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SUCCESS AT WORK

Increasing the holiday entitlement –
A further consultation

Summary of responses
and Government response
to the consultation

JUNE 2007

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Foreword



Today I am presenting regulations to Parliament to increase the statutory holiday entitlement from four weeks to 5.6 weeks, subject to a maximum of 28 days. In our election manifesto in 2005, we promised to make time off for bank holidays additional to the four-week holiday entitlement, a commitment we reiterated in the *Success at Work* policy paper in March 2006. Since then, we have not been idle; measures on the holiday entitlement were included in the Work and Families Act passed by Parliament in January 2006. We have conducted two consultations on our proposals to increase the holiday entitlement – one last summer and one earlier this year, to which latter consultation this is the Government response.

I have been struck by the number of individuals who have responded to this further consultation, describing the difference that the increase in the holiday entitlement will make to their quality of life and that of their families. These proposals will make a real difference in the lives of some six million hard-working people by giving them more time to spend with their families and friends, to explore their interests and to rest from their work. Businesses too have welcomed the establishment of a more level playing field, the reduced absenteeism, the increased staff productivity and motivation, and the better work-life balance for staff that the increased holidays will deliver.

Our research and the responses to the consultation have helped us to understand the effects of these proposals on employers and we have sought to smooth the impact of the introduction of the additional holiday and take account of business needs. We intend to phase the increase in the holiday entitlement to enable businesses to adjust. We have agreed that the maximum statutory entitlement should be 28 days, although many employers already recognise the benefits of giving their staff more holidays. We have listened to new concerns expressed by certain sectors and have taken steps to address them.

The responses to this latest consultation have indicated that employers and workers alike want greater clarity over the holiday entitlement. We intend to provide an online calculator to enable the increased statutory entitlement to be calculated quickly and easily. We hope that this resource, available to both employer and worker, will prevent some of the disputes over holiday entitlement that currently arise – often simply due to uncertainty as to the nature of the entitlement. We will also look to provide guidance and where the current state of the law is uncertain (due to action in the European Court of Justice) make this clear while continuing to press the Court for a practical judgment that reflects the reality of what happens in UK workplaces without undermining protections afforded to individual workers. We will provide publicity materials and draft letters to help inform workers and employers of the changes. We hope that industry and unions will work with us to help inform those affected of the increased entitlement and ensure that everyone benefits from this over-due measure to ensure everyone has a fair leave entitlement.



Jim Fitzpatrick
Minister for Employment Relations

Executive Summary

1. The further consultation on increasing the holiday entitlement sought views on draft regulations to increase the statutory holiday entitlement from four weeks to 5.6 weeks (pro rata for part-time staff), subject to a maximum of 28 days. A Partial Regulatory Impact Assessment was also published for comment, and views were sought on how the implementation of the proposed changes could be supported through guidance and other means. The further consultation followed an initial consultation in June-September 2006.
2. A total of 668 substantive responses were received to the further consultation, nearly double the response to the earlier consultation. Most of those who responded to the further consultation had not responded to the initial consultation and many of the responses covered issues that had already been consulted upon. Whilst two-thirds of responses came from employers and their representatives, there were a significant number of responses from individual workers and from trade unions.
3. Responses from employers fell into two camps – those that currently did not give the equivalent of 5.6 weeks' holiday, and those that did (typically as four weeks' holiday plus time off for bank holidays). The issues raised by these two groups of employers were different. For those that did not already give the equivalent of 5.6 weeks' holiday, cost was the issue most often raised, particularly for SMEs and the care sector (although the strength of response from these communities may reflect our efforts to raise awareness of the proposals in these sectors and encourage responses). Other responses highlighted the ability to provide payment in lieu of leave as of particular importance in sectors where recruitment is an issue, or where there are large numbers of sessional/casual workers. In general, responses from this group of employers urged simplicity in the regulations and their implementation.
4. For those that already gave at least 5.6 weeks' holiday, the most common concern was a desire for the maximum degree of flexibility to accommodate existing arrangements. The ability to provide payment in lieu of leave (where already offered by the employer) was also an issue. Employers in general raised concerns over the potential overlap between the proposed implementation dates of October 2007 and 2008 in the draft regulations, and the employer's own leave year. There was strong support for detailed guidance covering a range of different leave patterns and scenarios, online calculators and model letters/staff communications.

- 5.** Individual workers who responded to the consultation were strongly supportive of the proposals to increase the holiday entitlement, although some expressed concern that some employers may try to avoid increasing the amount of holiday workers could take. Many welcomed the opportunity to take additional holiday as leave (rather than as payment in lieu) to enable them, for example, to spend more time with families over school holiday periods. Union responses also supported the proposals, although many disagreed with the proposal to limit the statutory holiday entitlement to a maximum of 28 days and to phase the increase in holiday entitlement over two years. The Government's decision to ask the Low Pay Commission to take the increased holiday entitlement into account when recommending the level of the National Minimum Wage was also criticised by this group of respondees.
- 6.** The Government response to the main points raised in the consultation is overleaf.

Government response

Comments on the draft regulations

- 7.** A number of specific points were made on the draft regulations. The Government agrees that the increase in the holiday entitlement should apply to all workers (as well as those considered 'employees') and that it should have the same territorial extent offshore as the main Working Time Regulations. The draft regulations included amendments to the regulations relating to mobile workers on inland waterways and those involved in seafishing; the regulations relating to merchant seafarers will be amended shortly to reflect changes in relevant international treaties and hence were not included within the scope of the draft regulations. Further to the consultation, the Government proposes to amend the regulations for mobile workers on inland waterways and those involved in seafishing separately from these amendments to the general Working Time Regulations to avoid confusion over differing regulations. The civil aviation regulations are also being considered separately.
- 8.** The Government maintains that the most appropriate way in which to implement the manifesto commitment is to amend the Working Time Regulations to increase the holiday entitlement, rather than give a separate right to take time off on a specific bank holiday. The Government notes the concern expressed by those employers already giving the equivalent of 5.6 weeks' holiday entitlement of the potential impact upon them. Where possible, it is the Government's wish to minimise burdens on those employers who already follow best practice in their leave arrangements. Therefore, Government proposes that employers that already (as at 1 October 2007) give 28 days' holiday or more would be excluded from the regulations on the basis of certain conditions. This will reassure employers that already give their staff a generous holiday entitlement that they will have little to do as a consequence of these changes. We believe that this 'light touch' approach is consistent with our focus, set out in Success at Work, to support good employers whilst protecting vulnerable workers.
- 9.** The Government again notes that the calculation of the increased holiday entitlement may be more complex for some employers if the implementation date for the entitlement does not co-incide with an employer's leave year. Whilst many companies have a January-December or April-March leave year, the current default leave year in the Working Time Regulations is 1 October-30 September and the Government believes that the initial increase in the entitlement should be aligned with this. The online calculator and ready reckoner to be provided within the guidance for implementation package will help with most complex calculations.

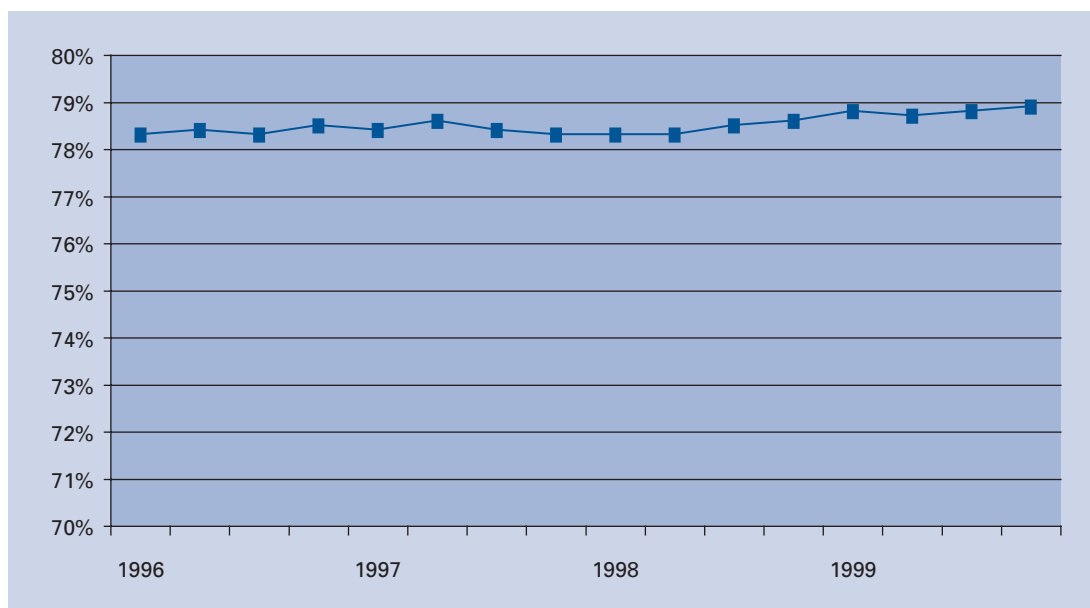
10. The Government's preferred approach in the January 2007 consultation had been to introduce half of the additional holiday entitlement from October 2007, and the remaining half from October 2008. On further consideration of the cost pressures, in particular for the health and social care sector, the Government intends to delay the second increase in the holiday entitlement from 1 October 2008 until 1 April 2009. The initial increase will come into effect on 1 October 2007, as originally proposed.
11. The Government recognises the wish on the part of some employers to provide payment in lieu of the additional holiday, and the concern expressed by individuals and unions that the ability to make such payment would be open to coercion and abuse. As stated in the Government response to the initial consultation, the Government does not intend to enable payment in lieu of the additional holiday entitlement. However, the Government also notes the concern expressed by some respondents, particularly from the care sector, about the ability to provide the staff cover required by statute, for the periods of additional holiday and the difficulties that some sectors face in recruiting suitable staff. The Government therefore proposes to allow payment in lieu of the additional holiday entitlement until 1 April 2009, a transitional period to enable required staff to be recruited and trained. This transitional period may also help employers to align the increase in actual leave taken by staff with their own particular leave year.
12. A number of respondents sought greater clarity over the interaction between the holiday entitlement and sick leave. This issue is the subject of current cases before the European Court of Justice and the House of Lords and until those cases are concluded, it would be inappropriate to give detailed guidance on a position that may shortly be subject to further change. The Government will set out in guidance the current situation and review this in the light of the court rulings once they are delivered.

Inadvertent impacts of the regulations

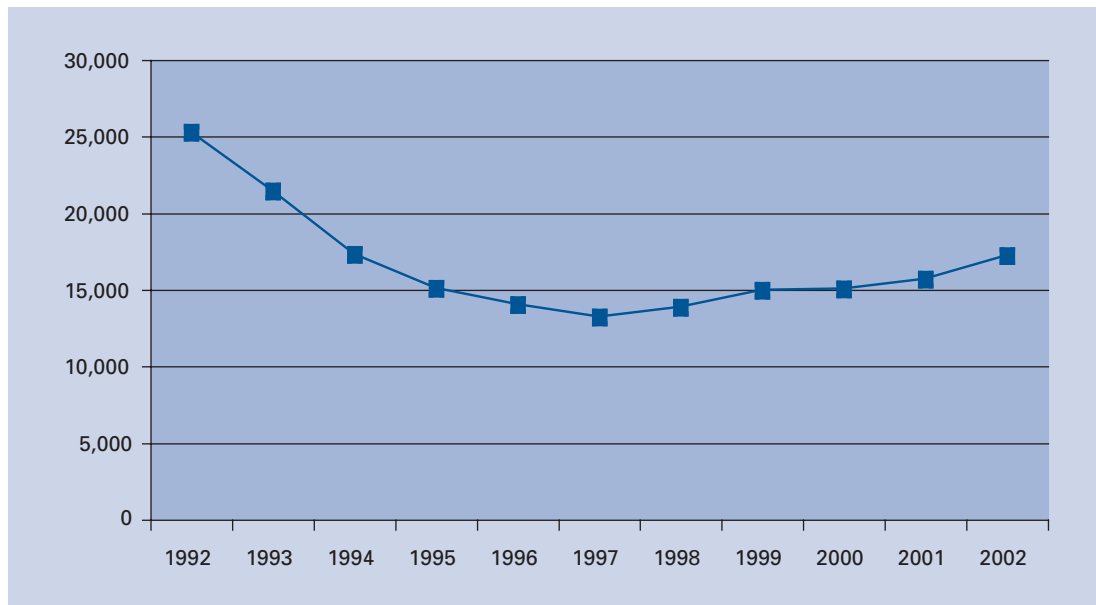
13. The Government is aware that a number of employers reward long service with increased holiday entitlements. Whilst the scope to give service-related leave may be constrained by an increase in the holiday entitlement, many employers that give service-related leave already give at least 28 days' holiday before the service-related leave is included, and so should not be directly affected by these proposals. The Government proposes to increase the statutory minimum holiday entitlement; retaining differential contractual holiday entitlements will be a matter for discussion and negotiation between employer and staff. The Government does not intend to require the maintenance of differentials in the legislation.

14. Whilst the Government recognises that increasing the holiday entitlement may result in employers failing to comply with the legislation or using overseas service providers or increasing use of self-employed contractors, the Government does not believe that the relatively small costs involved would provide sufficient incentive alone for employers to introduce such changes. These proposals would not require employers to open their premises on bank holidays, unless they wish to.
15. The Government does not accept the suggestion that the increase in the holiday entitlement will lead to lower employment rates or to higher levels of business failure. Analysis of both the employment rate and the level of business failures show no discernable impact from the introduction of the statutory holiday entitlement, amongst other changes, when the Working Time Regulations were introduced in 1998:

Working Age Employment Rate



Total liquidations UK



Costs and benefits in the RIA

16. Whilst recognising that most employers will only need to take minimal steps to take account of these proposals where they already give at least 28 days' holiday, the Government acknowledges the strength of concern about the cost impact on those businesses that will be affected. The Government recognises the particular challenges faced by smaller businesses in maintaining staff cover and by certain sectors likely to be particularly impacted, such as the care sector.
17. The Government has proposed a number of measures to help employers adjust to the increased holiday entitlement, including phasing the introduction of the additional holiday entitlement, removing the requirement to round up the holiday entitlement during the first year of employment, asking the Low Pay Commission to take the costs of the increased holiday entitlement into account, and limiting the statutory holiday entitlement to a maximum of 28 days. The Government believes that there will be a number of benefits as a result of the increase in the holiday entitlement, including reduced staff turnover, improved staff morale and productivity, reduced absenteeism and a better work-life balance for many staff. The Regulatory Impact Assessment accompanying the draft regulations has been updated in the light of comments made in the consultation process.

Supporting implementation & guidance requirements

- 18.** The Government welcomes the support expressed in responses for the provision of model letters, an interactive calculator for the increased entitlement and tailored guidance for different groups affected by the proposals. The Government will take account of the particular issues raised by respondents in drafting that guidance. The Government does not believe that it is appropriate to provide an opt-out or other provisions specifically for small businesses, or to amend the notice arrangements currently required by the Working Time Regulations. Given the desire expressed by some respondents for a level playing field on holiday entitlement, the Government does not intend to provide financial assistance, through reductions in employers' National Insurance contributions or through direct support, for employers that need to increase holiday entitlements for their staff.
- 19.** The Government notes the concerns expressed by some respondents over the enforcement of holiday entitlement. The Government is currently seeking views on current dispute resolution procedures, and on a package of measures to help solve employment disputes successfully in the workplace. Where disputes cannot be successfully resolved in the workplace, enforcement of the additional holiday entitlement will continue to be by individuals through the employment tribunal system.

1. The consultation process

The initial consultation

20. An initial consultation was conducted in June-September 2006, seeking views on the costs and benefits of the proposals, the timing of the increase in the holiday entitlement and possible flexibilities in handling the additional holiday (such as carry over to the following year and payment in lieu of taking holiday). A total of 344 responses were received to this consultation and a Government response to the initial consultation was published in January 2007¹.

The further consultation

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

Publicising the consultation

22. The consultation launch was supported by a press notice and a dedicated webpage, attracting significant media coverage. Copies of the consultation documents were sent to over three hundred business and union stakeholders, including those who had responded to the initial consultation and who had asked to be kept informed of progress. Over the period of the consultation, the dedicated webpage attracted over 94,000 visitors and the electronic form of the consultation document was downloaded nearly 8,000 times. Following feedback from the initial consultation, the ability to respond online via a website questionnaire was provided. During the consultation period, 1,280 people registered on the survey website either to receive further details or to respond to the consultation. Over 95% of responses to the consultation were made via the online facility.

¹ Success at Work: Increasing the holiday entitlement – an initial consultation. Summary of consultation responses and the Government's response to the consultation, DTI, January 2007, URN 07/513

23. The research to support the Regulatory Impact Assessment indicated that micro-enterprises and small businesses were less likely to give at least 28 days' holiday (pro-rated for part-timers) to staff already and that such businesses were therefore more likely to be affected by the proposals. Efforts were therefore made to ensure that small businesses were consulted on the proposals. As with the initial consultation, details of the further consultation were emailed to around 2,100 businesses on the Small Business Service's consultation database, and details were placed on the BusinessLink website. A number of representative organisations and unions also drew their members' attention to the consultation.
24. Over the past year, the DTI website has offered to add those who wanted to be kept informed of the development of the proposals to increase the holiday entitlement to an email distribution list. This distribution list was used to draw attention to the consultation, to advertise the consultation meeting and to remind all of the consultation closing date. By the end of the consultation, over 5,300 people had asked to be added to the distribution list.

Consultation meeting

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

Responses to the consultation

26. A total of 668 responses to the consultation were received; a list of those respondents who did not request confidentiality can be found at Annex C. The breakdown of responses is shown in Chart 1.
27. Information about the size of business was sought on the consultation form to enable any particular impacts depending on the size of the business to be assessed. The breakdown of business respondents by business size is shown in Chart 2.

Chart 1: Composition of respondents (total: 668 responses)

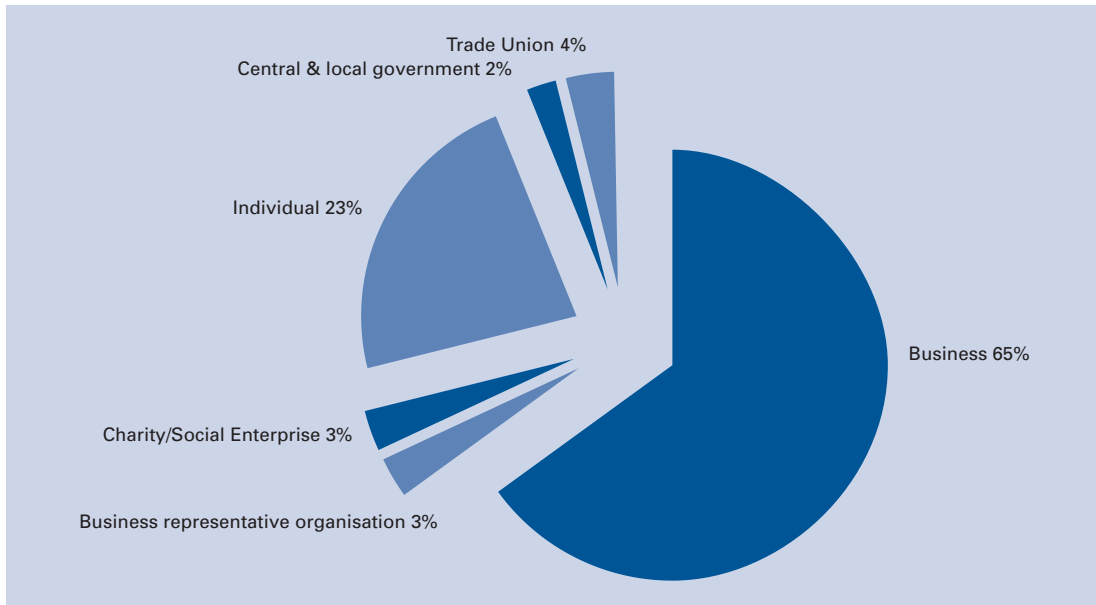
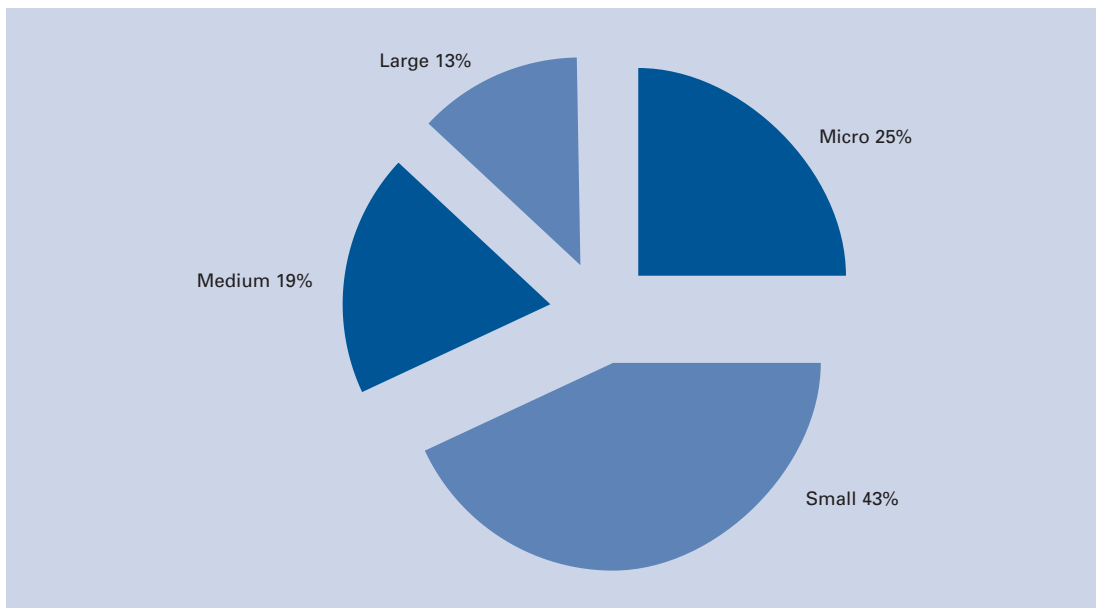


Chart 2: Business respondents by size (total: 430 responses)



Evaluating the consultation

- 28.** The consultation process was evaluated by inviting, by email, to complete a further online survey, a random sample of:
- Those who had attended the consultation meeting;
 - Those who had submitted a response via the online facility;
 - Those who had registered with the online facility but who had not submitted a formal response to the consultation.

The results of the evaluation can be found at Annex B.

2. The draft regulations

29. The consultation document included draft regulations and sought views, both on their drafting and on any inadvertent impacts they could have.

Coverage of the regulations

30. A number of respondents noted that the regulations would extend the additional holiday entitlement not only to employees, but also to other workers (such as agency staff and casual workers) as the Working Time Regulations to be amended covered all workers. Others noted that the self-employed would not benefit from the additional holiday entitlement.
31. Respondents also commented on the territorial coverage of the draft regulations. Some noted that the Government had recently amended the Working Time Regulations to clarify the application of the regulations offshore; the draft regulations should refer to that clarification, it was argued. Others were concerned that the regulations only covered England, Scotland and Wales, and that there was therefore the potential for significant complexity should the Northern Irish Executive decide on a different implementation timetable, holiday entitlement or vary other provisions.
32. The draft regulations covered two other groups of workers, not covered by the holiday provisions of the main Working Time Regulations, those involved in sea fishing and mobile workers on inland waterways. Some respondents were concerned that other maritime groups, such as merchant seafarers, were not included in the provisions and others were concerned that those working on tug boats were considered merchant seafarers, and so were not covered by the draft regulations. Others noted that those covered by civil aviation regulations on working time would also not be covered by these draft regulations.

Approach of the regulations

33. Some responses commented on the Government's proposed approach of increasing the holiday entitlement, rather than giving a statutory right to take holiday on bank and public holidays. Some unions preferred the approach adopted in the Republic of Ireland, where workers have a positive right to take holiday on a bank or public holiday, and to have time off or payment in lieu if they are required to work on a bank holiday.

34. A large business respondent argued that the manifesto commitment could be implemented by stating that any time off for bank holidays could not be included in the statutory four-week holiday entitlement. A number of respondents were concerned at the potential impact of the regulations on employers that already give the equivalent of 5.6 weeks' holiday or more. The EEF recommended that the regulations exempt from the requirements of the regulations any employer that already contractually gives the equivalent of 5.6 weeks' holiday.
35. A number of respondents noted that at present many part-time members of staff did not receive paid time off for bank holidays falling on days that they would not normally work. Other part-time workers received more than a pro-rata entitlement to bank holidays as they usually worked on Mondays and/or Fridays, on which most bank holidays fell. A recent court ruling (*Capita vs McMemeny*) had addressed the position regarding the application of the Part-time (Prevention of Less Favourable Treatment) Regulations 2000. Some respondents welcomed the greater clarity over the treatment of part-time staff for annual leave that the proposed regulations offered.
36. A few respondents suggested that the additional holiday entitlement should be subject to an opt-out so that workers who wished to work the additional holiday entitlement and be paid extra would be able to do so. A number of individuals responding were concerned that some employers would try to exploit an opt-out or other form of loophole. A small number of respondents commented on the apparent complexity of the draft regulations and made a number of detailed drafting suggestions.

Timing and phasing of implementation

37. A number of responses addressed the proposals to phase the implementation and the proposed implementation date of 1 October 2007. Some unions argued that the additional holiday entitlement need not be phased in. A number of business respondents also suggested that phasing the implementation would increase the administrative costs of the implementation and that businesses should be free to introduce the additional holiday entitlement in the most appropriate manner, as long as the full additional entitlement was introduced by a later date, such as October 2008 or April 2009. Other respondents supported the proposal to phase the introduction of the increase as it would give employers time to

adjust to the increase, and the proposed timetable for implementation was considered appropriate.

- 38.** Respondents also commented that an October implementation date was not consistent with the majority of leave years operated by employers, which either ran January – December, or April – March. As a result, the calculations of the increased entitlement would be more complex and the additional costs of the increased entitlement may not have been included in budget planning for the financial year 2007-8. It was suggested that the implementation could be delayed until April 2008, or that the additional entitlement could be introduced from the start of an employer’s next leave year. Various ways to do the latter were suggested – either that the increase was still phased so that an organisation increased their entitlement to 4.8 weeks at the start of their next leave year after 1 October 2007 and to 5.6 weeks at the start of their next leave year after 1 October 2008 or that the increase was made in one go at the start of the next leave year either in 2007 or in 2008, with workers favouring the earlier date and employers 2008 or later.
- 39.** A few respondents suggested that there should be a qualifying period of service before workers would be entitled to the new entitlement. Others supported the Government’s decision not to require a qualifying period.

Flexibilities in managing the additional holiday

- 40.** The proposal in the draft regulations not to permit payment in lieu of taking the additional holiday entitlement (buying out) generated considerable comment. A number of unions and individual respondents supported the proposal, whilst many business respondents objected. Those supporting the proposal not to allow payment in lieu expressed concern that the ability to ‘buy out’ leave could lead to fraud by workers falsely using sickness absence to save their holiday entitlement to be bought out, coercion by employers of workers to have their holiday bought out and concern that payment in lieu of holiday was contrary to the overall intention of the legislation, namely to enable workers to take more holiday. Those that already gave at least 5.6 weeks’ holiday (but allowed part of the additional leave to be bought out) noted that they would have to amend their holiday arrangements, even though they already met or exceeded the increased holiday requirement.

41. A number of respondents from the care sector expressed concern over the difficulties in recruiting care staff and the requirement to maintain statutory staffing levels, which meant that the additional holiday entitlement would be very difficult to cover without recourse to payment in lieu of leave. Other employers that routinely used casual or sessional workers commented that providing an additional holiday entitlement when staff may only work for very short periods, or work irregular patterns would be much more administratively complex than enabling the additional entitlement to be bought out.
42. Some felt that not permitting payment in lieu of the additional entitlement could be unpopular with staff who might rather have money than additional time off.
43. Whilst some respondents supported the Government's proposals to permit carry over of unused additional holiday entitlement from one year to the next, others expressed concern at the potential complexity for employers as a result. Two respondents suggested that the timescale in which any carried over holiday may be taken should be limited, say to three months. Other respondents wanted carry over for more than one year, or suggested that carry over should be limited to no more than five days unused entitlement a year. There was also concern that the ability to carry all 1.6 weeks' additional entitlement over to the following year represented a significant proportion of the increased total holiday entitlement.

Interaction with other forms of leave

44. A number of respondents expressed concern that staff that fell sick whilst on leave may be eligible for time off in lieu for the period of sickness. Staff on maternity leave would also be eligible for time off in lieu for bank holidays that fell during their maternity leave. Others asked how the additional holiday entitlement would interact with other forms of statutory leave, such as paternity or adoption leave, or the rest periods covered elsewhere in the Working Time Regulations.
45. Some respondents, particularly those that currently give at least 5.6 weeks, were concerned that the regulations as drafted would create a legal regime of three different types of holiday: a statutory entitlement to four weeks' holiday derived from the Working Time Directive, a further 1.6 weeks' entitlement that would be subject to fewer restrictions than the four weeks' entitlement, and any additional leave offered contractually by an employer.

The complexity that three types of leave would introduce, it was argued, would cause practical headaches for employers in keeping track and accounting for the different entitlements. Responses from those employers not currently giving 5.6 weeks' holiday supported the same rules applying to the additional holiday entitlement as to the current holiday entitlement for the sake of consistency.

46. A number of respondents commented that increasing the statutory holiday entitlement would impact on contractual holiday entitlements, restricting the scope for giving additional holiday entitlements contractually to recognise staff loyalty, long service or good performance, or to differentiate between different groups of staff (such as waged and salaried, for example). Some currently gaining the benefit of such additional contractual leave were keen to see such differentials maintained; some receiving only the statutory minimum entitlement were keen to see the differentials eroded. Some individual respondents were concerned that employers could use the increase in the statutory minimum entitlement to level down contractual entitlements to the new statutory minimum.

Impact on working arrangements

47. Several business respondents argued that the proposals would provide a greater incentive to use self-employed contractors, rather than employing in-house staff, or to use overseas service providers (off shoring). Others argued that the increased entitlement could increase the use of illegal migrant workers or undeclared employment.
48. The increased holiday periods would, in the opinion of some respondents, increase the pressure on other staff not on holiday, and on small business owners in ensuring sufficient staff cover. A few respondents were concerned that businesses might have to open their premises that would otherwise have been closed over holiday periods in order to accommodate the wishes of those staff that wanted to work over the holiday period.
49. Some business respondents suggested that their response to the increased holiday entitlement would be to make cost savings elsewhere in the wage bill, either by removing premium pay rates for overtime or bank holiday working, or by reducing the level of any pay increases that might be awarded. Some individual respondents had been told by their employer that they intended to buy out the additional holiday entitlement rather than increase pay to reflect inflation.

50. Several respondents felt that capping the statutory entitlement at a maximum of 28 days would discriminate against those working six days a week, who would receive less additional holiday than those working less than six days a week. Noting that the Regulatory Impact Assessment showed that part-time staff would benefit in particular from the increased holiday entitlement, other respondents felt that the proposals would discriminate against full time staff and those part-time staff that regularly work on days on which bank holidays fell.
51. Some respondents felt that the regulations would lead to an increased number of workplace disputes that could lead to employment tribunal cases, not least because the increased holiday entitlement meant that there was more at stake.

Other comments on the regulations

52. A number of respondents supported stronger enforcement of the increased holiday entitlement, expressing concern that the current enforcement mechanism through employment tribunals could be lengthy and expensive.
53. Because of the link between the additional holiday entitlement and bank holidays, some respondents asked whether the holiday entitlement would be increased in future if additional bank holidays (either on an ad hoc or permanent basis) were introduced. Others mentioned the religious significance of some of the current bank holidays.
54. Whilst the removal of the requirement to round holiday entitlements up to the nearest half-day was welcomed by some respondents, others were concerned that the 5.6-week entitlement would lead to fractions of a day's leave, with no provision in the regulations for rounding down to the nearest unit of time. Guidance would be required on how fractions of a day's holiday should be treated.

3. The Partial Regulatory Impact Assessment

- 55.** A draft Partial Regulatory Impact Assessment was published alongside the consultation document, and views were sought on the costs and benefits of the proposals outlined in the Assessment.

Policy costs of the proposals

- 56.** Many respondents highlighted the costs of the proposals on employers that did not already give at least 5.6 weeks' holiday, particularly those from smaller businesses. A number of respondents argued that the costs of the proposals would lead to an increased number of business failures and a reduction in the employment rate. Others calculated the potential cost impact on their businesses.
- 57.** Respondents from the residential care sector expressed concern at the difficulty in recruiting staff to the sector, the regulatory need for specified staffing levels and the constraints on being able to pass any increased costs on to consumers when much of the funding was fixed through local authorities. Other respondents said that long-term contracts or preset budgets would make it difficult for some employers to pass any increased costs onto customers in the short term. There was some concern that increased prices, as a result of any increased wage costs, would act to increase inflation.
- 58.** Some respondents suggested that actual costs to employers affected would be greater than the 3.2% of their wages bill that had been presented in the Regulatory Impact Assessment, as the cost estimates only took into account wage costs and did not include lost production. Others felt that the increased holiday would undermine competitiveness, compared to EU and international competitors.
- 59.** Some respondents expressed concern that those that already gave at least 28 days' holiday would also face additional cost as the payment for untaken leave on termination would be increased to reflect the increased statutory entitlement, whilst current contractual entitlements to time off for bank holidays may not have been payable on termination.
- 60.** Some business respondents stated that the increased costs of employing staff as a result of the increased holiday entitlement would lead to lower employment rates, as businesses would be less ready to take on additional staff, and potentially to increased business failure rates.

Benefits of the proposals

- 61.** Some respondents were disappointed that the benefits of the proposals had not been costed in the same way as the costs had been to enable the balance of costs and benefits to be accurately assessed. Union respondents, and others, felt that the costs had been overestimated, either because the number of beneficiaries had been overestimated, because employers would absorb the increased holiday without necessarily incurring additional costs, or because the costs of amending HR systems to reflect the changes would be lower than forecast.
- 62.** A number of employers felt that the proposals would bring about a more level playing field between employers and would enable those that already gave 28 days' holiday to compete on a more even footing with those that currently gave only the statutory minimum holiday entitlement. Some individuals welcomed the greater equity that the proposals would bring between temporary or agency staff, and permanent employees in the same workplace, where at present holiday entitlements may be different. Many respondents welcomed the increased clarity that the proposals would bring to the treatment of part-time workers with respect to time off for bank holidays.
- 63.** A number of respondents described specific benefits as a result of the increased holiday entitlement. Some identified increased productivity as a result of workers being more rested and refreshed. Others suggested that the increased holiday entitlement would reduce the amount of sickness (through reduced stress levels) and other types of absence from the workplace. Others also felt that the increased entitlement would increase recruitment and retention, not least by reducing the differentials in holiday entitlement between different sectors and different jobs.

4. Supporting implementation

- 64.** The consultation document sought views on how implementation of the increase in holiday entitlement could be supported and, specifically, what areas the guidance accompanying the final regulations should cover. Many respondents offered to help with the development and testing of our guidance.

Model letters

- 65.** The suggestion of model letters setting out the new entitlement was widely welcomed both by employers and employees but by SMEs in particular. There were a number of pleas to ensure the use of plain English. Versions should be produced to cover atypical work patterns and in particular part-time and shifts. All should be available well in advance of implementation.

Calculator

- 66.** An interactive calculator was also a popular suggestion with employers and employees alike, although it was considered essential by many that this include calculations for part-time, shifts, annualised hours, term time working and other atypical work patterns whilst still being easy to use. The calculator should be available without charge as a download as well as online and an equivalent or near equivalent should be available in hard copy for those who do not have internet access. As with the model letters, respondents considered it essential that it be available well in advance of implementation.
- 67.** A number of other requests to help with difficult calculations were received in addition to the overwhelming support for an online calculator. As well as calculating the leave for atypical work patterns (as mentioned above) assistance was also requested to help when working out the entitlement for starters and leavers (and so the rate of accrual), how the accrual would relate to the taking of public holidays in year one of employment and how to include shift premiums in the calculations for holiday pay.
- 68.** Help was also called for in calculating how much of the new entitlement employees with a leave year other than October to September would be entitled to. It was asked that how to do this sum in particular should be communicated widely as there is some misunderstanding as to how much of the entitlement employees will receive and when.

Guidance

69. A number of respondents asked for additional guidance material aimed at both employers and employees. Employers were particularly keen to see a checklist for implementation (to cover both application and communication to staff) and posters that could be placed around a workplace to ensure a clear understanding of the new entitlement. The guidance for both employers and employees should include illustrative examples and case studies.
70. A more formal effort to raise awareness through a tailored campaign was also suggested. It was thought that greater clarity was essential as some employees already believe incorrectly that the new entitlement would be in addition to time off for bank holidays. Media coverage would also help explain any resulting increased costs to customers.
71. Once again there were general pleas that the guidance be published as soon as possible, its existence be well publicised and that it use plain English throughout. A number of respondents also asked that guidance is not limited to online sources only; one suggested that the low paid (a key target recipient of the increase) are less likely to have ready access to the internet. A paper based ready reckoner to support the online calculator was also suggested. Others asked for responsive support during and after implementation – either by telephone or online.
72. Respondents to the consultation raised a number of specific issues where guidance would be required, including:
 - a. **Dealing with part days.** A number of respondents noted that part days would become common place when calculating the new leave entitlement for part-time employees (for example 4.8 times a 3 day week is 14.4 days) and asked for clarity on how these should be treated.
 - b. **Atypical work patterns.** Clarification as to what exactly the increase would mean for part-time workers, and whether or not it would matter what days they usually work were the most popular suggestions. Guidance on how to calculate and implement the increase for other atypical work patterns such as shifts (regular, irregular and continental), term time and seasonal working, annualised hours, compressed hours and casual and student employees was also popular.

- c. Time off in lieu.** Specific guidance was also requested on the use of carrying over leave (and in particular relating to how it could be insisted upon to ensure no shortage of leave when Easter falls twice in one year).
- d. Links with other regulation.** Guidance was sought on how these proposals would link with other related regulations, the Road Transport Directive was mentioned specifically.
- e. Need to amend contracts.** A number of employers were unsure exactly how they needed to inform employees of the changes and whether or not contracts would need to be changed. Clarification was requested on what exactly would be required and a form of words, where appropriate.
- f. Definition of a “Day”.** A number of employees and representatives that currently work long day shifts (12 hours, for example) expressed concerns over calculations for the current entitlement and fears that what was considered a discrepancy would continue under the new proposals. Some form of definition for a day was called for or, it was suggested, the term “shift” be used as a replacement.
- g. Differing public holidays in Northern Ireland and Scotland.** A number of larger employers noted the proposed difference in the level of holiday proposed by the Northern Ireland Executive and outlined the difficulties this would present in offering a fair and equal level of holiday to employees across the UK. Specific advice was sought on implementation in Scotland.
- h. Greater Clarity.** Respondents asked for greater clarity over exactly what the changes meant. Several respondents demonstrated confusion over the links with bank and public holidays. When exploring this matter further at the consultation meeting it was suggested that it may be easier to stop making the link between the proposed increase in holiday and bank and public holidays altogether, or at the very least to specify and publicise the fact that the new entitlement will include time off for bank and public holidays.

Other measures to support implementation

- 73.** Some employers suggested that increasing the length of compulsory notice when requesting holiday would help when managing the increase. Others asked that we extend to the additional days the right of the employer to specify when holidays could be taken, as this was helpful in managing absences. Some employee representatives saw these regulations as a good opportunity to remove the employer's right to refuse leave which they felt could be abused and enable inappropriate blocking of leave. Some respondents were unclear on the existing rights surrounding holiday for both employers and workers. The guidance should clarify existing rules as well as proposed changes.
- 74.** A number of small and micro employers suggested an opt out for those under a specified threshold (number of employees, turnover and profit were all suggested), or that small companies were at least given a longer timeframe to introduce the increase. A few employers suggested that there was nothing that could be done to ease the implementation of these proposals and that they should be withdrawn.
- 75.** Reducing or even abolishing employers National Insurance contributions was suggested by a number of employers as a good way to mitigate the impact of these proposals, particularly for smaller companies.
- 76.** A call was made from representatives in the care sector that local authority and NHS budgets be increased to reflect the increase of staffing costs for contractors. One respondent suggested that any increased funding be ringfenced for use by "not for profit" contractors. Others urged the Government not to provide financial support for companies in implementing the additional holiday argument, highlighting concern that this would be anti-competitive.

Annex A: Consultation questions

Question 1: Draft regulations

Draft regulations are included in the consultation document. Do you have any comments on the detailed drafting of the proposed changes to the law? If so, please specify.

Question 2: Inadvertent impacts

Are there any other possible consequences of these regulations, which the Government might not have anticipated? Please specify.

Question 3: Costs and benefits

Do you have any comments on the assessment of the costs and benefits made in the partial Regulatory Impact Assessment? If so, please give details and provide additional information to assist the assessment.

Question 4: Supporting implementation

Have you any specific suggestions for additional steps the Government might take (e.g. make available draft standard letters and an on-line holiday calculator) which might make it easier for employers to implement these regulations?

Question 5: Guidance requirements

Are there any particular issues you would find it helpful to see covered in the guidance accompanying these regulations?

Question 6: Feedback on guidance

We want to ensure that the guidance is clear and accessible, and we are seeking a small number of volunteers to test it for clarity and ease of use. Would you be willing to be approached in late spring to help with this?

Question 7: Other comments

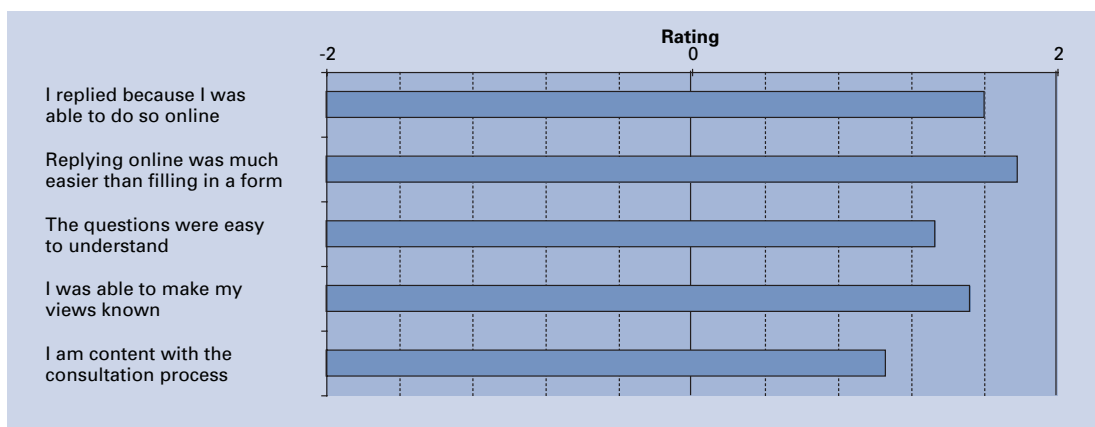
Do you have any other comments on the proposals to increase the holiday entitlement?

Annex B: Evaluation of consultation exercise

- B1.** The consultation process was evaluated by inviting to complete a short online survey, a random sample of:
- Those who had responded to the consultation online;
 - Those who had attended the consultation meeting, and;
 - Those who had registered on the online consultation survey but who had not made a substantive response to the consultation questions.

Those who had responded to the consultation online

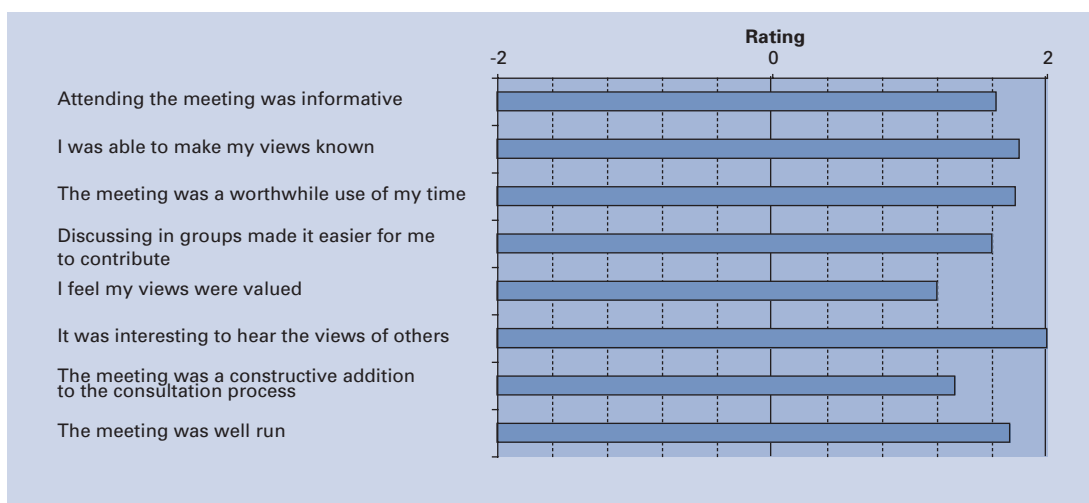
- B2.** Those who had used the facility to respond to the consultation online were asked to indicate the extent to which they agreed with the following statements (with 'strongly agree' worth +2, 'slightly agree' worth +1, slightly disagree worth -1 and strongly disagree -2):



- B3.** The evaluation shows that using an online survey brought people who otherwise would not have responded to the consultation process because of the ease of replying. A number of those surveyed, however, were dissatisfied with the consultation process as they were concerned that their views would not make any difference to the policy, as the key decisions had already been made. Others expressed concern that the consultation had not been sufficiently publicised by, for example, approaching a sample of employers directly, asking them to respond.

Those who attended the consultation meeting

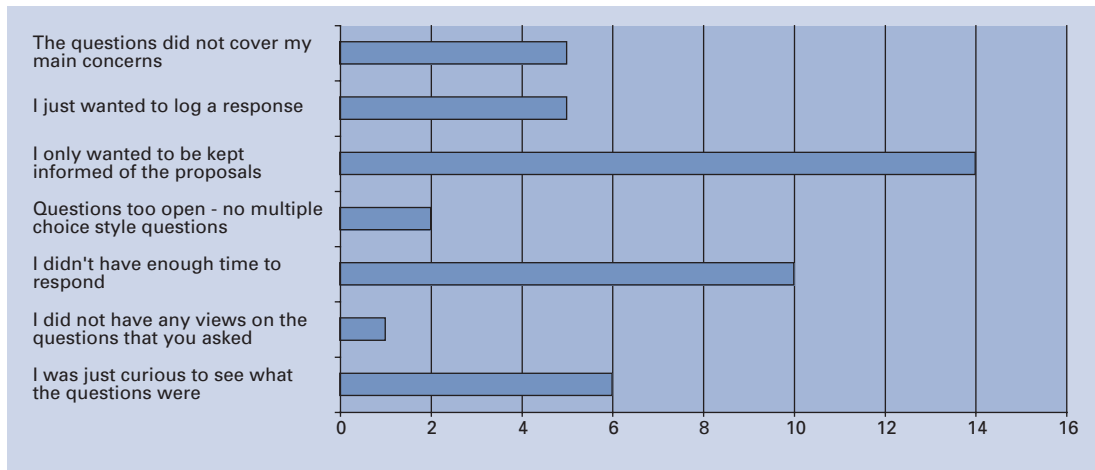
- B4.** Those who had attended the consultation meeting on 12 March 2007 were asked to indicate the extent to which they agreed with the following statements (again, with 'strongly agree' worth +2, 'slightly agree' worth +1, slightly disagree worth -1 and strongly disagree -2):



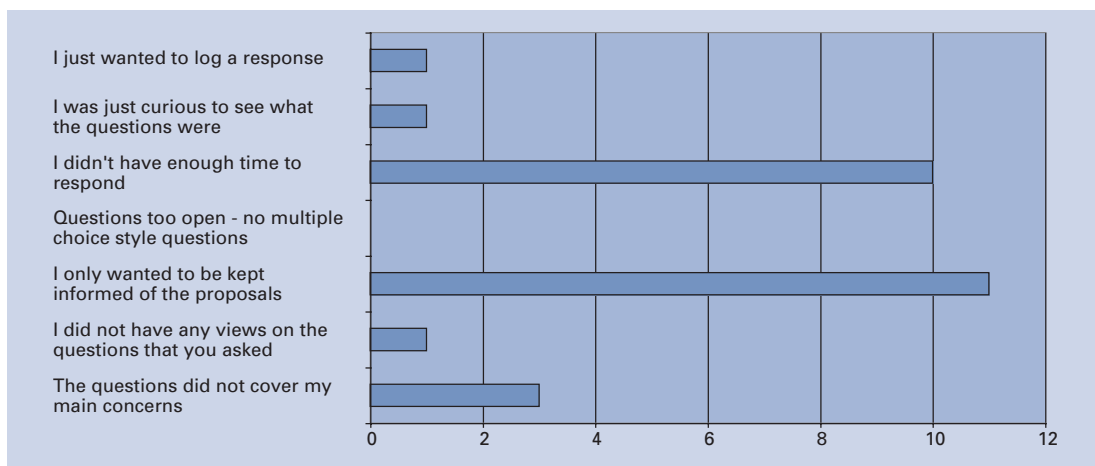
- B5.** The evaluation shows that the consultation meeting was valued by individuals, particularly as an opportunity to understand the views of others, as well as being part of the formal consultation process. The presence of the Minister and the use of discussion groups were appreciated, although some specific comments were made about the effective operation of such groups. Similar concerns about publicising the consultation process and the impact of respondents' views on the overall policy were also raised.

Those who had registered on the online consultation survey but who had not made a substantive response

- B6.** Over 1,200 individuals registered on the online survey facility, filling in their personal details, yet only around half of these went on to make a substantive response to the consultation questions. To understand why a large number of people had not made a substantive response, those who had registered but not answered the consultation questions were asked to indicate all the reasons that they did not make a substantive response to the consultation (being able to indicate more than one reason):



B7. They were then asked to indicate the main reason they did not make a substantive response to the consultation (being able to choose only one reason):



B8. The evaluation suggests that those that did not respond to the consultation wanted either to be kept informed of the proposals or did not have sufficient time to make a substantive response.

Conclusions of the evaluation

B9. The evaluation exercise suggests that the use of an online survey has brought people into the consultation process who would not otherwise have made a response, although there were a significant number of people who wished to be kept informed of the progress of the proposals without wishing, or have the time, to make a substantive response. The ability to discuss the proposals with a cross-section of other respondents was also welcomed, particularly using smaller groups to enable more to participate in discussion.

Annex C: Written consultation responses

Business representatives/ trade bodies

Association of Convenience Stores
Association of Licensed Multiple Retailers
Birmingham Chamber of Commerce
British Chambers of Commerce
British Hardware Federation
British Holiday and Home Parks Association
British Hospitality Association
British Retail Consortium
British Security Industry Association
Confederation of British Industry
Construction Confederation
Construction Industry Council
EEF
Employment Lawyers Association
English Community Care Association
Federation of Small Businesses
Freight Transport Association
Horticultural Trades Association
Independent Schools Council
National Care Association
National Group on Homeworking
Norfolk Tourist Attractions Association
Road Haulage Association
The Booksellers Association
The Newspaper Society
West Yorkshire Chamber of Trade & Commerce and Bradford District Chamber of Trade

Business: Micro

Abell Morliss
And Finally Hairdressing
Baltimore Garden Centre
Cambrai Aircraft Covers
CB Builders
Contento Consulting Ltd
Craft in Time
DCS Payroll Agency
Designation.com Ltd
Dianes Pantry
E.G. James Ltd
Employer Solutions Ltd
Employment Law
Fitzpatrick Wilkes & Co.
Grosvenor House Associates (Cornwall) Limited
Harlington Village Pre-School
Harmsworth-Townley.co.uk
Headspace Hair Design
Hoods Shoes
JC Business Services
Jenny Barnes & Co Ltd
John Stamford & Associates
Kenmare Tyre Service Ltd
Marion and Wake Scaffolding Ltd
Mounts Bay Coaches Ltd
Neil Carter Arboricultural Logistics Ltd
Paradise Nails & Beauty
People Solutions Ltd
Posture Products Limited
Providence Protech
Rima Design
SCR Solutions
Signs & Plastic Products Ltd
SPS Stationery Ltd

Stephen Roberts (Auctioneer) Ltd
The Derbyshire Larder
Training Matters
Walker Langford & Co
Wellow Business Services
Wolverhampton Road News and
Post Office

Business: small

Abraclean Ltd
Aesops
Andrews Computer Services Ltd
Automatic Process Ltd
Avolites
Bamburgh House Limited
Bonds Confectionery
Braemar Court Care Home
C and S Transport
Concept Powder Coating Ltd
Corries Cabin
Country View Homecare
Services Ltd
Dellsop Ltd
Display Signs Limited
Emilie Galloway Care Home
Empire HR limited
Ernest V Waddington Limited
Faresaver Buses
First Base
Foxwise Accountancy Ltd
Freeman Business Info plc
Global Doors Ltd
GM Marketing Ltd t/a J Cox & Sons
Guarantor Security Ltd
Hall & Warburton Ltd
HALS Ltd
Hopewiser Limited

Horwich Parish Playcar
Hunts House
Integrated Commercial Trading Ltd
& Carbank Ltd
IVC Limited
Jo Hansford
Luminescence
Mapledale Ltd
McGrigors LLP
Mead Lodge
Merry Maids of Chester
Midland Canal Centre Ltd
Napton Narrowboats & Southam
Country Stores
Noel Chadwick Ltd
Oscabs – Community Childcare
Peninsula Business Services
Photogenic Ltd
Poppies W L & S Ltd
Preston Bethany Trust
Quantor Scanning Limited
Reading Golf Club
Rowley Ashworth Solicitors
Safe Engineering
Safehands Services Ltd
Scottish & Newcastle Pub
Enterprises
Share Haulage
Sheiling Tor
Shrewsbury Home Care Services
SmartGuard Security Ltd
Southfields House Residential Care
Home
SRK Ltd t/a Premier Nurseries
Taverham Partnership
The Blue Moon Cafe
The Old Rectory Residential Home

Tuckton Dental Practice
Turquoise Trail Ltd. t/a McDonald's
Rothwell
Village Developments plc
Vyrnwy Academy Ltd
Weald Training Group
Whitwell Surgery
Wing Security
Wonderland Day Nursery
Woodheyes Care Home

Business: medium

A to Z Cleaning Services
Birch Brothers (Kidderminster) Ltd
Bradford Grammar School
Bradstow School
Bryan Cave
BSRIA Ltd
Business Post
C J Lee & Sons
Candlelight Homecare Services Ltd
Castle Howard Estate Ltd
Chris Benson Signs Limited
Coquet Trust
CP Plus
Crystal Cleaning Company
Downs (Insulation & Electrical)Ltd
Elite Security Group
Ercol Furniture Ltd
Etiquette Formal Hire Ltd
Excalibur Group
Great Parndon Community
Associaton
Hamilton House Medical Limited
Independence Homes Ltd
KapaK Europe Limited
Lodestar cleaning contracts Ltd

Lound Hall Limited
Select Pizzas Ltd
The Buzzworks Group
Wilson & Scott (Highways) Ltd

Business: Large

Alliance Boots
Asda Stores Limited
Bernard Matthews Ltd
BHS
Brayborne Cleaning Services
Limited
BUPA Care Services
Comet
DSGI Plc
Excess Baggage Group Ltd
First Security (Guards) Ltd
International SOS UK Ltd
John Lewis Partnership
Marks and Spencer
Martindales Ltd
MTV News Europe
Reliance Security Services Limited
SCS Upholstery plc
Syfer Technology Ltd
Tamar Foods
Tesco
The Original London Sightseeing
Tour Ltd
Waterman Group plc
Whitbread Group Ltd

Central Government

Department of Health
London Development Agency

Charity/Social Enterprise

Age Concern Suffolk
Cross and Passion Convent
East Kent Crossroads
Grovelands Park Pre-school
Mowlem Institute Charity
National Trust
Rees Pre-school and Childcare
Centre
SCA Group Ltd
Scope Employment Support
Services
The Brendoncare Foundation
Wyggston's Hospital

Individuals

Ms P Gough
Joan Lewsey
Kirsty Ayre
Phil Wilson
Michael Jones
Miss C Williams
Ian King
Jason Kelly
Tobias Farlan
Dean Duneclift
Jason Hinkson
Alan Hudson
Jane Dugdale
Kirk Churchill
John Robertson
Thomas H F Kidman
Nicola Fry
Louise Campbell
Max Cousins
Rebecca Coldicott
Mr A P Mariner

Joan Smith
Dave Gunter
M Fletcher
Andrew Bennett
Mike Atkinson
Graham Read
Sally Picksley
Kim Hands
Trevor Kirkwood
Christopher Sugg
Kate Russell
P Forrest
Barry Edwards
Joseph Powell
M Fletcher
W Steven Nicholson
David A Robinson
Michael Docherty
Maura Griffin
Billy Tonner
Julie Alison
K Fotheringham
Martin Woodcock
Kim Taylor
Susan Elsdon
Rita Hunte
Joanne Faulkner
Paul Lear
Maureen Huntington
Jonathan Whitney
Sue Avery
H Kirk
Russell
Richard Ward
Gail Denton
Christine Toms

Lyn Stephenson
Helen Ulliyatt
Laura Reed
Garry Harding
Emma Hesbrook
D N Collins
Steven Jennings
Gloria Ison
Jane Dugdale
Mr H Maisary
Karen Gee
Martin McGarrity
PJ Mahoney
James Burns
James Tinsley
Paula Edge
Natalie Rice
Lynda Brewster
Dawn Burnham

Trade union/staff associations

Amicus the Union
Association of Principal Fire Officers
Association of School and College Leaders
Bakers, Food and Allied Workers' Union
Dental Practitioners Association
Employees.org.uk
GMB
NASUWT
National Hairdressers' Federation
PCS
Royal College of Midwives
Trade Union Congress
Transport and General Worker's Union
UCATT
Unison
USDAW

Annex D: Consultation meeting participants

Abbeyfield Kent Society
Acadia
Acas
Allen Overy
Amicus
ASDA
Association of Convenience Stores
AstralMax Couriers
Aviance
Avolites Ltd
BBC
BHS
British Hospitality Association
British Retail Consortium
BUPA Care Services
Business in Sport and Leisure
Business Services Association
Care South
Confederation of British Industry
DHL Corporate Procurement
Diverse Production Ltd
Employment Lawyers Association
European Study Group
Foyles Bookshop
Federation of Small Businesses
GMB
Gondola
House of Commons
John Lewis
Ladbrokes
Leonard Cheshire
Local Government Employers
Marks & Spencers
MITIE Security
Molly Maid UK Limited
National Access and Scaffolding Confederation
National Care Association
Novus Leisure Ltd
Office and General
Optomen
Ormsby Centre
P & D Employment Limited
Peninsula Business Services
Precise Media Group
Reliance Security Services
Richard Anthony & Company
Royal Bank of Scotland Mentor Services
Sainsburys Trade Union Side
ScS Upholstery
Shep Plastics
Simmons & Simmons
Tesco
The Newspaper Society
TNS Global
TUC
Unison
Usdaw
Virgin Atlantic Airways Limited
Westminster Home Care Ltd



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