



EMPLOYMENT RELATIONS
RESEARCH SERIES NO. 60

2000 Compendium of
Regulatory Impact
Assessments

EMPLOYMENT MARKET
ANALYSIS AND RESEARCH

Published in July 2006 by the Department of Trade and Industry.
URN 06/1164
© Crown Copyright 2006

This and other DTI publications can be ordered at:

www.dti.gov.uk/publications

Click the 'Browse by subject' button, then select 'Employment Relations Research'. Alternatively call the DTI Publications Orderline on 0845 015 0010 (+44 845 015 0010) and provide the URN, or email them at:

publications@dti.gsi.gov.uk

Postal enquiries should be addressed to:

Employment Market Analysis and Research
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET
United Kingdom

<http://www.dti.gov.uk/employment/research-evaluation/>

Email enquiries should be addressed to: emar@dti.gov.uk

Foreword

The Department of Trade and Industry is working to create the conditions for business success, and help the UK respond to the challenge of globalisation. As part of that challenge we aim to achieve full employment, foster an adaptable labour market and encourage high performance workplaces – while ensuring decent minimum employment standards.

The Department has an active research programme on employment relations and labour market issues, managed by the Employment Market Analysis and Research (EMAR) branch. The economists, statisticians and social researchers based in EMAR have three main roles:

- to provide the evidence base for good policy making;
- to apply better regulation principles to proposed labour laws; and
- to monitor and review the impact of existing regulations and policies.

We do this through preparing Regulatory Impact Assessments (RIA), in-house research and analysis, commissioning external research, and conducting periodic socio-economic benchmark surveys. We also lodge the datasets from all major surveys with the UK Data Archive, to allow peer review and to encourage secondary analysis.

Details of our research programme appear each quarter in the ONS journal *Labour Market Trends*, and can also be found on our website: <http://www.dti.gov.uk/employment/research-evaluation/>

Results of this research are usually published in the DTI Employment Relations Research Series, or as a DTI Economic Paper or Occasional Paper. All reports are available at: <http://www.dti.gov.uk/publications/>

Anyone interested in receiving regular email updates on EMAR's research programme, new publications and forthcoming seminars should send their details to us at: emar@dti.gov.uk



Grant Fitzner
Director, Employment Market Analysis and Research

Contents

The Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000	1
National Minimum Wage (Increase in Development Rate for Young Workers) Regulations 2000	17
National Minimum Wage Regulations 1999 (Amendment) Regulations 2000	21
Directive concerning the Framework Agreement on Fixed Term Work (Partial RIA)	25
Young Workers Directive (Partial RIA)	44
Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001	50

The Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000

March 2000

Title

1. This regulatory impact assessment (RIA) considers the potential impact of the draft Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. The Regulations will apply clause 19 of the Employment Relations Act 1999. An RIA for the Bill was produced in February 1999. However, it did not go into detail about the benefits and costs as the Regulations had not been finalised and the results of research used in preparing this RIA were not then available.

Objectives, purpose and intended effect

Objective

2. The Government wishes to promote a flexible labour market in which employers and workers work in partnership. This needs to be underpinned by a framework of employment rights that facilitates a diversity of employment patterns, such as part time work, that suit the needs of employers and individuals. The legislative framework should help employers to manage their businesses efficiently, but also ensure minimum standards and fairness for all workers.

Purpose

3. The Regulations give effect to the European Council Directive 97/81/EC, which identified two general purposes:

- to provide for the removal of discrimination against part time workers and to improve the quality of part time work;
- to facilitate the development of part time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers¹.

¹ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part time work concluded by UNICE, CEEP and the ETUC

4. The Government believes that these Regulations will ensure that part time workers are treated no less favourably than comparable full time workers.

The problem/ risk assessment

5. The Government believes that discrimination against part time workers is both unfair and inefficient. As well as disadvantaging those who are subject to discrimination, it is also damaging to the labour market as a whole by potentially restricting the movement of labour. Full time workers may be less willing to move into part time work for fear of being treated less favourably than at present (e.g. lower hourly pay or less opportunity for advancement). In addition, people looking for work may be discouraged from looking for or accepting part time work if they expect to be treated less favourably than in a full time job.

6. In recent years the extent of any such discrimination has diminished as the result of changes in legislation and labour market conditions. Legislation such as the removal in 1995 of the differences in protection against unfair dismissal according to numbers of hours worked, has increased job security for part time workers. Some employers have sought to keep the services of skilled workers who do not wish to work full time by offering a diversity of working patterns. Nonetheless, some discrimination remains. In a competitive labour market, people subjected to unfavourable treatment should be able to move to better employers. This is not always possible and people in part time jobs face particular difficulties. If they are limited in the hours they can work (e.g. during school time) or they are not geographically mobile (e.g. second earners) the employer may have some monopsony power over this group of workers. As a result they may offer conditions that are worse than they would offer in a competitive market and worse than they provide for full time workers (who have more choice). As the source of any monopsony power would be difficult to remove, legally binding standards of fair treatment provide a more effective remedy.

Proposed remedy

7. The purpose of this measure is to establish decent minimum standards for treatment of part time workers. The Government has already introduced minimum standards for workers including the National Minimum Wage and the Working Time Regulations. However, the potential for residual discrimination remains. These draft Regulations are intended to ensure that:

- part time workers have a right not to be subjected to any detriment for working part time;
- part time workers can seek redress for dismissal/redundancy on the grounds that the worker worked part time;
- part time workers have the right to request a written statement of reasons for less favourable treatment.

Options

8. The Government is acting on several fronts to improve the lot of part time workers. They benefit disproportionately from employment legislation setting out minimum standards (National Minimum Wage and the Working Time Regulations). The Government is also backing campaigns to encourage flexible patterns of work, and programmes to provide extra childcare; both of these will enable part time workers to have a wider choice of jobs. The European Social Partners reached an agreement that legislation was the most appropriate remedy to the problem of discrimination. The UK government is obliged to introduce legislation to implement the Directive. Failure to do so could make the UK subject to Francovich claims - i.e. individuals who would have benefited might be able to claim compensation from the Government. Section 19 of the Employment Relations Act committed the Government to produce regulations.

Expected benefits

9. The aim of the Regulations is to ensure that employers apply the principle of equal treatment to all part time workers.

Benefits to workers

10. Some part time workers will benefit directly from the proposed Regulations through higher pay or other benefits. But the Regulations will widen choice for all workers. Guaranteed minimum standards may make part time work a realistic option for many full time workers, who wish to achieve a better balance between home and working life. They may also encourage people not working to take up part time jobs. Although there is little statistical evidence of discrimination, there certainly has been discrimination in the past, and the perception persists. As a result people may be inhibited from taking up part time work. Legislation will specify clear and enforceable rights for part time workers and may therefore encourage people to look for and take part time jobs.

Benefits to the economy

11. If people are able to achieve a better balance between work and home there are positive benefits for the economy and society. Workers may be less inhibited about changing jobs and thereby losing their protection, which should help to promote a more flexible labour market and greater labour market attachment. Confidence in equal treatment may mean (a) people do not drop out of the labour market and (b) people are more likely to move from inactivity. As a consequence labour supply should increase, benefiting employers.

Other benefits

12. There may be cost savings to the Employment Tribunal Service and ACAS. Currently part time workers (the majority of whom are female) may seek to redress from discrimination by trying to prove indirect sex discrimination. The new Regulations make their rights clearer and easier to enforce. This clarity will also make it easier for employers to understand their obligations.

Quantifying the benefits

13. The Regulations will apply to part time workers. However, the Labour Force Survey (LFS) - the main source of official labour market data – only distinguishes between employees and self-employed. It does not measure the number of workers as defined in employment law. Moreover, the LFS is based on self-reporting of employment status, and so the measure of employees based on the LFS could actually capture people who are workers in terms of employment law, rather than employees. There is in practice often no clear-cut distinction between employee and worker. In many cases employment status may be obvious but in the event of a dispute only a court or tribunal can give a definitive decision. Research commissioned by the DTI concluded that perhaps around 5% of all in employment (approximately 1 million people) were, in terms of employment law, workers but not employees. We do not know how many of these work part time.

14. The estimates of numbers benefiting and compliance costs to employers presented below are all based on employees as measured in the LFS and the BMRB survey of part time employees, i.e. based on the subjective judgements of individuals and employers respectively. They are therefore likely to underestimate the numbers of people benefiting and the compliance cost for employers, as these apply to workers, but we are unable to quantify the precise impact. However, it seems likely that any underestimation will be very modest and should not affect aggregate compliance costs by more than about 5%.

15. The benefits identified in the previous section are not easily quantifiable. According to the LFS, there are approximately **6 million part time employees** in Great Britain.

16. We do not believe that there is widespread unfavourable treatment of part time employees. Job satisfaction among part time employees is higher than among full time employees. The 1998 Workplace Employee Relations Survey found that part time employees were much more likely to regard themselves as being fairly treated than were full time employees - 61% compared with 45%.

17. The estimates below make extensive use of a survey commissioned by the DTI after the agreement between the Social Partners. It was carried out by BMRB in late 1998. The survey investigated differences in terms and conditions between part time and comparable full time employees in the same workplace, looking at pay and non-wage benefits. The survey found some evidence of discrimination between part time and full time employees, but it was not extensive.

18. According to the BMRB survey, about 70% of establishments used part time employees. Of all the workplaces with at least one part time employee, 30% had full time staff doing the same jobs as part time staff, where a comparison of terms and conditions could be made. However, closer investigation suggests many of these part time employees were in fact performing different tasks compared with their supposed full time comparators, so this proportion is likely to be an overestimate. In the Regulations the test for a full time comparator is based primarily on whether the workers are doing the same job, rather than whether workers have the same qualifications, experience etc. Combining the findings of the survey with the Labour Force Survey, we estimate that there are about **1 million part time employees** who work alongside a full time employee doing a comparable job.

19. The following paragraphs examine how these employees might be affected by each of the main clauses in the Regulations. We estimate that at least **400,000 employees** could benefit directly from the end of less favourable treatment. Some people may stand to benefit on more than one account. The value of these benefits is estimated to be £23.4 million.

Table 1: Estimated value of benefits to part time employees

Change	Numbers benefiting	Financial benefit per year £ million
Pay	27,000	5.8
Non-wage benefit entitlements	400,000	17.6
Total	--	23.4

Pay

20. The BMRB survey found that where part time employees were employed alongside comparable full time employees, wages were the same in 67% of cases (where the respondent was able to comment). In 33% of cases the employer said they paid part time employees less. However, a follow up qualitative study found that in nearly every case the jobs were different in some way (e.g. different responsibility) and could reflect differences in grade or level. Therefore few of these employers actually discriminated on the basis of pay against their part time employees (see Annex). We estimate that perhaps 27,000 part time employees could benefit from this regulation. To illustrate we calculate the effect of a 5% increase in their average weekly gross pay (see Annex for explanation and calculation).

This produces an estimate of the total net benefit of bringing pay into line of **£5.8 million per year**.

21. Our survey, on which these estimates are based, was carried out before the National Minimum Wage came into force. Many part time employees work in low paid jobs; for example 35% of part time employees work in the wholesale, retail and motor trade and the hotel and restaurant industry. People working in these low paid industries have since benefited from a wage floor that must be applied equally to all workers, full and part time alike. We would therefore expect discrimination between part time and full time comparators to have decreased since then. This implies that these benefits may be overstated, but the effect cannot be quantified.

Entitlement to non-wage benefits

22. The BMRB survey found that where benefits and entitlements, such as holidays and payment in kind, are offered to staff, the majority of employers provide them equally (pro rata) to part time and full time employees. This is true of employers of any size. In only 12% of cases did establishments with part time employees have any differences in the entitlement to non-wage benefits of part time and full time staff. In many cases this is objectively justified or may arise because people have to serve a certain time to qualify (e.g. enhanced maternity leave). We estimate that the number who stand to benefit from measures to address discrimination in non-wage benefits is about 400,000. We have put a value of **£17.6 million** on these benefits (see Annex).

Gender impact

23. Women account for 82% of part time employee jobs and 44% of female employees work part time. This implies that these Regulations are likely to have a stronger positive impact for women than for men. The Regulations allow part time workers to compare their current terms and conditions with those of a full time predecessor doing the same job. This is likely to be of particular benefit to women returning from maternity leave. To quantify the impact of this we need to know:

- how many part time workers have a full time predecessor;
- of these, how many would not otherwise have a full time comparator;
- of these, how many will be subject to less favourable treatment.

24. Lack of data means that we are unable to estimate the numbers of potential beneficiaries. Generally, we can say that as a result of this, it is likely that there will be more part timers with a full time comparator.

Estimated Compliance Costs

Employers affected

25. Our survey found that the majority of establishments (69%) used part time employees. Of these 42% had full and part time employees doing similar jobs (i.e. 30% of all establishments). The use of part time employees varies considerably between sectors.

Elements of costs

26. We have identified three elements of recurring costs and calculated a range of costs (see Annex for details of calculations).

(a) *Pay* The majority of employers pay their part time staff the same hourly wage as their full time comparators. Hence the number of employers affected by the Regulations regarding less favourable treatment of part timers will be small. We have calculated above that the benefit to employees of equalising pay is £5.8 million each year. Allowing for non-wage costs such as pension contributions and National Insurance gives a cost to employers of **£6.7 million**.

(b) *Non-wage benefit entitlements* Our survey investigated the provision of a large range of benefits including holidays, payments in kind, loans etc. Employers providing benefits to all full time and no part time staff are relatively rare. In only 8% of cases did employers of part time employees with full time comparators report that part time employees were excluded from non-wage benefit entitlements. We estimate that the benefit to employees of equalising non-wage benefits is £17.6 million and the aggregate cost to employers of bringing part time benefit entitlements into line is **£20 million**.

(c) *Right to receive a written statement of reasons for less favourable treatment.* The Regulations will give a worker who thinks they have been treated less favourably than another worker the right to ask their employer in writing for a written statement giving the reasons for this treatment. This could place additional compliance costs on businesses in terms of management time. We do not anticipate that numbers would be significant. We assume that, among part time employees who work in establishments with full time comparators, about 2 per 1000 part time employees make such a request² and that on average each request takes ½ day of management time to handle. Therefore, we estimate that requests for a written statement would cost employers approximately **£0.7 million**.

Total recurring costs

27. Adding the three elements together, we estimate that the Regulations could cost employers around **£27.4 million** a year. All but £4 million of the

² As an indicator of the propensity to make a complaint, only 0.7 per 1,000 employees make an application to Employment Tribunal on grounds of sex or race discrimination. A request in writing for a written statement is a less drastic step than going to a Tribunal, so this may under-estimate the propensity to ask for a written statement. We therefore perform our calculations assuming that 2 per 1000 part time employees will ask for a statement.

compliance cost goes towards increasing benefits to employees (in other words, of the £27.4 million cost to employers, £23.4 million goes directly towards increasing the benefits to employees). The Regulations do not impose any new burden of record keeping or require employers to set up new systems - only to include part timers within systems already in place for full time staff. There are no non-recurring costs.

Table 2: Estimates of costs to employers

Change	Financial Cost £ million
Pay	6.7
Non-wage Benefit Entitlements	20.0
Written statement of reasons for treatment	0.7
Total	27.4

Costs for the typical employer

28. Compliance costs for most employers will be zero. Less than a third of all workplaces employ part timers who work alongside full time comparators. The vast majority of them do not discriminate against their part time employees on either pay or benefit entitlements. Employers that discriminate in terms of pay may face an annual compliance cost of £250 per affected worker. Employers that discriminate on the basis of non-wage benefits may face annual compliance costs of around £50 per affected worker³.

Business sectors affected

29. The measures in the Regulations will guarantee rights for all part time workers, regardless of whether or not they benefit directly from any single element. However, certain sectors are more likely to be affected by the Directive than others. How a sector is affected will depend on: (a) the proportion of part time workers in the sector; (b) the proportion of part time workers with full time comparators; (c) whether employers in the sector offer benefits; (d) whether employers in the sector discriminate against their part time workers. Table 3, drawn from the BMRB survey, provides a guide.

³ See Annex for assumptions and calculations

Table 3 Proportion of establishments with at least one difference in non-wage benefits, by industry

	Establishments with at least one difference as:		
	% of establishments with comparator employees	% of establishments with PT employees	% of all establishments
Agriculture	98	50	40
Manufacturing	33	10	5
Wholesale, retail	50	25	18
Hotels & restaurants	39	10	10
Transport & comms	52	24	12
Financial intermediation	48	38	23
Public administration	-	-	-
Education	24	13	11
Health & social work	21	14	13
Other	38	12	8
All	42	18	12

30. The table shows the proportion of establishments with at least one difference in non-wage benefits by industry. According to the survey findings, a high proportion of establishments in the financial sector (48%) had some difference in provision, although it should be noted that only 2% of all part time employees work in this sector and only 15% of all employees in this sector work part time. The sector where a high proportion of employees were part time and where a high proportion of employees had a difference in non wage benefits is wholesale and retail. Although agriculture has a high proportion of establishments with a difference in non-wage benefits, these establishments actually make up a negligible proportion of all those establishments affected by the Regulations.

Small Businesses

31. According to the 1998 Labour Force Survey, 31% of all employees in small workplaces work part time, compared with 25% of all employers. However, the BMRB survey found that a relatively high proportion of small establishments did not employ any part time employees.

32. Of those small establishments that did have part time employees, a high proportion did not have full time comparators. However, where there were comparators the survey found that only 10% of smaller establishments had a difference in non-wage benefits, and would therefore have to look at their current arrangements, compared with a third of larger establishments.

Other Costs

Enforcement Costs

33. A part time worker may present a complaint to an Employment Tribunal on the grounds that he or she has been subjected to a detriment in contravention of the Regulations. The Employment Tribunals Service (ETS) and ACAS may therefore have to deal with a few additional Employment

Tribunal cases. However, due to the fact that the majority of part time employees are women, some cases related to the unfair treatment of part time employees are currently heard under sex discrimination legislation. These Regulations may therefore effect a transfer of applications from sex discrimination cases to a new part time work jurisdiction and there could even be a reduction in their number. We do not believe that the net number of cases arising specifically from these Regulations will be significant.

Results of Consultations

34. The Directive is the result of negotiation at the European level between the Social Partners. In anticipation of the Regulations the DTI undertook a survey of a representative sample of employers of all sizes and sectors. The purpose of this survey was to identify the extent to which employers currently provide different terms and conditions to their part time employees and the extent to which practices might have to change as a result of any anti-discrimination legislation. The findings for that survey have been used in producing the RIA in conjunction with data from the Labour Force Survey. The RIA has been updated to reflect changes made to the Regulations as a result of the public consultation.

Summary of Costs and Benefits

35. The two main effects of the Regulations will be to increase the pay and non-wage benefits for certain part time workers.

36. These Regulations are estimated to directly benefit at least 400,000 part time employees and give added security to all 6 million part time employees. We estimate that the employees that benefit directly will be better off by a total of £23.4 million per year. This will therefore involve some costs to employers. Total compliance costs are estimated to be £27.4 million per year, all but £4 million of which goes towards increasing benefits to employees. These costs are low in relation to the total wage bill. The table below summarises these estimates.

Table 4: Summary of costs and benefits

Change	Numbers of PT employees benefitting	Financial benefit to PT employees £ million	Financial cost to business £ million
Pay	27,000	5.8	6.7
Non-wage Benefit Entitlements	400,000	17.6	20.0
Written statement of reasons for treatment	7,200	--	0.7
Total	--	23.4	27.4

37. In addition to these quantified effects, there are some unquantified effects. These include:

- the effect of including all workers and not just employees, which could add up to 5% to compliance costs for employers;

- the effect of some part timers receiving an occupational pension, which could affect up to 5,000 people (see Annex for calculation);
- the effect of the provisions for full time female workers returning to work part time from maternity leave.

38. On the other hand, changes made by employers as a result of the National Minimum Wage and the Working Time Regulations may lead to some overestimation of costs and benefits. There is no need for additional record keeping and there are no non- recurring costs.

39. There are also the wider, but unquantified, benefits arising from the security created by the removal of the opportunity for discrimination - so the benefits are much more widely spread than simply the number who might get higher pay and an increase in non wage benefits. The Government believes that the measure is justified on the grounds of fairness and improving the working of the labour market.

Sensitivity Analysis

40. Despite a special survey being commissioned to provide information for this RIA, a number of assumptions have to be made to estimate costs and benefits. Probably the most significant assumption is the proportion of part time employees who have a full time comparator at their workplace. While 60% of all part time employees are based at workplaces where some part timers work alongside full timers in comparable jobs, we have assumed that only a quarter of this group do in fact have a direct comparator. Changing this proportion would change the estimated number of beneficiaries, estimated benefits and costs pro rata e.g. if the proportion with comparators were in fact a half, then costs and benefits would double.

Enforcement, Sanctions, Monitoring and Evaluation

Enforcement

41. A complaint by a worker that they have been treated in a manner that infringes any of the rights conferred by the Regulations may be presented to an Employment Tribunal. If the tribunal finds that a complaint is well founded, it can order the employer to pay compensation or take other steps it considers just and equitable.

Monitoring

42. The DTI and ETS will monitor the cases brought to an Employment Tribunal.

March 2000

Contact: Ms F Ismail
Employment Relations Directorate 4d
DTI
1 Victoria Street
London SW1H 0ET
email: fazleen.ismail@irdv.dti.gov.uk

ANNEX A CALCULATIONS

These calculations make extensive use of a survey commissioned by the DTI in 1998. The survey, carried out by BMRB, investigated differences in the terms and conditions of part time employees with comparable full time employees, looking at pay, non-wage benefits and treatment. A full report is to be published shortly.

The Number of Part Time Employees with Full Time Comparators

The survey found that 7 in 10 establishments use part time employees. Of all the workplaces with at least one part time employee, 30% had full time staff doing the same jobs as part time staff, where a comparison of terms and conditions could be made.

It is difficult to translate this figure into the proportion of part time employees who have a direct comparator. We estimate that 60% of part time employees work in establishments where some part time staff work alongside a comparator. The BMRB survey found that in many cases the part time employees were actually performing different tasks compared with their supposed full time comparators - so the proportion of workplaces with at least one part and full time equivalent may be an overestimate. Therefore, we assume that a quarter of these people will actually have a full time comparator. That produces an estimate of 0.9 million part time employees who work alongside someone with a full time contract ($60\% \times \frac{1}{4} = 15\%$, $15\% \times 6 \text{ million} = 0.9 \text{ million}$).

Pay

Of respondents to the BMRB survey, 30% said that part time employees were paid less than comparable full timers. However, there were a significant number of cases where the respondent was unable to say. Excluding these, in 33% of cases the employer paid part time employees less than pro-rata wages. Translating this into employees, the survey suggests that about 20% of part time employees with a comparator have lower pay.

However, a qualitative follow-up study that specifically examined the issue of pay found that discrimination is far less widespread than the quantitative survey indicates. When questioned in more detail it was found that there were material differences in the jobs of the part time and full time employees (different levels of responsibility and/or experience). The difference in pay therefore may be objectively justified - so would not be affected by the Regulations.

We therefore assume that only one sixth of these part time employees (about 3% of all part time employees) actually are discriminated against. Combined with the LFS that gives 27,000 (3% of 900,000) employees that are paid less than their full time colleagues. To illustrate the effect of this we assume they get a pay increase equal to 5% of the average gross pay for part time

employees in the LFS (spring 1999) which gives us £4.10 per week (=0.05 x £82 per week). Total pay is then estimated to increase by £5.8 million (£4.10 x 52 x 27,000).

Employers' labour costs are equal to gross pay (£82 per week) plus employers' NICs and statutory and non-statutory pension contributions. We assume that there is a 5% increase in gross pay for part time employees (0.05 x £82 = £4.10 per week). To this we add the increase in statutory and non-statutory pension contributions estimated to be 16.9% of the increase in gross pay⁴ to the increase in employers' labour costs. Therefore the increase in employers' labour costs is estimated to be £6.7 million. (We do not include anything else for other non-wage labour costs as they are considered separately below.)

Non-Wage Benefit Entitlements

The BMRB survey found that 45% of part time employees with a full time comparator had a difference in non-wage benefits. Therefore, of the 0.9 million part time employees with a full time comparator, 400,000 have a difference in non-wage benefits⁵. The BMRB survey asked about a range of 22 benefits such as holiday pay available to part time employees and their full time comparators. A total of 1436 benefits were available to a sample of 210 workplaces (covering 230 workgroups i.e. 1.1 workgroups per workplace). That means that a typical non-wage benefits package for a full time comparator consisted of about 6 benefits.

We took the 6 benefits most commonly available to full time comparators and calculated the value of this non-wage benefits package to a part time worker and the cost of the benefits package to an employer.

⁴ 12.2% employers' NICs + 4.7% non-statutory pension contributions (based on the Labour Cost Survey 1992, *Employment Gazette* September 1994).

⁵ This is consistent with the BMRB survey finding that 28% of part time employees worked in establishments where there were full time comparators and a difference in non-wage benefit entitlements. If we assume that 25% of these part timers actually have a full time comparator and a difference this also produces a figure of about 400,000 part time employees with comparators who have a difference in non wage benefits.

Table A1. Estimated value of benefits to part time employees

	Value of benefit to part time employee (£)	Cost to employer (£)
Holiday pay ^a	130	160
Bank holiday pay ^b		
Special leave ^c	15	20
Discounts on organisation's products ^d	50	50
Employer funded training schemes ^e	250	250
Shift premia ^f	110	150
Total benefits package for part time employee	555	630

^{a & b} We assume that a part time worker on average pay will move from the statutory minimum (4 weeks: either 12 days annual leave and 8 bank holidays or 20 days annual leave and no paid bank holidays) to amount of leave commonly provided for full time employees (4 weeks plus bank holidays). i.e. an increase of 8 days or 1.6 weeks. Benefit to worker is increase in gross wages (£82*1.6 weeks) = £130 and cost to employer is increase in gross wages and non-wage labour costs (£82*1.24*1.6 weeks) = £160. We assume that non-wage labour costs are equal to 24% of gross wages. ^cOne day at average part time wage rate: benefit to worker = £15 (£82/5) and cost to employer = £20 (£82*1.24/5). ^dWe assume a 10% discount on £500 worth of goods per year = £50. ^eWe assume full time employees receive £500 worth of training each year and pro rata this to obtain the cost of training for a part time worker = £250 (0.5*500). ^f According to the New Earnings Survey full time employees receive an average of £5 per week in shift premia. The benefit to a full time worker is £240 (£5*48 weeks). The cost to an employer per year, including non-wage labour costs, is £300 (£5*48weeks*1.24) for a full time worker. If we pro rata this for a part time worker the cost is £150 (0.5*£300)

Using the BMRB survey, we estimate that part time employees with a full time comparator are excluded from 8% of this non wage benefit package i.e. a value of £44 to employees and a cost of £50 to employers. Therefore, the value to part time employees of an increase non-wage benefits as a result of the Regulations is £17.6 million (£44*400,000) and the cost to employers is £20 million (400,000*£50).

Pensions

Formatted

From existing research we know that in some organisations part-timers are not treated equally with respect to pensions. The existing research also indicates that this form of discrimination has been reduced over the past 4 to 5 years especially after the introduction of the 1995 Pensions Act. From the BMRB study we know that 38% of establishments offer occupational pensions to their employees. We also know from this study that in a majority of cases where a benefit was provided, it was equally provided to full time and part time employees. Of those establishments providing occupational pensions, in 77% of cases they were available to part time staff, and only in 14% of cases they were not available to any part time staff. Additionally, it is common practice for employees who earn less than the Lower Earnings Limit (LEL) per week to be excluded from occupational pension schemes. We know that 57% of part time employees earn more than the LEL. Therefore, the proportion of part time employees that could benefit from the Regulations with respect to pensions is around 3% (0.38*0.14*0.57) of those with a full time comparator or 30,000. However, as in the case of pay, we apply the assumptions made as a result of the qualitative follow-up study. Therefore, we assume that only one sixth of these part time employees actually have a full time comparator. This gives a figure of 5,000 part time employees (less than 0.1% of all part time employees) that could benefit with respect to pensions as a result of the Regulations.

Although this gives us an approximate measure of those who will benefit from the introduction of the regulation, we can not quantify to costs for business. Occupational pension schemes vary in their value and costs between occupations. To quantify the costs we would need to know not only the value of these pensions but also the occupational distribution of the 5,000 part-time employees benefiting from the regulations with respect to pensions. We do not have information on either of these.

Right to receive a written statement of reasons for less favourable treatment

As an indicator of people's propensity to complain about discrimination, we have based our estimate on the fact that in 1998/99 around 0.7 per 1000 employees submitted Employment Tribunal applications on the grounds of sex and race discrimination. However, asking in writing for a written statement is a less drastic step than going to a tribunal, this may be an under-estimate, and we perform our calculations on the basis that 2 per 1000 part time employees will ask for such a statement. Applying that to the 3.6 million part time employees who work alongside someone with a full time contract, gives 7,200 requests. We assume that a written statement takes on average ½ day of management time, that is a cost of around £98 per statement⁶. Many of these requests may be from groups of employees. For 7,200 statements this implies an aggregate cost of £0.7 million (=£197 x 0.5 x 12,000).

Table A2: Summary of range of costs and benefits

Change	Numbers of PT employees benefiting	Value of benefit to PT employees £ million	Financial cost to business £ million
Pay	27,000	5.8	6.7
Non-wage benefit entitlements	400,000	17.6	20.0
Written statement of reasons for treatment	7,200	--	0.7
Total	--	23.4	27.4

⁶ Based on New Earnings Survey, April 1999. Average gross weekly pay for general managers and administrators in national and local government, large companies and organisations (full-time employees on adult rates) was £792.4. (This includes profit-related pay and other PBR pay and may therefore be an overestimate.) According to the 1992 survey of labour costs, non-pay elements of labour costs were 19.4% of total labour costs so that total labour costs were 24% higher than wages. $1.24 \times 792.4 = 982.57$ per week => £196.51 per day (on the assumption of a five day working week).

National Minimum Wage (Increase in Development Rate for Young Workers) Regulations 2000

May 2000

Introduction

1. This assessment estimates the costs and benefits of the amendment to the National Minimum Regulations 1999 known as the National Minimum Wage (Increase in Development Rate for Young Workers) Regulations 2000. The effect of this amendment is to raise the national minimum wage rate for young workers aged from 18 to 21 years old inclusive from £3.00 an hour to £3.20 an hour.

2. The Government has appointed an independent body, the Low Pay Commission (LPC), to make recommendations on the appropriate rates for the national minimum wage, to monitor its implementation, and to evaluate its impact. The LPC's first report was published by the Government in June 1998. In that report it recommended that there should be a rate for young people (called a 'development rate') which would apply to those aged 18 to 20 inclusive, set at £3.20 an hour. While the Government accepted this and all the other recommendations in the report in principle, the Government announced in its formal response to the report, also published in June 1998, that this development rate should be phased in over two stages. There would be an initial transitional rate for 18 to 21 year olds (rather than 18 to 20 year olds) from 1 April 1999 of £3.00 an hour (rather than £3.20). The rate would be increased to the recommended rate of £3.20 an hour in June 2000. The reason for this was explained to Parliament in a statement on 18 June 1998:

"The Commission proposes that the minimum rate should apply at £3.20 to all 18 to 20-year olds, and to all workers starting a new job with a new employer and receiving accredited training. We are, however, at a critical point in the economic cycle. The Government are determined to proceed with all due caution with the introduction of that rate, especially for the crucial group of those aged 18 to 21.

Purpose of the Amendment

3. This amendment therefore fulfils the Government's 1998 commitment to raise the development rate for young workers to the £3.20 level initially recommended by the LPC.

Low Pay Commission Assessment

4. The LPC was asked to produce a second report in December 1999, nine months after the introduction of the minimum wage in April of that year. This report, which was published by the Government in February 2000, did not make further recommendations on the rates but analysed and evaluated the impact of the minimum wage on the economy, on the labour market and on particular sectors and groups of workers. It looked in particular at the impact of the Regulations on young workers, and the effect of the lower development rate.

5. The LPC's second report was the result of nine months of intensive research, evidence-gathering and statistical analysis. This Regulatory Impact Assessment therefore draws on the work of that body.

6. The LPC used the latest available ONS figures in their second report. These figures do not cover the period after the introduction of the minimum wage. Such figures will not be available until autumn 2000. But the existing figures allow reasonable estimates to be made of the number of potential beneficiaries of the minimum wage set at various levels. The LPC found that:

"The proportion of young workers earning less than £3.00 is very small. Some will have seen their pay rise subsequently; some will be exempt because they are apprentices. There is also a comparatively small proportion earning £3.00-£3.19. Allowing for even minimal wage inflation, this proportion should decline still further over the coming year. Certainly the numbers likely to be affected, and the size of the pay hike involved, are far lower than the comparative position in April 1998 (*sic*) when the £3.00 rate was introduced. The Government's declared intention to increase the rate for 18-20 year olds to £3.20 in June 2000 (Hansard 1998), therefore, should have only a very small impact on employers."

Costs and Benefits

7. The Government agrees with this analysis. The rise from £3.00 to £3.20 is a rise of 6.7 per cent over 14 months and its impact on the overall wage bill of employers, while impossible to measure accurately, will be extremely small. On the other hand, a rise of up to 20p an hour will make a very real difference to workers on that level of pay.

8. We estimate that up to around 150,000 workers may benefit from the uprating. Assuming that the wages of all these employees increase by 20 pence as a direct result of the requirement to uprate pay, the maximum cost to employers would be around £45 million in the first year. Similarly, the maximum benefit to workers aged 18 to 21 in that pay range is also £45 million.

9. These estimates are based partly on data from the April 1999 New Earnings Survey, the month when the National Minimum Wage was first introduced. It is possible that when the next data from the New Earnings Survey become available in the Autumn, they will show that the statutory uprating has had a smaller direct impact on the wages of low-paid employees than is estimated in this RIA. There are a number of reasons why the figure of £45 million may be an overestimate of the increase in labour costs. Not all the workers will get the full 20p rise – many will already be on a pay level somewhere between £3.00 and £3.20; other workers may already be receiving more than £3.20; and a small percentage of employers will continue to fail to comply at all. We expect the figure for non-compliance to reduce over time, but this will be as a result of enforcement activity, publicity campaigns and word of mouth rather than as a result of the rate increase brought about by this amendment.

Monitoring and Review

11. The Government announced in February this year that it is asking the Low Pay Commission to continue to monitor the impact of the minimum wage and report again by July 2001.

Future changes

12. In February, the Government also announced that the main rate of the minimum wage will increase from £3.60 to £3.70 from 1 October this year. At the same time, a number of other more detailed changes recommended by the LPC in their second report will also be introduced, such as an extension of the one year exemption for those on the Government's Modern Apprenticeship programme so that the exemption also applies to those on National Traineeships. These Regulations will be laid separately in one or two months time, along with a Regulatory Impact Assessment of the measures.

Declaration

13. I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the Responsible Minister:

Contact point:

David Wagstaff
Employment Relations
Department of Trade and Industry
0121 7215 0252

Date: May 2000

National Minimum Wage Regulations 1999 (Amendment) Regulations 2000

June 2000

Introduction

1. This assessment estimates the costs and benefits of the amendment to the National Minimum Wage Regulations 1999 known as the National Minimum Wage (1999) Regulations 2000. The effect of this amendment is to raise the national minimum wage rate for adult workers over the age of 22 from £3.60 to £3.70 an hour.
2. The Government has appointed an independent body, the Low Pay Commission (LPC) to make recommendations on the appropriate rates for the national minimum wage, to monitor its implementation and to evaluate its impact. The Government published the LPC's first report in June 1998. In that report, the LPC recommended that the adult rate for the national minimum wage should apply to all workers over 20 and be set at £3.60. While the Government accepted this and all other recommendations in the report in principle, the Government announced in its formal response, also published in June 1998, that the adult rate should apply from a person's 22nd birthday, rather than the 21st.
3. The LPC also suggested in their first report that the adult rate for the minimum wage be increased to £3.70 in June 2000. The Government noted this suggestion but did not accept it, choosing instead to wait until evidence on the initial impact of the minimum wage became available. With this aim, the Government asked the LPC to produce a further report by December 1999.
4. The LPC's second report was published in February 2000. While they did not make any specific recommendations on the rates, the LPC found little adverse effect from the introduction of the minimum wage, and re-stated their original suggestion:

"Our original advice to the Government was that the rate of £3.60 should be increased to £3.70 in June 2000, and that to do so would have no adverse economic consequences. We remain

confident in this advice. It is supported by all the available economic evidence, including the current buoyant labour market, and the way firms have adapted to the initial rate."

"The Story So Far" – Second Report of the Low Pay Commission (Dec 1999) p116

5. As a result of the LPC's encouraging initial evaluation of the effect of the minimum wage on the economy, the Government decided that it was safe to increase the adult rate to £3.70. However, it decided that this increase should take place in October rather than June, in order to give business ample time to prepare. The increase for young people went ahead in June as originally recommended, since that increase had already been accepted and announced by the Government in 1998.

Purpose of the Amendment

6. This amendment raises the adult rate from £3.60 to £3.70, as suggested by the LPC.

Low Pay Commission Assessment

7. The LPC's second report analysed and evaluated the impact of the minimum wage on the economy, on the labour market and on particular sectors and groups of workers. It was the result of nine months of intensive research, evidence-gathering and statistical analysis. This Regulatory Impact Assessment therefore draws on the work of that body.

8. The LPC used the latest available ONS figures in their second report. These figures do not cover the period after the introduction of the minimum wage. Such figures will not be available until autumn 2000. But the existing figures allow reasonable estimates of the effects of the minimum wage. The LPC found that:

"Although a large number of workers have benefited, our findings show that there has been no detrimental impact on the economy, with around 0.5 per cent being added to the national wage bill and with no measurable impact on overall employment. In many low-paying sectors, there has actually been expansion in employment."

"The Story So Far" – Second Report of the Low Pay Commission (Dec 1999) p115

Costs and Benefits

9. The proposed rise from £3.60 to £3.70 is a rise of 2.8 per cent over 18 months and its impact on the overall wage bill of employers, while impossible to measure accurately, will be extremely small. On the other

hand, a rise of up to 10p an hour will make a very real difference to those workers whose pay has not risen since April 1999 and who are still earning £3.60 an hour.

10. We estimate that around 1.5 million adult workers are expected to benefit from the introduction of the National Minimum Wage in April 2000 at the original rate of £3.60. In the absence of data on what proportion of these workers would still be earning £3.60 an hour without any statutory uprating, we start with the assumption that all 1.5 million workers stand to benefit directly from the statutory 10p increase in the minimum wage in October 2000. In this case, the maximum cost to employers would be around £180 million in the first year. Similarly, the maximum benefit to workers on low pay would be around £180 million, equivalent to almost £120 per worker.

11. If this were the case, the increase in wage costs as a direct result of the minimum wage would represent an increase of 0.036 per cent in the economy's total wage bill.

12. These estimates are based on data covering the period before the introduction of the Minimum Wage. When new data from the New Earnings Survey become available in the Autumn, it will be possible to estimate more accurately the effect that the uprating of the adult rate is likely to have on people's pay. It is likely that this new data will show the direct impact of the uprating on the wages of low-paid employees to be substantially less than the estimate contained in this RIA. The main reason why most workers who were earnings less than £3.60 in April 1999 may not benefit directly from the 10p rise is because they will in any case have had their pay uprated to £3.70 or more by October 2000. Some other workers will have had their pay uprated to a level somewhere between £3.60 and £3.70.⁷ If we were to assume that the wages of all those earning the minimum wage in April 1999 were uprated just to keep pace with inflation, then the increase in wage costs would be negligible.

Monitoring and Review

13. The Government announced in February this year that it is asking the LPC to continue to monitor the impact of the minimum wage and report again by July 2001

⁷ In addition, a small proportion of workers may not benefit from the uprating of the minimum wage since their employers will continue to fail to comply. We expect the figure for non-compliance to reduce over time, but this will be as a result of enforcement activity, publicity campaigns and word of mouth rather than as a result of the rate increase brought about by this amendment.

Future Changes

14. In February the Government also announced that a number of technical changes will be made, such as extension of the one-year exemption for those on the Government's Modern Apprenticeship programme so that the exemption also applies to those on National Traineeships. [These Regulations will be laid separately, along with a Regulatory Impact Assessment of the measures.] *depends on Parliamentary timing*

Declaration

15. I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances

**Signed by the Responsible
Minister:**

Date:

Contact point:

David Wagstaff
Employment Relations
Department of Trade and
Industry

Directive concerning the Framework Agreement on Fixed Term Work

2000

Summary

Issue The growth of fixed term contracts in several European countries has led to concern that workers on such contracts may experience unfavourable treatment compared with workers on open-ended contracts and that employers may be using them to deny workers legitimate employment rights.

Purpose The aim of the Framework agreement is to:(a) improve the quality of fixed term work by ensuring the application of the principle of non-discrimination; and (b) establish a framework to prevent abuse arising from the use of successive fixed term contracts.

Options This Directive implements the Agreement reached by the Social Partners, who have agreed that legislation is the most appropriate way to address perceived abuses.

Benefits Much depends on whether the Directive is seen to apply to wages and to pensions. The measures in the agreement would increase remuneration for workers on fixed term contracts (FTC) and give them added security. Pay and pensions apart, removing discrimination would benefit FTC workers by about **£16 million**. If the directive were to cover pay and pensions the benefits to temporary workers would be worth **£48-81 million**. In addition these workers would have additional security, although this cannot be valued.

Sectors affected In the UK, the public sector, uses proportionately more FTC workers and accounts for half of the total of about **805,000** workers with FTC. The public sector also accounts for over 70% of those who have been in their jobs for over two years. Long FTC (over two years) are rare in the private sector. About two thirds of workers with FTC work for an employer who also has similar workers on open ended contracts.

Compliance costs The costs are largely the converse of the benefits to workers - plus employer NICs - as there should be little in additional administration costs or non-recurring costs. If the Directive does not apply to wages, pensions and redundancy payments then the cost is about **£20 million**, with slightly more than half that falling on the public sector. If the Directive applies to discrimination in pay and pensions then the total cost to business is estimated to be **£66-99 million** with a similar split. Limitations on renewals might add a further **£67 million**, most of that falling on the public sector. These are gross costs and will be partially offset by benefits from providing equal treatment and security - such as lower quit rates and higher commitment.

Small businesses Small businesses tend not to use FTC and when they do they are less likely to discriminate, so the effect on them is unlikely to be significant.

Consultation This Directive is the result of negotiation and agreement between the Social Partners at the European level.

Other costs There would be a small additional cost to the ETS and ACAS.

Title

1 This regulatory impact assessment (RIA) considers the potential impact of the proposal for a Council Directive to implement the Framework Agreement on fixed term work concluded by UNICE, CEEP and the ETUC (hereafter referred to respectively as “the Directive” and “the Agreement”.) As the Directive has yet to be agreed we have considered costs for a range of assumptions as to what it may cover.

Objectives, Purpose and intended effect

2 The measure has the dual objective of improving fairness and labour market efficiency. In its Explanatory Memorandum, the European Commission stated that the purpose of this framework agreement is to:

- (a) improve the quality of fixed term work by ensuring the application of the principle of non-discrimination;
- (b) establish a framework to prevent abuse arising from the use of successive fixed term employment contracts or relationships.⁸

Objective

3 The Government wishes to promote a flexible labour market in which employers and employees work in partnership. This needs to be underpinned by a framework of minimum standards and security. The Government is establishing such a framework with the introduction of regulations on working time, a National Minimum Wage and measures set out in the Employment Relations Bill.

4 The Government wishes to see a framework that facilitates the use of fixed term work where appropriate - i.e. where work is fixed term and employers need “numerical flexibility” to adjust employment in line with changing economic conditions. The legislative framework should help employers to control their costs, but not at the expense of worsening conditions for the marginal worker. The Government has already taken steps to protect vulnerable groups of workers, including workers on fixed term contracts. The Employment Relations Bill included measures to tackle discrimination against part time employees and to abolish waivers in fixed term contracts where workers sign away the right to protection against unfair dismissal. The Agreement is in keeping with the concern to secure the fair treatment of a particular group of workers who, because of their situation in the labour market, are vulnerable to unfavourable treatment. At the same time it should ensure that temporary work remains a viable option for those job seekers who want it.

The problem/ risk assessment

⁸ Clause 1 of the Framework Agreement.

5 Fixed term workers include some who have a very advantageous labour market position and are able to command high pay⁹ (such that employers may not wish to put them on the permanent pay roll). But it also includes some who are vulnerable - perhaps with limited opportunities.

6 The current situation can disadvantage fixed term workers:

- who have less advantages than their colleagues with open-ended contracts, and suffer a financial loss or who are treated differently in some other way;
- who are subject to successive fixed term employment contracts rather than an open-ended contract - and are thus deprived of rights that that accrue with service, whether statutory (such as Redundancy Payments on termination) or contractual (for instance additional maternity pay);
- Though indirect costs such as negative effects on psychological well-being, or difficulties in raising credit from financial institutions.

7 There is some concern that abuses may have been increasing in recent years. This is of greater concern in some other European countries than in the UK, because: the use of fixed term contracts is much more extensive there and has been growing rapidly - whereas FTC are not very common in the UK outside of the public sector.¹⁰

8 Nonetheless there is a widespread suspicion in the UK that abuses have increased in recent years with the increase in the use of fixed term contracts - in particular the filling of permanent posts with people on fixed term contracts. There is some statistical support for this suspicion. The increase in the number of employees in temporary jobs has not been associated with areas where employment levels are volatile, and it is almost entirely due to people being in temporary jobs for longer. A growing proportion of those people who have been in a temporary job for over two years are on short term contracts (45% in 1995 and 49% in 1998).

Proposed remedy

9 The purpose of this Directive is to establish decent minimum standards for treatment of fixed term workers. The Agreement proposes measures to ensure that:

- the principle of non-discrimination is upheld (clause 4);
- measures to prevent abuse of fixed term employment are in legislation (clause 5);

⁹ The Labour Force Survey suggests that fixed term contract employees receive a higher average wage than permanent employees.

¹⁰ For information on rights of temporary workers see IDS Employment Europe 449, May 1999 page 15, EC Employment Observatory Tableau de Bord, EC

- information and employment opportunities shall be provided to fixed term workers in the same way as to workers on open-ended contracts (clause 6);
- fixed term workers shall be included in thresholds for establishing information and consultation bodies (clause 7).

10 Most employers will not be affected by the Directive. It will in the main ensure that good practice is spread across all firms, ensuring that fixed term workers can expect fair treatment no matter who they work for. Most fixed term workers are not treated less favourably than their colleagues with open-ended contracts and abuse is not wide-spread. Employers generally use fixed term workers because they facilitate numerical flexibility rather than because such workers are cheaper.

3. Options

11 It is unlikely that the problems identified (discrimination and the denial of employment rights) will be reduced without government action. The European Social Partners have decided that regulation is the most appropriate way to remedy the problems of discrimination and abuse.

4. Expected Benefits

12 This Directive aims to ensure that employers apply good practice in the handling of their fixed term workers, not discriminating against them, and not using temporary contracts to deprive workers of employment rights. There are approximately 805,000 workers in the UK who are currently on fixed term contracts. A number of them could expect to have their terms and conditions improved – though there is some uncertainty over whether the Directive applies to pay. Many others would have increased **security**.

13 The various clauses in the Agreement will directly benefit:

- those fixed term workers who are treated less favourably than their permanent equivalents -
- those fixed term workers whose contracts are successively renewed;

14 We estimate (based on the Labour Force Survey, Autumn 1999) that:

(a) about 507,000 FTC workers working alongside people doing similar jobs. The number with less favourable conditions are uncertain but it is questionable whether the directive will result in changes for all of them, because there may be justifiable reasons for differential treatment (e.g. experience and responsibility) or they may be compensated in other ways within the remuneration package.

(b) while we can not put a precise number to those who have their contracts successively renewed there are about 200,000 FTC workers who have been in their job for longer than their current contract.

15 The measures in the Agreement should not inhibit employers from using fixed term contracts where work is genuinely of a fixed term nature. In general, fixed term contracts suit both the employer and employee and help promote a flexible labour market which will allow the economy to adjust more rapidly to changes in demand and reduce skill mismatch. The measures proposed in the Directive may lead some job seekers to be less inhibited about taking on fixed term work, knowing that their rights are secured. If this were to happen, the potential supply of such workers would increase.

5. Quantifying benefits

16 From the Labour Force Survey, we know that there are approximately 805,000 temporary employees on fixed term contracts in the UK¹¹. They account for around 50% of all temporary workers and 3.3% of all employees. This measure possibly overstates the number of fixed term employees as some of these are probably employed by an employment agency rather than the organisation where they work (and even if on a fixed term contract with the agency their comparator would be other agency workers). On the other hand, the Directive may be interpreted to apply to seasonal workers, of whom there are about between 80,000 and 170,000 in the course of the year. We shall base our calculations on the LFS measure of fixed term contracts.

17 The following paragraphs look at how these workers might be affected by each of the main clauses in the Agreement. The results are summarised in Table 1 below. Some people may stand to benefit on more than one account. The calculations behind the figures in table 1 are presented in Annex 1.

Table 1 Value of benefits to workers with fixed term contracts

Change	Numbers benefiting	Financial benefit £ million
Non wage discrimination		
Training	10,000	5
Other benefits	15,000	11.3
Discrimination over pay		
Wages	20,000	9.1
Pensions	50,000	32-65

18 The estimates make extensive use of a survey commissioned by the DTI in 1998 in anticipation of the Agreement between the Social Partners. The survey, carried out by BMRB, investigated differences in the terms and conditions of employees on FTC and comparable workers, looking at pay, non-wage benefits and treatment.¹² It found some evidence of discrimination

¹¹ LFS Autumn 1999.

¹² Part time and Fixed term Contract Staff, A Survey of Employers – a report will be published later in 1999.

between temporary and permanent workers, but that it was not extensive. The survey found that only 19% of establishments had any fixed term workers. Of all the workplaces with at least one fixed term worker, just over two fifths had permanent staff doing the same jobs as fixed term staff, where a comparison of terms and conditions could be made. These establishments accounted for 63% of FTC employees. Applying that to the LFS gives a total of 507,000 workers who work alongside someone with an open-ended contract.

Principle of non-discrimination

19 The DTI's survey found that where benefits are offered to staff, the majority of employers (of all sizes) have no differences in the benefits available to fixed term and permanent staff. Only 15% of employers of fixed term workers have any differences in the entitlement to **non-wage benefits** of fixed term and permanent staff. In many cases that is objectively justified (e.g. loans that can be paid back over many years), or may arise because people have to serve a certain time to qualify (e.g. enhanced maternity leave). In others the FTC workers may be compensated with higher pay or other benefits. We estimate that the number who stand to benefit from measures to address discrimination in (non-wage) benefits is about 15,000. We have put a value of about £755 on the missing benefits (see annex 1) so the total value of the benefits is about **£11.3 million**.

20 The Agreement explicitly mentions access to **training**. We estimate that this benefits about 10,000 workers, and putting a value to that gives a total of perhaps **£5 million** (see Annex 1).

Wider interpretation of coverage

21 More significant for workers on FTC would be the application of the principle of non-discrimination to pay and access to pensions, If the Directive is treated as applying to pay we estimate that about 25,000 workers stand to benefit. The DTI survey found that where fixed term contract workers were employed alongside permanent workers, in 62% of cases (where respondent were able to comment¹³) wages were the same. In 23% of cases the employer paid fixed term workers less and in 13% of cases, they were paid higher wages¹⁴. The survey, combined with the LFS, suggests about 25,000 workers are paid less than their colleagues with open-ended contracts. However this probably overstates the extent of discrimination as others may be rewarded for experience and extra duties (e.g. supervision of the temporary workers)¹⁵ so we assume the number likely to benefit if there were to be legislation to

¹³ 23% of respondents were not able to give information on pay.

¹⁴ Part-time and Fixed term Contract Staff, A Survey of Employers

¹⁵ Our survey did not explore the reasons for differences in pay but when differences for part time employees were probed it was found that differences could generally be explained by seniority, duties and experience.

remove discrimination in pay would be nearer **20,000**. Assuming an average increase of £12.45 per week in gross pay (see Annex 1 for explanation and calculation) produces an estimate of the total net benefit of bringing pay into line of **£9.1 million per year**.

22 The inclusion of pensions could be significant for workers in the UK; more so than in other EC countries where occupational pension schemes are within the state system and can easily accommodate contributions for those on short work assignments.¹⁶ In the UK, we estimate that about 10% of FTC workers with a comparator are excluded from occupational **pension schemes**. Some FTC workers receive higher pay to offset this – we assume about 10% - that leaves 50,000 who stand to benefit. If we assume that the employer contribution to these schemes is about 5-10% of the wage that gives a total increase in remuneration of **£32-65 million per year**.

Improved security

23 Perhaps the most important benefit would be increased security. The Agreement states that, where there are currently no legal measures to prevent abuse, member states will have to introduce legislation to require objective reasons justifying the renewal of fixed term contracts; limit the maximum total duration of successive contracts or relationships; or limit the number of renewals of such contracts or relationships¹⁷. This should give added security to workers on FTC. Nearly all other EC countries already have such legislation in place.¹⁸ This should prevent employers filling a permanent post by continually renewing a FTC and thus potentially denying entitlements to workers. If repeated FTC were replaced with open-ended contracts that could lead to more redundancies but workers would be compensated by redundancy payments. If job terminations remained at their present level and contract lengths were not increased, these payments might be worth up to £63 million a year. It is possible that these gains might not be achieved if employers, instead of offering open ended contracts, used a succession of different people on short term contracts.

5. Sectors affected

24 Table 2 shows the number of fixed term employees by industry sector, and how significant they are within the sector. It is possible that this may overstate the total numbers if, as we suspect, some agency workers are actually recorded as FTC.

¹⁶ IDS Employment Europe 449, May 1999 page 13

¹⁷ Clause 5 of the Agreement.

¹⁸ *European Industrial Relations Review* May 1999

Table 2: The number and proportion of fixed term workers by sector, UK

Industry Sector	No. of FTC employees	Distribution of FTC workers across industry	FTC as a proportion of all employees in the sector
Agriculture & fishing	*	*	*
Energy & water	15,900	2	5
Manufacturing	81,500	10	2
Construction	45,900	6	4
Distribution, hotels & restaurants	45,000	5	1
Transport & communication	37,200	5	2
Banking, finance & insurance etc.	114,900	14	3
Public admin, education & health	402,000	50	6
Other services	58,200	7	5
All Industries	805,00	100	3.3

Source : LFS Autumn 1999 * = fewer than 10,000

25 The measures in the Directive will guarantee rights for all of these workers, regardless of whether or not they benefit directly from any single measure. But the table shows that certain sectors - those that use fixed term workers more extensively - are more likely to be affected by the Directive than others. In particular, the public sector accounts for about half of all fixed term workers. This disproportionate effect is compounded by:

a) the results of our survey, which suggests that the public sector is more likely to discriminate against fixed term workers on non-wage benefit entitlements than the private sector. Overall, in 3% of cases, employers said that they had at least one difference between fixed term and permanent workers in benefit entitlement. This compares to 11% in public administration, 5% in education and 7% in health and social work.

b) the fact that the vast majority (67%) of those FTC workers who have been in their job for over two years (and who might therefore be affected by measures to limit abuse) are in the public sector.

c) of the 200,000 who have been in their current job longer than their current contracts, three quarters are in the public sector.¹⁹

¹⁹ Labour Force Survey, Spring 1998.

6. Estimated Compliance Costs

Employers affected

26 The survey carried out in 1998 by BMRB on behalf of the DTI found that only 19% of establishments with at least one employee had any fixed term workers. The use of fixed term workers is much less common in small establishments. Of establishments with 50 or more employees 43% used fixed term workers.²⁰

Elements of costs

27 The main effect of any legislation would be to increase the benefits given to employees. There is a transfer from employers to employees, raising labour costs. The main compliance cost to employers can therefore be derived from the benefits to workers identified above. The following paragraphs take each clause in turn. We present first the basic interpretation (non wage benefits + training) then add in costs if a more comprehensive interpretation of discrimination were to be applied (+ wages + pensions). Then we consider the potential implications of limits on the use of renewal of FTC, looking at a "worst case". The one addition to resource costs is, following the assumption of increased redundancies, the extra costs of handling redundancies rather than simply terminating contracts. Calculations are presented in Annex 1 and 2

28 We do not foresee any significant non-recurring costs.

Clause 4 Non-discrimination

29 Employers providing benefits to all permanent staff and no fixed term staff are relatively rare. In only 10% of cases in our survey did respondents say that none of their fixed term workers but all of their permanent staff were entitled to benefits. The majority of employers of fixed term contract workers will not face compliance costs to end discrimination. However for those that do the aggregate cost was estimated to be **£14.4 million**. The requirement to provide appropriate training opportunities to enhance the skills, career development and occupational mobility of FTC worker, may pose more difficulty. The cost of **training** is estimated above to be **£5 million**.

30 If wages are to be included, the wage bill increases by £12.9 million. The addition of employers' NICs makes a total addition to labour costs of **£14.1 million**. For pensions we estimate costs to be **26-54.5 million**. (see Annex 1 for calculations), and there would be some additional administrative costs in accommodating people on short contracts.

²⁰ That is comparable to the findings of WERS 1998 which suggest that 44% of workplaces with 25 or more employees use fixed term workers (*The 1998 Workplace Employee Relations Survey First Findings* table 3 p8).

Clause 5 - Measures to prevent abuse

31 The Agreement states that where there are currently no legal measures to prevent abuse, member states will have to introduce legislation to require objective reasons justifying the renewal of fixed term contract; limit the maximum total duration of successive contracts or relationships; or limit the number of renewals of such contracts or relationships. We have costed a "worst case" scenario where instead of a sequence of renewed FTC employers put the workers onto open-ended contracts but the jobs end just the same. In this situation those separated after two years would be entitled to redundancy payments. We estimate that this would add about 30,000 to the redundancy figures (currently these separations are classified as job terminations) at a cost of **£63 million**. As well as redundancy payments there would be some additional administration costs in handling redundancies, which we estimate to be about **£4.1 million** (see Annex 2). Apart from this there is no additional administrative costs in having permanent rather than temporary employees (their statutory employment rights are no different). This is predominantly a cost for the public sector rather than the private sector. The vast majority of people who have been in their jobs over two years but are on fixed term contracts are in the public sector.

Clause 6 - Information on employment opportunities

32 This clause requires employers to provide workers on FTC with information about vacancies that become available, on the same basis as their permanent employees. The aim is to give them an opportunity to secure permanent positions. We do not believe that this should cause employers any difficulties. Many employers use temporary contracts as a way of screening workers before offering open-ended contracts. Research carried out by the Institute for Employment Studies in 1995 found that a fifth of employers surveyed deliberately use some of their temporary jobs as trials for workers who could become permanent.²¹ For employers that do not give this opportunity it is probably because there are not comparable jobs with open-ended contracts. Where these practices do not already exist, we do not believe that providing fixed term workers with information and employment opportunities will cause problems, so any costs involved will be negligible. There may be some complication where different entry standards are applied to temporary and permanent recruits (where temporary workers would have to compete with external candidates).

Clause 7- Information and consultation

33 The cost of providing information to existing workers' representative bodies about fixed term work in the undertaking should be very small. The

²¹ *Labour Market Trends* p403 September 1996 - article based on IES report 311 Atkinson,J., Rick,J., Morris,S., Williams,M (1996) *Temporary Work and the Labour Market* IES Report 311

requirement to take fixed term workers into consideration in the calculation of the threshold above which workers' representative bodies are required in national and Community law will have little effect. Proposals for establishing European Works Councils already include fixed term workers. (The number of cases where it would make any difference is likely to be very small.)

Total recurring costs and offsetting benefits

34 Adding up all the items identified above – that is the extra benefits for FTC workers plus NI and some administration costs gives a total of **£127-155 million**.

Table 3 Recurring (gross) compliance costs

Change	Total £ million	Business £ million	Public Sector £ m
Minimal interpretation of directive			
Training	5	2	3
Other benefits	14.4	5.9	8.5
Inclusion in consultation	Nil	Nil	Nil
Providing information on vacancies	Nil	Nil	Nil
total	19.4	7.9	11.5
Including discrimination over pay			
Equal pay + NICs	14.2	5.8	8.4
Pensions	32-65	13.1-26.6	18.9-38.4
Total - all discrimination	65.6-98.6	26.8- 40.3	38.8-58.3
Limiting abuse			
Redundancy payments	63	20.8	42.2
Redundancy administration	4.1	1.4	2.7
Total	132.7-165.7	49-62.5	83.7-103.2

35 This cost would be partially offset by some benefits to employers. Temporary workers tend to have a higher quit rate and lower commitment. This is one reason why many employers do not use temporary workers. Equal treatment and greater security will lead to greater commitment and productivity (for instance, making it worthwhile to undertake job specific training). As a result of the Directive there will be a reduction in recruitment and training costs and possibly an increase in productivity. Most employers that use FTC provide favourable terms and conditions, recognising the benefits of doing so. However, where employers do provide less favourable terms we must presume that the perceived benefits are not sufficient to not outweigh the costs (though there may be a tendency to see the costs more clearly than the prospective benefits). Nonetheless these benefits should be taken into account in assessing the overall recurring costs.

36 The effect of the changes to end discrimination would be to raise the relative cost of temporary workers. That may make them less attractive, leading to employers shifting to open ended contacts or to reducing employment. Surveys that examine the reasons for the use of temporary workers find that relative cost plays a minor role compared with the need to

meet peaks in demand and staff absences.²² Applying the principle of non-discrimination is therefore unlikely to lead too much of a shift to open ended contracts, but limitations on renewals might have such an effect.

Costs to business

37 Temporary workers are present disproportionately in the public sector, particularly among those who have been in their job for over two years. Such contracts are rare in the private sector. So the costs to business are much lower than this overall figure. Table 3 presents a breakdown based on the distribution of FTC between the two sectors (i.e. 59% of the costs of ending discrimination fall on the public sector and 67% of the costs of redundancy payments). That gives the gross cost to business of **£48-60 million**.

7. Small Businesses

38 It is unlikely that this Directive would have much effect on small businesses. Our survey shows that very few small businesses make use of fixed term workers. Furthermore establishments with few employees are less likely to offer non-pay benefits (such as pensions) than establishments with large numbers of employees. Hence there are fewer areas for potential discrimination, and second, smaller establishments are less likely than large establishments to discriminate against FTC staff on the benefit they do offer.²³

8. Other Costs

Enforcement Costs

39 As with any anti discrimination legislation this is likely to give rise to applications to Employment Tribunals. This means that there will be some additional costs for ETS and ACAS. However, given the low number of fixed term workers and the limited extent of discrimination that exists, the Directive (whatever the form of the final regulations) is unlikely to have a large impact on either ETS or ACAS.

40 The legislation is likely to create demand for advice leading to extra calls to the ACAS helpline. Producing extra guidance literature could cost the DTI up to £12,000 per year.

²² In the 1996 survey by IES 6% mentioned wage costs, *Labour Market Trends* September 1996 page 405.

²³ Of establishments with at least one FTC and one permanent equivalent, 64% with 1-10 employees say that there are no differences in benefits received between FTC and permanent staff. This compares to only 21% of establishments with over 250 employees.

9. Results of Consultations

41 This framework Agreement is the result of negotiation between the European Social Partners which include the TUC and CBI.

10. Summary of costs and benefits

42 The Directive could bring considerable benefits to workers on fixed term contracts in both improved treatment and greater security. Most employers will not be affected by the anti-discrimination provisions. Limitation on renewal/extension of fixed term contracts may be an inconvenience to employers, but in legal terms there are no additional costs to having permanent rather than temporary employees, aside from the right to redundancy payment on termination of employment. The effect of this would be felt most in the public sector.

10. Enforcement and Sanctions

43. It is expected that if the put into UK legislation, individuals could seek remedy for any infringement of their rights through an Employment Tribunal.

Contact:

Stephen Rosevear
Employment Relations Directorate 4d
Department of Trade & Industry
Room 2117,
1, Victoria Street
London SW1H 0ET

ANNEX ONE APPLYING THE PRINCIPLE OF NON-DISCRIMINATION

Pay

The DTI's survey found that where fixed term contract workers were employed alongside permanent workers, in 57% of cases, the employer paid equal wage rates. However, there were a large number of cases where the respondent was unable to say whether or not they paid equal rates. Excluding these cases, in 70% of cases the employer paid equal wage rates; in 18% of cases, the employer paid fixed term workers lower than pro-rata wages and in 11% of cases, they were paid higher wages. The survey suggests that about 5% of FTC workers with a comparator have lower pay. Combined with the LFS that gives about 25,000 workers are paid less than their colleagues with open-ended contracts. However this probably overstates the extent of discrimination as others may be rewarded for experience and extra duties (e.g. supervision of the temporary workers). Our survey did not explore the reasons for these differences in pay but when differences between part time and full time employees were explored it was found that differences could generally be explained by seniority, duties and experience. We assume the number likely to benefit if there were to be legislation to remove discrimination in pay would be nearer 20,000.²⁴ Assuming they get a pay rise of equal to 5% of the average for FTC workers, that is £12.45 per week gross (=£7.10 per hr x 35 hours x 5%)²⁵, the wage bill is estimated to increase by **£12.9 million** (=£12.45 x 52 x 20,000).

With marginal tax rates of 30% (income tax + NI) that gives a total net benefit to workers of £453 per temp job pa (=£12.45 x 52 x 0.7) giving a total of **£9.1 million** (=£453 x 20,000).

For employers' labour costs we have to add in NICs at **10%** making a total of **£14.2 million**. (We do not include anything for other non-wage labour costs as they are considered separately below).

Pensions

Based on the DTI survey we estimate that 10.3% of FTC workers with a comparator are excluded from occupational pension schemes, that is 52,000 people²⁶. However, the remuneration package has to be seen as a whole and some FTC workers receive higher pay as compensation for the lack of pension contributions (so they can make their own arrangements) – we assume about 10% - that leaves 50,000 who stand to benefit. For the calculation we use a range of employer contribution to these schemes of 5-

²⁴ A few of these may have benefited from the introduction of the national minimum wage but we shall not take that into account as most FTC workers are in higher paid jobs.

²⁵ Information on average wages for workers on fixed term contracts drawn from the LFS Autumn 1999.

²⁶ 10.3% x 507,000 FTC workers working alongside people doing similar jobs = 52,221.

10% of the wage (the annual survey by the National Association of Pension Funds has produced a figure in this range over recent years: see IDS Focus 89, March 1999). That gives a total increase in remuneration of **£32-65 million per year**.²⁷

Training

The LFS shows that workers on FTC are less likely than others to be offered training (43% of FTC workers compared to 50% of all employees). Our survey found similar results. In about 15% of cases FTC workers are excluded from training where it is offered but they account for about 3.27% of FTC employees with comparators, that is about 16,600.²⁸ It is likely that in many cases the FTC worker is employed because they already have the specialist skills - surveys identify that as a major reason for using FTC.²⁹ Others may receive higher pay as an alternative. We therefore estimate that perhaps 10,000 stand to benefit from improved access. Assuming that training is worth £500 that is a total of **£5 million**.

Other benefits

The BMRB survey asked about a range of 20 benefits available to fixed term contract staff and their comparators. A total of 493 benefits were provided to a sample of 60 workplaces (with 1.3 workgroups per workplace). This means that a typical benefits package for a FTC comparator consisted of approximately 6 benefits. Excluding occupational pensions and training (costed above), this leaves four non wage benefits typically available to a FTC comparator.

We took the four most commonly available non-wage benefits available to fulltime comparators and calculated the value of this non-wage benefits package.

Estimated value of benefits to full time comparators

	Benefit to ftc employee	Cost to employer
Holiday pay ¹	400	500
Bank holiday pay ²		
Special leave ³	50	62
Sick pay above statutory minimum ⁴	305	400
Total benefits package for FTC	755	962

¹ & ² Benefit is cost of part time employee on average net pay moving from statutory minimum (4 weeks including public holidays) to amount of leave commonly provided for full time employees (4 weeks plus public holidays) = 249*1.6. ³One day at average part time wage rate so benefit to employee = 249/5 and cost to employer = 249/5*1.24. ⁴ 8 days sick pay per annum (*Labour Market Trends*, August 1999). SSP is currently £59.55 per week, benefit to employee is difference (8*50)-(1.6*59.55) = £305; cost to employer is (8*62)-(1.6*59.55) = £400

²⁷ 50,000 people, with average wage of £249 pw (LFS Autumn 1999). So assuming that pension contributions are 5% gives: 50,000 x £249 x 52 x 0.05= £32 million

²⁸ 3.27% x 507,000 FTC workers working alongside people doing similar jobs = 16,578.

²⁹ Heather,P., Rick,J., Atkinson,J., Morris,S. (1996) Employers' use of temporary workers, *Labour Market Trends*, September. Page 405

If we exclude pensions and training then we estimate that about 9% of employers with FTC workers and comparators³⁰ exclude temporary workers from benefits available to other employees. We estimate that the number of workers negatively affected is about 25,000. This probably overstates the extent of discrimination because:

- a) some benefits will have qualifying periods which are not met by their current temporary workers (or they give workers an open-ended contract before they reach such thresholds)
- b) some employers pay their temp workers more than workers on open-ended contracts to compensate for the loss of benefits

We assume therefore that the number who miss out on benefits because of discrimination is about 15,000. For 15,000 workers the gain to workers is about **£11.3 million** (£755 x 15,000). For employer costs we arrive at a annual cost of **£14.4million** (962 x 15,000). This is probably an overestimate for in the case of holidays many temporary workers on short contracts would not have a statutory right and many other benefits (e.g. parking spaces) are much less costly.

Notification of Opportunities (Clause 6)

The LFS suggests that only 21% of employees on fixed term contracts do not want a permanent job. 39% of fixed term employees work in temporary employment because they could not find a permanent job (LFS Autumn 1999) - though not all of them would want to work permanently in the job they do on a FTC. This measure will therefore be welcomed by some workers on FTC. However, we have no evidence that employers do not already offer permanent jobs to workers on FTC - so do not expect it to have much effect on job offers.

Qualifying periods

The fourth section of clause 4 is aimed at ensuring that length of service qualifications for entitlement to conditions of employment are the same for fixed term workers as for permanent workers, except where justified on objective grounds. Our survey found that 38% of employers have a minimum service period which their employees must serve before qualifying for benefit entitlements. This qualifying period probably explains some of the reported differences between people on fixed term and open-ended contracts. The survey did not look for differences in qualifying period but we are not aware of this being an issue in the UK. Some firms may have such different qualifying periods but we believe that FTC generally have similar qualifying period unless they are not eligible at all.

³⁰ Excluding those cases where the respondent did not know.

ANNEX TWO - TO PREVENT ABUSE

To consider the possible effects of limitations on the length of FTC or on the possibilities of renewal we begin by considering a "worst case." The steps are as follows:

- a) We begin by assuming that restrictions (on length of contract or the number of renewals) mean that no-one who has been in their job for over two years is on fixed term contract. Employees on an open-ended contract are entitled to redundancy pay if they lose their job by reason of redundancy after having completed two years' service. If we assume that the jobs end just as now that would mean more redundancies and more payments
- b) we adjust to allow for quits rather than terminations
- c) we allow for longer term contracts

How many FTC workers have been with their employer for a long period?

From the LFS we can estimate the number of FTC workers who pass the two year threshold and so on as follows:

number passing two years	67,000
three	51,000
four years	40,000
five years	14,000

Additional redundancies

If we start from the assumption that all are genuinely on work of a limited duration then putting more people on open-ended contracts but keeping the number of separations the same would mean more redundancies when the work finished - an extra 67,000 redundancies per year.

Not all separations of FTC workers are terminations. The quit rate among FTC workers is higher than among workers with open-ended contracts. A quit rate of a third would mean only 45,000 extra redundancies but we assume it falls to a quarter so redundancy payments would have to be paid to 49,500 each year. With the following pattern :

Length of service	Number of Redundancy Payments
Two years	12,000
3 years	8,000
4 years	20,000
5 years	11,000

Allowing for longer term contracts

This is reduced if we allow for contracts of over two years. If our interest is in people who are on renewals we can identify those whose contract is for a shorter period than the length of time they have been with their employer. Excluding those who have a long term contract and some who have a

contract based on completion of a task rather than a period gives the following assumptions:

Length of service	Number of Redundancy Payments
Two years	4,000
3 years	6,000
4 years	12,000
5 years	10,000
	32,000

We assume that half of these are paid the statutory minimum while half have improved terms. (That is based on 1992 survey of employers which found that more half the employers making redundancies improved on the statutory minimum, see *Employment Gazette* July 1993) For those with improved terms we assume 3 weeks pay for every year of service (For examples of redundancy provisions in larger companies see *IDS Studiesplus* Spring 1999, Managing Redundancy). The average wage for those on fixed term contracts and with two years' service is £300. That gives the following calculations.

Length of service	Statutory payment		Improved RP		Total expenditure £ million
	Assumed number	Level	Assumed number	Level *	
Two years	2,000	£440	2,000	£1,800	4.5
3 years	3,000	£660	3,000	£2,700	10.1
4 years	6,000	£880	6,000	£3,600	26.9
5 years	5,000	£1,100	5,000	£4,500	28.0
Total					69.4

Producing a total of £70 million (£14m at the statutory minimum and £56 at improved terms). Some FTC give a premium in the wage to compensate for the lack of RP so we might reduce this total by 10% giving extra income for the workers of **£63 million**.

It would be possible for employers to avoid these costs by:

- a) not renewing FTC so people did not accumulate service - but that would involve extra recruitment and training costs,
- b) when redundancies are made, to concentrate redundancies on more recent recruits with lower payments.

Administration costs

For our calculation we assume that each person made redundant involves one day of management time. The NES 1999 gives a weekly wage of personnel managers as £643.70 per week, so a cost of £128 a day, For 32,000 redundancies that would be **£4.1million**. This is deliberately on the high side. It is doubtful that the marginal cost of redundancy is so high (for instance it does not cost more in consultation), but there may be a few cases where the number of redundancies is pushed over the 20 threshold thus requiring consultation. Against that, ought to be set the transaction costs involved in drawing up temporary contracts and handling their termination.

Young Workers Directive

November 2000

Issue

1. To amend the Working Time Regulations (WTR) to reflect the ending of the UK opt-out from the working time and night work provisions within the Young Workers Directive (YWD).
2. Although the UK has implemented the European Union Council Directive on the protection of young people at work, the UK retained opt-outs from certain provisions. The opt outs covered workers aged 16 and 17 who would otherwise, under the YWD, be restricted to working a maximum of 40 hours per week, with a maximum working day of 8 hours, and would not normally be allowed to work at night between 10pm and 6am (or 11pm to 7am). The opt-outs expired on 22 June 2000. Further details are contained in the consultation document 'Young Workers Directive - End of UK Opt-Outs' published by DTI on [date].

Objective

3. To comply fully with the EU Young Workers' Directive while retaining the maximum flexibility in its implementation.
4. To achieve benefits for young workers, including a better balance between work and family life, with commensurate improvements in health and safety. Young workers are particularly likely to benefit in terms of access to education and opportunities for personal development.

Benefits

5. There are benefits as well as costs associated with the amending regulations, although these are inevitably more difficult to quantify. The existing Working Time Regulations³¹ have ensured that employees are

³¹ See 'Measures to Implement Provisions of the EC Directives on The Organisation of Working Time ("The Working Time Directive") and the Protection of Young People at Work ("The Young Workers Directive") Public Consultation', Department of Trade and Industry Employment Relations Directorate April 1998, URN: 98/645. Annex E contains estimates of

provided with basic minimum rights through a legal framework, providing minimum standards combined with flexibility for employers. The benefits included a better balance for workers between work and home, greater choice over hours worked and improvements in health.

6. Appropriate restrictions on working time and night-work for young workers would be expected to mean that the workers concerned are more alert and therefore more productive while they are working. This would tend to reduce costs to business while producing benefits for the economy and employers in the longer term.

7. The benefits in terms of improvements to health and family life which may be gained from restricting working hours and night working apply as much to young workers as older workers. For young workers, however, there are likely to be particular benefits in terms of access to education and opportunities for personal development, again with benefits in the long term.

8. The Council of the European Union adopted the Young Workers Directive in order to adjust labour regulations applicable to young workers so that their specific developmental and vocational training needs were met. In particular, the effects of work on young people's health, safety and physical development were noted. Young workers are a particularly sensitive risk group who needed to be protected from dangers that specifically affect them. They need protecting from risks arising from their lack of experience, absence of awareness of risks, and from their immaturity. The working time of adolescents should not adversely affect their ability to benefit from education.

Risks

9. One risk of ending the opt out are that some employers who currently employ 16 and 17 year olds in a training capacity may not wish to employ them under the new regulations, thus removing a training and development opportunity for some young people. On the other hand specified derogations (see below) are likely to exempt young workers from the YWD in industries where the requirement to work in a particular pattern, such as night work or extended hours, is an essential part of the job.

Options

10. Seeking renewal of the opt-out was not a negotiable option. Now that the opt-out has ended, regulation is the only means of compliance with these remaining provisions of the YWD. The available options for implementation are as follows:

the costs of compliance. The methodology and assumptions used in this earlier appraisal have generally been followed in the present assessment.

- a blanket implementation without derogations
- b that the UK should authorise work by adolescents during the period in which night work is prohibited or for more than eight hours on any day/40 hours in any week in the sectors specified in the YWD:
 - in shipping and fisheries
 - in the context of the armed forces and the police
 - in hospitals and similar establishments
 - cultural, artistic, sports and advertising activities.
- c that the UK should further authorise derogations in sectors likely to face particular difficulties: agriculture, hotels and catering, postal services and newspaper deliveries.

11. Derogations of the type described above are available to all member states under the terms of the YWD (see 'derogations' below).

Costs - Restriction of working time to 40 hours per week.

Numbers

12. According to the March to May 2000 Labour Force Survey around 40,000 persons in the UK aged 16 and 17 were in employment and working more than 40 hours per week. The average working week for those working more than 40 hours per week was 47 hours.

Compliance cost

13. We can assume that the work in excess of 40 hours per week is essential to the employer's business and that if the work were not done by 16-17 year olds, older workers would carry it out. If the average hourly pay of 16-17 year olds is £3.50 and that of employees aged 18-20 is £4.90³², then the compliance cost to the employers will be a function of the difference. If we assume, as in previous exercises, 22% for non wage costs, we have a cost which can be attributed directly to the change in the regulations of around £23 million per annum ($=40,000 * 7 * £1.40 * 1.22 * 48$). (The calculation assumes 4 weeks holiday per year). There are a number of reasons why the cost may be substantially less, however. While some of the work is likely to be redistributed to other workers in a higher wage band, some of it will be absorbed within the existing workforce. Some employers will be paying premium rates for overtime working which could be done in normal time at equivalent or less cost. In theory, the more expensive workers will tend to be more productive than workers they replace, although age related pay structures may not reflect productivity differences precisely. One effect of switching the work to other groups may be that the cost of the older workers rises, as a result of the increased demand. The £23 million annual figure,

³² See 'New Earnings Survey2000' Office for National Statistics, 2000, Table A15.

along with other costs in this note, is believed to be a reasonable illustration of the potential cost, however.

14. It is not expected that there will be any significant administrative costs to employers.

Prohibition of night work.

Numbers

15. About 20,000 employees aged 16 or 17 were recorded in the LFS as ever working at night. Detailed information on the actual hours worked is not available.

Compliance cost

16. As above, we assume that night work is essential to the employer's business and that if the work were not done by 16-17 year olds, workers in an adjacent age group would carry it out.

17. The average number of hours worked by young night workers is around 20 hours, but not all of this will be worked at night. Making a further allowance for those who do not always work at night, the estimated compliance cost is:

$20,000 * 20 * 0.5 * 1.40 * 1.22$ (non wage labour costs) * 48 = £16 million per annum.

(20,000 workers at 20 hours each, assuming half worked at night, wage differential = £1.40 and non wage costs = 22%, annualised).

18. Again, we assume that the administrative cost of the necessary reorganisation is negligible.

Restriction of the working day to 8 hours.

19. There are no data available on the extent to which young workers work days of longer than 8 hours. Limitation of the working week to 40 hours will to some extent tend to reduce the number of long days worked. It may also be assumed that employers would deal with this limitation by re-organising work schedules. Compliance costs will therefore be negligible.

Derogations.

20. Under the terms of the YWD, it is open to the UK to exempt certain sectors from the arrangements for night work for young workers. These are specified in article 9(2) b of the YWD as shipping, fisheries, armed forces, police, hospitals and other related establishments, cultural, artistic, sports

and advertising. For convenience we will refer to these as specified derogations.

21 Around one in ten young workers who ever work nights work in industries to which these derogations may apply. Accordingly the compliance costs from implementing the restrictions on night working would be reduced by 10%. The proportion of young workers who usually work more than 40 hours in a week in these industries is about 5%.

22 In addition member states may authorise derogations by way of exception or where there are objective grounds for doing so. Such derogations are likely to be applied in industries concerned with agriculture, hotels and catering, postal services and newspaper deliveries, which we shall refer to as objective derogations. About 50% of young workers who ever work at night work in agriculture, hotels and catering, postal services and newspaper deliveries. About 10% of young workers who currently work more than 40 hours a week work in these industries. (See also, 'Impact on Industry Sectors', below.)

In tabular terms (annual costs)

Compliance cost due to :	Maximum working hours	Prohibition on night work
Without derogations	£23 million	£16 million
Specified derogations	£1.2 million	£1.6 million
Objective derogations	£2.3 million	£8 million
Cost less derogations	£19.5 million	£6.4 million

Impact on small businesses.

23 Around 40% of young workers who currently work weeks of longer than 40 hours or ever work nights work at premises which employ fewer than 25 employees. Accordingly 40% of the compliance cost will fall on small employers who currently employ about one third of the total labour force.

Impact on industry sectors.

24 According to the Spring 2000 Labour Force Survey, about one third of the adolescents usually working more than 40 hours a week, were employed in the wholesale, retail and motor trades. Around one fifth were employed in manufacturing and about the same proportion in construction.

25 About half the adolescents who ever worked at night worked in the hotel and restaurant trade.

26 In both cases, numbers are small, however, and the Labour Force Survey cannot provide accurate estimates.

Securing compliance

27 The revised regulations would continue to provide for workers entitlements and could be enforced by complaint to an Industrial Tribunal if denied. In addition limits on working time can be enforced by sanctions which could be imposed by health and safety at work authorities. The extra costs to HSE and Local Authorities of this enforcement activity are expected to be negligible.

Conclusions

28 The total cost of compliance with the new regulations, if implemented, could be as low as £26 million per annum if certain derogations are applied. This is a negligible proportion of the annual UK labour bill of £493 billion in 1999 (wages and salaries plus employers' social contributions). While the compliance cost will fall to an extent on small business, it will still not be a significant extra burden for them.

29 The benefits of implementing the working time regulations include improvements to health and family life and apply more to young workers than to older workers because they need protecting from risks arising from their lack of experience, absence of awareness of risks, and from their immaturity. For young workers there are also particular gains in terms of access to education and opportunities for personal development. These will all be of benefit to employers in the long term.

Contact point and date:

Philip White
Employment Market Analysis and Research
Department of Trade and Industry
0207 215 5934

November 2000

Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001

November 2000

Implementing Council Directive 97/80/EC on the Burden of Proof in cases of discrimination based on sex as amended to apply to the UK by Council Directive 98/52/EC

Purpose and Intended Effect of the Measure

Identify the issue and objective

1. Implement the 1997 Burden of Proof Directive. The Directive has two parts.
 - The first is the shift in the burden of proof from applicant to respondent, once the applicant has established a prima facie case.
 - The second is a definition of indirect discrimination which is new to UK law and differs from the approach currently taken in UK legislation.

From this point, the RIA is divided into two, for ease.

PART I Shift in the Burden of Proof

Risk assessment

2. It can be difficult for an employee to prove that the reason for an employer's actions are founded in sex discrimination. This is because the employer has all the documentation and details. For instance, if a woman is interviewed and refused a job, she will find it extremely difficult to prove sex discrimination, because she does not have access to all the other applications or the employer's reasons for hiring one person and refusing others. One solution to this problem is to reverse the burden of proof, once a prima facie case is made out. This means that once the applicant is able to show facts which would lead a Tribunal to presume or infer that there has been sex discrimination, they will then look to the respondent to prove that there has been no such discrimination.

Options

Identify options

- i. Do nothing – leave the current case law to cover the situation. The Equal Pay Act already requires the employer to show that any difference in pay between a man and a woman doing the same job, or work of equal value, is because of reasons unrelated to sex. In other cases of sex discrimination, and in race discrimination cases, Tribunals have a common longstanding practice, based on the case of *King v GB China Centre (1991)*, of inferring discrimination from facts which raise the possibility of discrimination, where the employer doesn't provide a satisfactory alternative explanation.
- ii. Legislate to shift the burden of proof through changes to Tribunal procedures – The possibility of changing the Tribunal procedures to reverse the burden of proof was considered. Doubts have been expressed about the legality of using Employment Tribunal (Procedures) Regulations to achieve this, and there was also concern that this option would not cover vocational training or employment of barristers and pupils in chambers, where such cases are heard in county court rather than the Employment Tribunal.
- iii. Legislate, putting the shift in the burden of proof on the face of the SDA. – The preferred option for reasons of legality and clarity was to put this change on the face of the SDA. However, the intention is not to shift the burden of proof for the entire scope of the SDA, just the sections dealing with employment and vocational training.

Issues of Equity or Fairness

3. The shift in the burden of proof is considered fair, because generally an employer will keep records on employees or recruits interviewed which will allow him or her to explain why he or she did something, and if his or her reasons were not discriminatory, to show what the real reasons were.

Benefits

- a. **Identify the benefits** – the benefits are not easy to quantify, as the existing case law already provides for the same outcome in the overwhelming majority of Tribunal cases. The main benefit will therefore be one of increased legal clarity.
- b. **Quantify and value** - The reversal of the burden of proof only comes into operation when the individual has made out

their case. There is no question of an employer having to disprove an accusation of discrimination by an employee who has no evidence to back up his or her claim. Informed legal opinion has been that this will make very little difference in practice to the way in which sex discrimination cases are decided in the UK.

Compliance costs for Businesses, Charities and Voluntary Organisations

- a. **Business sectors affected** - all those who employ staff. Charities and voluntary organisations will only be covered in respect of salaried staff, volunteers are not considered to be “workers” in EC legislation.
- b. **Compliance costs for a “typical” business** – the cost to an employer who is not discriminating should be nil. A well-prepared employer is no more likely to lose a Tribunal case under the new test.
- c. **Total Compliance Costs** - Informed legal opinion has been that this will make very little difference in practice to the way in which sex discrimination cases are decided in the UK. Compliance costs should therefore be minimal. There were 4926^[1] applications made to Employment Tribunals under the SDA in the last operating year. The median compensation award in a Tribunal case taken under the Sex Discrimination Act is £4115^[2].

Consultation with Small Business: “The Litmus test” – respondents to the consultation included:

- Forum of Private Business – (25,000 member businesses, averaging seven employees each) agreed with all our proposals, and commented that “Employers take action and must be able to justify them in objective terms if challenged.”
- Small Business Service – made no comment on the Burden of Proof section of the consultation document.
- Federation of Small Businesses – objected to the shifting of the burden of proof in principle but raised no specific objection to our proposed form of implementation

Identify any other costs

4. There may be some marginal costs to employers who are ill-prepared to defend a Tribunal case. Once the applicant has made out their case of discrimination, it is for the employer to prove that he did not discriminate as alleged. The Tribunal will not have the discretion to find in favour of the

employer even though there is an inference of discrimination. The applicant will need to establish sufficient facts before the burden shifts to the employer but an employer who is ill prepared to defend such allegations may find that they are unable to satisfy the burden of proof placed on them.

Results of Consultations

5. The majority of those who responded to the consultation stated that it would be preferable to make clear on the face of the act what is an already well-established, but poorly understood, practice of employment Tribunals.

Summary and recommendations

6. We recommend that the “shifting the burden” aspect of the Burden of Proof directive be implemented by changes on the face of the SDA. This is recommended primarily in order to ensure that the Directive is correctly implemented but also for the sake of clarity and coverage of all training and employment, including those cases which are not heard in employment Tribunals, is explicit.

Enforcement, Sanctions, Monitoring and Review.

7. The primary route for enforcement of sex equality legislation is by the individual, perhaps supported by their trade union or the Equal Opportunities Commission, through the Employment Tribunal system. Monitoring of the numbers of sex discrimination claims taken, and the percentage which are successful, is ongoing by the Employment Tribunal Service. We will therefore be able to see if the number of applicants succeeding in Tribunal cases rises after this measure is implemented, though it will not be possible for the effect of this measure to be separated from the effect of other measures (i.e. the new definition of indirect discrimination, other equal pay measures) implemented at the same time.

PART II New Definition of Indirect Discrimination

1. **Risk assessment** – Indirect discrimination occurs when the same requirement or condition is applied to women and men but impacts on one sex to their detriment in that a considerably smaller proportion of that sex can comply than the other and there is no objective reason irrespective of sex for the requirement or condition. So, for example, it would be unlawful to set an absolute height requirement for security guards. However, the Sex Discrimination Act currently offers a loophole to employers seeking to discriminate. In this example, they are able to state that the height requirement is not an absolute bar to recruiting those below that height, it is merely their preference to recruit those over this height. A woman will then have difficulty taking a claim of indirect discrimination, even if she is aware that the employer will never, in practice, recruit anyone below this height. The directive definition is wider than the current approach taken in UK law, it would cover what an employer does in practice, as well as the policy he espouses.

2. **Options**

Identify options – If we are to comply fully with the directive, we must amend the current definition of indirect discrimination in the SDA. Currently the SDA only prohibits indirect discrimination where the employer is placing an explicit requirement or condition upon an employee. This does not always cover situations where an employer is not applying a clearly discriminatory condition or requirement but is in practice applying criteria which are more difficult for women to meet than men, and which cannot be objectively justified. An example of this might be where an employer was not openly discriminating in advertising certain posts but in practice regularly preferred candidates who had, say, demonstrated geographical mobility in taking previous jobs. Another would be the preference for people over a certain height, detailed above. Changing the law to cover such practices will improve women's chances of proving indirect discrimination where an employer is applying a discriminatory and unjustifiable practice. However, this will not, we judge, substantially increase burdens or uncertainty for large numbers of employers.

Two options were considered for legislation.

(i) Include "practice" – the consultation document stated that the implementation of the directive could perhaps be achieved by simply inserting the word "practice" into the SDA. This was to ensure that the requirement of an absolute bar would no longer prevent individuals from claiming indirect discrimination when a mere practice had been applied. Consultees expressed a preference for using wording closer to the original in the directive " provision, criterion or practice" and we therefore

propose using these words to ensure that the Directive is fully implemented.

(ii) Clearly separate the approaches to indirect definition to reflect that the Directive only covers employment and vocational training and does not extend to goods, facilities and services.

Without primary legislation, we are unable to harmonise the two definitions. The simplest way to achieve this by way of regulation is to separate the approach to discrimination in section 1 of the SDA and introduce a new subsection which will only apply to those matters which can be covered by the Directive.

3. **Issues of Equity or Fairness** – The current legal loophole, where employers are sometimes able to deliberately discriminate in practice as long as there is no absolute and visible rule, is clearly unfair. These regulations will eliminate that unfairness. Perhaps less obvious, but equally unfair, are some of the business practices which have no objective justification, but which can stand in the way of recruitment, promotion, and progression for women. An employer will still be able to prefer for promotion those employees who have worked in an overseas office of its business (which women are less likely to do) if it can show that the preference for this experience is objectively justifiable. However, where such practices are applied so as to disproportionately affect one sex more than the other then they will be indirectly discriminatory if they are not objectively justifiable and they will be liable to challenge.

4. **Benefits**

a. **Identify the benefits** – this change will close a loophole in the law which allows wily employers to deliberately discriminate on grounds of sex, and allows complacent employers to continue unchallenged with business practices which may be disadvantaging women.

b. **Quantify and value** – there is an obvious value in closing this loophole in the law for women (as the sex most often discriminated against) but there is also a benefit for employers in testing their business practices, and satisfying themselves that they are recruiting and promoting the best person for the job, rather than applying irrelevant or outdated criteria. For individuals there are potential benefits from compensation and settlement payments: it is estimated that they will receive a total sum of £304000.^[3]

5. **Compliance costs for Businesses, Charities and Voluntary Organisations**

a. **Business sectors affected** - all those who employ staff. Charities and voluntary organisations will only be covered in respect of salaried staff, volunteers are not considered to be “workers” in EC legislation.

b. **Compliance costs for a “typical” business** – there is no cost to businesses who are not applying discriminatory business practices. There are likely to be some one-off costs in testing existing business practices, and either justifying these or amending them. It is expected that most such testing will be done without recourse to an employment Tribunal, but there may in the short term be some Tribunal cases establishing the boundaries of the new law.

c. **Total Compliance Costs** – In 1999/2000 there were 3809 Sex Discrimination Employment Tribunal cases disposed of. If we assume that the number of Tribunal cases will increase by 5%, then this will increase the compliance cost to business by £584000^[4].

6. **Consultation with Small Business : “The Litmus test” – respondents to the consultation included**

- Forum of Private Business – (25,000 member businesses, averaging seven employees each) agreed with all our proposals.
- Small Business Service – made no comment on this section of the consultation document.
- Federation of Small Businesses – objected to the shifting of the burden of proof in principle but raised no specific objection to our proposed form of implementation

7. **Identify any other costs** – The administrative cost to government is estimated to be £106,000^[5]

8. **Results of Consultations** – the consultation suggested that we might implement by simply including the word “practice” in the SDA. A number of commentators did not fully grasp how this might work, and those who did argued that it was unnecessarily complex. We have taken notice of this advice, and now propose to provide two, clearly distinguished, definitions of indirect discrimination, one for the employment and one for the goods and services parts of the SDA. We also now propose, in line with the preferences expressed by consultees, to stick more closely to the original wording of the Directive. This wording is also closer to that agreed for the European Race and Framework Employment Directives.

9. **Summary and recommendations** – we recommend that the second option for implementation be pursued. It involves a bigger change to the

wording in the SDA, but it is much clearer and easier to operate for the lay person. There is no difference in the legal effects of the two options.

10. **Enforcement, Sanctions, Monitoring and Review.** – The primary route for enforcement of sex equality legislation is by the individual, perhaps supported by their trade union or the Equal Opportunities Commission, through the Employment Tribunal system. Monitoring will be undertaken by the Employment Tribunals Service to see if the number of applicants succeeding in Tribunal cases rises after this measure is implemented, though it will not be possible for the effect of this measure to be separated from the effect of other measures (i.e. the new method of shifting the burden of proof) implemented at the same time.

ANNEX

Legal costs, costs of staff time and costs of payment to applicants.

The Employment Tribunals Service Data 2000^[6] showed the outcome of sex discrimination employment Tribunal cases disposed of in 1999/2000 was as follows:

- 1504 (39%) were (ACAS conciliated) settlements.
- 1348 (35%) were withdrawn
- 233 (6%) were successful at Tribunal (i.e. the outcome is in favour of the employee)
- 542 (14%) were dismissed at the hearing (i.e. the outcome is in favour of the employer)
- 9 (4%) were dismissed/disposed of for other reasons

There was a total of 3809 Sex Discrimination Employment Tribunal Cases disposed of in 1999/2000. If we assume that changing the definition of indirect discrimination will increase the number of Tribunal cases by 5% and posit that the distribution of outcomes remains the same then the outcomes of the increase in Tribunal cases would be distributed as follows:

- 75 would be ACAS conciliated settlements
- 67 would be withdrawn
- 12 would be successful at Tribunal
- 27 would be dismissed at the hearing
- 182 would be dismissed/disposed of for other reasons.

Compliance and non compliance costs

We have assumed, as is the usual practice, that where an employer successfully defends a complaint to a Tribunal or where the case is withdrawn, or dismissed for other reasons, there will be compliance costs. However, where a claim is lost, the employer has obviously not complied, so the costs are not included. Below, we distinguish between compliance and non-compliance costs.

Legal costs incurred by employers

- If we look at the legal costs incurred for different case outcomes^[7], (N.B. this is for all cases as there is no separate data for discrimination cases), the mean cost for a settled case is £563.4, the mean cost for a withdrawn case is £806.1, the mean cost for a case which goes to Tribunal and is upheld is £747.4, for a case which is dismissed at Tribunal, £1502.8 and the mean cost for a dismissed / disposed of case is £769.8.
- Using what we know about the pattern of outcomes, the costs to employers for the increased number of sex discrimination cases will be £42000 for settled cases, £ 54000 for withdrawn cases, £9000

for cases which are upheld, £41000 for cases which are dismissed at Tribunal and £7000 for cases which are dismissed/disposed of. The legal costs incurred as compliance costs are therefore £144000.

Staff time costs

We have data from the DTI survey on time spent on cases by staff. We can estimate the total time by applying the pattern of outcomes for discrimination cases to the data on time spent on case by case outcome (N.B. this is for all cases as there is no separate data for Discrimination cases). The mean amount of time spent by Managers is:

- settled cases 24.8 hours
- withdrawn cases 26.1 hours
- cases which go to Tribunal and the outcome is in favour of the applicant 38.1 hours
- cases which go to Tribunal and the outcome is in favour of the employer 47.1 hours
- dismissed / disposed of cases 30 hours

If we apply the assumed pattern of case outcomes to this, it would mean that managers would spend a total of 5600 hours on these cases (1800 hours on settled cases, 1700 on withdrawn cases, 1300 on cases which are dismissed at Tribunal, 500 on cases upheld at Tribunal and 300 on dismissed / disposed of cases).

For other staff, the amount of time spent is:

- settled cases 8 hours
- withdrawn cases 10.5 hours
- cases which go to Tribunal and the outcome is in favour of the applicant 15.7 hours
- cases which go to Tribunal and the outcome is in favour of the employer 22.6 hours
- dismissed / disposed of cases 12.6 hours

If we apply the assumed pattern of case outcomes to this, it would mean that other staff would spend a total of 2200 hours on these cases (600 hours on settled cases, 700 on withdrawn cases, 600 on cases which are dismissed at Tribunal, 200 upheld at Tribunal and 100 on dismissed / disposed of cases).

To calculate the cost of these staff hours to businesses, we assume the hourly pay rate of managers to be £30 and for other staff, £15, and apply the assumed pattern of case outcomes. This means the time cost incurred as compliance costs is £185,000

Compensation payments awarded at Tribunal hearings

The median award in a sex discrimination case, £4,115^[8]. Earlier we made the assumption that in 6% of cases the Tribunal will find in favour of the applicant, this would result in total compensation payouts of £49,000. Note that while these represent benefits to individuals, they are not considered to be compliance costs because the companies have not complied with the legislation.

Payments in settled cases

Employers and applicants can jointly decide to settle cases prior to the Tribunal hearing. This means that the outcome of the case is not in the public domain and avoids the employer incurring the costs of preparing for, and attending a hearing. We have data on such settlements from the DTI survey and the mean payment (where a payment is made) is around £3,400. In total, the payments in settled cases would equal £255,000

Total costs

The total compliance costs to employers will therefore be: £144,000 for legal costs, £185,000 on staff time costs and £255, 000 in payments on settled cases – in all £584,000.

Total benefits

Individuals benefit from compensation payments from Tribunals and payments from settled cases. They will receive a total sum of £304,000.

^[1] Employment Tribunal Service Annual Report and Accounts 1999/2000

^[2] DTI Survey of Employment Tribunal Applications.

^[3] See Annex

^[4] See Annex

^[5] The Employment Tribunal Service disposed of 83409 Tribunal cases of all jurisdictions in 1999/2000 at a total cost of £46,581,000. If we assume there will be 190 additional cases when the definition changes, this will represent an increase of approximately 0.2% in the number of Tribunal cases. Assuming a proportionate increase in costs gives a cost to government of £106000.

^[6] Employment Tribunal Service Annual Report and Accounts 1999/2000

^[7] DTI Survey of Employment Tribunal Applications 1998

^[8] DTI Survey of Employment Tribunal Applications 1998