

BERR | Department for Business
Enterprise & Regulatory Reform

EMPLOYMENT BILL

Impact Assessments

FEBRUARY 2008

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Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Employment Bill: Part 1. Summary	
Stage: Final	Version: Final	Date: February 2008
Related Publications: Employment Bill		

Available to view or download at:

<http://www.berr.gov.uk/employment/employment-legislation/employment-bill/index.html>

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

The purpose of the Employment Bill is to strengthen and clarify key aspects of employment law. The Bill is necessary in order to fulfil both elements of the Government's employment relations strategy: increasing protection for vulnerable workers and lightening the load for law-abiding business. The policy areas covered by the Bill require changes to primary legislation in order to meet these policy objectives.

What are the policy objectives and the intended effects?

The Bill will enable implementation of the Government's proposals following the independent Gibbons Review of dispute resolution in the workplace; introduce a fairer method of calculating National Minimum Wage (NMW) arrears and a new civil penalty for employers who have not complied with NMW legislation; exclude Cadet Force Adult Volunteers from NMW entitlement; introduce a new enforcement framework for employment agency standards; amend trade union membership law to ensure compliance with the European Court of Human Rights ruling in *Aslef v UK*.

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

See separate impact assessments (attached) for details of options in the various policy areas.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? See separate impact assessments (attached) for details of policy review in the various policy areas.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 4 February 2008

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Government will incur one-off costs of £6m and recurring costs of between £12.5m and £15.5m
	One-off (Transition)	Yrs	
	£ 6m	1	
	Average Annual Cost (excluding one-off)		
	£ 12.5m-£15.5m		Total Cost (PV) £ 28.7m-34.2m
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Government will benefit by £14m a year. Employers will save £176.9m/year, including £149.9m from a reduction in admin burdens. Employees will save £9.2m/year.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 200.1m		Total Benefit (PV) £ 367.3m
Other key non-monetised benefits by 'main affected groups' see summary table in evidence base.			

Key Assumptions/Sensitivities/Risks Quantifiable costs and benefits presented above relate to dispute resolution. While the policy will be ongoing, costs and benefits have been calculated for only 3 years as it is not possible to predict future changes in people response to the policy. See summary table in evidence base for more detailed breakdown.

Price Base Year 2007	Time Period Years 3	Net Benefit Range (NPV) £ 333m-338.5m	NET BENEFIT (NPV Best estimate) £ 338.5m
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What is the geographic coverage of the policy/option?			GB		
On what date will the policy be implemented?			varies by policy		
Which organisation(s) will enforce the policy?			varies by policy		
What is the total annual cost of enforcement for these organisations?			£ varies by policy		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			Yes/No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 149.9m	Net Impact £ 149.9m decrease

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Overview

The purpose of the Employment Bill is to strengthen and clarify key aspects of employment law. The Bill is necessary in order to fulfil both elements of the Government's employment relations strategy: increasing protection for vulnerable workers and lightening the load for law-abiding business. The policy areas covered by the Bill require changes to primary legislation in order to meet these policy objectives.

Objectives

The Bill will:

1. Enable implementation of the Government's proposals following the independent Gibbons Review of dispute resolution in the workplace (with benefits to business of around £177m per annum);
2. Introduce a fairer method of calculating National Minimum Wage (NMW) arrears and a new civil penalty for employers who have not complied with NMW legislation;
3. Introduce a new enforcement framework for employment agency standards;
4. Amend trade union membership law to ensure compliance with the European Court of Human Rights ruling in *Aslef v UK*
5. Exclude Cadet Force Adult Volunteers (CFAVs) from NMW entitlement;

An overview of the issue, the rationale for government intervention and the Government's preferred option is given below for each of these policy areas. Full details of the options considered for each policy area are given in the individual impact assessments.

(i) Dispute Resolution

The Gibbons Review identified key problems with the current dispute resolution system in Great Britain, including the tendency of the current statutory dispute resolution procedures to formalise disputes, and inconsistencies in the workings of the employment tribunals. The evidence suggests that the current system is costing too much for all parties both in terms of money and time; and that it could do more to resolve disputes at the earliest opportunity. These concerns were reflected by a wide range of stakeholders in the recent full public consultation.

The current shortcomings of the system point to a future model that is more efficient and simpler to use, offers users advice on more proportionate ways of resolving their disputes, and which enables disputes to be resolved earlier, with less lost time, expense and stress for all parties.

The Government consulted on a range of policy options, based on many of the recommendations of the Gibbons Review. The Government intends to proceed with: repeal of the statutory dispute resolution procedures; an enhanced Acas statutory Code and guidance; encouraging compliance with the Code by allowing tribunals to adjust awards if it has not been followed; and new services including more Acas conciliation; a fast track for simple claims and an improved advice service. This package has been selected to achieve the objectives of early and efficient resolution of disputes.

(ii) NMW Enforcement

Underpayment of the NMW is both unfair to the workers who are underpaid and to compliant business who are undercut. At present, employers who are found to be underpaying their workers can repay what they owe without either attracting a penalty or remedying the loss of purchasing power that the worker has suffered as a result of the underpayment. Government intervention is necessary to remove all the potential profits of underpayment of the NMW, creating a clearer deterrent to non-compliance.

Underpayments of the NMW can be viewed as involuntary interest-free loans to employers by the lowest-paid and most vulnerable workers. The employer obtains a benefit from non-compliance with the NMW (for example, they may have accrued interest on the unpaid wages, or repay wages at a rate which, due to inflation, now holds lesser value) and thus an unfair competitive advantage against those competitors who are complying with the NMW.

The option of continuing with the current enforcement system has been considered but this would not meet the policy aims of encouraging a change in the behaviour of potentially non-compliant employers. Primary legislation is required to strengthen enforcement of the NMW by changing the basis for calculating arrears, imposing a civil penalty and strengthening the criminal sanctions. The proposed legislation would not increase the regulatory requirements for compliant businesses and would improve fairness for them and workers.

(iii) Employment Agency Standards Enforcement

The Government is proposing changes to the penalties regime for breaches of employment agency legislation, and to clarify the investigative powers of the Employment Agency Standards Inspectorate (EAS) to achieve more effective enforcement.

In the absence of government intervention there may be continued abuses of workers by rogue agencies who are not prepared to put right their procedures when problems are brought to their attention. This damages not only vulnerable agency workers who are deprived of their rights but also legitimate agencies who suffer from unfair competition from the minority of disreputable agencies who cut corners at the expense of their workers and therefore gain an unfair advantage.

The Government considers that it is important to strengthen the enforcement regime to target those who cut corners illegally to the detriment of agency workers, hirers and reputable agencies who are disadvantaged by such practices. The Government's preferred option is that the penalties for offences under the Employment Agencies Act 1973 should be increased by making them triable either way; and that the powers of inspection for officers appointed under the Act should be extended.

(iv) Amendment of Trade Union Membership Law

The Government is responding to a European Court of Human Rights judgment of February 2007 with which we are obliged to comply. The case concerned the freedom of trade unions under GB law to expel or exclude individuals on the grounds of their political party membership, and the Court concluded that the relevant part of GB law violated Article 11 of the European Convention on Human Rights. The UK Government has recognised the need to amend the relevant part of trade union law in this country.

Two options were considered:

A: Amend Section 174 to ensure there is no explicit reference to a special category of conduct relating to political party membership or activities.

B: Retain the special category of conduct relating to political party membership and activities but significantly amend the rights not to be excluded or expelled for such conduct.

The Government's preferred option is A because it is simpler to understand and apply in practice. It should therefore provide less scope for unnecessary legal action

(v) Exclude Cadet Force Adult Volunteers from NMW Entitlement

The objective is to amend the National Minimum Wage Act 1998 to exclude persons serving with the MOD sponsored Cadet Forces (Cadet Force Adult Volunteers or CFAVs) from qualifying for the minimum wage. This is to be done in order to clarify the position that CFAVs do not qualify for the NMW and therefore for the avoidance of doubt.

The MOD has always categorised CFAVs as volunteers and this is clear on their various websites and literature. However, elements of being a CFAV could cloud their legal status. For instance, CFAVs often sign personal declarations or agreements undertaking certain standards of behaviour associated with their position in a quasi military role, and their access to MoD facilities and equipment. These could be confused with employment contracts. CFAVs also receive occasional remuneration beyond the reasonable expenses usually received by volunteers. If CFAVs were not considered volunteers for the purposes of the National Minimum Wage Act, they may be classed as workers. Although it is unlikely that such a case would be taken and that this conclusion would be reached, this would both remove the voluntary status of CFAVs and bring NMW entitlements.

The remuneration CFAVs get is linked to their rank. At a "typical" cadet summer camp adult volunteers are active at least 12 hours a day (7am to 7pm). Only those CFAVs remunerated at Chief Petty Officers, Sub Lieutenants and above and their equivalents are compliant with the NMW if this were the only period they were involved in Cadet Force activity.

However, if CFAVs were judged to be workers they would have to be remunerated at least the NMW for all hours they volunteer, including all weekend activity and week day parade nights. CFAVs have a duty of care at all times they are with cadets. This may mean occasionally being on call through the night. It would need to be considered whether the minimum wage was due for these periods.

Ultimately, a CFAV could decide to challenge his status at an employment tribunal. It is unlikely that a CFAV would do this, given that he volunteered with no expectation of being remunerated, and there is only a small risk that the result would class a CFAV as a worker. Nonetheless, without legal clarity there remains a risk that an employment tribunal could result in a CFAV being classified as a worker, entitled to receive the NMW for all the time that they volunteer. It is unsatisfactory to allow such uncertainty, and the associated liabilities, to continue. In order to clarify the position that CFAVs do not qualify for the NMW the MoD have proposed a specific exemption to exclude Cadet Force Adult Volunteers, the supervising adult instructors of the MoD-sponsored Cadet Forces, from qualifying for the National Minimum Wage.

Summary of Costs and Benefits

The tables below set out the estimated costs and benefits for the preferred options of each policy strand by main group. Further detail is available in the individual impact assessments.

Table 1. Estimated costs from 2008 onwards (£m).

	Exchequer	Employers	Employees
Dispute Resolution	£6m (Year 1 setup costs) £12.5m-£15.5m (Year 2+, recurring costs)	None	None
NMW Enforcement*	£0.16m	£0.67m-£0.82m	None
EAS Enforcement*	Minimal due to small number of cases	Minimal	None
Amendment to Trade Union Law	None	None	Minimal cost to unions
Excluding CFAVs from NMW	None	None	None

Source: BERR estimates; * NB: Under both NMW and EAS Enforcement any costs stated here are entirely avoidable under 100% compliance with existing regulations. Employers would simply be i) repaying employees the wage they were originally entitled to and ii) avoiding paying any additional penalty. Therefore they are not included in the overall costs in the summary sheet above.

Table 2. Estimated benefits from 2009 onwards (£m).

	Exchequer	Employers	Employees
Dispute Resolution	£14m (recurring)	£176.9m (incl. £149.9m admin burden reduction)	£9.2m
NMW Enforcement*	£0.52m Plus lower enforcement costs from increased compliance (not quantified)	None	£0.15m-£0.3m
EAS Enforcement*	Lower enforcement costs from great compliance (not quantified)	Better protection for reputable agencies	Less mistreatment of agency workers (not quantified)
Amendment to Trade Union Law	None	None	Minimal benefit unions
Excluding CFAVs from NMW	Not quantified (saving from preventing potential ET cases)	Not quantified (saving from preventing potential ET cases)	Not quantified (saving from preventing potential ET cases)

Source: BERR estimates; * NB: Under NMW Enforcement benefits to the Exchequer and employees would be zero under 100% compliance with existing regulations. As such the Exchequer would not receive any income from penalties and employees would already be paid the correct wage. Therefore they are not included in the overall benefits in the summary sheet above

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

SPECIFIC IMPACT TESTS

Details of the individual tests that have been undertaken are given below. Not all policy areas in the Employment Bill were considered relevant for these tests. Therefore only dispute resolution, National Minimum Wage (NMW) and Employment Agency Standard (EAS) Enforcement are discussed here.

Competition Assessment

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A1 below). The proposed legislation will apply to all firms and is unlikely to affect the competitiveness of any particular sector.

Dispute Resolution

The proposed changes to the dispute resolution system are designed to reduce the cost of dealing with disputes in the workplace for both employers and employees. We believe it will also improve the working of the labour market.

Employment disputes may lead to job separations for reasons other than professional or career development. By improving dispute resolution within the workplace, these measures may enhance the match between skills required at work and the skills workers have.

NMW and EAS Enforcement

Furthermore changes proposed under NMW and EAS Enforcement are aimed at achieving greater compliance and therefore strengthen measures to prevent rogue employers undercutting those who do comply. Therefore only those employers who fall short of their compliance obligations will be affected by these proposals.

The National Minimum Wage provides a floor for wages and therefore ensures that firms cannot compete against each other by driving down wages to unacceptable levels. The proposed options will act as a disincentive for firms to undercut others by charging less than the minimum.

Effective National Minimum Wage enforcement supports both workers and business by tackling the competitive advantage gained by non-compliant employers who exploit their vulnerable workers.

Table A1. Competition assessment.

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

Source: BERR

Small Firms Impact Test

Dispute Resolution

The changes proposed under the dispute resolution system would apply to firms of all sizes. However, as shown in table A2 below, smaller firms tend to be disproportionately represented in employment tribunal claims. For instance, according to the Survey of Employment Tribunal Applications (SETA) 2003, 35% of all employees in Great Britain were in smaller workplaces (fewer than 25 employees), but the survey found that 45% of all employment tribunal applications occurred in workplaces of this size (it should be noted that the survey examined single claims only). Therefore it is likely that the benefits to business identified would have a disproportionately positive effect on smaller firms. These data will be updated towards the end of 2008 when the first findings of the next Survey of Employment Tribunal Applications become available.

Table A2. Dispute resolution – employment tribunal applications by size of workplace

Workplace size	Applications	Share of total GB employees
1-24 employees	45%	35%
25-49 employees	17%	14%
50-249 employees	24%	24%
250+ employees	14%	27%

Source: Tables 2.4 and 2.5, Findings from the Survey of Employment Tribunal Applications 2003, BERR

NMW and EAS Enforcement

In their reports, the LPC have noted that small firms tend to be more affected by the minimum wage, with 4 per cent of jobs in small firms being paid at the adult National Minimum Wage in April 2006, compared with 2.5 per cent in medium sized firms, and around 1.5 per cent in large firms. It is therefore more likely that cases found to owe arrears will cover small businesses. However, if a new penalty scheme is introduced that links the fine to the amount of arrears owed (and therefore linked to the number of workers who have been underpaid by the firm), then it is more likely that larger business will face a greater fine than small ones.

The Government consulted on the EAS Enforcement proposals earlier this year. While the proposals were generally supported, one business association expressed concerns that burdens on business should be taken into account. We have addressed this by restricting the power to seek financial information from third parties to cases where the agency concerned is given written notice to provide the information and has not done so. In addition, the Government has made it clear that we do not expect the new powers to be used on more than around 10 occasions per year so the great majority of businesses would be unaffected.

Equality Impact Assessment

Dispute Resolution

The proposed changes to the dispute resolution system should apply equally to all groups. The changes are designed to offer users advice on more proportionate ways of resolving their disputes and enable disputes to be resolved earlier, thereby resulting in less time and expense.

In terms of equalities duties, the last Survey of Employment Tribunal Applications (SETA) 2003, showed that women and those with disabilities are not disproportionately represented in employment tribunal cases, but that some ethnic groups may be (see Table A3).

Table A3. Dispute resolution – ET applicants by personal characteristic

	ET applications (%)	GB employees (%)
Women	39%	49%
<i>Ethnicity</i>		
White	90%	93%
Black	4%	2%
Asian	3%	3%
Mixed	1%	1%
Other	1%	1%
<i>Disability</i>		
Long-term illness/disability	18%	21%
Long-term limiting illness/disability	10%	11%
No long-term illness/disability	82%	79%

Source: Tables 2.1 and 2.2, Findings from the Survey of Employment Tribunal Applications 2003, BERR; NB: percentages may not add due to rounding

Furthermore, the most recent data from the Tribunals Service indicate that of the 176,434 employment tribunals cases disposed in 2006-07, around 20% were discrimination and equal pay jurisdictions and 15% were accounted for by sex discrimination, race discrimination and disability discrimination (Table A4). Furthermore, in race and disability discrimination cases a relatively high proportion are resolved through Acas conciliation, which suggests that this form of resolution is effective and that wider availability of pre-claim conciliation should benefit all the parties involved.

Table A4. Dispute resolution – employment tribunal cases by jurisdiction, 2006-07

Nature of claim	Jurisdictions disposed	Withdrawn	Acas conciliated settlements	Struck out	Successful at tribunal	Other outcomes
All Jurisdictions	176,434	31%	24%	21%	12%	11%
<i>Of which...</i>						
Sex discrimination	18,909	48%	12%	33%	2%	4%
Race discrimination	3,117	31%	38%	7%	3%	21%
Disability discrimination	4,345	33%	46%	5%	3%	11%
Religious belief discrimination	498	34%	35%	8%	2%	21%
Sexual orientation discrimination	384	33%	41%	7%	5%	14%
Age discrimination	135	38%	41%	8%	0%	12%
Equal pay	7,854	60%	6%	30%	2%	2%

Source: Tribunals Service, Annual Statistics, 2006-07

NMW and EAS Enforcement

The proposed changes to the enforcement of the National Minimum Wage and Employment Agency Standards should also benefit vulnerable workers.

Female workers tend to work in the lower paid sectors of the economy, and this is reflected by the fact that the last two years have shown a larger proportion of complaints of underpayment among females.

Similarly, workers from ethnic minorities are also more likely to work in the low paying sectors of the economy, with some 36 per cent of ethnic minority employees working in the low-paying sectors compared with 29 per cent of white employees.¹

In addition, new migrants have been found to be particularly vulnerable to exploitation by unscrupulous employers. Research has shown that people employed through international employment agencies were more likely to be underpaid or have more deducted from pay to cover accommodation and other services.²

Fair arrears will benefit all workers who have been underpaid the National Minimum Wage, and a new automatic penalty for underpayment will apply to any employer found to be underpaying the National Minimum Wage. We will continue our policy of targeting publicity³ and enforcement to ensure that workers in these areas are aware of their rights, and that employers are aware of their responsibilities.

¹ *National Minimum Wage: Low Pay Commission Report 2007.*

² French, S. and Möhrke, 2006, *The impact of 'new arrivals' upon the North Staffordshire labour market*, Research for the Low Pay Commission. Centre for Industrial Relations, Institute of Public Policy and Management, Keele University.

³ See particularly DTI and HMRC *National Minimum Wage Annual Report 2005/06* for further details.

Summary: Intervention & Options

Department /Agency: BERR	Title: Employment Bill Impact Assessment: Part 2 - Dispute Resolution Review	
Stage: Final	Version: Final	Date: February 2008
Related Publications: Resolving Disputes in the Workplace: A Government Response		

Available to view or download at:

[http:// www.berr.gov.uk/employment/employment-legislation/employment-bill/index.html](http://www.berr.gov.uk/employment/employment-legislation/employment-bill/index.html)

Contact for enquiries: Tim Harrison/Tony Stafford

Telephone: 0207 215 5799

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

The Gibbons Review identified key problems with the current dispute resolution system in Great Britain, including the tendency of the current statutory dispute resolution procedures to formalise disputes, and inconsistencies in the workings of the employment tribunals. The evidence suggests that the current system is costing too much for all parties both in terms of money and time; and that it could do more to resolve disputes at the earliest opportunity. These concerns were reflected by a wide range of stakeholders in the recent full public consultation.

What are the policy objectives and the intended effects?

The current shortcomings of the system point to a future model that is more efficient and simpler to use, offers users advice on more proportionate ways of resolving their disputes, and which enables disputes to be resolved earlier, with less lost time, expense and stress for all parties.

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

The Government consulted on a range of policy options, based on many of the recommendations of the Gibbons Review. The Government intends to proceed with: repeal of the statutory dispute resolution procedures; an enhanced Acas statutory Code and guidance; encouraging compliance with the Code by allowing tribunals to adjust awards if it has not been followed; and new services including more Acas conciliation; a fast track for simple claims and an improved advice service. The option which this package represents will achieve the optimum in terms of early and efficient resolution of disputes.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The outcomes of the policy will be assessed a reasonable period after entry into force of the legal changes.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 4 February 2008

Summary: Analysis & Evidence

Policy Option: 3	Description: Repeal statutory dispute resolution procedures and introduce a package of measures to promote effective dispute resolution
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' All costs are Government costs and relate mainly to the set up and operation of the new interactive advice service as well as the provision of pre-claim conciliation.		
	One-off (Transition)	Yrs			
	£ 6m	1			
	Average Annual Cost (excluding one-off)				
	£ 12.5m-15.5m	2	Total Cost (PV)		£ 28.7m-34.2m
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Government will benefit from savings of £14m to the ET system. Employers will save £176.9m mainly due to reductions in admin burdens (£149.9m), but also from changes to the dispute system. Employees will benefit by £9.2m.		
	One-off	Yrs			
	£ 0	0			
	Average Annual Benefit (excluding one-off)				
	£ 200.1m	2	Total Benefit (PV)		£ 367.3m
Other key non-monetised benefits by 'main affected groups'					

Key Assumptions/Sensitivities/Risks The cost-benefit estimates are based on an estimated throughput of 67,000 single-equivalent tribunal claims a year. Costs will be incurred from 2008 onwards and the benefits will be realised from 2009 onwards. While the policy will be ongoing, costs and benefits have been calculated in net present value terms for only 3 years initially.

Price Base Year 2007	Time Period Years 3	Net Benefit Range (NPV) £ 333m-338.5m	NET BENEFIT (NPV Best estimate) £ 338.5m
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What is the geographic coverage of the policy/option?				GB	
On what date will the policy be implemented?				April 2009	
Which organisation(s) will enforce the policy?				Tribunals Service	
What is the total annual cost of enforcement for these organisations?				£ 314.52m ¹	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				No	
What is the value of the proposed offsetting measure per year?				£ N/A	
What is the value of changes in greenhouse gas emissions?				£ N/A	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 149.9m	Net Impact	£ 149.9m Decrease

Key: Annual costs and benefits: Constant Prices (Net) Present Value

¹ Tribunals Service total operating costs 2006-07

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

A: Strategic overview

1. In the light of the independent review by Michael Gibbons² (the Review) of workplace dispute resolution practices and the associated public consultation³, the Government proposes to repeal the statutory dispute resolution procedures and implement a package of replacement measures to encourage early/informal resolution of disputes. This supports BERR's Simplification Plan with significant savings for business, estimated at £177m per annum.

B: The issue

2. The Review identified key problems with the current dispute resolution system in Great Britain:

- The statutory dispute resolution procedures introduced in 2004 carry a high cost burden for employers and employees and have had unintended negative consequences, which outweigh their benefits;
- While around 75% of claims made to an employment tribunal are resolved without the need for a hearing (a substantial portion with the involvement of Acas), many settlements happen too long after the dispute first occurred and a significant proportion of those cases that do reach a tribunal hearing should have been capable of being resolved beforehand between the parties.

3. The evidence therefore suggested that the current dispute resolution system is costing too much for all parties - employers, employees and Government - both in terms of money and time; and that more needed to be done to resolve disputes at the earliest opportunity. The Government has sought an alternative model that is more efficient, simpler to use, offers users more proportionate ways of resolving their disputes, and aims to resolve disputes earlier.

Consultation

Within government

4. The Review consulted widely within government, including the then DTI, Acas and the Tribunals Service, along with other government departments.

Public consultation

5. The Review received considerable input from key non-government stakeholders, including representatives of business (including the CBI) and of workers (including the TUC). Following publication of the Review's report in March 2007, the Government undertook a three-month public consultation on options based on the recommendations of the Review. The Government received over 400 responses to the consultation. Several responses summarised the views of a number of stakeholders and many others were from representative organisations on behalf of their members. A number of meetings held in England, Scotland and Wales were attended by over 200 people. Formal written responses to the consultation came from a broad

² 'Better Dispute Resolution. A Review of employment dispute resolution in Great Britain' Michael Gibbons March 2007

³ 'Success at Work: Resolving Disputes in the Workplace' DTI March 2007

spectrum of interests. Employers and their organisations were strongly represented among respondents.

C: Objectives

6. Following the Review and the issues identified with the current system, the Government considered a package of measures to help solve employment disputes successfully in the workplace so that:

- Productivity is raised through improved workplace relations;
- Access to justice is ensured for employees and employers;
- The cost of resolving disputes is reduced for all parties;
- Disputes are resolved swiftly before they escalate; and
- Employment rights are not diluted.

7. These measures include: repealing the statutory dispute resolution procedures; providing better help and guidelines to resolve disputes at an earlier stage; and improving the way employment tribunals work.

Background

8. The Government's policy on resolving disputes in the workplace was last set out in the 2001 consultation paper '*Routes to Resolution: Improving Dispute Resolution in Britain*'. This proposed three principles for a modern dispute resolution system: access to justice; fair and efficient tribunals; and a modern, user-friendly public service. A framework to achieve this was laid out in primary legislation in the Employment Act 2002. This established statutory minimum dismissal and disciplinary and grievance procedures. A three-step process of a written statement, a meeting and an appeal was introduced by The Employment Act 2002 (Dispute Resolution) Regulations 2004 (the Regulations), and accompanied by revised employment tribunal rules of procedure and a revised Acas Code of Practice on disciplinary and grievance procedures.

9. The Government gave a commitment to review the Regulations after two years, to see if these objectives had been met. This commitment was confirmed in '*Success at Work*⁴ as part of our programme to deliver better regulation. This is a key part of BERR's work to simplify regulation, by removing compliance costs and complexity, and addressing irritants for business and others affected by employment law, while ensuring that employee rights are protected.

10. In December 2006, the Government broadened the review to look end-to-end at the whole dispute resolution framework with the appointment of Michael Gibbons as an independent reviewer. The Gibbons Review (the Review) looked at the options for simplifying and improving all aspects of employment dispute resolution, to make the system work better for employers and employees.

11. The Review put forward recommendations for change, covering the current legal requirements, the way employment tribunals work and the scope for new initiatives to help resolve disputes at an earlier stage.

12. In its consultation *Success at Work: Resolving Disputes in the Workplace*⁵ in March 2007 the Government considered these recommendations and invited views on various measures to help resolve disputes successfully in the workplace. The partial impact assessment (RIA) published alongside the consultation provided initial estimates of the costs and benefits of these measures. This final impact assessment (IA) sets out revised estimates of the costs and benefits of the proposed changes in the light of responses to the consultation.

⁴ '*Success At Work: Protecting vulnerable workers, supporting good employers*' March 2006 URN 06/1024.

⁵ <http://www.berr.gov.uk/files/file27469.pdf>

D: Options identification

13. A summary of the measures on which the Government consulted is set out below. The partial impact assessment considered a package of measures (Option 3) against two alternatives: do nothing (Option 1) and repeal the statutory procedures and streamline employment tribunals (Option 2). Details of these options can be found in the partial impact assessment.

- **Option 1:** Do nothing;
- **Option 2** Repeal the statutory dispute resolution procedures and streamline employment tribunals;
- **Option 3:** As Option 2 above, but also introducing a package of measures to promote effective dispute resolution including:
 - i. offering a new advice service;
 - ii. providing a new entry point for employment tribunal applications;
 - iii. providing a new approach to straightforward claims;
 - iv. making dispute resolution services available earlier in appropriate cases;
 - v. removing fixed periods for Acas conciliation.

14. Despite the fact that the available data to assess the effects of the 2004 reforms is limited, the Review identified some key trends within the current system. Since the introduction of the reforms in October 2004, the total number of employment tribunal claims has risen, but this is entirely due to a significant increase in multiple claims. Although the number of multiple claims varies from quarter to quarter, claims have on average risen from almost 16,000 a quarter in the financial year (FY) 2005-06 to around 19,200 in FY 2006-07⁶. Single claims fell initially after the 2004 reforms from around 16,000 claims a quarter to 12,000 in the fourth quarter of 2004. However, since then the number of single claims has been rising steadily to 14,400 per quarter in the first half of 2007. Following an initial fall, there has since been an upward trend in the number of single claims towards pre-October 2004 levels.

15. The 2004 reforms seemed to have had an initial impact on reducing the risk of unfair dismissal, but at a higher cost to business. The PricewaterhouseCoopers / BRE administration burdens exercise 2005 identified that the costs to business of complying with and carrying out the various elements of the statutory dispute resolution procedures amounted to £114.8 million⁷ (after taking account of business as usual costs).

16. In terms of the number of tribunal claims and associated costs together with the administrative burden placed on employers of having to follow the statutory procedures, Option 1 would not reduce the number of claims or the costs for all parties.

⁶ Multiple claims accounted for 58 per cent of all claims in 2006-07 compared with 36 per cent in 2004-05.

⁷ This is based on the number of employment tribunal claims registered in 2004/05, i.e. around 86,000

17. Following the consultation, the Government intends to make the following changes i.e. Option 3:

- Repeal the statutory dispute resolution procedures
- Revert to the case law⁸ which applied before 2004 regarding the role of procedural unfairness in unfair dismissal
- Invite Acas to revise its statutory Code of Practice on disciplinary and dismissal procedures, and give employment tribunals discretion to make adjustments to awards if parties have unreasonably failed to comply with the Code
- Introduce an expanded Acas advice service which will be able to give employers and employees information about the options open to them to resolve employment disputes
- Improve the existing short-track process for certain employment jurisdictions within the Tribunals Service
- Make additional Acas pre-claim conciliation services available where appropriate
- Remove the current time restrictions on Acas' duty to conciliate after a claim is made to a tribunal.

18. These are described briefly below.

19. In addition to these measures, the Government will work with the providers of Alternative Dispute Resolution (ADR) services, such as training and mediation, and with bodies representing employers and employees, to promote the benefits of early dispute resolution in the workplace.

Resolving more disputes in the workplace

20. Under this Option the statutory procedures⁹ would be repealed. The principles which underpinned the statutory regulations procedures are supported by employer and employee organisations. However, the procedures have had a number of unintended negative consequences, including an increase in the number of disputes needlessly reaching a formal stage, an increased use of legal advice and a focus on following procedure rather than reaching an early outcome. Provisions for repeal are contained in the Employment Bill. The Government also proposes to revert to the situation following the Polkey case, whereby a dismissal may be found to be unfair on procedural grounds but the tribunal may reduce the compensation award in proportion to the likelihood that dismissal would have gone ahead even if the correct procedure had been followed.

21. The Government recognises that repeal of the statutory procedures could result in some employers and employees failing to act appropriately in attempting to resolve disputes in the workplace prior to an employment tribunal claim. The Government is therefore proposing a short, non-prescriptive statutory Code should be introduced, drawn up by Acas in collaboration with stakeholders. This would allow tribunals to consider the appropriateness of parties behaviour in the particular circumstances of a case rather than assessing compliance with set procedures. It is also proposed that tribunals be allowed to adjust awards by up to 25% if either party has acted unreasonably in failing to comply with elements of the relevant statutory Code.

Beyond the workplace

22. Michael Gibbons concluded that better advice and guidance for employers and employees and greater availability of conciliation in the early stages of disputes could enable more parties to resolve their differences without needing to go to tribunal. The Government is therefore proposing additional investment in improving the advice on resolving disputes available to employers and employees, and on funding a greater level of conciliation for disputes which are not yet the subject of an employment tribunal claim.

⁸ In particular the House of Lords judgement in Polkey v A E Dayton Services Ltd [1988] AC 344

⁹ Sections 29-33 and Schedules 2, 3 and 4 of Employment Act 2002, along with s98A Employment Rights Act 1996 and consequential amendments in other primary and secondary legislation

23. Two legislative changes intended to maximise the effectiveness of Acas conciliation are contained in the Employment Bill. Time restrictions on Acas's duty to offer conciliation to parties involved in employment tribunal claims are to be removed, ensuring that Acas conciliation is open to parties until a tribunal hearing has been held. This will ensure that Acas help is available when parties realise close to the date of a hearing that they wish to reach an agreed settlement. The Government also proposes that Acas's existing duty to conciliate on request from the parties in cases which are not yet the subject of a tribunal claim should become a power. This would enable Acas to prioritise its caseload if that was necessary.

24. The Government believes that some tribunal cases, which revolve around the determinations of facts in cases of monetary disputes, could be dealt with more quickly and simply. The Government intends to enhance existing arrangements to deal with such cases effectively, through future changes to administrative practice and secondary legislation, and through two provisions in the Bill. The first clarifies the power of employment judges to propose to the parties that a case should be determined in writing, but the Bill restates the position and makes it clear that both parties can insist on a hearing if they want one. A further provision is designed to allow claimants who have suffered direct financial losses as a result of not receiving money they were owed, over and above the non-payment itself, to ask the tribunal to order compensation for such losses to be paid by the employer. At present such compensation has to be sought in a separate action in the small claims court.

More effective employment tribunals

25. The Government consultation sought views on a number of different measures to improve and streamline processes and procedures. Most of these would require secondary legislation and will be consulted on in more detail at a later date.

E: Analysis of options

Costs and Benefits

26. The estimated costs and benefits associated with the Government's preferred option (Option 3) are presented and discussed below. They are compared against the baseline Option 1, the current system with no change.

27. It should be noted that although these figures have been developed since the partial RIA, they remain provisional estimates. They will be developed and revised further during the course of the Government's policy implementation, and will be re-presented as necessary in the impact assessments that accompany the relevant secondary legislation.

28. BERR will also be carrying out the next Survey of Employment Tribunal Applications (SETA) in early 2008 with the first findings available later that year.

Assumptions

29. Since some of the planned measures produce effects that are dynamic in nature, in that changes to one area will have a consequential impact on other aspects of the system, the various cost implications have been analysed using a simple model of the employment tribunal system. This model is based on a number of illustrative assumptions:

- The effect of any change to the system must be analysed against a consistent baseline number of tribunal claims. It is straightforward to assess the level of single claims from Tribunals Service data, around 52,000 in 2005/06. Furthermore the number of single claims has been relatively stable over recent years. It is inherently more difficult to do so for multiple claims as the underlying unit, and hence average, costs will vary according to how

many claims an individual employer is facing. This model therefore adopts an estimate of single-equivalent claims with a baseline of 67,000 claims¹⁰;

- The model estimates costs and benefits for employers, employees and the Exchequer. The unit costs used for each group vary, reflecting as far as possible the costs of the current system to each group;
- Evidence from the Survey of Employment Tribunals 2003 (SETA 2003) shows that costs vary according to a number of factors, but are mainly affected by the stage reached in the dispute resolution process¹¹ and the jurisdiction(s) under which the claim is filed;
- Some data are available from the PricewaterhouseCoopers/BRE Administrative Burdens Measurement Exercise database. Both the aggregate information obligation (IO) burdens and their underlying unit costs have been used where appropriate¹²;
- Although it is intended that the measures will take effect around April 2009, some involve initial set-up costs;
- Finally, only a relatively small proportion of employment disputes end up in the employment tribunal system. Many are settled or may be withdrawn along the way. The RIA on the statutory dispute resolution procedures estimated, on the basis on the Legal Services Research Centre (LSRC) Periodic Survey, that there may be between 700,000 and 900,000 employment-related justiciable¹³ events each year

30. The model-derived estimates are based on the following assumptions:

- As discussed above, the number of initial disputes entering the system is set at 67,000;
- The new advice service successfully resolves 10% of potential disputes¹⁴ before they go any further in the system;
- Of the remainder, as with the current system, around 10% are dealt with by means of the fast-track process. However of these we assume that initially 10% are resolved through new powers to make written determinations with the consent of the parties, rather than through a hearing. We anticipate that recourse to written determination increases in subsequent years, but this is not yet included in the model;
- A further 40% engage with the expanded Acas pre-claim conciliation service, with half of these being successfully conciliated. Those that are not resolved re-enter the main employment tribunal system;
- Of all the cases that enter the employment tribunal system proper, conciliation is attempted in some 90% of cases and 40% of the time the case is resolved. Of those that are not resolved, 60% of cases fall out of the system for other reasons.

31. Unit costs for employer staff time involved in all stages of the dispute resolution process have been estimated at 2007 prices¹⁵. We have further assumed external legal costs at

¹⁰ Although the number of ET claims rose to around 133,000 in 2006/07, the number of single claims has remained relatively stable in recent years. For this reason and also to maintain consistency with the partial RIA we have continued to use 67,000 single-equivalent cases as our baseline.

¹¹ Before reaching an employment tribunal hearing, claims may be withdrawn, settled privately or a settlement reached using Acas conciliation.

¹² It should be noted that the PwC admin burdens exercise was based on data for 2004/05. Furthermore the PwC data make no distinction between single and multiple claims and hence does not account for variations in unit costs. We have therefore attempted to produce a measure of single-equivalent claims, which inevitably leads to problems of comparability.

¹³ A 'justiciable event' is defined by Genn, Paths to Justice, 1998 as a matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being 'legal' and whether or not any action taken by the respondent to deal with the event involved the use of any part of the civil justice system.

¹⁴ In the partial RIA we assumed 5%. Subsequent analysis of the effectiveness of the current Acas helpline service [ref. to 2007 Acas survey] and consultancy on the design of the expanded service indicate that the effectiveness of the service is likely to be greater than this.

¹⁵ These are wage data taken from the Annual Survey of Hours and Earnings (ASHE) 2007 and have been uprated by a factor of 1.21 to allow for non-wage labour costs. Specifically these relate to wages for office managers (SOC code 1152), lawyers (SOC 2411) and personnel/HR staff (SOC 1135).

£250/hour, though only in cases where employers use representation in the form of solicitors at different stages in the process¹⁶.

32. These assumptions have been based on the available data (where it exists) as well on discussions with key stakeholders such as the Tribunals Service and Acas. Inevitably changes to the system involve a degree of uncertainty and as more evidence and data becomes available we will revise the model accordingly and present the results in subsequent impact assessments to be produced alongside secondary legislation in this area.

Costs

Exchequer Costs

One-off costs

33. One-off implementation costs will be incurred by the Government in 2008/09.

34. In total these costs are estimated at £6 million in 2008/09. This is mostly accounted for (£5.6 million) by the set-up costs of the advice service, which includes technical and training costs, additional staff costs, consultancy support and regional piloting costs¹⁷. In addition to this there will be costs of £0.4m for piloting the additional pre-claim Acas conciliation services, in order to confirm how best to target disputes that are likely to benefit from these services.

Recurring costs

35. Ongoing Exchequer costs then come on stream from 2009/10 onwards and are estimated to range between £12.5 million to £15.5 million each year.

36. These costs are mainly due to an extra £10m of funding for pre-claim Acas conciliation in cases that are considered most likely to benefit from it.

37. The new advice service is estimated to have running costs of between £2.5m to £5.5m, depending on the average length of calls made to the helpline¹⁸. This investment is over and above the current £7.5m spent on the Acas helpline.

Benefits

38. As a result of these policy and service changes, benefits are estimated to accrue to employers, employees and the Exchequer and are set out below. In each case benefits are realised mainly from 2009/10 onwards when the changes become fully effective.

39. A proportion of the benefits are as a result of savings made from the redesign of the employment tribunal system. On the basis of the model, we estimate that the number of single-equivalent employment tribunal hearings will fall by around 30%. It should be noted once again that this is based on single-equivalent cases entering the system to take account of multiples and therefore will not be directly comparable to published data by the Tribunals Service. However, the changes will have an effect throughout the system as cases take different routes to reach resolution and hence the savings identified amount to more than just those associated with a fall in the number of employment tribunal hearings.

Benefits to the Exchequer

40. Benefits to the Exchequer are estimated to amount to £12.1 million each year in 2009/10 and 2010/11. All of this is achieved through employment tribunal savings as a result of the repeal of the statutory procedures (£1m), the new interactive advice service (£7m) and earlier conciliation (£3.8m).

¹⁶ See SETA 2003 chapters 4 and 7 and report annexes for further details

¹⁷ BERR New Services Programme Advice Service Description, Detica, October 2007

¹⁸ *ibid*

Benefits to employers

41. Total annual recurring savings to employers from all the proposed changes are estimated at £176.9 million and is made up as follows:

Employer savings from reduction in administrative burdens

42. Employers will benefit from a reduction in administrative burdens totalling £149.9 million¹⁹.

43. First of all, by repealing the three-step procedure employers will no longer be subject to the 11 information obligations relating to the procedures. Together the saving from this (after business as usual costs) will amount to £114.8 million. We would expect employers to continue to follow the principles which the procedures sought to encapsulate – in particular to communicate effectively with employees about disciplinary issues, and to comply with the requirements of the law on unfair dismissal – and the revised Acas statutory Code of Practice will continue to promote those principles and the ability of tribunals to adjust awards for unreasonable failure to comply with the Code will incentivise compliance. The administrative burden saving to employers derives from the fact that they will no longer need to comply with the complex and sometimes over-burdensome requirements which arose from putting the principles into regulatory form.

44. Second, changes to the dispute resolution process will mean that those disputes that are resolved at either the helpline stage or through pre-claim conciliation will not require either party to complete tribunal claim and response forms (known as the ET1 and ET3). The PwC administrative burdens exercise estimated that each claim would cost employers £2,000 on average to produce their ET3 form, with much of this accounted for by the use of external services such as legal advice. From our model we have estimated that just over 26%²⁰ of potential ET claims would not reach the formal ET1/ET3 stage. Using our standardised volume of 67,000 potential claims feeding into the dispute resolution system, this would amount to an overall saving to employers of £35.1 million²¹.

Employer savings from other changes to the dispute resolution system

45. In addition to reductions in administrative burdens, employers will also benefit from further savings totalling £27 million. These savings are generated as a result of potential claims being resolved at an earlier stage in the dispute resolution process and the overall reduction in claims that reach a full tribunal hearing. Consequently there are reductions in internal staff time as well as the degree to which external legal advice is required. Specifically these cost savings are:

- The reduction in costs as a result of the 10% of claims that are now dealt with at the interactive advice service stage. This is estimated at £12.8 million.
- The 10% of fast-track claims that are dealt with by written determination. Savings amounting to £0.3 million mainly as a result of the time saved in no longer having to attend a hearing.
- £13.8 million generated as a result of the 20% of remaining claims being resolved via pre-claim conciliation.

Employee Benefits

¹⁹ It should be noted that this is based on the PwC administrative burdens study and hence is a) at 2005 prices and b) is based on a volume of around 86,000 ET claims for the period 2004/05.

²⁰ Those cases dealt with by the interactive advice service and those resolved through pre-claim conciliation would not be subject to ET3 costs.

²¹ As discussed above, it is difficult to compare directly with the PwC data as they used a volume of total ET claims of around 86,000.

46. Employees will benefit by £9.2 million from 2009/10 onwards mainly due to the effect of the interactive advice service (£5.3 million) as well as savings from using pre-claim conciliation (£3.8 million).

Table 1. Detailed costs and benefits (£m).

	2008/09	2009/10	2010/11
COSTS			
Exchequer – total one-off costs	6.0	0.0	0.0
- interactive advice service set-up	5.6	0.0	0.0
- pre-claim conciliation	0.4	0.0	0.0
Exchequer – total recurring costs	0.0	12.5 -15.5	12.5 – 15.5
- interactive advice service	0.0	2.5 – 5.5	2.5 – 5.5
- pre-claim conciliation	0.0	10.0	10.0
BENEFITS			
Exchequer – total recurring	0.0	14.0	14.0
- repeal 3 steps	0.0	1.0	1.0
- new approach to fast-track claims	0.0	0.4	0.4
- interactive advice service	0.0	9.7	9.7
- pre-claim conciliation	0.0	3.8	3.8
Employers – total recurring benefits	0.0	176.9	176.9
- repeal 3 steps	0.0	114.8	114.8
- new approach to fast-track claims	0.0	0.3	0.3
- interactive advice service	0.0	12.8	12.8
- pre-claim conciliation	0.0	13.8	13.8
- reduce burden of ET3s	0.0	35.1	35.1
Employees – total recurring benefits	0.0	9.2	9.2
- new approach to fast-track claims	0.0	0.0	0.2
- pre-claim conciliation	0.0	3.8	3.8
- interactive advice service	0.0	5.3	5.3

Source: BERR estimates

F: Risks

47. It is inevitable that the costs and benefit estimates presented above are liable to a degree of uncertainty, especially with changes to the dispute resolution system and the introduction of new measures.

48. It should be noted that there will be a ceiling on the additional resources available for pre-claim conciliation services, and Acas will be given the statutory ability to prioritise its use of these resources as it sees fit. This approach was broadly supported in consultation. Furthermore, the advice service is being designed to be capable of dealing with a significant expansion of demand over and above the current level. We are using expert consultancy to assess likely demand and identify the most effective structure for the future service. As a result, we will be piloting both the new pre-claim conciliation services and various aspects of the expanded advice service during 2008 to ensure they are fit for purpose and test our demand assumptions

G: Enforcement

49. If a dispute is not resolved in the workplace, an employee may make a claim to an employment tribunal as with the existing dispute resolution system. Employment tribunals are specialist judicial bodies that are part of the Tribunals Service.

H: Recommendation and summary table of costs and benefits

50. Overall costs and benefits by main group affected are given in Table 2 below.

51. Ongoing benefits to employers include an estimated £149.9 million as a result of reductions in administrative burdens.

52. It should be stressed that all these costs and benefits are subject to ongoing revision as new data and information becomes available.

Table 2. Summary of costs and benefits (£m).

	Costs		Benefits	
	Year 1	Year 2+	Year 1	Year 2+
Exchequer	6.0	12.5 – 15.5	None	14.0
Employers	None	None	None	176.9
Employees	None	None	None	9.2

Source: BERR estimates

I: Implementation

53. We expect that all the key changes will come on stream in April 2009.

J: Monitoring and evaluation

54. The planned changes to the Acas advice service and the additional pre-claim conciliation services will be tested through regional piloting before implementation. BERR intends to develop detailed benefits realisation plans for these services during the set-up phase. The overall volume of tribunal claims will also be an indicator of the effectiveness of the changes, although this is of course influenced by external factors including the introduction of new employment rights. Subsequently, the next Survey of Employment Tribunal Applications (SETA) to be carried out in early 2008 will give a benchmark upon which to assess the impact of any changes.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	No

Annexes

Please see the Employment Bill summary impact assessment for the details of the specific tests carried out with respect to this policy area.

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Employment Bill: Part 3 - National Minimum Wage Enforcement	
Stage: Final	Version: Final	Date: 5 December 2007
Related Publications: National Minimum Wage and Enforcement Agency Standards Enforcement - Government response to consultation		

Available to view or download at:

<http://www.berr.gov.uk/files/file42755.pdf>

Contact for enquiries: Tim Harrison/Caroline Roberts

Telephone: 0207 215 5799

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

Underpayment of the National Minimum Wage (NMW) is both unfair to the workers who are underpaid and to compliant business who are undercut. At present, employers who are found to be underpaying their workers can repay what they owe without either attracting a penalty or remedying the loss of purchasing power that the worker has suffered as a result of the underpayment. Government intervention is necessary to remove all the potential profits of underpayment of the NMW, creating a clearer deterrent to non-compliance.

What are the policy objectives and the intended effects?

The Bill aims to strengthen NMW enforcement in three main ways. Firstly, by changing the way arrears are calculated so that workers do not lose out in real terms as a result of underpayment (“fair arrears”). Secondly, by introducing a new civil penalty for non-compliance to create a clearer deterrent than presently exists. Thirdly, by strengthening the criminal prosecution regime to provide more effective enforcement of the most serious cases of non-compliance.

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

The option of continuing with the current enforcement system has been considered but this would not meet the policy aims of encouraging a change in the behaviour of potentially non compliant employers. Primary legislation is required to strengthen enforcement of the NMW by changing the basis for calculating arrears, imposing a civil penalty and strengthening the criminal sanctions. The proposed legislation would not increase the regulatory requirements for compliant businesses and would improve fairness for them and workers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The ongoing service level agreement between BERR and HMRC as NMW enforcers will ensure the level of enforcement and the associated costs and benefits will be monitored.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 6 December 2007

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Employers: £0.15m to £0.3m for repayment of wages arrears to workers and £0.523m for penalty fees; Exchequer: up to £0.16m defending appeals and increased admin. None of these costs would arise under 100% compliance with existing NMW regulations.			
	One-off (Transition) Yrs				
	£ 0				
	Average Annual Cost (excluding one-off)				
	£ 0	Total Cost (PV)	£ 0		
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Workers would benefit by £0.15m to £0.3m from repayment of wage arrears; Exchequer would receive £0.523m from penalty fees. None of these benefits would arise under 100% compliance with existing NMW regulation.			
	One-off Yrs				
	£ 0				
	Average Annual Benefit (excluding one-off)				
	£ 0	Total Benefit (PV)	£ 0		
Other key non-monetised benefits by 'main affected groups' Stronger enforcement of NMW should result in fewer cases of non-compliance.					

Key Assumptions/Sensitivities/Risks The costs and benefits associated with this policy change are largely transfers that would not arise in a situation of 100% compliance.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	asap			
Which organisation(s) will enforce the policy?	HMRC, Defra			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

A: Strategic overview

The legislative proposals on National Minimum Wage enforcement stem from the Secretary of State's acceptance of the recommendation in the Low Pay Commission's 2007 report that "as a deterrent to non-compliance, the Government introduce a penalty to apply to any employer found to have underpaid the minimum wage". The Government held stakeholder meetings and undertook a public consultation on its proposed approach in May 2007, both for a new penalty regime and also on proposals to ensure a fair outcome for those who have been underpaid by their employer.

B: The issue

Underpayment of the NMW is both unfair to the workers who are underpaid and to compliant business who are undercut. At present, employers who are found to be underpaying their workers can repay what they owe without either attracting a penalty or remedying the loss of purchasing power that the worker has suffered as a result of the underpayment. Government intervention is necessary to remove all the potential profits of underpayment of the NMW, creating a clearer deterrent to non-compliance.

Rationale for Government intervention

1. Underpayments of the NMW can be viewed as involuntary interest-free loans to employers by the lowest-paid and most vulnerable workers. The employer obtains a benefit from non-compliance with the NMW (for example, they may have accrued interest on the unpaid wages, or repay wages at a rate which, due to inflation, now holds lesser value) and thus an unfair competitive advantage against those competitors who are complying with the NMW.

(i) Fair arrears

2. Workers paid below the NMW may suffer financial hardship even if arrears are eventually paid as the current method of calculating arrears does not take account of the fact that the arrears may have lost purchasing power since they were incurred. The aim of fair arrears is to restore to the worker what they had lost in real terms.

3. All workers have a right to fairness, whether working their complaint out themselves with their employer, using a third party such as HM Revenue and Customs (HMRC), or going to an employment tribunal. We therefore consider that the same method of calculating fair arrears should apply wherever an underpayment has occurred, irrespective of the means used to secure reimbursement.

4. To ensure the efficient resolution of the payment of fair arrears, the government has sought a transparent, uniform approach wherever underpayment has occurred. This will enable workers and employers to understand clearly what arrears are due. This is particularly important in enabling any employer who proactively identifies and restores an underpayment to calculate and restore the correct amount, and in enabling the worker to establish that they have received their entitlement.

(ii) Penalty

5. The aim of fair arrears is to restore to the worker what they had lost in real terms, not to punish employers. Fair arrears do not, therefore, fulfil the objective for a simple, effective deterrent to non-compliance. As a result, the Government has also considered options for a penalty, with the objective of discouraging arrears from arising in the first place.

6. The current NMW penalty formula is not straightforward to calculate. It is:

twice the hourly amount of the NMW (as in force at the date of the penalty notice) in respect of each worker to whom the failure to comply relates for each day during which the failure to comply has continued in respect of the worker.

7. As a result, because employers may not know up front what the penalty they face is, the deterrent effect of the penalty could be weakened. In addition, the penalty only applies at the end of the enforcement process, when an employer fails to comply with an enforcement notice, and is therefore essentially a deterrent to non-compliance with the enforcement notice rather than non-compliance with the National Minimum Wage Act (NMWA).

Consultation

Within Government

8. BERR has consulted with several other departments including HM Revenue and Customs and the Department of Environment, Food and Rural Affairs (Defra) as enforcers of the National Minimum Wage and the Agricultural Minimum Wage. BERR has also consulted with HM Treasury, the Ministry of Justice, the Scottish Executive and the Employment Tribunals Service.

Public consultation

9. The Government undertook a public consultation on its proposed approach in May 2007.

10. There were a total of 33 written responses to the consultation, although none referred specifically to the cost and benefit estimates made in the partial impact assessment. Full details of the responses may be found in the Government Response to consultation.

C: Objectives

11. A key Government priority is to minimise the number of workers who are underpaid the National Minimum Wage (NMW) by making sure the right incentives are in place to ensure that employers comply with the law, preventing arrears from arising in the first place.

12. This is why the Government agreed to actively consider the 2007 Low Pay Commission recommendation that “as a deterrent to non-compliance, the Government introduce a penalty to apply to any employer found to have underpaid the minimum wage.” Our aim is for a **simple, effective enforcement mechanism** that employers can easily understand.

13. The Government also aims for a fair outcome for those who have been underpaid when they are reimbursed, recognising that workers may have lost out in real terms as a result of underpayment.

Background

14. The National Minimum Wage Act 1998 creates a statutory right for a qualifying worker to be paid a minimum level of remuneration. The NMW is considered one of the most important labour market reforms introduced by the Government since 1997. It has reduced the extent of low pay in the UK and has helped close the gender pay gap at the bottom of the earnings

distribution¹. Her Majesty's Revenue & Customs (HMRC) enforce NMW legislation on the Government's behalf in the UK. In agriculture, the NMW (known as the "Agricultural Minimum Wage") is enforced by the Department of Environment and Rural Affairs in England and Wales, and by the devolved administrations in Scotland and Northern Ireland.

(i) Fair arrears

15. If a worker who qualifies for the NMW is remunerated by his employer at a rate which is less than the NMW, the worker is entitled to arrears. These are defined under section 17(2) of the National Minimum Wage Act as the difference between the remuneration received by the worker and the NMW rate they should have been paid at.

16. This calculation does not take into account that arrears may have lost purchasing power since they were incurred.

(ii) Penalty for underpayment

17. Currently employers who are brought to HMRC's attention as underpaying the NMW are able to repay arrears without attracting a penalty, either by repaying arrears during the course of an investigation or repaying arrears in full on receipt of an enforcement notice. A penalty is only applied if the employer does not comply with an enforcement notice. The current penalty regime therefore does not discourage employers from allowing arrears to arise in the first place.

18. If the enforcement notice is not fully complied with, employers are issued with a penalty notice which penalises the employer with a fine. The current minimum penalty is £231.48, for an employer who has underpaid one worker.

D: Options identification

19. As well as the option of **do nothing**, the following options on arrears and penalty regimes were considered in the May 2007 consultation:

i) Fair arrears

20. To reflect the concerns outlined in the section *Rationale for Government intervention*, the Government considered the following options for a straightforward, generic mechanism to calculate fair arrears for all workers:

i) Charging interest on arrears;

Interest is applied in some areas of employment law, such as when awarded by an employment tribunal in discrimination cases², or on the late payment of tribunal awards³. This is calculated to a set Government interest rate. This could accurately reflect what the worker might have lost in terms of interest earned whilst arrears were withheld.

ii) Charging all arrears at the current rate;

When workers are repaid, they receive arrears calculated against the rate their underpayment was incurred under. Underpayments stretching over a longer period may have been incurred under more than one NMW rate.

The NMW rate has increased annually since its introduction. Whilst there is no guarantee of this, it does mean that generally, previous NMW rates are lower than the current rate.

¹ "Shaping a Fairer Future" Women and Work Commission

² The Industrial Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996

³ Employment Tribunals (Interest) Order 1990

Using the current rate for all arrears would mean that all arrears restored to workers would accurately reflect what the appropriate minimum wage is considered to be in today's economic circumstances.

This would not affect arrears which had been incurred under the current rate. Such workers would be receiving their arrears at the rate which was still considered the appropriate NMW.

iii) Arrears plus adjustment

Arrears could be calculated in the present way, and then adjusted to create an uplift payable to the worker from the employer. Adjusting the earnings owed would mitigate against the loss of purchasing power.

The level of adjustment would be determined by how much the worker had been underpaid, for instance as a fixed percentage of arrears, or as an amount depending on the "band" of arrears the underpayment fell into (for instance, arrears of £0 - £100 could see a different sum going back to the worker than arrears of £100+).

This would enable employers to quickly work out the adjustment and apply the uplift that was due to their workers, and workers could quickly ascertain whether they had been repaid their earnings correctly.

ii) Penalties

21. To create a simpler penalty regime, the Government also considered replacing the existing enforcement and penalty notice regime with a streamlined mechanism for requiring payment of fair arrears and applying a penalty. As well as taking no action, the Government consulted on the following options for the type of penalty to be introduced:

a) Fixed penalty;

A fixed penalty which would be applied to a company who met the penalty criteria.

b) Fixed penalty per worker;

A fixed penalty per worker underpaid.

c) Penalty which is a multiple of arrears;

A fixed multiplier in legislation, which could be applied to the total level of arrears outstanding to create the penalty amount.

d) Banded fixed penalty.

A fixed penalty which is determined by what "band" the total level of arrears falls into.

22. It is important to retain an incentive for employers to admit and repay arrears, even when caught. The Government therefore consulted on a penalty which escalated if arrears remained unpaid or the penalty was ignored, encouraging employers to pay arrears early, rather than delay. This would mirror the current penalty notice which is applied when an employer ignores or doesn't pay in full an enforcement notice. For each option, we asked what the initial level of the penalty should be, and what the penalty should escalate to.

Government conclusions following consultation

i) Fair arrears

23. Following the consultation, the Government has concluded that repaying arrears at the current NMW rate (**Option ii** above) would best achieve the policy aims for fair arrears. This would mean that the additional element of remuneration beyond the actual amount of underpayment would be treated as earnings and taxed through the PAYE system, whereas

(under current tax rules) the tax on interest on arrears would have to be accounted for through self assessment. The Government does not consider that workers who have been underpaid the NMW should be required to go through self assessment. Repaying arrears at the current rate would mean that arrears would accurately reflect what the appropriate national minimum was currently considered to be and would provide an incentive for employers to resolve underpayments before any rate change. More details about the reasons for this preferred option are provided in the Government response document.

ii) Penalties

24. Following the consultation, the Government has concluded that the penalty for underpayment of the NMW should be based on a multiple of total arrears (**Option c** above). This is discussed fully in the Government response, but a summary is given below:

25. This approach would act as an effective deterrent to non-compliance as the penalty would reflect the extent of underpayment. Although there is a general relationship between the number of workers and the amount of arrears, situations occur where there is either a large number of workers with a low level of arrears owed to each or, conversely, a small number of workers with a large amount of arrears owing to each. The Government therefore considers that applying a penalty per worker would not be as proportionate and as effective a deterrent.

26. A number of respondents argued that a penalty should not be applied in certain cases, such as unintentional errors. However, we have concluded that a penalty should be due in all cases where underpayment of the NMW is still outstanding at the date the enforcement body starts its investigation. This is because the new penalty regime would be more difficult to apply if enforcement officers had to consider the employer's intention when considering a case of underpayment of the NMW. Also, we want to encourage employers to take care to be compliant with the requirements of the NMWA.

27. Consideration of the civil penalty has been particularly influenced by two separate factors: ensuring that the civil regime complies with Article 6 of the European Convention on Human Rights (ECHR) and balancing the relationship between the civil penalty regime and the criminal prosecution regime for NMW offences. We have concluded that:

- The multiplier for the penalty should be 0.5 (i.e. a penalty that is half the amount of arrears);
- The penalty should be reduced by one half if the employer reimburses their worker(s) quickly;
- The penalty should not be increased if the employer fails to reimburse their worker(s) by the date specified by the enforcement body;
- There should be a minimum penalty threshold of £100, applying where the amount of underpayment is less than £200; and
- There should be an upper civil penalty ceiling of £5,000.

28. The Government has concluded that the reduction of the penalty if an employer reimburses their workers quickly would provide an incentive for employers to admit and repay arrears.

29. In addition to the civil penalty, the Government is also introducing additional civil enforcement powers to increase the efficiency of NMW enforcement, whereby compliance officers have the power to take information away from employer's premises for a reasonable time to enable them to take copies.

30. Furthermore, at present, offences under the NMW Act (such as refusal to pay the NMW or obstructing a compliance officer) are triable only in a Magistrates' Court where the maximum fine available is £5,000. We consider that this is insufficient to provide an appropriate deterrent in the most serious cases. We have therefore concluded that the offences should be triable either way, that is, as either summary offences in a magistrates' court or as indictable offences

in a Crown Court. In the latter case, the court would have the power to impose an effectively unlimited penalty as well as, for example, disqualification of a director.

E: Analysis of options

Costs and benefits

31. Penalties will only be incurred if an employer is found to owe arrears and therefore is found to infringe the requirements placed upon them under the National Minimum Wage Act. The costs for employers arising from the new system of fairer penalties and arrears are therefore **avoidable under full compliance with the existing legislation**. The proposals do not impose any additional requirements for compliant employers and aim to benefit such employers by removing the existing financial benefits gained by non-compliant employers.

32. In broad terms those employers who fail to comply would be faced with two types of cost. First of all, with fair arrears, this represents a financial transfer from the employer to the worker who has been underpaid which takes account of the fact that the arrears may have lost purchasing power since the underpayment occurred. However, this is not a cost as such, as had the worker been paid the correct wage in the first place, then the worker would not have an entitlement to fair arrears.

33. Secondly, penalties would impose an extra cost on employers who fail to comply, but as stated above this is avoidable under full compliance with the existing legislation.

34. There will be some increase in costs to the Exchequer resulting from the changes in enforcement. However, these costs will arise only in the investigation of cases of suspected non-compliance, and would probably be outweighed by the revenue generated by the collection of penalties. Any additional costs would be outweighed by the policy benefit of moving towards full compliance and ensuring equity and fairness for workers by making sure they are paid the wage that is owed to them.

35. The following analysis represents an *illustrative example* of what the impact would have been on cases closed, assuming the same numbers of cases as in the financial year 2006/07 had the proposed new enforcement regime been in place instead of the existing one.

36. The cost-benefit analysis focuses here only on the Government's preferred options. Discussion of the now discarded options is available in the partial impact assessment.

Assumptions

37. Table 1 below provides a historical overview of the number of investigations conducted by HMRC since the introduction of the NMW in 1999. Over the whole period there have been just over 45,000 HMRC investigations and a third of these cases have been found to be non-compliant. Since 2001/02 almost 78,000 workers have been affected by underpayment totalling over £28 million⁴.

38. It should be noted that these data relate only to cases that HMRC investigate and do not necessarily represent the full extent of NMW non-compliance.

39. In addition to this Defra investigates around 120 cases of non-compliance with the Agricultural Minimum Wage annually. Since this number of cases is low relative to HMRC's caseload for investigation of NMW non-compliance, this Impact Assessment focuses predominantly on the costs and benefits of the changes to the NMW enforcement regime.

⁴ Expressed in 2006 prices

Table 1. HMRC investigations into non-compliance with the NMW.

Year	Investigations*	% found to be non-compliant	Total arrears (current £)	Number of workers
1999	6041	28%	£1,242,341	n.a.
2000	7256	29%	£3,034,373	n.a.
2001	5368	36%	£5,135,799	10,378
2002	6238	32%	£3,585,941	7,373
2003	5541	39%	£2,558,096	9,428
2004	5155	34%	£3,760,361	11,261
2005	4904	32%	£3,291,516	25,314
2006	4500	34%	£3,039,680	14,187

Source: HMRC.

40. In 2006/07, 4,500 employers were subject to a completed investigation by HMRC's NMW compliance teams, 1,523 of which (34%) were found not to be paying the minimum wage, covering 14,187 workers. At this stage, 1,452 (95%) of these employers settled informally by repaying arrears to the underpaid workers, and the remaining 71 received an enforcement notice requiring them to repay all arrears to all workers in full in a given period of time. HMRC issued penalty notices to 2 employers.

41. Had a penalty notice been issued to any employer found to have underpaid the minimum wage i.e. as in our proposed legislation, then all 1,523 non-compliant employers would have been issued with a penalty.

42. If we assume the following (**Scenario A**):

- The number of complaints remain unchanged – the new system of fairer arrears gives workers more incentive to complain, but this increase might be mostly offset by a fall in the number of workers being underpaid, as the new system of an immediate penalty to all employers found to owe arrears and the requirement to repay fair arrears will mean that employers have more incentive to comply with the existing legislation;
- The number of risk assessed cases remain unchanged;
- The proportion of all cases investigated found to be owing arrears remain unchanged;
- The average number of workers per non-compliant case is 6.2;⁵
- The 1,452 employers who settled informally in 2006/07 have a relatively higher propensity to settle and would therefore all choose to settle after they had been given a penalty. The rationale behind this is that they could have waited for an enforcement notice which would have required them to pay the same arrears anyway, but they still chose to settle before this;
- The 18 employers that appealed against the enforcement notice would also appeal against the penalty under the new system given that the notice will require them to pay a fine on top of arrears; and

⁵ This figure would apply overall to all 1,523 cases.

In 2006/07, 14,187 workers were identified as having been owed arrears (and 1523 employers were found to owe arrears). This figure includes 4,700 workers identified in 1 case. If we deduct this extreme cases from the calculation, then:

$$(14,187 - 4700) / (1,523 - 1) = 6.2.$$

- The appeal rate of the remaining 53 employers (who did not appeal the enforcement notice) is now 10 per cent under the new regime given that the notice requires them to pay a penalty in addition to arrears.
- This implies that 1,500 cases would have been settled at this stage, with 23 going to employment tribunal.⁶

43. Of the 18 cases closed in 2005/06 that went to tribunal, two appeals were successful, giving an appeal success rate of 11% (the same rate of success as for appeals in 2005/06). Assuming the same rate holds, of the 23 employers that would have appealed under the new system, around 2 would have been successful. The amount of arrears set out in the current enforcement notice (that is, the difference between what a worker was paid and what he should have been paid under the NMW rate in force at the time) is the basis for the calculation of both the penalty and the fair arrears in the proposed regime. It is likely, therefore, that an appeal which was successful in the current regime would also be successful under the new regime (and vice versa).

44. Alternatively, if we assumed that of the 1,452 employers who settled informally, a small proportion, say 1%, might be incentivised to appeal if they were to receive a penalty (**Scenario B**), then we would have expected around 38 appeals to employment tribunals in 2006/07. Again, assuming an appeal success rate of 11%, then 4 of these appeals would have been successful. Table 2 below summarises the impact of each scenario on the numbers of employers having to pay arrears and penalties, and the numbers of expected appeals to tribunal.

Table 2. Enforcement outcomes under the new scenarios compared with actual for 2005/06 including the number of workers each total covers.

	Had to pay arrears owed*	Had to pay penalty**	No. appeals to tribunal
Do nothing	1,523 (14,187 workers)	2 (12 workers)	18 (111 workers)
Scenario A	1,521 (14,181 workers)	1,521 (14,181workers)	23 (142 workers)
Scenario B	1,519 (14,163 workers)	1,519 (14,163 workers)	38 (235 workers)

Source: BERR estimates based on enforcement data from HMRC.

Note: * Assumes all employers that appealed and were unsuccessful had to pay back full arrears owed. **Assumes that all employers that appealed a penalty and were unsuccessful had to pay the original penalty owed.

Sectors and groups affected

45. All sectors are affected by the NMW, although agriculture has its own NMW machinery (the Agricultural Minimum Wage). In practice, the NMW is most keenly felt in food processing, textiles and clothing, retail, hospitality, security, cleaning, social care, leisure, travel and sport, and hairdressing.

46. Looking more specifically at sectors where non-compliance is most common, the NMW Annual report 2005/06 notes that the hospitality and hairdressing sectors have shown a significant increase in the number of complaints of underpayment over the last two years (the increase in hospitality figures is mainly as a result of HMRC's targeted enforcement regime).

47. HMRC are responsible for the enforcement of the NMW, with Defra responsible for the enforcement of the Agricultural Minimum Wage.

Analysis of benefits

48. As stated previously, costs and benefits incurred through rectifying illegal activity are avoidable, however, for illustrative purposes, they will be outlined in the following sections.

⁶ Appeal: $[(71 - 18) \times 0.1] + 18 = 23$.

Settle: $1452 + (71-23) = 1500$.

Workers

49. The reimbursement of workers may at first sight be seen as a benefit, as it might be seen as a transfer from the employer back to the worker. However, the underpayment only happened in the first place due to non-compliance. Had the employer been compliant, the worker would have received the full NMW rate he or she was entitled to at the right time and the issue of reimbursement would not arise. Therefore this should not be viewed as an economic benefit as such.

50. The marginal effect is that workers will benefit by having the underpayment calculated on the basis of the current NMW rate. Where underpayments happened in the past under a lower NMW rate, workers would benefit to the extent of the difference between the current NMW rate and the NMW rate at the time. For example, an underpayment that occurred in November 2005 when the NMW rate was £5.05, would receive fair arrears at the rate of £5.52 in November 2007, a difference of around 9%.

51. Under the current system, without detailed information on the period over which the underpayment has occurred or the degree to which employers who settle informally already reimburse workers over and above the NMW rate at the time, it is necessary to make an assumption as to the marginal impact of fair arrears.

52. Therefore we assume that fair arrears will amount to between 5 to 10 per cent of the total arrears amount of £3m. The marginal benefit from fair arrears would therefore amount to between £150,000 and £300,000.

53. In general, workers identified as being owed arrears will however benefit from the options of fair arrears, as the amount of arrears paid back to the worker would take into account the fact that they may have lost purchasing power since the time they were incurred.

54. In addition, the proposed penalty serves the purpose of incentivising employers to comply with the existing National Minimum Wage legislation. This means that there will be fewer workers being underpaid overall.

55. Table 2 shows that in the new penalty scenarios, some workers might lose out because their employers might be incentivised to appeal the process and their appeals might be successful – but then this implies that the employer has not been found to be in breach of the National Minimum Wage Act and therefore these workers would be legitimately being paid their given wages.

Exchequer

56. The effect of the new penalty in terms of money received by the Exchequer will vary depending on the extent of non-compliance, as the penalty is based on a multiple of the arrears. A higher penalty would be imposed on an employer who has underpaid a small number of workers but totalled a large amount of arrears, compared to another who underpaid more workers, but total arrears owed were less.

57. Overall, however, there ought to be a positive effect to the Exchequer under the proposed new penalty regime. Under the current regime, employers who are brought to HMRC's attention as underpaying the NMW are able to repay arrears without attracting a penalty. However, under the proposed new penalty system, all employers found to owe arrears will pay a penalty (i.e. in 2006/07, had the new system been in place, 1,523 employers would have had to pay the penalty instead of the 2 who failed to comply with the enforcement notice).

58. Using data from 2006/07 it is possible to estimate the overall amount that might be paid in penalties based on the fixed multiplier option.

59. In total, just over £3m was owed in arrears, though in 97% of all cases the amount of arrears owed was less than £10,000, and in just over two-thirds of cases (68%) the amount was below £1,000. Average arrears per worker amounted to £214 and average arrears per case was £2,000 (Table 3a below).

Table 3a. Total NMW arrears owed 2006-07

Arrears	Cases	Total arrears (£)	Workers affected	Arrears per worker	Arrears per case
£1 - £99	414	£16,000	820	£20	£39
£100 - £499	410	£101,600	1,860	£55	£248
£500 - £999	215	£152,900	880	£174	£711
£1,000 - £4,999	377	£837,200	2,680	£313	£2,221
£5,000 - £9,999	58	£418,100	940	£443	£7,209
£10,000 - £19,999	29	£378,500	5,870	£64	£13,052
£20,000 - £49,999	11	£313,200	580	£544	£28,473
£50,000 - £99,999	1	£52,100	100	£506	£52,100
£100,000+	4	£796,100	460	£1,687	£192,275
Total	1519	£3,038,700	14,190	£214	£2,000

Source: HMRC

60. Therefore with a minimum penalty imposed of £100 and a cap of £5,000, this would amount to a total of just over £1m to be paid by non-compliant employers to HMRC in penalties. However, because of the provision of a reduction in the penalty for early reimbursement by the employer, the aggregate sum from penalties could amount to around £538,000. This is based on the assumption that the 95 per cent of non-compliant employers who settle informally now would reimburse their workers quickly in order to benefit from a reduced penalty (Table 3b below).

61. However, taking account of the current aggregate sum from penalties, the *net effect* of this policy change would be marginally lower at around **£523,000⁷**.

Table 3b. Estimated NMW penalties on basis of 2006-07 caseload

Arrears	Cases	Arrears penalty per case		Repayment cases		Total penalty volume (£)
		<i>unadjusted</i>	<i>adjusted</i>	<i>Quick*</i>	<i>Normal</i>	
£1 - £99	414	£19	£100	393	21	£21,750
£100 - £499	410	£124	£100	389	21	£21,750
£500 - £999	215	£356	£356	204	11	£40,181
£1,000 - £4,999	377	£1,110	£1,110	358	19	£219,848
£5,000 - £9,999	58	£3,604	£3,604	55	3	£109,931
£10,000 - £19,999	29	£6,526	£5,000	27	2	£77,500
£20,000 - £49,999	11	£14,236	£5,000	10	1	£30,000
£50,000 - £99,999	1	£26,050	£5,000	0	1	£5,000
£100,000+	4	£96,138	£5,000	3	1	£12,500
Total	1519	£1,000		1,439	80	£538,260

Source: HMRC; BERR calculations; it is assumed that in 75% of cases employers choose to repay arrears early and hence benefit from reduced rate penalty.

⁷ Currently only a small number of penalty notices are issued each year: since 2002 there have been 10 or fewer notices per year. In the year 2007-08 to date 10 notices have been issued amounting to a total penalty of around £10,500. We estimate that for the year as a whole, the total penalty amount will be around £15,000

Analysis of costs

(i) Arrears

62. Similarly it is important to be clear about how the costs are treated. As stated above, the reimbursement of arrears by the employer to the worker is not an economic transfer in the true sense. Had the employer been compliant originally, then he/she would have paid the correct NMW rate at the time. Hence the scale of arrears, amounting to over £3m in 2006/07, is not an additional cost as such to employers as a result of the policy to introduce tighter enforcement.

63. As discussed in the benefits to workers section above (paragraphs 50-52), there would be a marginal economic cost to employers of fair arrears of between £150,000 and £300,000.

(ii) Penalties

64. As discussed in the *Risks* section below, applying an immediate penalty may have resource consequences. In some cases informal settlement during the course of an investigation allows arrears to be restored to workers quickly. It also enables employers to rectify what may have been an accidental error without being penalised. In addition, employers may also be less willing to work with enforcers if they are facing a potential penalty. This again could have an effect on the throughput of cases.

HMRC

65. Extra time will be needed to calculate arrears under the proposed new method for calculating fair arrears. We have assumed that it would take around an additional 5 minutes to calculate fair arrears per worker as the methodology is based on the current method of calculating arrears. Then assuming that around 10,000 workers are identified as being owed arrears per year⁸, then the additional cost of calculating arrears per year would be around **£10,000**⁹. These additional costs could be incurred by both HMRC and non compliant employers.

66. It is also possible that, faced with fairer arrears, underpaid workers could be incentivised to complain thus increasing the number of calls to the helpline and also increase the number of investigations that will need to be carried out by HMRC's compliance teams, which would imply additional costs to HMRC. However, this effect could be offset if the implemented policy is effective in its aim of reducing non-compliance in the first place. In which case, there will be fewer workers in a position to complain, thus reducing the number of calls to the helpline. As a result, the costs incurred as a result of this effect could be minimal.

Tribunals service

67. The proposals for fair arrears and a new penalty may lead to increased costs due to an increase in the number of **appeals to tribunal**. This could occur for two reasons:

- all non compliant employers will now be issued with a penalty, and therefore the size of the pool of potential appeals is larger; and

⁸ Figures for 2003/04 were 9,428, 2004/05 were 11,261 and 2005/06 were 25,314 from the *National Minimum Wage – Annual report 2005/06*. However, the 2005/06 figures may be higher than the average as 3 cases involved a high number of workers (totalling 15,000), so deducting these bring the 2005/06 figure to around 10,000 workers. Similarly, in 2006/07 1 case accounted for 4,500 workers so deducting these bring to 2006/07 figure to a similar level.

⁹ Calculated as:

Time spent x median hourly wage (from 2006 Annual Survey of Hours and Earnings) x 1.3 (30% non wage labour costs) x 10,000 (total number of workers).

Figures rounded to the nearest £10,000.

- not only do employers have to pay higher arrears, but they also have to pay a fine on top of them, therefore there will be greater financial incentive to appeal as the cost of appealing to a tribunal for employers might be less than the expected savings if their appeal is successful (given a fixed success rate of 11% - see *assumptions*.)

68. Given the assumptions outlined under scenarios A and B under the section *Assumptions*, we could expect between around 5 to 20 additional appeals to tribunal over a year.

69. These appeals are usually listed for a one hour hearing with a Chairman sitting alone. The daily fee for a Chairman is £421 and they do at least 6 one hour cases a day. If we then add administrative costs, receipt and service of the claim, copying, etc which are fairly minimal plus an additional hours work on the day of the hearings greeting the parties, etc, we can assume that the cost per appeal to the Tribunals Service is around £100.¹⁰ The new system of an immediate penalty once non-compliance is identified could impose an additional cost to the Tribunals Service of between **£500 and £2,000**.

70. In addition, the cost to HMRC of defending each appeal is around £3,500 for a case of average size and complexity. This covers barrister costs and solicitors' office costs based on a two day hearing.¹¹ Therefore, as well as the additional costs above, appeals generated under the new system could impose an additional cost to HMRC of between **£17,500 and £70,000**.

Prosecution

71. As a result of Government's decision to make offences under the NMW Act triable as either summary offences in a Magistrate's Court or as indictable offences in a Crown Court, non-compliant firms facing prosecution may face higher costs, owing to the greater costs involved in Crown Court cases. However, these costs are avoidable if firms comply with the requirements of the NMW Act and are therefore not regulatory costs.

72. The Government may face higher costs as a result of some NMW prosecutions taking place in Crown Courts. It is estimated that the cost to Her Majesty's Court Service (HMCS) in a Magistrate's Court may be around £1,477 per day¹². In a Crown Court this figure rises to £5,284¹³. If the total Crown Court time involved in dealing with NMW cases brought by the Revenue and Customs Prosecution Office amounts to four weeks, the additional cost to Government would be around £76,140. However, it might be expected that there would be a net gain to the exchequer arising from higher penalties imposed by the Crown Court in sentencing. The estimated revenue from higher penalties has not been quantified.

F: Risks

73. The new penalty will be applied considerably more often than the current penalty notice as it would apply to the 95% of non-compliant employers who currently settle arrears informally during the course of an investigation. Issuing and collecting more penalties will have resource implications for HMRC.

74. Informally settling arrears during the course of an investigation can be a quick route to restoring arrears to workers without further action or investigation being taken. To gather the level of evidence necessary to penalise, greater input and investigation may be needed by HMRC and in some cases it could take longer to reimburse arrears to workers.

75. Some employers may be less willing to work with HMRC and repay arrears if they are facing an automatic penalty for underpayment. This is why we have proposed a reduction to the penalty to encourage for early restoration of arrears and co-operation with HMRC. Ultimately, these considerations could affect the throughput of cases. These risks should be weighed

¹⁰ Source: Employment Tribunals Service.

¹¹ Source: HMRC

¹² Ministry of Justice estimates

¹³ Ministry of Justice estimate

against the deterrent effect that a new penalty could have, and the question of whether it is right that employers should be able to be caught underpaying and not be penalised, whatever their motivation.

G: Enforcement

76. The National Minimum Wage is enforced in two ways. HMRC takes proactive steps to secure enforcement and acts on complaints. Individuals also have a right of redress to an employment tribunal or civil court.

77. The Government also issues an annual report on enforcement action. The latest National Minimum Wage – Annual Report 2005/06 can be found online, at: www.berr.gov.uk/files/file35198.pdf.

H: Recommendation and summary table of costs and benefits

78. Table 4 below presents a summary of the quantifiable costs and benefits associated with the proposed policy change. It should be noted that none of the extra costs and benefits identified below would arise in a situation of 100% compliance with payment of NMW. Therefore these figures are largely transfers from one party to another and should not be considered as additional economic costs and benefits arising from the policy changes themselves.

79. The intention of the policy is to encourage greater compliance with the NMW, so if successful we would expect to see a decrease in number of cases per year and associated costs.

Table 4. Summary of quantifiable costs and benefits.

	Costs	Benefits
Employers	£0.15 - £0.30m (fair arrears) £0.523m (penalty fees)	None
Total	£0.673m - £0.823m	
Workers	None	£0.15m - £0.30m (fair arrears)
Total		£0.15m - £0.30m
The Exchequer	£0.0005m - £0.002m (extra TS appeals) £0.0175m - £0.07m (HMRC defence of appeals) £0.01m (arrears calculation) £0.076m (Crown Court prosecutions)	£0.523m (penalty fee income)*
Total	£0.104m - £0.156m	£0.523m*

Source: BERR estimates based on enforcement data from HMRC. * NB: There will also be revenue income from prosecution cases but this is not quantifiable.

I: Implementation

The Government plans to implement this new legislation as soon as possible.

J: Monitoring and evaluation

The effectiveness of the new regime will be monitored in settling ongoing service level agreements between BERR and HMRC as enforcers.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Please see the summary impact assessment for the details of the specific tests carried out with respect to this policy area.

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Employment Bill: Part 4 - Employment Agency Standards Enforcement	
Stage: Final	Version: Final	Date: 5 December 2007
Related Publications: National Minimum Wage and Enforcement Agency Standards Enforcement - Government response to consultation		

Available to view or download at:

<http://www.berr.gov.uk/files/file42758.pdf>

Contact for enquiries: Tim Harrison/John Thorpe

Telephone: 0207 215 5799

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

The penalties available for breaches of employment agency legislation have proved insufficient to deal with the small minority of seriously non-compliant agencies, in particular those contravening a prohibition order may not be an effective deterrent. The investigative powers are also not sufficient to identify the scale of any misconduct (eg the number of workers affected).

In the absence of government intervention there may be continued abuses of workers by rogue agencies who are not prepared to put right their procedures when problems are brought to their attention.

What are the policy objectives and the intended effects?

To strengthen the employment agency enforcement regime to target those who cut corners illegally to the detriment of agency workers, hirers and reputable agencies who are disadvantaged by such practices. We have concluded that the penalties for offences under the Employment Agencies Act 1973 should be increased by making them triable either way; and that the powers of inspection for officers appointed under the Act should be extended. Overall this should lead to reduction in abuse of agency workers and increase compliance.

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

1. Make offences under the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 triable either as summary offences in a Magistrate's Court or as indictable offences in a Crown Court.
2. As above and amend Section 9 of the Employment Agencies Act 1973 to clarify powers available to EAS inspectors to be able to demand and secure copies of financial information from an agency or suspect directly or from their bank or building society. This will enable inspectors to assess the scale of any abuses against workers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed two years after the amended provisions come into force..

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 6 December 2007

Summary: Analysis & Evidence

Policy Option:	Description: penalties for offences should be increased by making them triable either way; the powers of inspection officers should be extended
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' There would be increased costs for non-compliant agencies. These have not been quantified. None of these costs would arise under 100% compliance with existing regulations.			
	One-off (Transition) Yrs				
	£ 0				
	Average Annual Cost (excluding one-off)				
	£ 0		Total Cost (PV)	£ 0	
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Not quantified			
	One-off Yrs				
	£ 0				
	Average Annual Benefit (excluding one-off)				
	£ 0		Total Benefit (PV)	£ 0	
Other key non-monetised benefits by 'main affected groups' Greater compliance, more unquantifiable benefits such as less mistreatment of agency workers and protection for reputable against those who cut corners through non-compliance					

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	1 October 2008			
Which organisation(s) will enforce the policy?	Tribunals Service			
What is the total annual cost of enforcement for these organisations?	£ 800,000 approx			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

A: Strategic overview

On 16 May 2007, the Government launched a formal consultation to seek views on enforcement of the National Minimum Wage (NMW) and Employment Agency Standards. The consultation closed on 8 August 2007. The proposals in respect of employment agency standards sought to ensure that an effective enforcement regime is in place for dealing with the minority of employment agencies that do not comply with agency legislation. While the present enforcement regime has proved effective with the great majority of agencies who wish to comply with the legislative requirements, there are difficulties related to the limitations of prosecuting the minority of seriously non-compliant agencies for summary offences. There are particular problems in terms of adequacy of penalties where an individual who has been prohibited from running an agency (because of their unsuitability on account of misconduct) ignores the ban. There are also problems in assessing the scale of abuses against agency workers by disreputable agencies in the absence of specific powers to obtain financial records regarding the agency.

Nearly all the respondents were supportive of both proposals to strengthen penalties and give clearer investigation powers. None of those responding opposed to either proposal although one business association expressed concerns that burdens on business should be taken into account. The proposed changes should benefit agency workers by discouraging non-compliance through higher penalties and improved investigative powers, and should also benefit legitimate agencies against non-compliant agencies who compete unfairly through cutting corners at the expense of agency workers.

B: The issue

The Government is proposing changes to the penalties regime for breaches of employment agency legislation, and to clarify the investigative powers of the Employment Agency Standards Inspectorate (EAS) to achieve more effective **enforcement**.

In the absence of government intervention there may be continued abuses of workers by rogue agencies who are not prepared to put right their procedures when problems are brought to their attention. This damages not only vulnerable agency workers who are deprived of their rights but also legitimate agencies who suffer from unfair competition from the minority of disreputable agencies who cut corners at the expense of their workers and therefore gain an unfair advantage.

C: Objectives

The Government is proposing measures to enhance the enforcement of the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

Background

The Conduct of Employment Agencies and Employment Businesses Regulations 2003, which came into force in April 2004, are enforced by the Department for Business, Enterprise and Regulatory Reform's Employment Agency Standards (EAS) Inspectorate. The Inspectorate

follows up every relevant complaint it receives which indicates a possible breach of the legislation, and undertakes spot checks on the basis of risk.

While EAS inspectors seek in the first instance to achieve compliance through advice and persuasion, the Inspectorate can take prosecution action, where appropriate, in a Magistrates' Court against an agency found to be in breach of the legislation. If the prosecution is successful, the agency may be fined up to £5,000 for each offence. Inspectors can also apply to an employment tribunal for orders prohibiting those persons who are considered to be unsuitable from operating an agency for up to 10 years. At present, the EAS considers prosecution in between 5 and 10 cases per year.

While any breach of the regulations governing employment agencies is a criminal offence, all criminal offences under the EA Act are summary offences (i.e. tried in a Magistrates' Court). The EAS experience has been that it has proved difficult to prosecute the small minority of determinedly non-compliant agencies who seek to exploit every possible loophole. Some of the difficulties relate to the limitations of prosecuting for summary offences, both in terms of adequacy of penalties and the relative lack of investigative and prosecution powers where criminal offences are summary only.

This problem is most acute in terms of the penalty for contravening a prohibition order, i.e. when an individual who has been prohibited from running an agency ignores the ban and carries on in business, thus rendering the prohibition ineffectual. While the EAS has powers to seek the prohibition of unsuitable individuals from running an agency for up to 10 years, the maximum sentence for breaching a prohibition order is a level 5 fine (i.e. a maximum of £5,000). This may not be an effective deterrent where the agency is generating a lot of money.

Section 9(1) of the Employment Agencies Act already gives EAS Inspectors the right to enter any relevant business premises, to inspect any records or documents kept in pursuance of employment agency legislation and to take copies of any such records or documents. However, the right to take copies of documents in practice requires an element of co-operation from the agency concerned (since invariably this means taking copies on the agency's photocopier), and in cases where the Inspectorate is investigating serious allegations, such co-operation may not be forthcoming. While it is a criminal offence to obstruct an Inspector in the course of their duties, and the vast majority of agencies readily co-operate with Inspectors, seeking a prosecution for obstruction is of itself a time-consuming and labour intensive process.

As offences under employment agency legislation are summary offences, an actual offence has to take place before charges can be made. In effect this means that the EAS need to identify witnesses to come forward to give evidence that the offence was committed. In the main, such witnesses will be agency workers who have been victims of these offences. Getting such victims prepared to stand up in court and give evidence against an agency that has refused Inspectors' requests to correct their illegal practices has proved to be a problem on a number of occasions. There is a fear that such individuals will be seen as potential trouble-makers and not get future work from other agencies.

In an investigation where it appears workers may have been denied money that is owed to them, it is crucial for EAS inspectors to discover what payments have been made to an agency to identify what monies have been received and the identities of those making payment. In a number of cases, the EAS receives complaints from one or two workers who may have lost money as a result of bad practices of rogue agencies. But there may be a substantial number of other workers who have been similarly mistreated by an agency but who (for a variety of reasons) have not complained. Unless the EAS Inspectors can examine the agency's financial records (at present the EAS do not have specific powers to do so), it is not possible to determine in such cases whether this is a generally compliant agency or a rogue operation systematically cheating agency workers out of their money. The EAS's policy is to concentrate enforcement resources on the latter type of agency.

Consultation

In May 2007 the Government undertook a public consultation on its proposed approach.

A total of 15 responses on the proposals on EAS enforcement were received, 7 of which were from trade unions and 5 from business and trade associations. Nearly all the respondents were supportive of both proposals to strengthen penalties and give clearer investigation powers. No responses were received in relation to the partial impact assessment. More information of the overall consultation responses can be found in the Government response.

D: Options identification

The Partial RIA considered three options:

Option 1: Do nothing.

Option 2: Make offences under the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 triable either as summary offences in a Magistrate's Court or as indictable offences in a Crown Court. The penalties and powers of prosecution would depend on which court the case came before.

Option 3: As Option 2 and amend Section 9 of the Employment Agencies Act 1973 to clarify powers available to EAS inspectors to be able to demand and secure copies of financial information from an agency or suspect directly or from their bank or building society.

Under **option 2**, making the offences triable either by Magistrate's Court or by Crown Court would: provide a more effective penalty to deter non-compliance and would also enable the EAS to prosecute individuals for "attempting" to commit the various offences under the EA Act (e.g. attempting to obtain money for job finding services) without having to rely on witnesses being prepared to appear in court.

To ensure this power available under **option 3** could only be used appropriately, limits would be placed on the circumstances in which it could be used to enable a proper balance to be achieved between the needs of the EAS to establish the amount of money received from unlawful practices and the needs for confidentiality and privacy of information. Such powers should only be available where the agency concerned has been asked in writing to provide the relevant records by a specified date and had not done so. On the basis of current experience and practice, we would therefore envisage such powers being used on around 10 occasions per year.

The Government considers that it is important to strengthen the enforcement regime to target those who cut corners illegally to the detriment of agency workers, hirers and reputable agencies who are disadvantaged by such practices. The Government's preferred option is option 3 as we have concluded that the penalties for offences under the Employment Agencies Act 1973 should be increased by making them triable either way; and that the powers of inspection for officers appointed under the Act should be extended.

(i) increased penalties

The Government intends to bring forward provisions in the forthcoming Bill on employment law to provide that the offences of failure to comply with a prohibition order; failure to comply with regulations made under the Act; and seeking a fee for work-finding services will be triable either way. On conviction on indictment a person will be liable to an unlimited fine; on summary conviction a person will remain liable to a fine not exceeding £5,000.

Having the most serious cases tried in a Crown Court would mean that the sentences would be more of a deterrent in cases where an agency was making a lot of money through illegal practices (an unlimited fine rather than a maximum of £5,000). This is particularly appropriate for an offence of running an agency while subject to a prohibition order. It would also reduce the EAS's dependence on witnesses prepared to stand up in court in order to achieve a conviction. The Government recognises that witnesses can be reluctant to give evidence due to fears of

intimidation or being seen as a trouble-maker; however, making the offences triable as indictable offences would allow the EAS to bring charges of “attempting to” commit offences which would overcome this problem.

(ii) increased powers of EAS inspectors

The Government has concluded that clearer powers to obtain information is necessary to enable EAS inspectors to establish the extent and scale of illegal practices, such as; identifying other mistreated workers, in addition to those who have complained. The Bill will therefore contain provisions to enable EAS inspectors to seek information from third parties, such as banks and other financial institutions, where such information is needed to determine the extent of non-compliance and where the EAS is considering prosecution. Before seeking information from third parties, the EAS will have to formally request the person carrying on or connected with the carrying on of the business of an agency, to supply the necessary financial information by a specified deadline. If the agency fails to provide the information by the stated date, EAS will be able to seek the information directly from the bank or other financial institution.

We will also extend inspectors’ powers to remove records and documents where there are no facilities to take copies inspected on the agency’s premises, for the sole purpose of making such copies and to return them as soon as is reasonably practicable.

Failure to comply with a request made under the new power will be an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

We will also put into place safeguards to protect agencies from any abuse of the new powers and to ensure that the changes are human rights and data protection compliant.

E: Analysis of options

Sectors and groups affected

Obtaining an accurate picture of the numbers of agency workers in the labour market has always proven difficult. The Labour Force Survey (LFS) reports a UK figure of nearly 260,000 agency workers in Q4 2006. But this is likely to underestimate the numbers of agency workers, partly because of definitional problems.

In an effort to get more reliable figures, BERR commissioned a survey of agencies during 1999. Based on this data it estimated that the number of agency workers at 550,000. Updating this figure for the growth in agency workers implied by the LFS since then would imply a figure of 560,000 in 2006. The DTI/BERR survey found there were around 10,000 agencies in 1999. This figure is likely to have grown since then: the ONS Annual Business Inquiry indicates there were around 17,000 enterprises involved in labour recruitment and provision in 2005, with an aggregate turnover of £27bn. The DTI/BERR survey found that most agencies have fewer than 10 employees. Some 37 per cent of those directly employed work in single site establishments. Agencies with over 100 direct employees account for approximately 15 per cent of the industry. BERR is currently commissioning research to obtain firmer numbers of agency workers.

The leading industry organisation, the Recruitment Employment Confederation (REC) also produces its own estimates. Data presented in *The Recruitment Industry Census 2006* suggests there are 1.08 million agency workers in the UK. While this Census is the most widespread survey of the industry to date, as it is based on over 4,500 site level responses, it consistently provides a higher number of agency workers than other sources. The REC Census estimates there are a total of 10,426 recruitment businesses and 15,970 recruitment sites (hence the majority of recruitment agencies are single site agencies).

The proposals in this impact assessment are highly targeted at agencies not complying with the Conduct of Employment Agencies and Employment Businesses Regulations 2003. We do not anticipate that taking these additional powers would have any impact upon law-abiding agencies or indeed upon those agencies who swiftly put right any small and/or inadvertent

breaches of the law when these are brought to their attention. The EAS currently considers prosecutions in around five to ten cases per year, with two successful prosecutions since the Conduct Regulations came into force in April 2004. While more effective enforcement could feasibly raise the number of successful prosecutions, the number of cases considered for prosecution would still be expected to be low in comparison to the total number of agencies.

Analysis of benefits

The purpose of the proposals is to tighten the enforcement and compliance of the Conduct Regulations. If this were effective, and potentially rogue agencies were to face a greater chance of being prosecuted effectively, and higher fines from being found guilty, then this should lead to benefits to agency workers in terms of facing fewer practises that contravene the regulations. Although there are currently only a small number of prosecutions each year, the improved deterrent effect could lead to a larger number of agencies following the regulations. It may also benefit the vast majority of agencies that abide by the regulations, as they will not face unfair competition from those breaking the law. It is not possible to provide a quantification of these benefits.

Analysis of costs

Under the proposals non-compliant firms facing prosecution may face higher costs, owing to the greater costs involved in Crown Court cases than Magistrates' Court cases. However, these costs are avoidable if firms follow the Conduct Regulations and are therefore not regulatory costs. Under **Option 2**, inspected firms would also potentially face higher costs from the ability of EAS inspectors to take documents away. However, inspected firms who are confident they are compliant with the Regulations would have little incentive to refuse inspectors from making copies, and therefore the incremental cost from this measure is expected to be small.

The Government may face higher costs as a result of some prosecutions taking place in County Courts. It is estimated that the cost to Her Majesty's Court Service (HMCS) in a Magistrate's Court may be around £1,477 per day¹. In a Crown Court this figure rises to £5,284². A case brought by EAS might be expected to take around one day in court time. This could imply an additional cost to HMCS of £3,807³ per case. If five cases were brought before a Crown Court each year, the total cost to HMCS would be around £26,400.

Option 3 may in principle affect a larger number of agencies than just those who are prosecuted by the EAS. But it is considered that the power to seek financial information regarding agencies from third parties should only be available where the agency concerned has been given notice to provide the specified information by a set time and has not done so. On the basis of current experience and practice, this might occur in perhaps 10 occasions per year. For these firms, the costs of inspection may be higher if there were required to provide information to the EAS. These costs are likely to be low, although exact quantification is not possible. The overwhelming majority of agencies would, however, be unaffected.

F: Risks

The EAS currently considers prosecutions in around five to ten cases per year, with two successful prosecutions and five prohibitions since the Conduct Regulations came into force in April 2004. While more effective enforcement could feasibly raise the number of successful prosecutions, the number of cases considered for prosecution would still be expected to be low in comparison to the total number of agencies.

¹ Ministry of Justice estimates

² Ministry of Justice estimates

³ £5,284 - £1,477

G: Enforcement

Enforcement of these provisions will be through the Employment Agency Standards (EAS) Inspectorate. The effectiveness of the measures will be monitored by the EAS and the results reported in the EAS Annual Report.

H: Recommendation

The Government considers that it is important to strengthen the enforcement regime to target those who cut corners illegally to the detriment of agency workers, hirers and reputable agencies who are disadvantaged by such practices. The Government's preferred option is option 3 as we have concluded that the penalties for offences under the Employment Agencies Act 1973 should be increased by making them triable either way; and that the powers of inspection for officers appointed under the Act should be extended.

I: Implementation

The policy will be implemented on 1st October 2008.

J: Monitoring and evaluation

The policy will be reviewed two years after the amended provisions come into force.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Please see the summary impact assessment for the details of the specific tests carried out with respect to this policy area.

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Employment Bill: Part 5 - Amendment to Trade Union Law	
Stage: Final	Version: Final	Date: 5 December 2007
Related Publications: NECHR Judgement in Aslef v UK Case - Implications for Trade Union Law. Consultation Document May 2007 ; Response Document November 2007		

Available to view or download at:

<http://www.berr.gov.uk/files/file42757.pdf>

Contact for enquiries: Tim Harrison/Bernard Carter

Telephone: 0207 215 5799

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

The Government is responding to a European Court of Human Rights judgment of February 2007 with which we are obliged to comply. The case concerned the freedom of trade unions under GB law to expel or exclude individuals on the grounds of their political party membership, and the Court concluded that the relevant part of GB law violated Article 11 of the European Convention on Human Rights. The UK Government has recognised the need to amend the relevant part of trade union law in this country.

What are the policy objectives and the intended effects?

To amend the relevant part of trade union law to ensure compliance with Article 11 of The European Convention.

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

Two options were considered:

A: Amend Section 174 to ensure there is no explicit reference to a special category of conduct relating to political party membership or activities.

B: Retain the special category of conduct relating to political party membership and activities but significantly amend the rights not to be excluded or expelled for such conduct.

The Government's preferred option is A because it is simpler to understand and apply in practice. It should therefore provide less scope for unnecessary legal action.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The effects will be monitored by examining cases determined reached by the Tribunals Service

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 6 December 2007

Summary: Analysis & Evidence

Policy Option:	Description: Amend Section 174 to ensure there is no explicit reference to a special category of conduct relating to
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'		
	One-off (Transition) Yrs			
	£ 0			
	Average Annual Cost (excluding one-off)			
	£ 0	Total Cost (PV)	£ 0	
Other key non-monetised costs by 'main affected groups' Costs to unions should be minimal as any expulsions they make are voluntary				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' .		
	One-off Yrs			
	£ 0			
	Average Annual Benefit (excluding one-off)			
	£ 0	Total Benefit (PV)	£ 0	
Other key non-monetised benefits by 'main affected groups' allows trade unions a wider ability to expel members whose political affiliations are contrary to a union's principles.				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	1.10.07			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Purpose and intended effect

Objectives

1. On 27 February 2007, the European Court of Human Rights (the "Court") issued a judgment in the case of *Aslef v The United Kingdom* (Application no 11002/05). The case concerns the freedom of trade unions under GB law to expel or exclude individuals on the grounds of their political party membership, and the Court concluded that the relevant part of GB law violated Article 11 of the European Convention on Human Rights (the "Convention"). The UK Government does not intend to appeal the judgment, and recognises that the relevant part of trade union law in this country should be amended to ensure compatibility with the Convention. The UK Government therefore concludes that those aspects of section 174 of the 1992 Act which refer to political party membership and activities need to be changed to ensure complete compliance with Article 11.

Background

2. Under the law, any individual who wishes to join or remain a member of a trade union has the right to do so. The union may exclude or expel that person only for one of a number of permitted reasons. Those reasons are set out in section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the "1992 Act"). One of them is that the person's "conduct" is unacceptable.

3. Section 174 sets out categories of conduct, jointly classified as "excluded conduct", for which it is always unlawful for a union to expel or exclude a person. It also establishes a further category of conduct called "protected conduct", which it defines as "current or former membership of a political party". It is unlawful for a union to exclude or expel a person wholly or mainly on the grounds of that person's "protected conduct". However, Section 174 explicitly states that the "political activities" of a person do not constitute "protected conduct". The net effect of these provisions is to provide some scope for a union lawfully to expel or exclude political extremists on the basis of their political activities such as standing for political office or campaigning on behalf of a political party.

4. According to the Court, trade unions must be given greater autonomy to decide whether the political party membership of individuals should debar them from belonging to the union.

5. The UK Government recognises that the relevant part of trade union law in this country should be amended to ensure compatibility with the Convention. The UK Government therefore concludes that those aspects of section 174 of the 1992 Act which refer to political party membership and activities need to be changed to ensure complete compliance with Article 11.

Consultation

6. The Government undertook public consultation in May 2007 on its proposed approach to ensuring that the relevant parts of section 174 of the 1992 Act are compliant with Article 11.

7. Thirty three organisations replied to the consultation, twenty six of which were trade unions. As regards the two options presented in the consultation document, the large majority of respondents favoured Option A, which the Government is pursuing. There were no comments about the partial Impact Assessment included in the consultation document.

Options

8. The May 2007 consultation document proposed two possible options:

Option A: Amend Section 174 to ensure there is no explicit reference to a special category of conduct relating to political party membership or activities.

Option B: Retain the special category of conduct relating to political party membership and activities but significantly amend the rights not to be excluded or expelled for such conduct by specifying the limited conditions under which it would remain unlawful to exclude or expel.

Discussion of options

9. **Option A** would in effect position political party membership and activities under the general heading of "conduct" (which was the situation before the Trade Union Reform and Employment Rights Act 1993 was implemented). Where such political party membership or activities were "unacceptable" to the trade union, it would therefore be lawful for the union to expel or exclude on those grounds. This option would provide trade unions with much greater autonomy in deciding their membership. However, there would be no special safeguards against possible abuse. Such safeguards may not be necessary in any event: there is no evidence that trade unions would make use of this greater freedom by expelling members or activists of mainstream political parties. Also, if a trade union acted outside its rules when expelling a member, then that person could seek legal redress by bringing a breach of rule claim before the courts.

10. **Option B** would refer to the limited conditions under which it would remain unlawful for the trade union to exclude or expel an individual on the grounds of their political party membership or activities. Those conditions would specify that the union's decision would be unlawful unless the political party membership or activity concerned was incompatible with a rule or objective of the union, and the decision to exclude or expel was taken in accordance with union rules or established procedures.

11. **Option B** would specify particular safeguards against potential abuse. Those safeguards are based on the reasoning of the Court which noted the need for the trade union to avoid arbitrary behaviour and to act transparently in accordance with its rules. Many union rule books now refer to racist, xenophobic or extremist political behaviour as unacceptable to the union. So, little adaptation by those trade unions would be needed in order to comply with this option. Where a trade union was required to amend its rule book, then members and potential members should gain because they would be properly informed of the potential consequences of their political actions. **Option B** might, however, create grey areas and give scope for legal action to arise about the precise meaning of a union's rules or objectives.

12. Following consultation the Government has determined that Option A best meets the obligation to comply with the Court judgement. It is easier to understand and simpler to apply in practice. It would give less scope for unnecessary legal action.

Costs and benefits

13. There is no firm information on the number of people expelled by trade unions for their political activities each year. Nor is there data on the potential number of union members who would face expulsion if unions felt able to expel them for their political affiliations. These figures are likely to be low. That view is supported by the fact that the number of employment tribunal claims that are lodged against unions for wrongful expulsions is very small. The Employment Tribunals Service does not collect specific figures for complaints of a breach of section 174. However, they are certainly fewer than twenty a year and possibly fewer than ten. This provides some indication that the proposed change in the law will not result in a significant rise in the number of expulsions from unions. There is also little evidence that trade unions expel or exclude many individuals. We therefore feel that the proposed change in the law is unlikely to result in a significant rise in the number of expulsions from unions.

Analysis of benefits

14. **Options A and B** are similar in their intended effect and so the benefits from both are also similar. Both options allow trade unions a wider ability to expel members whose political affiliations are contrary to a union's principles. There are few monetary benefits that flow from this, although to the limited extent that unions currently have to engage in legal proceedings where they are challenged over expulsions they may benefit from some reduction in these sorts of costs.

15. There may also be some intangible benefits to union members from both options, in ensuring that disruptive individuals whose political views are abhorrent to them are no longer involved in the trade union. This should also ensure the smoother running of the union's affairs for all concerned.

Analysis of costs

16. Both **Options A and B** should impose minimal costs on unions, as any expulsions they might make would be voluntary. However **Option B** may necessitate that some unions examine their rule books to ensure they were sufficient to deal with any expulsion situations that might arise. It is also possible that **Option B** may allow some scope for legal action to arise about the precise meaning of a union's rules or objectives.

17. For union members or potential members, the only costs would be felt by those who either were expelled for their membership of political groups or by those members who left their membership of a political group to remain in a union. To any individual these costs could be significant but given the numbers affected are likely to be very small, the overall size of the intangible costs would be low.

Enforcement, sanctions and monitoring

18. These rights are currently enforced via the Tribunals Service. The Government is not proposing any change to the method of enforcement or to the remedies.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Summary: Intervention & Options

Department /Agency: MoD/BERR	Title: Impact Assessment of Employment Bill: Part 6 - Cadet Force Adult Volunteers	
Stage: Final	Version: Final	Date: 5 December 2007
Related Publications: National Minimum Wage and Voluntary Workers: Government Response to Consultation		

Available to view or download at:

<http://www.berr.gov.uk/files/file42756.pdf>

Contact for enquiries: Philip Russell/Helen Dwyer

Telephone: 0207-305-4651

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

Cadet Force Adult Volunteers (CFAVs) have a long tradition of volunteering their time for the benefit of the young people who join the Cadet Forces. However there are elements of being a CFAV which cloud their legal status as volunteers and there is a small risk that this could bring into question their qualification for the National Minimum Wage.

In the absence of government intervention there may be confusion over the CFAVs eligibility for the minimum wage which could damage the ability of the Cadet Forces to continue to provide training programmes for young people.

What are the policy objectives and the intended effects?

The objective of this policy is to clarify the position that Cadet Force Adult Volunteers do not qualify for the National Minimum Wage. By avoiding doubt over their position and removing the small risk that the voluntary nature of CFAVs could be challenged, the Cadet Forces will be able to continue to deliver a wide range of military themed activities and allow more young people to benefit from the Cadet experience.

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

MoD has considered a number of options for altering the delivery of Cadet Force activity to remove the existing confusion about the eligibility of the National Minimum Wage. Options considered have included making CFAVs employees or enlisting them in the Reserve Forces. All the options considered would have a significant impact on the ability of the Cadet Forces to provide the full scale and scope of activities.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The MoD holds regular meeting with Cadet Force Associations where the welfare of Cadet Force Adult Volunteers is subject to continuous review.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 6 December 2007

Summary: Analysis & Evidence

Policy Option:	Description: Exclusion of CFAVs from qualifying for the NMW
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' There are no costs associated with the preferred option		
	One-off (Transition) Yrs			
	£ 0			
	Average Annual Cost (excluding one-off)			
	£ 0	Total Cost (PV)	£ 0	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' There would be financial savings from preventing employment tribunals. See below for non-monetised benefits.		
	One-off Yrs			
	£ 0			
	Average Annual Benefit (excluding one-off)			
	£ 0	Total Benefit (PV)	£ 0	
Other key non-monetised benefits by 'main affected groups' Removes doubt over NMW applicability to CFAVs; sustains volunteer ethos; maintain cadet force delivery				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	asap			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

A: Strategic overview

To enable the Cadet Forces to continue to operate as successfully as they currently do, changes to the NMW Act are required to clarify that Cadet Force Adult Volunteers (CFAVs) are exempt from the National Minimum Wage.

The Cadet Forces are voluntary, community-based organisations that currently engage about 130,000 young people in a range of challenging activities. The Cadet Forces are sponsored by the MoD. No other Government department sponsors a youth organisation in the way the MoD sponsors the Cadet Forces and the proposal to exclude CFAVs from qualifying for the NMW places no obligation on any other Government Department.

By clarifying the position of CFAVs this change enables the Cadet Forces to continue to operate as they currently do. In doing so it does not place any burden on the private or public sector.

B: The issue

Cadet Force Adult Volunteers (CFAVs) have a long tradition of volunteering their time for the benefit of the young people who join the Cadet Forces. However there are elements of being a CFAV which cloud their legal status as volunteers and there is a small risk that this could bring into question their qualification for the National Minimum Wage.

In the absence of government intervention there may be confusion over the CFAVs eligibility for the minimum wage which could damage the ability of the Cadet Forces to continue to provide their programmes for young people.

C: Objectives

To amend the National Minimum Wage Act 1998 to explicitly exclude persons serving with the MoD sponsored Cadet Forces (Cadet Force Adult Volunteers or CFAVs) from qualifying for the minimum wage.

This will clarify the position that CFAVs do not qualify for the NMW and therefore for the avoidance of doubt.

Background

The MoD sponsors four Cadet Forces, the Combined Cadet Force, Sea Cadet Corps, Army Cadet Force and Air Training Corps. These are voluntary, community-based organisations that use military themes based on the culture and ethos of the Armed Forces to promote personal and social development including self-confidence, self-reliance, initiative, loyalty and a sense of service among young people aged between 12-20. The Cadet Forces focus on bringing adventure and enjoyment to young people, known as cadets, with a view to steering them towards responsible citizenship. Many activities lead to a qualification or award, such as the Duke of Edinburgh's Award or vocational qualifications. By involving young people in these

activities and inculcating a sense of citizenship, the Cadet Forces contribute to the Government's broader policy on engagement with the young and by extension benefiting particularly socially excluded groups.

The Cadet Forces are not part of the Armed Forces or the Reserve Forces, although some adult instructors may be serving members of the Regular or the Reserve Forces. All four Cadet Forces are national youth organisations that exist without any formal status under the law.

CFAV is the generic term adopted by the MoD to refer to any adult (over the age of 18) who volunteers to assist in the delivery of the MoD-sponsored Cadet Force programme as set out above. CFAVs act in a supervisory role and receive appropriate training in order to allow them to safely deliver the Cadet Force programme often in a military environment. They have to undergo special security clearances, including in most cases signing the Official Secrets Act. In addition they are trained to allow their safe access to MoD facilities and equipment (including firearms and ammunition handling) as well as to take responsibility for publicly and privately funded equipment and stores. This training can lead to nationally recognised qualifications. Some CFAVs have military ranks and some wear military uniforms. The rank structure used follows that of the parent service. The chain of command is based on the ranks held. The majority of CFAVs come forward from the local community and many have no previous military experience.

CFAVs volunteer their services without receiving remuneration, to assist in weekday cadet parade nights and weekend activities, the level of time commitment being left to the individual CFAV to determine. In addition, depending on their role, some CFAVs may claim fixed rates of remuneration based on the rank they hold to cover attendance at whole days training, annual camps, and training courses. There is no specific entitlement to this remuneration, which is limited to a maximum of 28 days, as set out in the individual Cadet Force regulations (i.e. the internal rules issued by the governing bodies of the Cadet Forces), and is subject to there being sufficient funds available and to the authorization of the relevant chain of command. In practice at the moment, current levels of annual remuneration range from a maximum of 5 days for the Sea Cadet Corps to a maximum of 21 days for the Army Cadet Force regardless of the number of training sessions and camps attended over and above this.

Annex A provides details of the current rates of remuneration. The funds for remuneration are provided by MoD; individual payments are authorised by the local Cadet Force commander. Rates of remuneration are linked to the rates paid to the Armed Forces and are reviewed annually, and information about the rates is made available to each Cadet Force. As they are acting on a voluntary basis, CFAVs tend not to complain if they do not receive remuneration but are less likely to volunteer for weekend activities or annual summer camps if the potential for remuneration is removed. Liability for income tax and National Insurance is settled on a PAYE basis through the MoD payment system.

The current estimated membership of the MoD sponsored Cadet Forces is set out in the following table:

Table 1. Size of the MoD sponsored Cadet Forces as at 1 April 07.

Cadet Force	Number of CFAVs	Number of Cadets
Combined Cadet Force	2,200	42,000
Sea Cadet Corps	4,500	11,000
Army Cadet Corps	8,400	44,000
Air Training Corps	10,900	33,000
Total	26,000	130,000

Source: Cadet HQs annual returns

Of the 26,000 CFAVs approximately 20,000 receive remuneration. The total number of CFAVs receiving remuneration broken down by parent service is illustrated in Table 2. Also shown is total number of days remuneration claimed. The number of weekday evenings volunteered, for which the CFAVs receives no remuneration, and the total number of weekend volunteered is shown in Table 3. The typical number of evenings and weekends volunteered by each rank is broken down at Annex B.

Table 2. Remuneration of CFAVs.

Parent Service ¹	Cost (£m) ²	Number of Remunerated CFAVs	Number of Remunerated Days
RN	£2.83	3,895	20,832
Army	£14.00 ³	10,630	223,000
RAF	£5.44	5,381	71,037
Total	£22.27	19,906	314,869

Source: Cadet HQs

Table 3. Estimated level of volunteer commitment.

Cadet Force	Total weekend days volunteered	Total evenings volunteered
Combined Cadet Force	54,000	86,000
Sea Cadet Corps	184,000	273,000
Army Cadet Corps	274,000	894,000
Air Training Corps	78,000	376,000
Total	590,000	1,630,000

Source: Cadet HQs

The problem

The MoD has always categorised CFAVs as volunteers and this is clear on their various websites and literature. However, elements of being a CFAV could cloud their legal status. For instance, CFAVs often sign personal declarations or agreements undertaking certain standards of behaviour associated with their position in a quasi military role, and access to MoD facilities and equipment. These could be confused with employment contracts. CFAVs also receive occasional remuneration beyond the reasonable expenses usually received by volunteers. If CFAVs were not considered volunteers for the purposes of the National Minimum Wage Act, they may be classed as workers. This would both remove the voluntary status of CFAVs and bring NMW entitlements.

CFAV remuneration is linked to rank. At a “typical” cadet summer camp adult volunteers are active at least 12 hours a day (7am to 7pm). Only those CFAVs remunerated at Chief Petty Officers, Sub Lieutenants and above and their equivalents are compliant with the NMW if this were the only period they were involved in Cadet Force activity.

However, if CFAVs were judged to be workers they would have to be remunerated at least the NMW for all hours they volunteer, including all weekend activity and week day parade nights. CFAVs have a duty of care at all times they are with cadets. This may mean occasionally being on call through the night. Consideration would have to be given to whether the minimum

¹ The Combined Cadet Force has RN, Army and RAF elements and is funded by all three services

² FY 05/06

³ Approximate figures

wage should also be paid for these periods. Tables 2 and 3 show the magnitude of additional volunteer commitment that would have to be funded if all volunteer activity were to be remunerated.

Ultimately, a CFAV could decide to challenge his status at an employment tribunal. It is unlikely that a CFAV would do this, given that CFAVs volunteer with no expectation of being remunerated. Nonetheless, without legal clarity there is a small risk that an employment tribunal could result in a CFAV being classified as a worker, entitled to receive the NMW for all the time that they previously volunteered. It is unsatisfactory to allow such uncertainty, and the associated liabilities, to continue (see Table 4). In order to clarify the position that CFAVs do not qualify for the NMW the MoD have proposed a specific exemption to exclude Cadet Force Adult Volunteers from qualifying for the National Minimum Wage.

D: Options identification

MoD and BERR have worked together to identify alternatives to amending the NMW Act. Beyond the 'do nothing' option, other options considered include:

- i. Gradual phase-out of payments made to CFAVs
- ii. Limiting attendance to a specific number of periods on duty at the NMW rate
- iii. Making CFAVs employees
- iv. Enlistment of all CFAVs in the Reserve Forces

These options are discussed in greater detail below.

(i) Gradual phase-out of payments made to CFAVs.

Under this scenario, CFAVs could still receive payment for legitimate out-of-pocket expenses, provided sufficient funds were available from MoD. This would be in keeping with the voluntary ethos.

The withdrawal of payments would have a significant impact on CFAVs numbers⁴ and as a consequence harm the ability of the Cadet Forces to provide so many young people with the cadet experience. This is because the remuneration also acts as some reward for CFAVs who undergo unique inconveniences when they join the Cadet Forces, such as accepting the need for training, undergoing special security clearance and for following strict procedures when using military facilities, firearms and other equipment.

The withdrawal of payments would not totally remove risk. Aspects of being a CFAV which could cause confusion about legal status would still remain– for instance, there is a small risk that the personal agreements some CFAVs may sign could be mistakenly confused with contracts of employment.

The results of public consultation indicated that implementation of this option would be likely to have a major impact on the supply of CFAVs either because of resignations among existing volunteers or the lack of incentives needed to recruit new ones. This would undermine the delivery of cadet activity. That would mean that the various developmental opportunities available to 130,000 young people serving as cadets would have to be drastically reduced or cease, which could have social costs for young people and the communities in which they live.

Whilst this option could save approximately £22m per annum we do not consider it acceptable.

⁴ In their response to consultation the Army Cadet Force Association predict that some 25% of Army Cadet Force CFAVs would leave almost immediately with a further 40% to 50% leaving within 2 years.

(ii) Limiting attendance to a specific number of periods on duty at the NMW rate

Remunerating at NMW rates but maintaining current levels of expenditure by limiting the number of sessions each CFAV attended would significantly curtail the number of hours a CFAV could contribute and would reduce the cadet experience to about one third of current activity levels. To remain cost neutral an ACF Sergeant Instructor could only contribute 199 hours per year⁵. The typical CFAV volunteers three times this amount⁶. Restricting the scale and breadth of activities would seriously compromise the quality of experience among cadets. It would also make the Cadet Forces less attractive to newcomers, and current cadets would be less inclined to stay, thereby losing the opportunity to develop new skills and enjoy a uniquely disciplined and challenging experience in a safe and controlled way, whilst developing character, confidence, leadership, self reliance, and an enduring sense of service to others.

(iii) Making CFAVs employees

CFAVs have always been regarded as volunteers – that is a long established tradition⁷ – and individuals who join do so on that clear understanding. It would be possible to change their status and make them employees or workers, but that would be wholly contrary to the voluntary nature of CFAVs. Such a change of status would bring with it a different relationship between CFAVs and the Cadet Forces including a mutuality of obligations and other complexities that currently are not an issue. Instead of being flexible and informal, CFAVs and the Cadet Forces would need to agree and put in place all the necessary features of an employer-worker relationship, including payment of the NMW, which would be unsuited to the Cadet Forces. The parties concerned – CFAVs, the Cadet Forces and MoD – have no wish to create a contractual relationship, but rather wish to maintain the tradition of volunteering.

Based on current activity levels, additional funding of up to £100m per annum would be required for this option. This figure does not include other employment rights such as pensions and maternity benefit that would accrue. This is not simply a question of affordability - this option is highly likely to be unacceptable to the CFAVs who prize their position as volunteers⁸ and would not wish to regularise their commitment.

(iv) Enlistment of all CFAVs in the Reserve Forces

Enlisting CFAVs into the Reserve Forces would gain Armed Forces exemptions from the NMW. Under existing regulatory powers found in the Reserve Forces Act 1996, it would be possible to make CFAVs a special category of the Reserve Forces. Each individual would then have to enlist into the Reserve Forces; such enlistment cannot be mandatory without it becoming a form of conscription. CFAVs would have an expectation to be treated equally to other reservists in respect to pay and bounty.

This move would alienate a significant number of CFAVs who may not want to enlist into the reserves. This would also confuse CFAVs with the deployable integrated Reserve Forces with potential for mobilisation, which was never the intention. At an estimated additional cost of

⁵ An average ACF Sergeant instructor is remunerated for 21 days at £52.19 per day – a total of £1095.99. At a NMW hourly rate of £5.52 this is the equivalent of 199 hours. Ignoring on call time and assuming 12 hours days at camp this equates to just 17 days. Or 8.5 days when on call time is included.

⁶ Typical ACF Sergeant volunteers 29 days (12 x 29 = 348 hours) plus 95 x 3 hour evening sessions = 633 hours.

⁷ Since 1860 cadet units have been run by volunteers for the benefit of children. The practice of remunerating CFAVs for a proportion of the time they give to cadets was introduced in the years following the Second World War when it was necessary to attract adult volunteers to the cadet forces.

⁸ In their response to consultation the Combined Cadet Force Association stated that “Our dialogue with our members over many years convinces us that CFAVs consider themselves to be volunteers, first and foremost.”

£29M per annum to provide parity with reservists, this option would be both unaffordable and present a significant risk to the continuance of the Cadet Forces.

(v) Do nothing

The current uncertainty means that an individual CFAV could pursue his own claim in an employment tribunal if he considered himself to be entitled to the National Minimum Wage. As CFAVs have volunteered without expectation of remuneration at minimum wage levels, it may be unlikely that they would do this. Nonetheless, without legal clarity the risk remains that a case could be taken and considered by an employment tribunal, and although unlikely, it is possible that this could result in a CFAV being classified as a worker and entitled to receive NMW [see *Making CFAVs employees*]. It is unsatisfactory to allow such uncertainty, and the associated liabilities, to continue. This option presents an enduring risk and does not provide a robust long-term solution.

Consultation

The public consultation about the NMW and voluntary workers ran from 12 June to 4 September 2007. There were 40 responses received of which 10 commented on the CFAV issue. The consultation document invited views on the principle of excluding CFAVs.

Three of the respondents were from the charitable associations that represent CFAVs and support the Cadet Forces. They were strongly supportive of the exclusion. No comments were received from individuals who perform the duties of CFAVs.

Four respondents expressed neither support nor opposition, but made specific points about the sorts of payments that should be allowed for all voluntary workers/volunteers and the need for better guidance about the law on volunteering.

Three other respondents expressed concern about the exclusion, commenting that not enough evidence had been presented as to why CFAVs should be excluded. Because of this, they asked whether other organisations that deliver activities for young people should achieve the same exclusions.

The government response to consultation was published on 27 November and is available on the BERR website at: www.berr.gov.uk/consultations/page39871.html

MoD maintains ongoing consultations with all stakeholder groups, primarily the cadet associations that support and represent the CFAVs.

E: Analysis of options

The broad costs and benefits of each of the options have been discussed in the previous section and are summarised in the table below

Table 4. Summary of costs and benefits of each option

Option	Estimated Financial Impact	Benefit	Disadvantage
Phase-out of payments	Saving of £22m	Reinforce volunteer ethos. Remove uncertainty over legal status.	<ul style="list-style-type: none"> • Less chance of attracting new volunteers. • Loss of CFAVs already serving. • Undermine delivery of cadet activity. • Other elements of a CFAVs duties, different to that of a typical volunteer, still remain.
Limiting attendance to a specific number of periods on duty at the NMW rate.	Cost neutral		<ul style="list-style-type: none"> • Significantly reduction cadet activity. • Significant reduction in the number of young people that benefit from the cadet experience.
Making CFAVs employees.	Cost of £100m/year	Clarify the legal status of CFAVs.	<ul style="list-style-type: none"> • Alienate CFAVs who consider themselves volunteers. • Impose employment law on volunteer activity.
Enlistment of all CFAVs in the Reserve Forces.	Cost of £29m/year		<ul style="list-style-type: none"> • Alienate CFAVs who do not want to enlist in the Reserves. • CFAVs would have to comply with Service regulations inappropriate for a volunteer organisation.
Do nothing.	Potential cost from employment tribunals; same cost of "Making CFAVs employees", plus risk of retrospective NMW payments		<ul style="list-style-type: none"> • Small but enduring risk to the Cadet Forces that CFAVs could be deemed workers or employees.
NMW exemption.	Saving from preventing employment tribunals	<ul style="list-style-type: none"> • Removal of doubt over NMW applicability to CFAVs. • Sustains volunteer ethos. • Maintains Cadet Force delivery. 	

Source: MoD

F: Risks

The UK Government and the devolved administrations are committed to offering young people tangible and realistic opportunities to enable them to develop social skills and get the best possible start in life. The government continues to look at ways to help young people by improving the opportunities available to them. As a result each government department is charged to focus on how it can contribute to achieve this aim.

MoD plays a leading role in the Government's youth agenda through the sponsorship of the Cadet Forces. The range of activities provided for and by the cadet organisations is wider than any other youth organisation in the United Kingdom, and is unique in being based on military themes, carried out under a disciplined military hierarchy and conducting a variety of potentially hazardous activities in a safe and controlled way. The Cadet Forces are popular with young people because of the unparalleled range of exciting, challenging and safe activities they provide.

The key risks from not amending the National Minimum Wage Act 1998 to exclude persons serving with the MoD sponsored Cadet Forces (Cadet Force Adult Volunteers (CFAVs)) from qualifying for the minimum wage would be:

Direct

- Current lack of legal clarity over status prolongs the small risk of employment tribunals which would have to be contested⁹.
- Although unlikely, if an employment tribunal did conclude that CFAVs were employees or workers, this would destroy the voluntary nature of the activity and enforce an obligation to participate on the CFAVs, thus reducing the number of adults wishing to participate.
- This would also increase operating cost to unsustainable levels.
- If the average cost per CFAV goes up, then with a set budget this means either:
 - MoD could only afford to remunerate fewer CFAVs which has a knock-on effect on the number of places available to young people, reducing the number of young people able to benefit from the Cadet experience.
 - Reduction or curtailment of the range and quality of activities available to Cadets for the development of their team-building, leadership, communication and other skills.
- Adversely affect the delivery of the Government's programmes relating to young people, including those from socially excluded groups.

Indirect

- The Cadet Forces often provide the only visible sign of the Armed Forces within local communities and an important source for disseminating information about careers in the Armed Forces to those communities. Reduction in cadet activity would have significant impact on the visibility of the Armed Forces in local communities.
- Recruitment into the Armed Forces would reduce. Although not an output of the cadet programme a number of cadets choose to join the Regular or Reserve forces each year as a result of their time in the Cadet Forces.
- Retention. At the non-commissioned officer level within the Armed Forces approximately 50% are former cadets. Without this nucleus of dedicated individuals personnel throughput and therefore training costs would be significantly higher.
- Public Service ethos would decline. Through participation in the Cadet Programme many cadets develop a public service ethos with many former cadets joining the uniformed public services (e.g. Police, Fire and Rescue, Ambulance and Prison Service).

The Cadet Forces, and the supporting role of CFAVs, therefore have a wider social value. Exclusion of CFAVs from the NMW Act would enable the Cadet Forces to continue to deliver safe recognised youth activities at current levels, thereby contributing to the economic and social wellbeing of the country.

G: Enforcement

Her Majesty's Revenue and Customs (HMRC) enforce the NMW on behalf of BERR. The administration of exclusion of CFAV from the NMW will fit into the existing NMW legislation structure and will be implemented through existing regulator inspection services and data collection channels; no new regulator or sanctions are required.

⁹ As individuals who have volunteered their time, it is unlikely that CFAVs would take a claim that they should be receiving the minimum wage. However, uncertainty over legal status prolongs this risk.

As a measure to increase clarity, this proposal will not impose any burden on NMW enforcement. In general, legislation which is clear about entitlements is easier to enforce.

H: Recommendation and summary table of costs and benefits for the options

A summary of the estimated quantifiable and unquantifiable costs and benefits is given in Table 4 in Section E above.

The Government's preferred option is to exclude CFAVs from qualifying for the NMW as this will avoid doubt over their position and remove the small risk that the voluntary nature of CFAVs could be challenged. The Cadet Forces will be able to continue to deliver a wide range of military themed activities with confidence, allowing young people to benefit from the cadet experience.

I: Implementation

Whilst this legislation will come into force at the earliest opportunity following Royal Assent of the Bill, it enables the current successful practice of the Cadet Forces to continue and therefore will not involve a change of practice. We will confirm the change with Cadet Forces and HMRC so that they are aware.

J: Monitoring and evaluation

The MoD holds regular meeting with Cadet Force Associations where the welfare of Cadet Force Adult Volunteers is subject to continuous review.

ANNEX Tables.

Table A1. Numbers of CFAVs and rates of remuneration within the cadet forces

Rank	Daily remuneration rate from 1 April 07	Number of CFAVs			
		CCF	SCC	ACF	ATC
Commander (SCC), Lieutenant Colonel (RM), Lieutenant Colonel (ACF) & Wing Commander (ATC), OF4 (CCF)	£150.99	89		145	60
Lieutenant Commander (SCC), Major (RM), Major (ACF) & Squadron Leader (ATC), OF3(CCF), Chaplains (CF3)	£107.56	232	221	340	309
Lieutenant (SCC), Captain (RM), Captain (ACF) & Flight Lieutenant Officer (ATC), OF2 (CCF), Chaplains (CF4)	£85.38	463	452	1125	1587
Sub Lieutenant (SCC), Lieutenant (RM), Lieutenant (ACF) & Flying Officer (ATC), OF1 (CCF)	£66.63	816	163	2415	1424
Acting Sub Lieutenant (SCC), 2nd Lieutenant (RM), 2nd Lieutenant (ACF) & Pilot Officer (ATC), OF1 (CCF)	£55.44	452			
Midshipman (SCC) and Acting 2nd Lieutenant (RM), OF1 (CCF)	£26.38		8		
Chief Petty Officers (SCC), Colour Sergeant (RM), Warrant Officers Class 1 Instructors (ACF) & Adult Warrant Officers (ATC)	£65.15		519	58	832
School Staff Instructor (CCF), Petty Officers (SCC), Sergeant (RM), Warrant Officers Class II Instructors (ACF)	£61.62	210	877	1071	14
Staff Sergeant Instructors (ACF) & Adult Flight Sergeant Instructors (ATC), OR7 (CCF)	£56.02			1743	
Sergeant Instructor (ACF) & Adult Sergeant Instructors (ATC), OR6 (CCF)	£52.19			2615	655
Probationary Petty Officers (SCC) & Probationary Sergeant (RM), OR6 (CCF)	£26.38		727		

Source: MoD

Table A2. Average evening and weekend attendance for CFAVs¹⁰

Rank	Number of CFAVs							
	CCF		SCC		ACF		ATC	
	Eve	Wnd	Eve	Wnd	Eve	Wnd	Eve	Wnd
Commander (SCC), Lieutenant Colonel (RM), Lieutenant Colonel (ACF) & Wing Commander (ATC), OF4 (CCF)	38	22			60	20	80	21
Lieutenant Commander (SCC), Major (RM), Major (ACF) & Squadron Leader (ATC), OF3(CCF), Chaplains (CF3)	38	22	92	80	90	29	81	22
Lieutenant (SCC), Captain (RM), Captain (ACF) & Flight Lieutenant Officer (ATC), OF2 (CCF), Chaplains (CF4)	38	22	92	75	95	29	75	18
Sub Lieutenant (SCC), Lieutenant (RM), Lieutenant (ACF) & Flying Officer (ATC), OF1 (CCF)	38	22	92	63	95	29	80	14
Acting Sub Lieutenant (SCC), 2nd Lieutenant (RM), 2nd Lieutenant (ACF) & Pilot Officer (ATC), OF1 (CCF)	38	22						
Midshipman (SCC) and Acting 2nd Lieutenant (RM), OF1 (CCF)			92	50				
Chief Petty Officers (SCC), Colour Sergeant (RM), Warrant Officers Class 1 Instructors (ACF) & Adult Warrant Officers (ATC)			92	75	60	20	61	15
School Staff Instructor (CCF), Petty Officers (SCC), Sergeant (RM), Warrant Officers Class II Instructors (ACF)	38	43	92	63	95	29	61	15
Staff Sergeant Instructors (ACF) & Adult Flight Sergeant Instructors (ATC), OR7 (CCF)					95	29		
Sergeant Instructor (ACF) & Adult Sergeant Instructors (ATC), OR6 (CCF)					95	29	112	14
Probationary Petty Officers (SCC) & Probationary Sergeant (RM), OR6 (CCF)			92	38				

Source: MoD

¹⁰ Averages calculated from the attendance figures of a representative sample of cadet units.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

Please see the summary impact assessment for the details of the specific tests carried out with respect to this policy area.

