have the right to request flexible working. This supports the assumption that it is the legislative right to request flexible working that has generated the deviation.

Chart F1: Trend analysis to inform take-up rate assumptions



Source: BIS analysis of 2nd, 3rd and 4th Work Life Balance Surveys of Employees

Annex G: Literature on the Impact of Flexible Working on Productivity

There is a body of research (both theoretical and applied) which suggests the extension of the right to request flexible working will lead to productivity benefits flowing from the new flexible working arrangements that result⁴⁶. This has largely been corroborated by consultations with businesses and their representative bodies. That said, and despite the volume of this research, very few studies seek to quantify the productivity effect in a manner that could be applied directly to our analysis; there is no definitive measure to draw on. Research focuses on testing the theory of the employee transmission mechanisms, on survey perceptions of productivity effects, on case studies, or on relative measures of productivity gain (the latter not always at the level of the employee). Moreover much of the literature on the mechanisms for productivity improvement centres on parents, rather than those who will get the Right under the proposed extension. As outlined below, the evidence there is, plus the feedback from stakeholders, nevertheless provides a sufficient foundation for the 5% assumption we have used in our analysis (which has been applied to a subset of the employees who take up new working arrangements as a result of the extension); and indeed suggests that this figure may underestimate the true effects.

How do the Productivity Benefits Occur?

There are a number of routes through which flexible working will lead to improvements in employee productivity and enhanced profits. The starting point is a conversation between the employer and employee that provides one or both parties with a working arrangement that suits them better.

For employees, the new arrangements enable them to better reconcile their work and non-work lives and impact on their attitude and behaviour towards work. Some of the literature, for example, focuses on the positive impact of flexible working and supportive environments on work-family conflict; reduced work-family conflict and the associated pressure leads to a workforce that is more satisfied, engaged or committed, and has higher morale. The same process applies to those without caring responsibilities who are better able to reconcile home and work commitments. For both groups, changes to working arrangements make them more motivated to work hard and perform well because they are more contented or driven at work⁴⁷. Or, within a sociological exchange theory framework⁴⁸, they feel duty bound to work hard as a reciprocal act in exchange for the work-life balance their employer is facilitating. The positive changes in employee performance then impact on establishment level outcomes such as high quality and productivity. For those who take up the new Right, a combination of these factors is likely to produce the increase in productivity that many surveys and stakeholder groups report.

For employers, changes in employee working arrangements may directly improve the functioning of the business model as a whole. For example, an employee's request to change their working hours may fit better with peak periods in the business when greater staffing levels would be of benefit; improving the quality of 'delivery' during these times, and hence productivity.

⁴⁶ See the forthcoming BIS Literature Review, Smeaton, D, Ray, K and G Knight, 2012, Costs and Benefits to Business of Adopting Work-life Balance Practices, BIS forthcoming.

⁴⁷ For review of the literature see Kelly, E., Kossek, E., Hammer, L., Durham, M., Bray, J. Chermack, K., Murphy, L. and Kaskubar, D (2008) Getting There from Here: Research on the Effects of Work-Family Initiatives on Work-Family Conflict and Business Outcomes. *Acad Manag Ann.* 2008 August ; 2: 305-349.

⁴⁸ For example, Kelliher, C. and Anderson, D. (2010) Doing More with less? Flexible Working Practices and the Intensification of Work. *Human Relations*, V 63, N 1, pp83-106'.

The Research Evidence

There is evidence underpinning these theories of productivity improvement: first, linking flexible working to enhanced employee engagement, satisfaction, commitment and similar outcomes and finding a positive association between these and performance and productivity; and second, exploring directly the relationship between flexible working and productivity without specifying the mechanisms through which any impact occurs. Some of this literature is summarised below.

i) Flexible working, work-life balance and satisfaction/engagement outcomes

There is research examining the link between work-life balance and outcomes such as satisfaction, commitment or engagement at work. For example, the literature review by Kelly et al (2008)⁴⁹ explores a) the extent to which work-family initiatives reduce employees' work-family conflict; and b) the extent to which reduced work-family conflict improve outcomes at the level of the individual and at the organisational level. They conclude that "overall, the findings from this body of research suggest that work-family conflict is related to job satisfaction, organisational commitment, turnover intentions, tardiness and absenteeism".

Hayman (2010)⁵⁰ used a sample of 311 office-based employees in one organisation to find a strong relationship between the use of flexible working schedules and employee well-being. Flexible working was found to have a negative relationship with role overload, a positive relationship with job satisfaction, and negative relationships with work-life conflict measures, all of which combine to suggest improvements in employee well-being associated with flexible working arrangements. Using regression analysis with a sample of 220 employed adults, McNall et al (2010)⁵¹ investigated the relation between the availability of flexitime and compressed working weeks and work-to-family enrichment, and the relation between the latter and job satisfaction and turnover intentions. They found flexible working to improve enrichment from work to home which in turn is associated with higher job satisfaction and lower turnover intentions.

Evidence from surveys supports the connection between flexible working, reduced work-home conflicts and outcomes such as satisfaction, engagement, commitment and morale. The positive consequences of working flexibly reported by respondents to the most recent Work-life Balance Survey of Employees⁵² included 'more time with family', 'work-life balance improved', 'less travelling/avoid rushhour', 'get more work done', 'enjoy work/happier', and 'improved health/less stress'. The Survey also found that employees with flexible working were much more likely than those without flexible working to say they were 'very satisfied' with their current working arrangements (46 per cent of part-time flexible workers said this in comparison to 37 per cent of those with part-time working only and 31 per cent of those with no flexible or part-time working). The last associated survey of employers⁵³ found that 58 per cent of employers thought that the provision of work-life balance practices had a positive effect on employee relations, whilst 57 per cent reported positive effects on employee motivation and commitment. A CIPD survey⁵⁴ on these issues found that employees who are satisfied with their work-life balance and those who are able to work flexibly are more engaged with their work than those who are dissatisfied or not working flexibly. It found that those on flexible contracts tend to be more emotionally engaged, more satisfied with their work, more likely to speak positively about their organisation and less likely to quit than those not employed on flexible contracts. Flexible working surveys conducted by

⁴⁹ Kelly, E., Kossek, E., Hammer, L., Durham, M., Bray, J. Chermack, K., Murphy, L. and Kaskubar, D (2008) Getting There from Here: Research on the Effects of Work-Family Initiatives on Work-Family Conflict and Business Outcomes. *Acad Manag Ann.* 2008 August ; 2: 305-349.

⁵⁰ Hayman, J. (2010). Flexible Work Schedules and Employee Well-Being. *The New Zealand Journal of Employment Relations – Special Issue on Occupational Stress.* Vol 35(2).

⁵¹ McNall, L., Masuda, A. and Nicklin, J. (2010) Flexible work arrangements, job satisfaction and turnover intentions: the mediating roles of work to family enrichment. *Journal of Psychology*, Vol 144, pp61-81.

⁵² Tipping, Chanfreau, Pery and Tait (2012), Report of the 4th Work-life Balance Employee Survey, BIS forthcoming.

⁵³ Hayward B, Fong, B. and Thornton, A. (2007), The Third Work-life Balance Employers Survey. ERRS No. 86, BIS.

⁵⁴ Truss, K, Soane, E. Edwards, C, Wisdom, K, Croll, A and J Burnett (2006), Working Life: Employee Attitudes and Engagement, CIPD.

IRS Employment Review in 2009 and 2010⁵⁵ found 63% of employers reporting increased employee engagement as a result of flexible working.

ii) Satisfaction/engagement outcomes and productivity

A further set of studies makes the link between morale/satisfaction/engagement and business performance. For example, using WERS (1999), Guest et al (2000)⁵⁶ explore a hypothesised model linking HR practices to employee commitment and satisfaction to productivity to sales and financial performance. The initial HR practices are not relevant here, but the link between satisfaction/commitment and turnover or performance outcomes is important. They find a positive association between employee satisfaction/commitment and comparative productivity. The literature review of Kular et al (2008)⁵⁷ reports a number of studies linking employees with high levels of engagement with benefits such as enhanced productivity. A meta-analysis conducted by Harter et al (2002)⁵⁸ supports this association, whilst Eaton (2001)⁵⁹ surveyed a sample of employees of biotechnology firms to find an association of work-family flexibility policies to perceived productivity and organisational commitment. Kelliher and Anderson (2010)⁶⁰ record higher levels of job satisfaction and organisational commitment among flexible workers and an intensification of work. Intensification was associated with those who worked reduced hours or remotely. They suggest that employees reciprocate the ability to work flexibly by exerting additional effort.

iii) Flexible working and productivity

The causal chain linking flexible working to productivity is complex and difficult to prove. The findings above nevertheless suggest that flexible working arrangements do have positive effects on individual performance. What follows is a summary of the evidence that directly links flexible working arrangements and positive productivity effects.

There is a body of econometric evidence suggesting a positive correlation between productivity/performance (measured at both the individual and firm level) and work-life balance policies, as outlined in the forthcoming BIS Literature Review. Using the Workplace Employment Relations Survey (WERS), conducting regression analysis with data from 1998 and 2004 (a period during which many workplaces increased their provision of family-friendly working arrangements) Whitehouse et al⁶¹ found “workplaces in which the incidence of family-friendly provisions increased over the time period were more likely to be identified by managers as having improved in financial performance relative to others in the field. This finding was consistent while controlling for the effect of market factors and the presence of management techniques potentially associated with improved financial performance”.

Also using the WERS panel data, Riley et al (2008)⁶² model the impact on business performance, productivity or profits of a variety of factors including working at home. They find some limited evidence to suggest there are positive effects of home working on business productivity and profits.

⁵⁵ IRS Employment Review Flexible Working Surveys 2009 and 2010, IRS.

⁵⁶ Guest, D., Michie, J., Sheehan, M. and Conway, N. (2000b) ‘Getting inside the HRM–performance relationship’, Working Paper 8, ESRC Future of Work Programme.

⁵⁷ Kular, S., Gatenby, M., Rees, C. Soane, E. and K Truss, (2008) Employee Engagement: A Literature Review. Kingston Business School Working paper Series No. 1.

⁵⁸ Harter, J.K., Schmidt, F.L. and Hayes, C.L. (2002), ‘Well-being in the Workplace and its Relationship to Business Outcomes: A Review of the Gallup Studies’.

⁵⁹ Eaton, S (2001), If You Can Use Them: Flexibility Policies, Organisational Commitment, and Perceived Productivity, *John F. Kennedy School of Government, Harvard University Faculty Research Working Papers Series. RWP01-009.*

⁶⁰ Kelliher, C. and Anderson, D. (2010) Doing More with less? Flexible Working Practices and the Intensification of Work. *Human Relations*, V 63, N 1, pp83-106

⁶¹ Whitehouse, G., Haynes, M. and Macdonald, F. (2007) *Reassessing the ‘family-friendly workplace’: Trends and influences in Britain, 1998-2004.* Department for Business Enterprise and Regulatory Reform. ERRS No. 76

⁶² Riley, R, Metcalf, H and J Forth (2008), The Business Case for Equal Opportunities: An Econometric Investigation, DWP.

Baltes and Briggs' (1999)⁶³ meta-analysis assesses the effects of flexible and compressed workweek schedules on work-related criteria including productivity/performance. They find flexible work schedules to have had significantly positive effects on employee productivity (an objective measure) and compressed workweek schedules to be associated with self-rated performance. Konrad and Mangel (2000)⁶⁴ using data from a survey of 658 American organisations assessed the impact of work-life programmes on firm productivity (objective sales per employee). They found work-life balance programmes had a significant association with productivity, but only in businesses with a higher proportion of female employees and in businesses with a higher proportion of professional workers.

Using a sample of 188 large companies Clifton and Shepard (2004)⁶⁵ use cross-sectional firm data on family programmes (a family-friendly index) combined with financial data to estimate production functions. Their modelling points to positive effects on productivity.

Survey research in this area includes the Third Work-life Balance Survey of Employers⁶⁶, which found that 47% of question respondents reported a positive effect of flexible working and leave arrangements on productivity, 12% a negative effect and the remainder no effect⁶⁷. Subsequent survey research from the British Chambers of Commerce⁶⁸ supports this finding with 58% of employers perceiving flexible working arrangements to be associated with an improvement in productivity (38% saw no effects and just 4% a decline in productivity). More recently, the CBI Employment Trends Survey⁶⁹ found that 37% of employers reported a positive correlation between granting requests to work flexibly and improved productivity.

Stakeholder Perspectives

Our figure of a 5% productivity gain was tested with businesses and their representatives during the consultation process, the majority of whom agreed a) that there were positive productivity effects from flexible working; and b) that 5% was an appropriate, if not overly conservative, estimate. The section on productivity benefits earlier in this impact assessment provides the detail of what stakeholders said, but a selection of quotes is repeated below.

“Ernst and Young LLP recognises that our more engaged employees are noticeably more productive and our more engaged employees are often those who feel empowered to manage how and when they do their work. We confirm that the gain from flexible working is noticeable and that five per cent increase in productivity is a reasonable assessment of the gain.”

Ernst and Young LLP

“At Citi we have a range of Flexible Working options available to our employees which provide many benefits for the organisation, amongst which is personal productivity. We think the estimate of a gain of 5% in personal productivity is in fact conservative.”

Citi Group

“Whilst it is difficult to measure productivity increases we agree that 5% is a reasonable assessment of a gain that would be noticeable, and confirm that the gain from Flexible Working is noticeable. In the year following the

⁶³ Baltes, B. and Briggs (1999). "Flexible and Compressed Workweek Schedules: A Meta-analysis of their Effects on Work-related Criteria." *Journal of Applied Psychology* 84(4): 496-513.

⁶⁴ Konrad A.M. and Mangel R. (2000). The impact of work-life programs on firm productivity. *Strategic Management Journal* 21(12): 1225–1237.

⁶⁵ Clifton T, and E Shepard (2004), Work and Family Programs and Productivity, *International Journal of Manpower*.

⁶⁶ Hayward B, Fong, B. and Thornton, A. (2007), The Third Work-life Balance Employers Survey. ERRS No. 86, BIS.

⁶⁷ After accounting for those who did not answer.

⁶⁸ BCC (2007), Work and Life: How Business in Striking the Right Balance.

⁶⁹ CBI (2011), Navigating Choppy Waters, CBI/Harvey Nash Employment Trends Survey 2011.

introduction of flexible working we saw a noticeable reduction in sickness absence and therefore productivity would have followed naturally.”
Wales & West Housing Association

In summary, there is a sufficient body of evidence to substantiate our assumption of a positive productivity effect from flexible working, and for us to calculate this effect as a 5% boost on the output of a subset of those individuals who take up new working arrangements as a result of the extension of the Right. We see this figure as modest, but high enough to reflect the noticeable improvement in productivity reported by employers both in survey evidence and during the consultation period.

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