

**EXPLANATORY MEMORANDUM TO
THE EMPLOYEE STUDY AND TRAINING (ELIGIBILITY, COMPLAINTS
AND REMEDIES) REGULATIONS**

2010 No. 156

AND

**THE EMPLOYEE STUDY AND TRAINING (PROCEDURAL
REQUIREMENTS) REGULATIONS**

2010 No. 155

1. This explanatory memorandum has been prepared by The Department for Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instruments**

2.1 These instruments contain details about a new employment right for employees to make statutory requests to their employer in relation to study or training. The Employee Study and Training (Eligibility, Complaints and Remedies) Regulations 2010 (“the Eligibility Regulations”) set out the form of the request and make provision about the circumstances in which an employee may complain to an employment tribunal and the level of compensation an employment tribunal may award if it finds a complaint well-founded. The primary purpose of the Employee Study and Training (Procedural Requirements) Regulations 2010 (“the Procedural Regulations”) is to define the process which employers must follow when considering requests.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 These two instruments are being made as part of the implementation of the Apprenticeships, Skills, Children and Learning Act 2009 (“ASCLA 2009”). Section 40 of that Act amends the Employment Rights Act 1996 (“ERA 1996”) so that eligible employees may make a “section 63D application” (a statutory request to their employer to enable the employee to spend time to undertaking study or training) and Schedule 1 makes consequential amendments. These provisions are, by order, to be commenced on 6 April 2010, the same day that these two instruments are to come into force, for employees working for employers with 250 or more employees and

employers employing those employees. The plan is for these provisions to be commenced in full so that they apply to all employees and employers in April 2011.

4.2 The Eligibility Regulations and the Procedural Regulations are both subject to the negative resolution procedure. There is another other linked instrument: The Employee Study and Training (Qualifying Period of Employment) Regulations 2010 [No. XXXX] which is subject to the affirmative resolution procedure.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required .

7. Policy background

- *What is being done and why*

7.1 The new right will work by giving employees a statutory right to submit to their employer a request to allow them to spend time undertaking business relevant study or training. At the same time, employers would be placed under a duty to consider those requests and respond in a set timeframe. Employers will be able to decline requests where they have a sound business reason to do so. The policy was to model the process on the well-established arrangements for flexible working.

7.2 The Eligibility Regulations require requests to be made in writing and to be dated. They also set out circumstances in which an employee may complain to an employment tribunal because the employer did not follow the correct procedure and set the maximum amount of compensation which a tribunal may award. This is all consistent with the flexible working model.

7.3 The Procedural Regulations set out what an employer must do when he receives a request. This includes, for example, when a meeting must be held to discuss the application, what decision notices must include, when an employee may appeal against an employer's decision, when time limits may be extended and provision to ensure an employee is permitted to bring a fellow worker to meetings. This is based on the flexible working process.

Why the new right is needed

7.4 While many employers invest in training this is not universal. The latest evidence available through the 2007 National Employer Skills Survey shows that one third of employers do not train their staff and around eight million employees go without training each year. In order to address this and

to stimulate further the demand for skills training and contribute to a change in culture in the workplace the Government included in the Bill leading to the ASCLA 2009 a statutory right to request time to train.

7.5 The policy has garnered a fair amount of public interest. It carries the support of both the TUC and CBI.

7.6 In developing the policy the Government reached the conclusion that legislating would be the best way of meeting its policy aims of: ensuring all employees had a route to have their training needs considered; and ensuring that more employers took the training needs of their employees seriously.

7.7 Other options considered were to do nothing. That is, maintain the position as is and not introduce any change. While training in the workplace may still increase as a result of the Government's other programmes, it was felt that there could be some people who would continue to miss out if this option was pursued. The idea of pursuing a voluntary approach through promoting the benefits of allowing employees to spend time training supported through advertising was also considered but it was felt that while this could have a short term benefit if may not lead to positive action i.e. people actually making requests for training.

Consolidation

7.8 None.

8. Consultation outcome

8.1 A full twelve-week public consultation on the right to request time to train was launched on 18 June 2008 in England. Following the launch of the England consultation the Scottish Executive and the Welsh Assembly Government launched their own consultations to consider whether the right should extend and apply in Scotland and Wales too. These consultations were also public but were of a shorter duration in order to fit in with the legislative timetable.

8.2 All three consultations delivered a positive result. On the key question of whether a right to request time to train could help skills development in their organisations, 67% of respondents in England, 87% in Scotland and 73% in Wales answered that it would. The main objection to the policy was the potential for the new right to create additional burdens for good employers. In response, the Government has made it a condition that employers only have to consider one request from their employees in any 12 month period. The summary of responses¹ to the consultation was published on 3 December 2008.

8.3 The Government has modelled this new right closely on the flexible working arrangements and consulted on this basis. The draft regulations

¹ http://www.dius.gov.uk/consultations/time_to_train

themselves have been shared with the devolved administrations, key business organisations and other stakeholders during various stages in their development. All comments received have been considered and some amendments made where appropriate.

9. Guidance

9.1 Guidance on the new right to request was made available to employees and employers on the 13th of January 2010. This is in line with best practice to make guidance available at least twelve weeks before regulations come into force. The guidance for employers is being made available through the Business Link website² and for employees through DirectGov³.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be in the region of £330m in the first year rising to £690m in the second year when the policy is rolled out in full. This is on the assumption that the numbers of requests predicted in the business case are made. These are 223,000 in the first year and 467,000 when the statutory provisions are commenced for all employees. The IA shows that the net benefit to the economy would be somewhere around £227m in the first year rising to £472m in the second year when all costs have been taken into account.

10.2 The impact on the public sector will be a proportion of the costs and benefits highlighted above. It is not possible to predict precisely what these will be. However, we do know that the public sector accounts for one fifth to one quarter of the workforce. On that basis the costs to the public sector of dealing with request would be between £66m and £82m in the first year and £138m and £172m from the second and subsequent year. The net benefit to the economy would be between £45m and £57m in the first year and £94m and £118m in the second and subsequent years.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small businesses in the first year following 6 April 2010.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to give those firms and businesses employing 249 or fewer employees an extra year to prepare for the introduction.

11.3 The basis for the final decision on what action to take to assist small business is that the Government believes that all employees should have the same access to training as other employees no matter size of employer they

² www.businesslink.gov.uk/timeotrain

³ www.directgov.gov.uk/timetotrain

work for. An exemption runs the risk of impacting unfairly on employees in exempted firms.

12. Monitoring & review

12.1 The Department is committed to carrying out a review of the operation of the policy prior to it being extended to employees in all sizes of business in April 2011. While this review may take in areas such as implementation issues, the primary focus will be to consider whether any additional reasons for refusal of requests are needed by employers to enable them to better manage the requests they receive from their employees.

12.2 Following this, one further evaluation would be planned to take place after a period of operation of the new right when it had been extended to cover all employees. This evaluation would also be used to inform the ongoing evaluation of the policy which would be achieved by including questions about the policy in regular business surveys thus minimising the burden on employers and reducing costs to Government.

13. Contact

13.1 Helen Kaczmarek at the Department for Business Innovation and Skills Tel: 0114 259 1330 or email: helen.kaczmarek@bis.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options		
Department for Business, Innovation & Skills	Impact Assessment of the right to request time to train	
Stage: Legislation	Version: Final	Date: 22 January 2010
Related Publications: Right to Request Time to Train Consultation Document & Summary		

Available to view or download at:
<http://www.bis.gov.uk/consultations>

Contact for enquiries: Pete Jinks

Telephone: 01928 794

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

Despite the significant progress and investment in recent years, our nation's skills base does not compare favourably with the best in the world. These poor relative skills are a significant contributor to the productivity gaps that exist between the UK and key competitor nations. To succeed in the highly competitive global economy, we must invest in our nation's talent. With around 74% of the workforce of 2020 having left compulsory education this will mean investing in the skills of people already in employment. Although total employer spend on training in England is estimated by employers to have risen to some £38.6 billion a year, we also know from the National Employer Skills Survey (NESS) 2007 that 33% of employers in England do not provide any sort of training for their employees, only 35% have a training budget, and around 8m employees receive no training each year. Surveys in Scotland and Wales reveal similar figures, for example, according to Future Skills Wales 2005 survey, 42% of employers questioned had offered little or no off-the-job training in the 12 months preceding the survey. The Scottish Employer Skills Survey 2006 indicates that just over one-third of employers had provided no training of any sort to employees in the previous 12 months. Over two in every five Scottish employees had received some form of off-the-job training, funded or arranged by their employer, in the 12 months prior to the survey.

We need all employers to follow the example set by the best; we need a measure that encourages all employers to engage with their employees, consider their skills needs, and invest in the skills of their workforce as a means of driving their business forward. This will act to deliver the benefits of increased training to both the individual and the firm (where the benefits of training are not always recognised before it happens), as well as allowing benefits to positively spill over to the economy as a whole. Individual skills development also acts to yield equity benefits in the form of maximising life chances for people.

What are the policy objectives and the intended effects?

The policy objective is to create a culture in which *all* employers see investing in the skills of their workforce as one of the most powerful things they can do to drive their businesses forward; and one in which individuals see improving their skills as one of the most powerful things they can do to help them realise their career aspirations.

We expect that, as a result of that cultural change, more employers will invest in the skills of their employees, and that more employees will improve their skills and gain new qualifications. We therefore expect to see a measurable contribution to the Skills PSA indicators at all levels for England, and will contribute to meeting skills indicators currently being developed by Wales on skills. In Scotland, time to train is expected to

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

Option 1: do nothing;

Option 2: pursue a voluntary approach to encouraging increased employer engagement;

Option 3: legislate to give eligible employees in Great Britain a new right to request time to train.

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

An initial evaluation of the policy will take place during 2010. While this may look at issues like implementation and guidance, the primary focus will be to consider the reasons for refusal available to employers to refuse requests for time to train. This will consider whether any additional reasons for refusal are needed by employers to help them manage requests better.

The policy will then be evaluated after it has been fully rolled out to all employees and been in operation for one full year. This will be during 2012 from April and will consider questions on the operation of the policy in business and skills surveys, such as the National Adult Learners Survey and the National Employer Skills Survey in England. There are surveys being designed in Wales on employer engagement in training and employee motivations and barriers to learning. In Scotland, we will make best use of existing surveys such as the biennial Scottish Employer Skills Survey and the Scottish boost of the Work Skills in Britain survey.

Ministerial Sign-off :

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:

Kevin Brennan

Date: 25/01/2010

Summary: Analysis & Evidence

Policy Option: 3	Description: Legislate for a right to request time to train
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' At 1.8%-1.9% take up per year-costs to employers in Year 1 are £328m, costs to Government are £132m and costs to individuals are £5m. There are also £2.5m of appeal costs. In Year 2 and subsequent years these costs are: £685m to employers; £275m to Government; £11m to individuals, and an extra £5m of appeal costs.
	One-off	Yr	
	£ 0	3	
	Average Annual Cost (excluding one-off)		
	£ 807m		
		Total Cost (PV)	£ 2,322m
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' At 1.8%-1.9% p.a. take-up: Total benefits to employees, via wages and employment chances from skills and qualifications gained are here estimated at, £693m in Year 1 and £1,448m subsequently (already in PV terms).
	One-off	Yr	
	£ 0	3	
	Average Annual Benefit (excluding one-off)		
	£ 1,197m		
		Total Benefit (PV)	£ 3,590m
Other key non-monetised benefits by 'main affected groups' Employees – a range of social benefits e.g. better health, increased social mobility. Employers – increased productivity and business performance. The Economy – increased productivity.			

Key Assumptions/Sensitivities/Risks The cost and benefit figures assume 1.8/1.9% take up among potential client group. Conservatively, only the training benefits from Level 2 and 3 qualifications are scored; in addition, only three years' of net benefit flows are assumed.

Price Base	Time Period	Net Benefit Range (NPV) £ -	NET BENEFIT (NPV Best estimate) £ 1,262m
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	Phased from
Which organisation(s) will enforce the policy?	Employment

What is the total annual cost of enforcement for these		£ TBC		
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		£ 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 (Y2)	Small (Y2)	Medium(Y2)	Large (Y2)
Are any of these organisations exempt?	Year 1	Year 1	Year 1	No
Impact on Admin Burdens Baseline (2005 Prices)		(Increase -		
Increase	£5.5m 2010,11.5m	Decrease	0	Net £ 5.5m then £11.5m

Key: Annual costs and

(Net)

Evidence Base (for summary sheets)

The Impact Assessment has been updated following the Time to Train consultations held in England, Scotland and Wales. The figures quoted in the “Summary: Analysis and Evidence” now reflect GB costs and benefits. All the consultation responses have been analysed and we did not discover anything that suggested we need to change our methodology for calculating the additional learner numbers.

Following the consultation exercise, Ministers decided to proceed with option 3 set out here, and introduce legislation. This was on the basis of the positive response received. On the key question of whether a right to request time to train could help skills development in their organisations, 67% of respondents in England, 87% in Scotland and 73% in Wales answered that it would. The provisions were included in the Apprenticeships, Skills, Children and Learning Bill which received Royal Assent on 12 November 2009 and is now an Act.

In considering implementation, taking account of the current economic climate and the Government’s work on Strengthening Regulatory Management BIS Ministers decided to adopt a phased approach to the introduction of the new right. It was felt that this would provide small and medium sized enterprises more time to prepare for introduction. This means that the right will initially apply to employees in large organisations with 250 or more employees in the first year from 6 April 2010., It will then be extended to employees in all organisations regardless of size from April 2011.

The tables in this IA therefore show the effect in Year 1 when the measure would apply in large businesses and in Year 2 onwards after phased implementation has been completed and the measure would apply in all businesses. Consequently, care should be taken when using the figures, as they are not wholly comparable.

A. THE ISSUE

The Government recognises that if we are to succeed in the highly competitive global economy it must create the conditions that foster investment in our nation’s talent. With around 74% of the workforce of 2020 having left compulsory education this will mean investing in the skills of people already in employment.

Put simply, a better skilled workforce is a more productive workforce, and a more innovative workforce, better able to adapt to new ways of working and the introduction of new technologies.

In the last decade, the nation’s skills base has improved significantly. Since April 2001, more than 1.75m learners achieved their first Skills for Life qualification. More than 1 million people have achieved first full level 2 qualifications – equivalent to five good GCSEs – since the end of 2002. Around 100,000 people now complete Apprenticeships each year, compared to 40,000 in 2001/02. And, from 1997/98 and 2005/06, the number of UK and overseas graduates increased from 259,000 to 304,000.

Despite this significant progress and investment in recent years, our nation’s skills base does not compare favourably with the best in the world. In the Organisation for Economic Co-operation and Development (OECD) rankings, the UK is 16th out of 29 on proportion of working age population with low skills; 19th out of 29 on intermediate; and joint 11th of 30 on high skills. The proportion of adults in the workforce with the equivalent of a level 2 qualification or better is 88% in the US, compared to 67% in the UK.

These poor relative skills are a significant contributor to the productivity gaps that exist between the UK and key competitor nations. Output per hour worked is 20% higher in France, 13% higher in Germany and 18% higher in the USA, and up to one fifth of that productivity gap is attributable to skills.

The impact of skills on the life chances of individual citizens is also significant. Investing in skills helps individuals to find and stay in work, and enhances their career prospects and their earnings potential. Over a third of people with poor literacy and numeracy receive benefits, excluding pensions and child benefit, compared with less than one in ten of those with better skills. Having basic literacy and numeracy significantly increases an individual’s chances of

being in employment. Achieving 5 good GCSEs (A*-C) can, on average, increase an individual's earnings by up to 30% compared to someone similar who is lower qualified. Over their working lives, the average graduate earns over £100,000 more than an otherwise similar individual whose highest qualification is at level 3.

Because of the value of skills to our economy, society, employers and individuals, Lord Leitch concluded in his independent review that to compete and prosper, we need to raise our game on skills, and aim to be a world leader on skills by 2020. He estimated that delivering world class skills could bring net benefits of at least £80 billion over 30 years, driven by increased productivity growth.

Nearly three quarters of the 2020 workforce has already completed compulsory education, so to deliver world class skills it is vital that we encourage and enable adults already in the workforce to improve their skills and gain new qualifications. Although total employer spend on training is estimated by employers to have risen to some £38.6 billion a year, figures from the 2007 National Employer Skills Survey (NESS) show that 33% of employers in **England** do not provide any sort of training for their employees, only 35% have a training budget, and around 8m employees receive no training each year. We need all employers to follow the example set by the best.

The **Scottish** Analysis of the Work Skills in Britain Survey shows that 36.3% of employees received no training in the previous year and the majority of these (53.7%) were individuals in 'elementary' job. This is in line with previous findings which show that those most likely to receive training were those already with higher level qualifications. Research also shows that in Scotland 21.5% of the economically active working age population do not have at least NVQ Level 2 (approx 551,000 people).

Despite improvements over the last few years in the skills of the Welsh workforce, **Wales** still has a higher proportion of low-qualified adults than Scotland and most of the English regions. Many employers in Wales *do* already make substantial investments in training: In 2007, 71% of establishments reported arranging on-the-job training for employees over the previous 12 months, and 54% had arranged off-the-job training. Encouragingly, there are signs that employers' provision of training may be increasing.

However, not all employers embrace a culture of learning. According to the Future Skills Wales Survey (2005) whilst 63% of working residents (excluding the self-employed) agreed that their employer does already allow enough opportunity to develop skills relevant to their job, 42% of working residents felt that they needed more training and learning time to do their job well. The survey also revealed that employees with higher skills were far more likely to receive training than lower skilled employees - thereby perpetuating a low skills trap for many in Wales. Similarly, smaller firms are less likely to provide training opportunities than larger firms, and some sectors do better than others.

What is the government doing to address this issue?

The common thread running through all of the reforms the Government has set in train to deliver world class skills is that they are driven by the needs of the customer – employers and individuals. This 'demand-led' approach is about ensuring that the support Government delivers will help employers and individual citizens to access the skills they need to prosper.

Employer leadership of the employment and skills system

The creation of the new UK Commission for Employment and Skills establishes an unprecedented level of employer leadership and challenge at the heart of the employment and skills system. The UK Commission is led by employers and will provide vigorous, independent challenge to Government at the highest levels, on the strategy, targets and policies that will best deliver our employment and skills ambitions. Each year, the UK Commission will produce a 'state of the nation' report assessing the progress we are making towards our ambition of becoming a world leader in employment and skills by 2020.

In the light of this policy being introduced we have asked the UK Commission to defer its review relating to consideration of whether employees should have a legal right to workplace training, such that the review would not begin before 2014 and is completed by 2015.

The UK Commission is also responsible for advising on and performance managing the network of Sector Skills Councils (SSCs). SSCs will have a new remit focussed on: raising employer demand and investment in skills; articulating the future skills needs of their sector; and, ensuring the supply of skills and qualifications meets employer needs.

Through their SSCs, employers have a leading role in the reform and development of qualifications for their sector, and over which qualifications should be priorities for public funding. Wales has set up its own Wales Employment and Skills Board (WESB), with representation on the UKCES, carrying out a similar advice and challenge role vis-à-vis meeting the skills and employment challenges the Welsh economy. The Scottish Government has established

the Skills Utilisation Leadership Group, with representation from trade unions, employers, and other stakeholder organisations. This group champions the Scottish Government's ambitions for sustainable growth by enabling better deployment of the skills of the workforce, and recognises the interdependencies between, and contribution of, individuals, organisations (in the private, public and voluntary sectors), the lifelong learning system and government necessary to achieve this goal.

Improving skills in the workplace

England

Through the Skills Pledge and the Train to Gain service the Government is taking action to improve workplace training. The Skills Pledge allows employers to show publicly their commitment to meeting the skills of their workforce. Since it was launched in June 2007, more than 7,600 employers, covering over 5 million employees, have made the Pledge.

Through Train to Gain, employers can access a range of specialist help to able them to identify their skills needs and secure access to a range of help in identifying and sourcing the training and qualifications that will best address those needs. Since national roll-out began from April 2006, Train to Gain has engaged over 100,000 employers, enabled over 570,000 learners to begin learning programmes, and over 290,000 to gain new qualifications. By 2010–11 Government investment through the service will rise to over £1 billion.

We are also expanding and improving the Apprenticeships programme. Apprenticeship starts have increased from 65,000 in 1996/97 to 180,000 in 2006/07. They are projected to grow to almost 210,000 by 2010/11. By 2020 we aim to deliver over 250,000 apprenticeship starts and 190,000 successful completions in order to deliver the Leitch ambition of 400,000 apprenticeships in England. And we're now funding an additional 1,200 adult Apprenticeships in some of the best apprenticeship training programmes available, to provide a further boost to the skills needed for the jobs of the future.

Enabling individuals to realise their potential

The new Adult Advancement and Careers Service will deliver tailored employment and skills advice to low skilled unemployed adults, bringing together services provided by Learndirect and nextstep, and working in partnership with Jobcentre Plus. And a new system of Skills Accounts will give individuals full ownership, choice and purchasing power over their learning. Skills Accounts will offer all individuals access to the full range of support they need to take control of their learning and careers over a lifetime, and will help motivate and empower more adults to take up, invest and progress in learning. This is central to a broader aim of raising participation and increasing investment by individuals in their own learning.

This is a significant reform programme, but to realise our ambitions we need to stimulate a significant increase in action and investment from employers and individuals, supported by Government. And to do that, we need to embed the value of skills and lifelong learning in our culture in a way that it has never been before.

Scotland

The policy context and vision for skills development in Scotland is aligned to and sits within the overall purpose of the Scottish Government– to create a more successful country where all of Scotland can flourish through increasing sustainable economic growth. Learning and Skills are one of the critical components of economic growth and the Scottish Government set out its vision for skills development in Skills for Scotland: A Lifelong Skills Strategy. The strategy sets out what needs to be done to develop a cohesive lifelong learning system centred on the individual but responsive to employer needs.

Scotland compares favourably with the rest of the UK in terms of qualification levels (as a proxy for skills). However this is not matched by Scotland economic performance. To address this disconnect Skills for Scotland focuses not only in increasing the skills levels of individuals in Scotland but also on more effective utilisation of skills.

A key aim of the strategy is to ensure that **all** individuals are able to participate in skills development. The Scottish Government anticipates that the introduction of the right to request time of to train will stimulate a better dialogue between employees and employers, a dialogue which will focus on skills development that brings benefits to both employee and employer. They hope this dialogue will engender a culture change within the workplace in Scotland and will help to increase the percentage of employees who participate in training and address the current inequalities in terms of those who receive training.

This ongoing dialogue should also support the Scottish Government's focus on skills utilisation as the training must be aligned to business needs and they expect the employer and employee to discuss and identify how both new

and existing skills can be more effectively deployed within the workplace. The Scottish Government want to support a culture of lifelong learning in Scottish workplaces where:

- Employers and employees see the mutual benefits of training
- Ongoing skills development and effective use of employees' skills is positively embraced, and
- Individuals and businesses have the knowledge and skills to flourish.

Support for individuals

The Scottish Executive expect that the unions and in particular, the Union Learning Representatives, would have a key role in supporting individuals. They would be a key source of advice and guidance around the process but would also be involved in identifying appropriate training opportunities as well as accompanying employees to meetings with the employer to discuss the request.

Scotland has said in the consultation document that the Scottish Government would encourage all employees to take advantage of this right. They have recently established Skills Development Scotland (SDS) which brings together Careers Scotland (their all age careers service), learndirect Scotland (which provides information on learning opportunities) and the learning and skills elements from Scottish Enterprise and Highlands and Islands Enterprise. All individuals will have access to information, advice and guidance, via SDS, in relation to both career planning and available training opportunities.

Support for businesses

Skills Development Scotland plays an important role in supporting workforce development through the funding of skills interventions and by providing advice and guidance on training issues to small businesses. The Scottish Government is committed to ensuring that skills interventions meet the needs of employers, and have tasked Skills Development Scotland with improving the quality of its skills interventions. They are in the process of considering what type of skills interventions are required for Scotland now and in the future.

Skills Development Scotland will continue to deliver the legacy services of *Ids4business* to small and medium-sized businesses, those that are often least likely to train their employees. Previously *Ids4business* provided access to expert advisers who help employers assess the skills needs of their business, sources training to meet business pressures and offers a range of free resources such as online training packages. To offer advice on what support is available to small businesses in relation to the new right for employees to request time off to train, Skills Development Scotland will establish a dedicated helpline based around the inherited expertise of the *Ids4business* service.

Wales

The Future Skills Wales Survey (2003) identified the biggest barrier to undertaking training according to residents surveyed was lack of time (19% of residents); followed in third place by work pressure (10%) after family or childcare commitments (16%). This Right to Request Time to Work will, it is hoped, help to address these barriers and to redress the imbalance in who benefits from training.

The Welsh Assembly Government is also working to improve workplace skills through a number of other avenues, most notably through 'One Wales', the government's political agreement, makes a commitment to "equipping young people and adults alike with the skills to fulfil their potential at work and...support the development and growth of businesses"

Its new skills and employment strategy (Skills that Work for Wales), commits to improving the skills and qualifications of the Welsh workforce, to bringing closer together the employment and skills agendas and to increasing employers' and individuals' participation in learning. A central tenet of the strategy is to promote an increased shared responsibility between individuals and employers to take responsibility for improving skills to achieve enhanced productivity for businesses and financial and career opportunities for individuals.

Businesses in Wales can improve their approach to staff development by working towards achieving the Investors in People (IiP) standard, and by signing up to Wales' Basic Skills Employer Pledge, whereby an employer pledges to 'help employees with poor basic skills to improve these basic skills' primarily through an Action Plan.

Businesses in Wales (subject to certain eligibility criteria) also have access advice and support for re- or up-skilling their employees through the Welsh Assembly Human Resource Development (HRD) advisors, who work with companies free of charge to:

- review the company's strategy to ensure staff development and training helps to deliver business objectives;

- help the company improve its approach to management and training by building an agreed organisational development plan, and advising on its implementation;
- identify training and development requirements and produce an agreed plan;
- help the company to implement the training plan successfully by linking the company with training organisations and help it to source the right courses and funding, if available;
- support the company towards the Investors in People award

These advisors are part of the Government's expanding **Workforce Development Programme**, a gateway for businesses to access advice and guidance as well as mainstream programmes. To avoid confusion and to improve business access these programmes are being simplified and streamlined our programmes through Flexible Support for Business (primarily through a website and Single Investment Fund). They include:

- Work Based Learning – e.g. the Welsh Assembly Government is increasing the number of Modern Apprenticeship places in Wales (2008-2010) and the upper age limit has been abolished to allow more people to benefit. They are funded by the Welsh Assembly Government, currently at no cost to an employer. Higher level (level 4) apprenticeships – Modern Skills Diplomas – are also available and particularly targeted at SMEs.
- ReACT: if a business employs a worker who has been made redundant from a company in Wales in the last 6 months it will receive a subsidy payable over a 12 month period. The Welsh Assembly Government will also reimburse 70% of the cost of retraining each redundant worker
- Leadership and Management Development Workshops: these are subsidised (70% for SMEs and 50% for large companies) and can be tailored to meet company specific requirements.
- People in Business Workshops are targeted at disseminating good practice to senior managers through workshops held by business gurus.
- Where training and development needs cannot be met through existing programmes discretionary funding may be made available.

For those employees who are hard to engage in learning (especially workers with low skills and from disadvantaged groups) the Wales Union Learning Fund is being expanded to support a larger network of Union Learning Representatives to work with such individuals in identifying and supporting skills development opportunities.

Underpinning these initiatives, advice will be available to those in work through an all-age Careers Wales' service, (currently being reviewed to improve its effectiveness)

B – OPTIONS DEFINITION

We have considered three options:

- a. Option 1: do nothing;
- b. Option 2: pursue a voluntary approach to encouraging increased employer engagement;
- c. Option 3: legislate to give eligible employees in Great Britain a new right to request time to train.

Option 1: do nothing

The Government has in place a significant programme of work to support and encourage employers and individual citizens to invest in up-skilling and re-skilling. In the past decade, that programme has supported a significant increase in the skills of the working age population. Since April 2001, more than 1.75m learners achieved their first Skills for Life qualification. More than 1 million people have achieved first full level 2 qualifications – equivalent to five good GCSEs – since the end of 2002. Around 100,000 people now complete Apprenticeships each year, compared to 40,000 in 2001/02. And, from 1997/98 and 2005/06, the number of UK and overseas graduates increased from 259,000 to 304,000.

But, as the Leitch analysis makes clear, we need to raise our game still higher on skills and aim to be a world leader on skills by 2020.

Whilst the reform programme outlined above will lead to increases in numbers acquiring skills and qualifications it could potentially leave a significant group of employees who wished to undertake training, but who did not feel sufficiently empowered to do so.

In 2010, the UK Commission for Employment and Skills will conduct a review of the progress we are making towards our skills ambitions. As part of that review, the UK Commission is due to assess progress towards making the UK a world-class leader in employment and skills by 2020, in the context of the aims and priorities of the four UK nations.

The review - and the aspect of it relating to a possible statutory entitlement to workplace training - is an important aspect of this option. It posits the possibility that, if we have not made sufficient progress towards our skills ambitions a significant element of compulsion would be introduced, compelling employers to support their employees to gain new skills and qualifications. The implications of that possibility – in terms of the potential costs and additional burden on employers - are an important factor in our analysis of the options open to us.

If the new right to request time to train goes ahead, we will ask the UK Commission for Employment and Skills to defer the aspect of its 2010 review relating to consideration of whether employees without a level 2 qualification should be given a statutory right to workplace training, such that the review would not begin before 2014 and is completed by 2015.

Option 2: pursue a voluntary approach to encouraging increased employer engagement

Many employers already discuss training needs with their employees. The former DIUS, BERR, and the CBI, and the TUC have published a document which describes the benefits of workplace discussions about training, based on case studies which highlight the diversity of successful dialogue systems that operate across different business sizes and sectors. The publication is aimed at employers and provides best practice guidance to encourage workplace dialogue on training and skills.

The release of this publication presents an opportunity to run an advertising campaign to support the publication and to promote workplace conversations between employees and employers about skills training. This could focus on two aims: encouraging employees to approach their employer with requests for time to undertake training; and encouraging employers to actively consider any requests.

Another potential means of encouraging employers to engage voluntarily is through marketing and communications activity. Advertising costs vary considerably, from approximately £200k for a very low-key promotion to several million pounds for a campaign like the 'Our Future: It's In Our Hands' campaign in England. Based on recent DIUS campaigns comprising limited, short-term TV and radio advertising plus paid press and PR, we can estimate the costs of a similar campaign to be approximately £2 million.

To assess the costs of option 2 to the employer we have used figures from the RIA for the extension of the flexible working arrangements, which identified the costs of an *informal* conversation between employers and employees. This is felt to be a representative figure that can be used to cost this option as it reflects the intention that an employee and an employer will meet to discuss training. This cost is cited as £23.69 per employee informally asking for training. This is based on the assumption that an informal conversation will take approximately half an hour, with management time estimated to cost £32.71 per hour and employee time estimated as costing £14.66 per hour.

We know from previous similar DIUS campaigns that advertising would be likely to increase *short-term* awareness of the policy to between 40-60%, although a sustained campaign would be needed to maintain this level of awareness. However, it is not possible to forecast how far this awareness would translate into action i.e. into actual requests for time to train. This means that we are unable to make an accurate assessment of the impact on the take-up of training from such an advertising campaign. Wales and Scotland may also wish to carry out more localised marketing campaigns in addition to GB wide campaigns

Option 3: legislate to give eligible employees in Great Britain a new right to request time to train

The right to request flexible working, which was introduced in April 2003, has proved to be a powerful driver of cultural change and has contributed towards a change in attitudes and behaviour in the workplace. Around 6 million employees currently have the right to request flexible working but over 14 million, including part time workers, work flexibly. And a further right to request deferred retirement has also benefited many workers. We believe a right to request time to train would deliver similar benefits.

The core of our policy is that eligible employees in Great Britain should have a right to ask their employer to give them time to undertake training. Employers – in both public and private sectors - would have to consider requests fairly and seriously. To make it easier for employers to manage the new right, we propose to base the processes for the new right to request time to train on the existing model of the right to request flexible working. Employers are used to dealing with requests under these arrangements and are likely to have well developed and understood processes for managing the flow of requests. It is envisaged these processes could be easily adapted and extended to support a new right to request time to train.

Who would the right to request time to train apply to?

We propose to create a new right to request time to train for all employees in Great Britain. By 'employee' we mean someone who has entered into or works under a contract of employment. The right would apply to employees working in both the public and private sectors.

We propose making it a condition that an employee would have to have worked for their employer for a reasonable period before being able to make a request for time to train. Under the existing flexible working arrangements, employees are eligible to apply to vary their contracts of employment if they have been continuously employed by their employer for a period of not less than 26 weeks. We consider a reasonable period of prior continuous employment by an employee to be eligible for the right to request time to train may also be 26 weeks.

Casting the coverage of the new right in this way will mean that employers would only be dealing with requests from employees with whom they had developed a substantial working relationship, and who had demonstrated a degree of loyalty to the business.

Where they are 'employees', volunteers will be covered by the new right.

This is the option that was taken forward, with the inclusion of a phased approach being taken to implementation. This would make the right applicable in businesses with 250 or more employees from 6 April 2010, and in all businesses from 6 April 2011.

What sort of training would be covered?

We propose to cast the right in terms that enable employees to request time to undertake any training that will help them to be more productive and effective at work, and that helps their employer to improve productivity and business performance.

So, people would be able to request time to address a particular skills need, for example working with spreadsheets, as well as full qualification-bearing programmes such as National Vocational Qualifications (NVQs) or English for Speakers of Other Languages courses. Such a broad scope for the right would mean that all employees - whatever their prior level of skills attainment - could exercise the right, thereby maximising its potential as a lever for cultural change, and maximising its direct impact on the skills of the workforce.

Through SSCs, employers have a leading role in the reform and development of vocational qualifications for their sector and over which qualifications receive public funding. That means that through granting a request for time to train to undertake courses of study for accredited vocational qualifications employers will be able to take some assurance that the programme their employee will be accessing will increase productivity and competitiveness.

Would employers have to pay for the training?

Many employers already invest significant resources in training for their employees, and will want to align that spend with requests they receive from their employees. But we do not propose that employers be compelled to pay for training when they grant a request for time to train.

Where employers in England grant requests for time to train to pursue nationally recognised and accredited training, they can access Government support through the Train to Gain service to help them maximise the impact

of time to train for their business. As described in Chapter 2, through Train to Gain, employers can access Government funding to sit alongside their own financial contribution, including a subsidy of up to 100% for certain training.

In Wales employers can access the Workforce Development Programme, which is a gateway to a range of mainstream programmes, as well as Discretionary Funding tailored to meet companies' specific training needs.

Employees in England wishing to undertake Higher Education (HE) having had a request for time to train granted will be able to access the full package of Government funding for both full-time and part-time study. Employees wishing to study on a part-time course in HE can qualify for means-tested help with the costs of their tuition fees and with study costs, such as books, materials and travel. The help they would qualify for would depend on their personal circumstances and the course they intended to study. Extra support will also be available in Wales from the 08/09 academic year in the form of additional grants to part time students with adult or child dependants.

How would employees make a request for time to train?

We propose that employees should set out their requests in writing, including some key information about what training they are requesting, and how it would benefit both them and their employer. Employees have a right to be accompanied to any meeting with their employer about the request for time to train, and there is no limit who that companion might be other than they must be a worker who is employed by the same employee making the request. In practice, employees might want to be accompanied by a friend, colleague or their Union Learning Representative.

Would employers have to grant all requests?

The new right is a right to *request* time to train, and not a right to time to train. After considering the request they receive, employers would be able to reject a request for one or more acceptable business reasons. Based on the existing list for flexible working provisions, it is proposed the acceptable reasons could be as follows:

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

How much time could an employee request?

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

We propose limiting the number of requests to one in any 12 month period. This is again in line with the flexible working arrangements. However, it would be possible for this one request to cover more than one type or course of training, depending on the needs of the employee. For example, an employee could ask to undertake a full Level 2 course and have literacy or numeracy needs that need to be addressed as well. What would be important is for the request to stimulate a proper dialogue between the employee and employer about the employees' individual learning needs.

How could the time be taken?

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

C - OPTIONS ANALYSIS

The tables in this section of the document show the breakdown for England. Annexes A and B show the same calculations for Scotland and Wales. The totals for Great Britain are given after each table.

Assessing the Impact

Assessing the impact of a statutory right to request time to train is difficult. It will be largely dependent on how employees and employers react to the policy, once implemented. For the purposes of this impact assessment we have therefore had to make some key assumptions in order to produce the cost benefit analysis. In terms of the costs, we have assessed the costs to the employer and employee in making a request for time to train, and of that request being considered and potentially taken through to appeal. We have also assessed the 'accommodation costs' of a successful application. The accommodation costs include some element of lost productivity costs, expressed as foregone earnings.

Key Assumptions

In assessing the time to train proposal we have made the following assumptions:

- That no further policy changes are made, other than those already planned, that will have an impact on the time to train proposals.
- That the time taken to make and consider a request for time to train would be the same as that for making a request under the flexible working arrangements.
- That it would be appropriate to apply the costs developed (by the then Department for Business, Enterprise and Regulatory Reform) for the flexible working arrangements to develop the cost benefit analysis for the time to train proposal.
- That we use the National Adult Learner Survey (NALS), Lifelong Learning Wales Record (LLWR) etc as a guide to assess potential demand amongst non-learners. From that analysis, we can reasonably assume that 13% of employees in this group would potentially be interested in submitting a request for time to train.

- That we would expect, through advertising and promotion of the right, that somewhere around 5% of employees outside of the non-learners group may want to exercise their right to request time to train.
- That based on the flexible working arrangements, and assuming that employers will see investing in the skills of their employees as a way of driving forward their business, around 75% of requests for time to train would be successful.

We have not attempted to estimate the percentage of deadweight requests, for example, the requests that would have occurred in the absence of any policy change. However, it is worth noting that, in assessing the potential levels of interest and take up (see Table 1 below) in time to train, we have excluded from our calculations those employees who currently receive training and non-learners not interested in training. By excluding those employees we feel that we have minimised the potential for deadweight to affect our calculations as these will be based primarily on the number that would be interested in time to train.

The following sections of this Impact Assessment are based, in part, on the assumptions listed above.

What would the take up of this new right be?

In order to assess fully the costs and benefits of time to train we need first to consider how many employees we would expect to exercise the right, and how many of these would be successful and go on to undertake some form of training.

The National Employer Skills Survey based its analysis on 22m people in **England** in employment. Around 8m of those employees do not currently receive any training. Using evidence from the National Adult Learner Survey (2005), we know that 40% of non-learners say that they would like to learn were it not for certain barriers. Of those, 9% say that they would learn if they could have time off from work to train and 4% say that they would learn if they were able to learn at work. Putting these together, we can reasonably assume that the potential demand for time to train from this group of "interested non-learners" would be around 13%. So using these figures the calculation would be 8m x 40% x 13% which would produce a potential client group of just over 420,000 employees when the policy was rolled out in full in year 2.

Amongst the remaining people in employment in England who had been in employment for 26 weeks or more (i.e. the "non-learners", who from the evidence outlined above we might assume to be 'not interested in learning', and those that already receive some training) we would expect the level of interest in time to train to be lower than amongst 'interested non-learners' – either because they are not interested in learning, or because they are already doing some learning.

We would though, still expect the right to request time to train to stimulate some take up amongst this group. We have assumed that potential take-up will be around 5% from this group of just over 19m employees. Using these figures we would assume a client group just under 950,000.

Putting these two figures – 420,000 and 950,000 - together, we have assumed that potential demand for time to train would be somewhere round 1.3m employees when the policy was rolled out in full year.

These calculations have been repeated for year 1 in Table 1 overleaf. As the right will only apply to employees in organisations with 250 employees or more, the number employees able to make requests in the first year is reduced to 10,758,000. We estimate that this could deliver total potential demand of 650,000 in year 1.

Table 1

Potential take up	<u>Year 1</u>	<u>Year 2</u>	SOURCE
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	<u>2010-11</u> <u>Large</u> <u>Employers</u>	<u>2011-12</u> <u>All</u> <u>Employers</u>	
Number of people in employment in England, who have been in employment for 26 weeks or more	10,758,000	22,000,000	National Employer Skills Survey
Proportion not receiving any training	3,524,603	8,140,000	NESS 2007: 37% of employees do not receive training
Proportion of non-learners interested in learning	40%	40%	NALS 2005
Potential 'interested' client group	1,409,841	3,256,000	
Potential client group 'not currently interested', or already receiving training	9,348,159	18,744,000	
Proportion of 'interested' group who may want to take up the right	13%	13%	NALS
Proportion of 'not currently interested' / already receiving training group who may want to take up the right	5%	5%	
Total potential demand	650,687	1,360,500	

However, we do not envisage that all these employees would make requests for time to train in a single year. Instead, we have assumed that somewhere in the region of 30% of these employees would come forward with requests for time to train in any year. This would equate to approximately 195,000 in year 1 and around 400,000 applications when the right has been phased in for all businesses. The impacts in Wales and Scotland are explored in Annexes A and B..

From the experience of the right to request flexible working we know that around 75% of applications are successful. Given that we are using the same application process, and that requests made under time to train are likely to be for shorter, more fixed periods as compared to those made under flexible working, we think it is fair to assume that a similar proportion of applications will be successful. This would mean that of the 195,000 requests we expect might be made in year 1, 146,000 would be granted and of 400,000 requests we expect might be made in a single year from year 2, just over 300,000 - or 1.4% of the total eligible population - would be granted.

Table 1a and !b overleaf illustrate the potential interest and take up at 20% 30% and 40% of the total estimated demand in England, also taking account of the phased approach to implementation. Our assumed maximum take up of 30% in any year is highlighted in the table below.

Table 1a – year 1

Assumed take-up in Year 1	1.2% of total eligible population (i.e. of the 10.8m) – (20% of estimated demand)	1.8% of total eligible population – (30% of estimated demand)	2.4% of total eligible population – (40% of estimated demand)
Total number of requests for time to train	130,137	195,206	260,275
Proportion of successful applications	75%	75%	75%
Total number of additional learners	97,603	146,405	195,206

Table 1b – year

Assumed take-up in any one year 2011-12	1.2% of total	1.9% of total eligible	2.5% of total
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onwards, after phasing-in completed and right applies in all businesses	eligible population (i.e. of the 22m) – (20% of estimated demand)	population – (30% of estimated demand)	eligible population – (40% of estimated demand)
Total number of requests for time to train	272,000	408,100	544,200
Proportion of successful applications	75%	75%	75%
Total number of additional learners	204,100	306,108	408,100

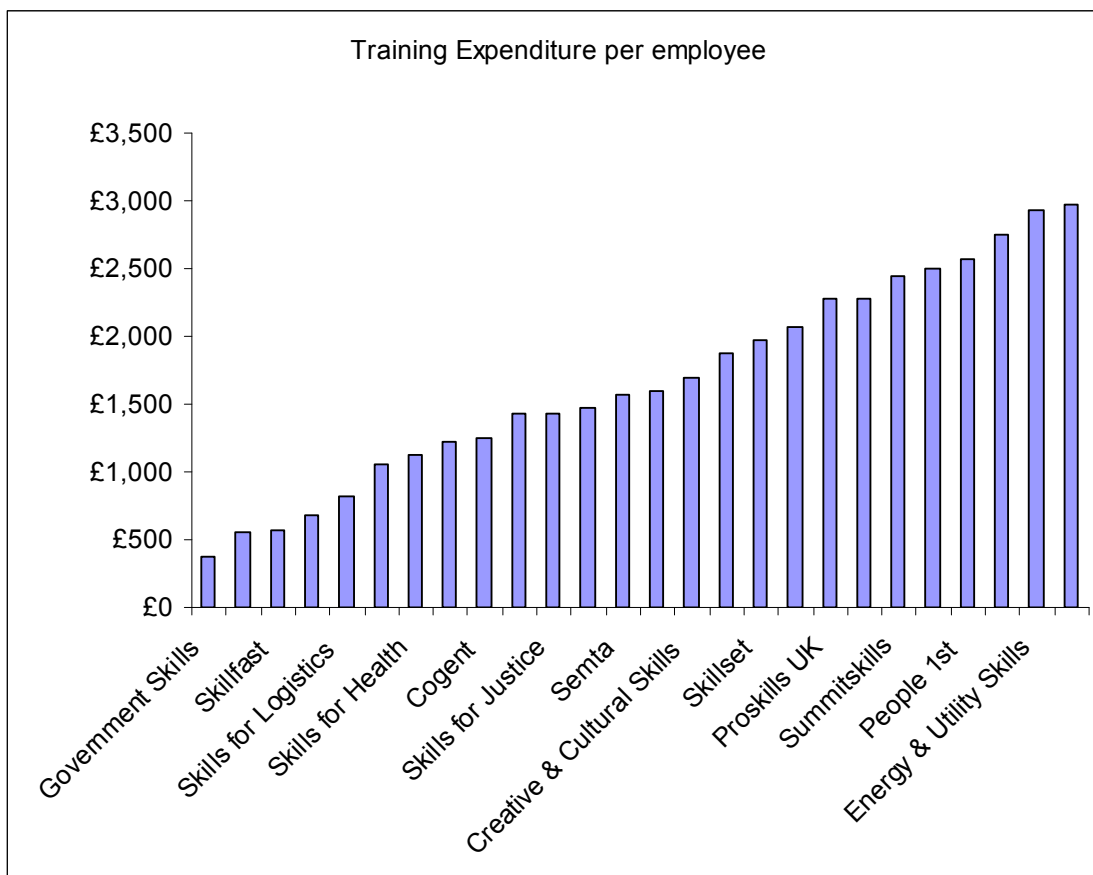
Table 1 in annexes A & B show the same calculations for Scotland and Wales. If we add together the figures from all three tables, for our assumed take-up of 30% we arrive at a forecast in Year 1 of total number of requests of 223,660 and total number of additional learners of 167,745 and a forecast in Year 2 onwards of a total number of requests of 467,322 and total number of additional learners of 350,491

The percentage of the total eligible population is calculated as the estimated number of requests made as a percentage of those able to make requests. This varies from 1.81% in the first year to 1.85% in the second year onwards in England. When rounded down to one decimal point these work out to be 1.8 and 1.9 percent respectively. For Wales and Scotland this works out to be 1.8% in each year when rounded..

SECTOR ANALYSIS OF REQUESTS

We have carried out an analysis of training requests by sectors within Sector Skills Council (SSC) grouping. The first factor we considered was training expenditure per employee. It would be a reasonable assumption that employees in sectors where the expenditure per employee was the lowest may be more likely to make requests under this proposal.

The graph below shows the expenditure per employee by SSC:

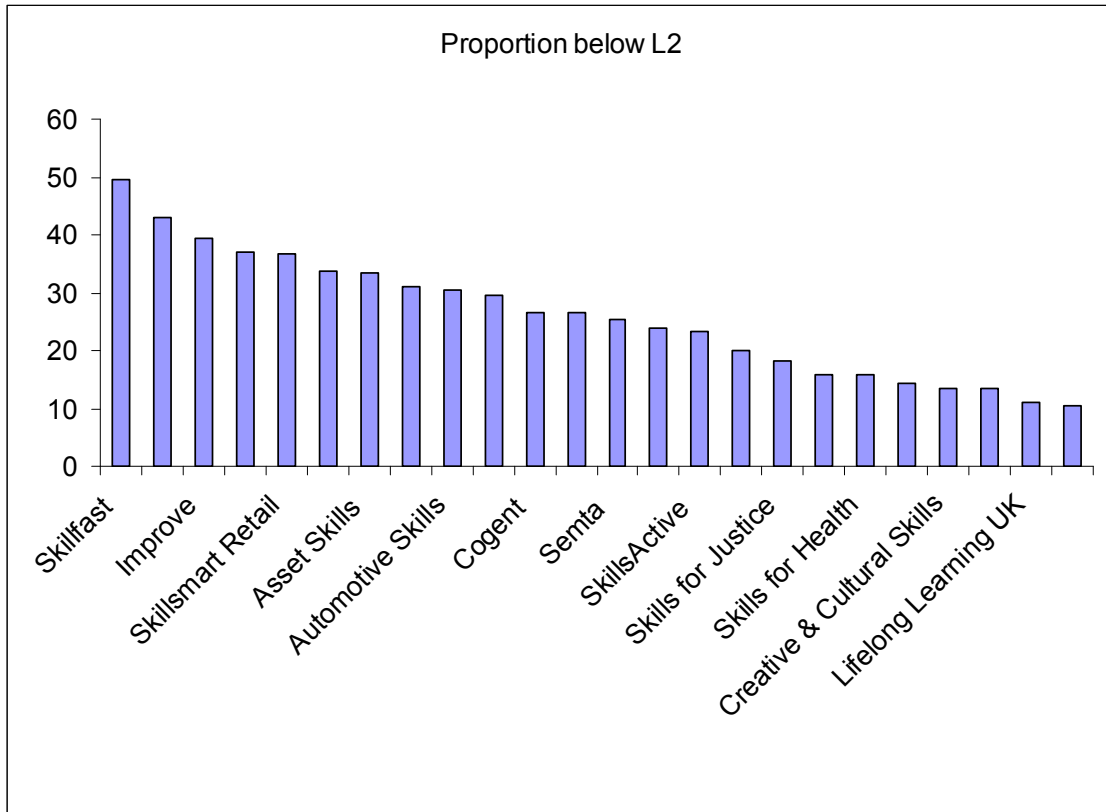


Graph 1 – data in Annex D

There are a number of other factors to consider which influence the spend on training but from this graph you could conclude that employers in the SSCs at the lower end of the chart, Government Skills, Skillfast and Skills for Logistics may receive more requests for Time to Train.

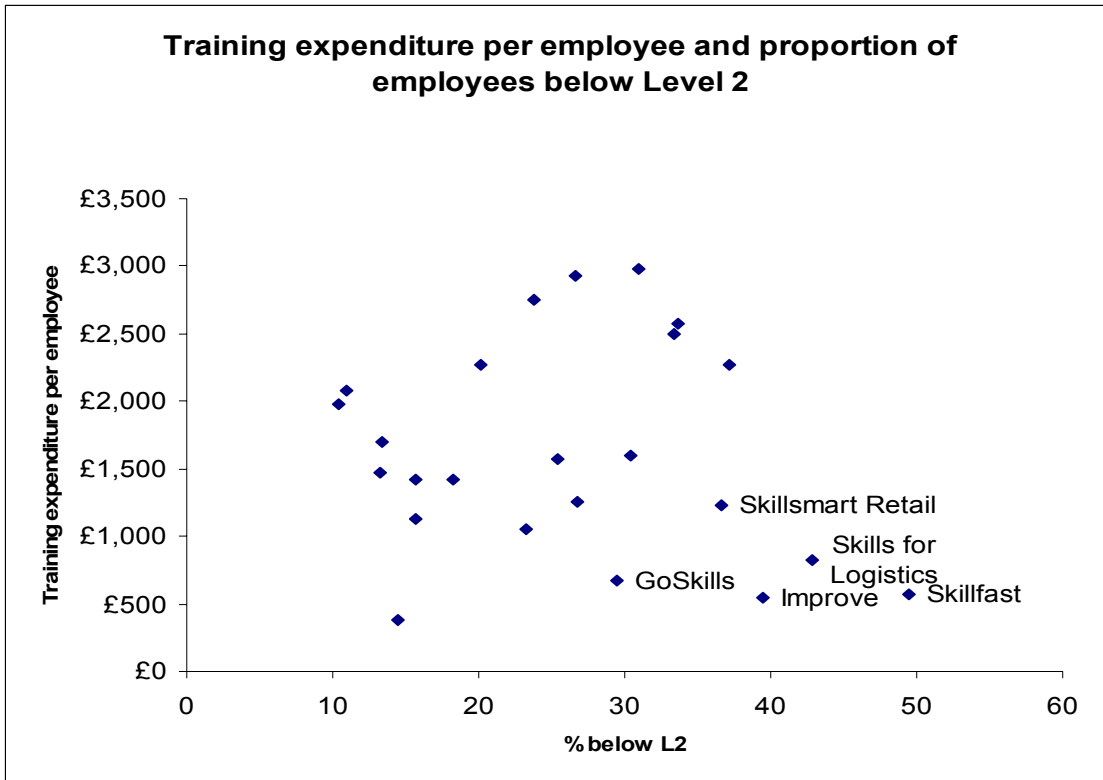
We also considered SSCs using the factor of the number of employees qualified below Level 2. While there is no qualification level in Time to Train at which people can make requests it seems a reasonable assumption that employers in sectors with the highest proportion of employees at low skill levels may experience more requests for training under this proposal than other employers. A first Level 2 qualification is

The graph below shows a breakdown of SSCs by the proportions of employees with qualifications below Level 2.



Graph 2 – data in Annex D

Finally, we considered both factors together. The graph below shows the SSCs expenditure and employees below Level 2.



Graph 3- data in Annex D

Again, it would be a reasonable assumption that employers within sectors with the lowest spend per employee on training and the highest proportion of employees below Level 2 may experience more requests under these proposals than other employers. This is at best a guide as to the possible impact of Time to Train.

Benefits

There are a wide range of benefits that accrue to employers from having a workforce with increased skills. It is estimated that a 1% increase in the proportion of workers trained in an industry leads to a 0.3% increase in industry wages and a 0.6% increase in value added per worker.⁴ There is also limited evidence for a positive link between training and profitability. For example, Bassi et al⁵ find that firms investing more in employee development in the US performed better on the stock market than firms who invested less.

The right to request flexible working impact assessment also cites the benefits of having flexible working arrangements in terms of reduced vacancy costs and increased skills retention; increased productivity and profits; and reduced absenteeism. Whilst it is fair to assume that some of these benefits would also apply to the right to request time to train we are unable to quantify this at this stage.

For the purposes of this impact assessment and calculating the benefits we have considered only people studying at Level 2 and Level 3. From the Statistical First Release figures⁶, we know that of the 2.4 million learners who are aged 19+, 20% study at Level 2 and 10% study at Level 3. This means that we have only captured the benefits from 30% of the additional learning. We think that it is reasonable to apply these percentages to assess the numbers of additional learners at these levels that we believe would be created through time to train – see table 2. Our assumed maximum take-up of 1.8% - 1.9% in England in any one year is highlighted in the table below.

Table 2a – Year 1

Take-up	1.2%	1.8%	2.4%
Number studying at Level 2 (20% of total learners)	19,521	29,281	39,041

⁴ Estimated effect of training on earnings and productivity, British firms, 1983-1999 (Dearden, Reed and Van Reenen, 2005)

⁵ Bassi, McGraw and McMurrer (2003) *Talent Optimization: Measuring Value Not Costs*, Human Capital Capability

⁶ Statistical First Release presents information on learner numbers in post-16 education and training in England funded by the LSC

Number studying at Level 3 (10% of total learners)	9,760	14,640	19,521
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Table 2b – Year 2 onwards

Take-up	1.2%	1.9%	2.5%
Number studying at Level 2 (20% of total learners)	40,800	61,200	81,600
Number studying at Level 3 (10% of total learners)	20,400	30,600	40,800

See table 2 in Annexes A & B for calculations for Scotland and Wales. If we add together the data from all three tables this gives us an assumed maximum take-up figure in Year 1 of 34,706 studying at level 2 and 17,319 at level 3. Then from Year 2 and any one year after phasing-in completed of 72,470 studying at level 2 and 36,165 at level 3.

We expect that the remaining 70% of training will be undertaken at other levels. This could be in the area of lower level skills such as Skills for Life or in unaccredited non qualification bearing courses - given that the right would allow for any training to be requested that would improve an employee's productivity at work and support improved business productivity and performance for their employer.

However, robust data is not available which would allow us to accurately assess the benefits of this type of training. We have therefore been unable to include it in our analysis. But it is fair to conclude that some economic benefits and wider social and economic benefits would result from this general increase in learning. We therefore believe that the actual benefits derived under this right are likely to be far higher than those we have been able to quote. This approach to benefits quantification is in line with impact assessment best practice.

We have confined our assessment to the benefits of Level 2 and 3 qualifications. Using the standard adult completion rates of 66% for Level 2 and 56% for Level 3 we have calculated the numbers of Level 2 and 3 qualifications that would result from these additional learner numbers. The results are shown in the table below:

Table 3a – Year 1

Additional qualifications	1.2%	1.8%	2.4%
Number of additional Level 2 qualifications	12,900	19,300	25,800
Number of additional Level 3 qualifications	5,500	8,200	10,900

Table 3b – Year 2 and on

Additional qualifications	1.2%	1.9%	2.5%
Number of additional Level 2 qualifications	26,900	40,400	53,900
Number of additional Level 3 qualifications	11,400	17,100	22,900

Again, if we add in the Scottish and Welsh data from Annexes A & B we arrive at a total in Year 1 of 22, 881 additional level 2 qualifications and 9,700 level 3, then in Year 2 and on of 47,839 additional level 2 qualifications and 20,216 level 3.

The figures in Table 3 have been used to calculate the benefit that would result from the additional learning. Using the NPV data taken from the MacIntosh cost benefit analysis of apprenticeships⁷. The MacIntosh report gives a Net Present Value (NPV) for a Level 2 qualification of £13k and £34k for a level 3. These figures have been updated to 2009 prices and on that basis provide a Net Present Value for a Level 2 qualification of £14.3k and £37.4 for a Level 3. Applying this to the number qualifications gained provides the following results:

Table 4a – Year 1

Take-up assumptions	Total benefit from Qualifications Gained
1.2%	£390m
1.8%	£585m
2.4%	£780m

Table 4b – Year 2 and on

Take-up assumptions	Total Benefit from Qualifications Gained
1.2%	£816m
1.9%	£1,224m
2.5%	£1,632m

Table 4 in Annexes A & B show similar calculations for Scotland and Wales. If we add these totals to Table 4 above, and look at our assumed take up figure, we arrive at an overall total benefit from qualifications gained in Year 1 of £693m and after full implementation in year 2 and onwards of £1,448m

Wider Benefits

There are also a range of other social benefits that result from increased skills. Better skills help individuals to find work, stay in work, and progress. Over a third of people with poor literacy and numeracy receive benefits, excluding pensions and child benefit, compared with less than one in ten of those with better skills. Research has also shown that the benefits of increased skills and qualifications go beyond financial considerations. There are associated health benefits from possessing a higher qualification. For example, we know that higher skilled workers are less likely to suffer from depression and obesity.⁸ Higher skills can also increase social mobility, allow people to provide better support for their children to learn and develop, reduce crime and increase civic participation

Costs

Employers

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

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

These are considered in turn. As the time to train procedure mirrors the processes for the flexible working arrangements we have based the costs on those in the 2008 RIA for the extension to flexible working

⁷ Macintosh (2007) A cost benefit analysis of apprenticeships updated to 2009 prices. The report assesses the lifetime benefits of completing vocational qualifications in terms of higher wages and employment likelihoods, compared to the costs to all parties of delivering the qualification

⁸ Various research reports by the Centre for Research on the Wider Benefits of Learning
<http://www.learningbenefits.net/Publications/ResearchReports.htm>

Implementation costs

These are one-off costs which will mainly be incurred in the period around when the legislation comes into force. It is assumed that the introduction of a right to request time to train will have negligible implementation costs. Firms are already familiar with how to process a request for flexible working and the new right will follow the same process. The cost of communicating the new right to employees will be very little as it is assumed that firms will already have a method of communication in place that will only need updating.

The phased approach to implementation is not considered to have any bearing on costs, as it is simply a matter of providing smaller businesses with more time to prepare for the introduction of the new right.

Procedural Costs

Average cost of handling a formal request

Essentially, the first stage encompasses a written request from the employee, deliberation by the employer both before and after a meeting with the employee, and then preparation of a decision. The principal cost will be the time of both management and employees (it is assumed that employees prepare requests during work rather than in their own time).

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

We also need to factor in experience from the flexible working arrangements, which has shown that these arrangements have acted to accelerate culture change in the workplace, leading to many applications being considered on a more informal basis, which again significantly reduces the procedural costs.

In its impact assessment for extending the right to ask for flexible working, the then Department for Business, Enterprise and Regulatory Reform (BERR) has carried out extensive analysis of the costs to business of handling formal requests. We consider that the right to request time to train would operate in a very similar way and thus it is appropriate and proportionate to use the BERR cost calculations in this impact assessment⁹. The flexible working Impact Assessment estimates 2 hours of employee time, and 3 hours of management time to process a request that is dealt with formally. This works out at approximately £74 per request in 2009 prices. When we include a 21% uplift for non direct labour costs this provides a figure of £90 per request. Evidence from the flexible working RIA indicates that 78% of all requests for flexible working were successful and of these, 87% were accepted at the first stage.

Average cost of appeal or internal grievance stage

The internal appeal stage will involve a written statement of appeal by the employee, a meeting (where the employee may be represented) and a written response by the employer. Where requests reach this stage, it is likely that both employees and managers take more care and attention over their written communications. The meeting may also be longer and more wide-ranging. It is therefore assumed that the average cost is double that of the first stage, namely £180 per request at 2009 prices (including a 21% uplift for non direct labour costs). Under the existing flexible working arrangements, 25% of declined requests went to internal appeal¹⁰. These would mean costs of around £2.5m in year 1 and around £5m in year 2 onwards. These costs have been included in the costs totals in the summary page.

Average cost of external dispute resolution stage

The average cost to an employer of an application to an Employment Tribunal - £5,822(at 2009 prices)¹¹ - is used as a benchmark figure. The cost to the employer excludes any financial or non-financial costs borne by the employee at this stage. Other sources of dispute resolution, e.g. the ACAS arbitration scheme, may be cheaper for both parties.

We expect the number of appeals to be low. Overall the number of appeals for the flexible working jurisdiction has been relatively small, accounting for approximately 0.2% of all applications, which equates to less than 0.1% of all Employment Tribunal claims over the period. Furthermore, following the extension of the right to request to carers of adults in April 2007, there was not a significant increase in claims: in the year to March 2007 there were a total of 235 ET claims, whereas in the year to March 2008 there were 271 ET claims. Again, given that we are mirroring

⁹ <http://www.berr.gov.uk/files/file47434.pdf>

¹⁰ 3rd Worklife Balance Survey page 59.

¹¹ Source Survey of Employment Tribunal Applications 03'

the flexible working appeals process, we think we can assume a similar appeal rate of 0.2%. At our maximum 1.9% take-up figure this would equate to around 940 claims per year.

ACAS Scheme and the Employment Tribunal Service

Based on flexible working figures, we do not expect enforcement costs to be significant as we anticipate the number of cases dealt with by ACAS and the Employment Tribunal Service to be low. We also think that the decision to phase the introduction of the right will reduce the number of claims to Employment Tribunals requiring pre-claims conciliation. We will consider the position at the mid-year point in October after the policy has been in place for six months based actual evidence of the number of cases coming forward for pre-claims conciliation and those actual reaching a Tribunal.

Administrative Burdens

In designing the policy we have sought to minimise the administrative burden on business, particularly small firms. We are mirroring the 'right to ask for flexible working' approach by providing clear, easy-to-follow on-line guidance to business and providing standard forms and letters for each stage of the application process.

Annex C sets out the administrative burden information obligations associated with the right to request flexible working. These were used by the then BERR to identify and separate out from the procedural costs, those activities under the current proposals that are likely to impose an information obligation on employers.

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

Employers are only required to consider one application from an employee within a 12-month period. The flexible working model assumed in the 2008 Impact Assessment estimated 1.00 hr of admin burden per agreed request and 1.00 hr of admin burden per refused request. Where a case is appealed, the model assumes an additional 2 hrs of admin burden. See table below;

Table 5. Estimated time to process a request

Acceptance stage		unit cost		of which admin burden	
		formal	informal	formal	Informal
Average time to processing requests at first stage (accepted)	management time	3	1.5	1	1
	employees time	2	0.5	0	0
Average time to processing requests at first stage (rejected)	management time	3	1.5	1	1
	employees time	2	0.5	0	0
Average additional time per request taken to appeal stage*	management time	6	3	2	2
	employees time	4	1	0	0

Source: BERR estimates. * Assumed to be the double of a new request

Table 2.6a of the 2009 Annual Survey of Hours and Earnings (ASHE) Analysis by Occupation¹² shows the median hourly rate of pay for a manager as £18.22 per hour. We consider 21% to be the most accurate figure to include for non-direct labour costs, and have applied this to the procedural costs overall. However, in order to be consistent with the standard cost model methodology, for the purposes of the administrative burden, we are applying a 30% uplift to account for non-direct labour costs. This gives a rate of £23.69 per hour.

Adding together the total number of requests in England, Scotland and Wales at our assumed take-up of 30% gives total requests in Year 1 of 223,660 and in Year 2 onwards of 467,322 requests. We anticipate that 75% of

¹² http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occupation.pdf

requests will be successful and 25% of requests will not. In Year 1 this equates to 167,745 agreed requests and 55,915 refused requests. From Year 2 onwards these figures would increase to 350,492 agreed requests and 116,830 refused requests.

We have assumed 25% of refused requests being appealed by the employee and claims to the Employment Tribunal Service are included in the overall figure for appeals.

Using the Standard Cost Model of 'price x time x quantity', we estimate the total additional administrative burden for GB employers will be a net annual increase in Year 1 of £6 m and in Year 2 onwards of £12.5m as shown below (2009 prices)

Year 1	Price	Frequency	Quantity	
Agreed requests	£23.69 x 1	1 per annum	167,745	£3,973,879
Refused requests	£23.69x 1	1 per annum	55,915	£1,324,626
Appeals	£23.69x 2	1 per annum	13,979	£662,325
Total				£6.0m

Year 2	Price	Frequency	Quantity	
Agreed requests	£23.69 x 1	1 per annum	350,492	£8,303,155
Refused requests	£23.69 x 1	1 per annum	116,830	£2,767,703
Appeals	£23.69 x 2	1 per annum	29,208	£1,383,875
Total				£12.5m

Adjusting these figures to the 2005 baseline, (using GDP deflator with 2008-09 as 100.0 and 2005-06 of 92.079) gives administrative burden net increases in Year 1 of £5.5 m and in Year 2 of £11.5m

Cost of accommodating requests for time to train

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

Employers can reject requests on grounds of cost, but this does not imply that the additional costs of accommodating requests are zero. Employers will accept cases where some additional cost is involved. Using the flexible working IA figures as our basis (based on wage survey data from 2007), we have assumed an accommodation cost for a successful request for time to train to be £217.50 (including a 21% uplift for non direct labour costs). This has been updated to 2009 prices to provide a new figure of £229. When added to the £90 procedural this gives a total cost of accommodating a successful time to train request of £319 which includes 21% for non wage labour costs.

Added to this we have also included costs for loss of productivity to employers in granting time to train requests. We have expressed this in terms of foregone earnings for the Level 2 and 3 qualifications gained which we have used as the primary source of the benefits. The foregone earnings figures have been taken from the Education and Skills Bill Impact Assessment published earlier this year. This equates to £5k per qualification.

Table 6a and 6b below summarises the total costs to employers. The lost productivity costs are based on the foregone earnings figure used in the IA for the Education and Skills bill. As with earlier calculations, this only covers the 30% of learners doing Level 2 and Level 3 and we are unable to accurately assess the other 70% of learning.

Table 6a – Annual Costs for employers (Year 1)

	Costs to	Proportion
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	Employers		1.2%	1.8%	2.4%
Successful	£319	75%	£31,160,807	£46,741,211	£62,321,615
Unsuccessful	£90	24.8%	£2,904,668	£4,357,002	£5,809,336
Tribunal	£5,822	0.2%	£1,515,349	£2,273,024	£3,030,698
Lost Productivity (expressed as foregone earnings)	£5,126k per L2/3		£150,098,567	£225,147,851	£300,197,135
TOTAL £			£186m	£279m	£371m

Table 6b – Annual Costs for employers (Year 2 and on)

	Costs to Employers	Proportion	1.2%	1.9%	2.5%
Successful	£319	75%	£65,152,118	£97,728,176	£130,304,235
Unsuccessful	£90	24.8%	£6,073,183	£9,109,774	£12,146,365
Tribunal	£5,822	0.2%	£3,168,346	£4,752,519	£6,336,691
Lost Productivity (expressed as foregone earnings)	£5,126k per L2/3		£313,831,391	£470,747,086,	£627,662,781
TOTAL £			£388m	£582m	£776m

Again, adding in the costs for Scotland and Wales shown in Tables 6 in annexes A & B, and using our assumed take-up figure, we arrive at a cost to large organisations in Year 1 of £328m and then an annual cost to all organisations from Year 2 of £685m

We assume that it costs each individual around £100 to study for a qualification, in terms of travel, books, subsistence etc. This figure is consistent with other impact assessments for level 2 and level 3 for people in employment.

The cost to Government, employer and or individual for tuition is assumed to be £2466 for level 2 and £2672 for level 3.

Total Costs

Table 7 below summarises the total costs and benefits in England at 1.2%, 1.9% and 2.5%. The table also shows the overall annual net benefit. Our assumed take up figure of 1.9% is highlighted in the table below.

Table 7a – Year 1

COSTS	1.2%	1.8%	2.4%
Employers	£185,679,392	£278,519,088	£371,358,784
Government	£74,224,641	£111,336,962	£148,449,283
Individual	£2,928,093	£4,392,139	£5,856,186
Total Costs	£262,832,127	£394,248,190	£525,664,253
BENEFITS			
Total Benefits to employees, business and economy from Qualifications	£390,408,923	£585,613,384	£780,817,845

Gained			
OVERALL ANNUAL NET BENEFIT	£128m	£191m	£255m

Table 7b – Year 2

COSTS	1.2%	1.9%	2.5%
Employers	£388,225,037	£582,337,555	£776,450,073
Government	£155,191,504	£232,787,256	£310,383,008
Individual	£6,122,160	£9,183,240	£12,244,320
Total Costs	£549,538,701	£824,308,051	£1,099,077,401
BENEFITS			
Total Benefits to employees, business and economy from Qualifications Gained	£816,280,776	£1,224,421,163	£1,632,561,551
OVERALL ANNUAL NET BENEFIT	£267	£400	£533

When added to the figures for Scotland and Wales in tables 7 in the Annexes this gives us an overall GB net benefit in Year 1 of £228m and from Year 2 an annual net benefit of £477m, at our assumed take-up rate.

C. SUMMARY AND RECOMMENDATIONS

The recommended option is option 3

Option 1

Although under this option the number of employees receiving training would increase, we are concerned that it would still leave too many employees not receiving training each year. For employees in companies not engaged with any skills initiatives, this option would not offer any new impetus for employees to receive training. Evidence suggests that this will particularly impact on those without basic skills levels who are less likely to receive training. This option would not do anything to positively change this.

Option 2

Although there are examples of good practice in voluntary conversations between employers and employees regarding training, there is a risk, similar to option 1, that not all of those in the eligible population would be reached. Despite the many Government initiatives and financial support in place to promote increased workplace learning, evidence shows that there are still significant numbers of employers – and therefore employees - who are not yet engaged. Option 2 depends heavily on employers being open to considering training requests, and will do nothing to reassure employees that their request would be dealt with seriously.

It is therefore felt that while this option could be a starting point for achieving the aims of the policy, it does not go far enough to support employees in making requests for time to train. Again, similar to option 1, this option is expected to provide only limited change to the status quo.

Option 3

This option would offer a powerful new impetus for employees to approach their employer to begin a conversation about their training needs and the potential to undertake work based training in work hours. It would give both the employer and the employee an opportunity to review the skills needs of the individual, as well as the needs of the business, and could potentially offer benefits to both should a higher qualification or skills level be reached. By definition, this option would cover those employees in the previous options as the scope would extend to all employees in the eligible population.

Risk, uncertainty and unintended consequences

Option 1

Risks

<u>Risk</u>	<u>Probability</u>	<u>Mitigation</u>
Employees working for employers who do not currently engage with them about their skills needs, or invest in their skills, will not be able to access workplace training.	H	Option 3 aims to mitigate this risk
Employees who feel uncomfortable approaching their employer to discuss time to train will have no new impetus, encouragement or support to do so.	H	Option 3 aims to mitigate this risk

Uncertainties

No uncertainties have been identified for this option.

Unintended consequences

No unintended consequences have been identified for the do nothing option.

Option 2

Risks

<u>Risk</u>	<u>Probability</u>	<u>Mitigation</u>
Not all employees in the eligible population would be reached	M	Ensuring that all publicity is widely focused and that the publication is accessible to employees as well as employers.

Uncertainties

The take up of this option is uncertain. While there is evidence that some employers are already engaging in conversations with their staff regarding training opportunities, it is uncertain as to how many more would begin as a result of this option.

Unintended consequences

No unintended consequences have been identified for this option.

Option 3

Risks

<u>Risk</u>	<u>Probability</u>	<u>Mitigation</u>
There is a risk that even if legislation is passed, employees may feel uncomfortable admitting to their employer that they have skills needs because they feel stigmatised for not already possessing these qualifications.	M	One aspect of the mitigation of this risk is the positive advertising campaign that is currently showing ‘Our future, it’s in our hands’. This mitigation would be considered further at implementation stage, However it is anticipated that Union Learn Representatives, Train to Gain brokers and the new Adult Advancement and Careers Service would be used as part of the mitigation process.
Risk of success – there is a risk that when the right is introduced, there are a very large number of requests, which employers cannot effectively manage.	L	Employers will be able to reject request fro time to train, where there is a sound business reason for doing so. And there is significant Government support – and funding – available to help employers make time to train work for them

Uncertainties

The take up of this option is, to a degree, uncertain. The analysis set out here is our best estimate, based on what we know about individual and employer attitudes and behaviour, and what we can learn from the right to request flexible working. In practice though, take up will depend on employer and employee reactions to the proposed new right.

Unintended consequences

No unintended consequences have been identified for this option.

D. IMPLEMENTATION

We have explored ways of supporting business throughout the implementation process. This has resulted in the development of the process and guidance through discussions with

employer representative groups. We are considering providing further support to business to support the guidance through the development of a flowchart and case study examples which illustrate how we see the policy working in practice. The guidance on Business Link also contains links to other parts of this site which includes helpful information for employers in managing changes to employee contracts should this be required when a request for time to train is agreed.

Time to train will be implemented for employees in large organisations (250+) from 6 April 2010 and for all employees from April 2011.

E. MONITORING

We are committed to evaluating the policy before it is extended to all employees in April 2011. This initial evaluation of the policy will take place during 2010. While this may look at issues like implementation and guidance the primary focus will be to consider the reasons for refusal available to employers to refuse requests for time to train. This will consider whether any additional reasons for refusal are needed by employers to help them manage requests better.

The policy would then be evaluated after it had been fully rolled out to all employees and been in operation for one full year. This would be during 2012 from April. The long term position would be to include questions on the operation of the policy in business and skills surveys such as the National Adult Learners Survey, National Employer Skills Survey in England. There are surveys being designed in Wales on employer engagement in training and employee motivations and barriers to learning. In Scotland, we will make best use of existing surveys such as the biennial Scottish Employer Skills Survey and the Scottish boost of the Work Skills in Britain survey.

F. ENFORCEMENT

In line with the current practice regarding flexible working, it is intended that if a request for time to train is rejected by an employer and the employee is not satisfied with the explanation, they have the right to appeal to the employer. If the employee is still unhappy with the decision, either because they doubt the veracity of the reasoning or believe that their employer has not correctly upheld the procedure, they would have the right to take the matter to an external tribunal.

As noted earlier, it is expected that the amount of cases being referred to an external tribunal is likely to be relatively small.

G. SANCTIONS

An employment tribunal would have the power to either uphold an employer's decision to refuse the employee time to train on the basis of the reason cited or alternatively to award the employee time to train should their decision go this way. The tribunal may also award employee compensation if the employer does not comply with the procedure set out in legislation.

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	Yes
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Competition Assessment

1. Would the regulatory proposal directly limit the number or range of suppliers?

No, a right to request time to train should not limit the number or range of suppliers.

2. Would the regulatory proposal indirectly limit the number or range of suppliers?

No, it is not thought that this policy would indirectly limit the number or range of suppliers.

3. Would the regulatory proposal limit the ability of suppliers to compete?

This provision would apply to all employees therefore it should not limit the ability of suppliers to compete

4. Would the regulatory proposal reduce suppliers' incentives to compete vigorously?

This policy should not reduce supplier's incentives to compete vigorously.

Small Firms Impact Test

Method

5. A "small firms" questionnaire on the right to request time to train was developed in consultation with the BERR Enterprise Directorate team and sent to 300 firms across Great Britain on the BERR Small Firms Consultation database. The firms were asked to send us their views on the TtT proposals and were also invited to submit a response to the full TtT consultation.

Analysis of Responses

6. 33 firms from a range of sectors and locations completed the questionnaire. 49% of respondents had fewer than 10 staff; 12% had between 10 & 20; 18% had between 21 & 49; and 21% had between 50 & 249.
7. 24% of respondents felt that the introduction of a statutory right to request time to train could help skills development in their organisation. Whilst this figure may appear low it should be noted that, of the firms that didn't feel TtT would support skills development in their organisation, 72% said this was because they already offer training to their employees rather than because of any particular reservations about the TtT proposals. Among the remaining 28% of negative respondents, the most common concerns expressed were around potential additional bureaucracy and costs to the business.

8. When asked specifically whether they thought complying with the new right would increase the admin burden on their business, 58% of respondents answered either not at all or only a little, while 42% thought it would increase it a lot. When asked about costs, 84% thought the new right would impose additional costs on their business, primarily through employing temporary staff to cover for people on training and for paying for additional HR expertise.
9. Opinion was divided on whether any firms should be exempt from the new right. 30% of respondents thought TtT should apply to all firms whilst the remaining 70% were split on who should be exempt. Exemptions for firms with fewer than 10, 20 and 250 employees were each supported by 17% of respondents respectively. 13% of respondents thought firms with fewer than 50 employees should be exempt and the remaining respondents cited a range of other reasons for granting exemptions.

The Government's Position.

10. We welcome the fact that almost a quarter of respondents felt that TtT would help skills development in their organisation. At the same time, we recognise the very real concerns expressed by small firms, particularly on the issues of bureaucracy and cost, and we will work to address these as follows.

Exemption

11. We recognise that many businesses already have effective systems in place to assess and review training and development needs and ensure all staff are offered the training they need to carry out their duties and progress in work. We expect employers to continue with their current arrangements. Employees whose training needs are being met would be unlikely to submit formal requests for TtT.
12. Whilst Government acknowledges that small businesses may find it more difficult to accommodate requests for training we do not think it would be right to provide small firms with an exemption. This risks impacting unfairly on employees in the exempted firms. Government believes that all employees in need of training should have the same rights, regardless of the size of the company they work in.

Bureaucracy

13. The main concerns centred on having to deal with complicated new instructions and processes, with several respondents fearing this might require them to pay for external HR expertise to help them to implement TtT. We have, however, based the process for making a request for time to train on the existing model of the right to request flexible working. Employers are used to dealing with requests under these arrangements and are likely to have well developed and understood processes for managing the flow of requests. We envisage these processes could be easily adapted to support a new right to request time to train.

Cost

14. When asked what Government could do to make it easier for small firms to implement TtT, over a quarter of respondents thought Government should provide more funding for training and ensure any grants are well publicised and accessible. Employers in England will be encouraged to utilise the Train to Gain service, which offers Government funding to sit alongside the employers' own contribution, including a subsidy of up to 100% for certain training. In addition, companies with fewer than 50 employees may be eligible for

a contribution to help them cover the wage costs incurred when releasing eligible employees through Train to Gain.

15. As shown earlier in this document, businesses in (**Scotland?**) and Wales will have access to a wide range of support through the Workforce Development Programme. For SMEs the Discretionary Funding element of the Programme (for bespoke, tailored training) offers favourable intervention rates; and the Modern Skills Diploma for Adults will also increasingly target employees in SMEs
16. Finally, the consultation has shown up a need for Government to make clear where Time to Train is positioned. It is not intended to replace the good systems that business have for delivering training to their staff. Those systems will continue. But, in cases where employees do not get access to training they will now have a route to discuss their training needs with their employer.
17. We will continue to consider carefully the impact of TtT on SMEs in the run up to implementation of the new right in 2010. As part of this, we will work with business representatives to develop clear, easily accessible TtT guidance, which may include standard forms where applicable, to help businesses to implement and action the new procedures with the minimum of disruption and cost.

Legal Aid

18. We do not deem this to be an issue. Unless the claimant, or their representative, if they have one) abuse the system by acting unreasonably, or by pursuing a claim which has no reasonable prospect of success, they will not have to meet the respondent's costs. This is one of the ways in which the employment tribunals differ from the ordinary civil courts.
19. The circumstances in which a claimant can be ordered to make a payment towards a respondent's costs (or preparation time, if the respondent is not legally represented) are where the claimant (or claimant's representative) acts "vexatiously, abusively, disruptively or otherwise unreasonably", or brings proceedings with a misconceived claim. Even then, when considering whether or not to make such an award, and if so the amount, the tribunal may take into account the claimant's ability to pay.
20. If a respondent (or respondent's representative) acts unreasonably, he or she can be required to pay for the claimant's costs (or preparation time). Unreasonable behaviour by a respondent could include making unjustified threats – e.g. threats that the claimant will be automatically required to meet the respondent's costs – to try to persuade the claimant to withdraw the claim. In 2003/04, costs awards were made in fewer than 0.1% of tribunal cases. Only 998 awards were made – and a third of these were made against respondents, rather than claimants. The average award was £1,859. Awards are based on actual costs, reasonably incurred.

Sustainable Development

21. It has been concluded that the right to request time to train does not contravene any of the sustainable development principles

Carbon Assessment

22. This policy should have no impact on carbon cost or climate change

Other Environment

23. After consulting the guidance published by the Department of Environment, Food and Rural Affairs (DEFRA) it has been concluded that there are no environmental issues that need to be taken into account with regard to this policy.

Health Impact Assessment

24. After consideration it has been concluded that there is not a necessity to carry out a full health impact test. Looking at the Department of Health questions, it is thought that the only possible impact that this policy could have on health would be the positive benefits found in research between health and education. Research has shown that higher skilled / educated workers are less likely to be unemployed, thus reducing the associated health risks. There is also research that suggests that “More skilled people are less likely to suffer from depression, obesity and respiratory problems.”¹³ It is not anticipated that these will have a significant enough impact on health to warrant a full health impact test.

Race, Disability and Gender Equality

25. This policy provides a ‘universal’ right to all employees within the eligible group, it is thought unlikely that it will have a negative impact on any specific group. A consultation took place in June 2008 and closed in September 2008. The results of the consultation showed that no issues had been identified around gender, race, disability or age that were thought to have a positive or negative impact on any of these groups.

26. The Employers’ Forum on Disability (EFD) felt strongly that there should be no restrictions the type of training that could be requested. It should not be restricted to accredited training as other training was just as important. Under the right to request time to train employees will be able to request any training best suited to their needs including unaccredited courses and other types of informal training that takes place in the workplace.

27. EFD also felt that there was a risk that some employees with disability may have their requests turned down as there were some cases where these people needed more time to do training. We have not made changes to the reasons for refusal in order to address this but will aim to monitor how this actually operates in practice.

28. This is linked to another concern raised by EFD. They felt that there should be specific provision in the regulations to require employers to deal with requests in line with their commitments under the Disability Discrimination Act (DDA). The Department’s view is that this is not the place to do this. The DDA 1995 already provides that in the employment context it is unlawful to discriminate against persons who have a disability. Again, we will include as part of our evaluation consideration of how, in practice, this policy impacts on persons with a disability..

29. There is a potential risk around whether vulnerable employees with mental disabilities or part-time workers (who tend to be female) might be more likely to have their requests for time to train refused if they are less able to negotiate effectively with their employer. However, all staff have the same right to be accompanied by a union learning representative or work colleague at a meeting to discuss a request. They can also get help from via careers advice services, NextStep, disability charitable organisation, and so forth. We believe that this adequately mitigates the above risk, as long as employees are aware that this will be a right, and that they will be aware of the assistance that they can receive to ensure that this right is addressed fairly by their employer. Indeed there is even the potential that it may have a positive impact on those with disabilities. Research has shown that 51.6 % of those who are DDA disabled and working limiting disabled are qualified to below level 2 or have no qualifications.¹⁴

27. Initial screening as to the potential impact of this policy on race, disability and gender equality indicates there will not be a major impact upon minority groups in terms of

¹³ Various research reports by the Centre for Research on the Wider Benefits of Learning <http://www.learningbenefits.net/Publications/ResearchReports.htm>

¹⁴ Labour Force Survey 2006

numbers affected or the seriousness of the likely impact, or both. If equality issues *do* arise at a future date, a further EQIA will be prepared.

30. However, we recognise that the take up of training is different among groups according to age and ethnicity. The tables on the following pages show a breakdown of learning by age and ethnicity. We also know that learners face a range of barriers which affect where they fall on the spectrum of either being either positive about learning or at the other end negative about learning. These are:

Reason for no/limited learning:

- Difficulties with English
- Couldn't find training I wanted
- Difficulties reading/writing
- No time because of family
- Only willing to learn if fees are paid by someone else
- Hard to get time off work do learning for job
- Whether there are people aged under 16yrs in household
- Not interested in doing learning, training or education
- Employer would not support learning
- Want to learn but can't find opportunities locally

Rural Proofing

33. It is not thought that this policy would have a different effect in rural areas.

Analysis and Evidence for Scotland

Table 1

Potential take up	<u>Year 1</u>	<u>Year 2</u>	SOURCE
	<u>2010-11</u>	<u>2011-12</u>	
	<u>Large Employers</u>	<u>All Employers</u>	
Number of people in employment in Scotland, who have been in employment for 26 weeks or more	1,097,805	2,245,000	Labour Force Survey Q2 2008
Proportion not receiving any training	359,670	830,650	NESS 2007: 37% of employees do not receive training
Proportion of non-learners interested in learning	45%	45%	from NALS Scotland 2005 - 45% of non-learners aged 16-69 would have liked to do some learning in the past year.
Potential 'interested' client group	161,851	373,793	
Potential client group 'not currently interested', or already receiving training	935,954	1,871,208	
Proportion of 'interested' group who may want to take up the right	11%	11%	from NALS Scotland 2005
Proportion of 'not currently interested' / already receiving training group who may want to take up the right	5%	5%	
Total potential demand	64,601	134,678	

Assumed take-up in Year 1 (i.e. in 2010-11 the right will apply in businesses with 250 or more employees)	1.2% of total eligible population (i.e. of the 1m) – (20% of estimated demand)	1.8% of total eligible population – (30% of estimated demand)	2.4% of total eligible population – (40% of estimated demand)
Total number of requests for time to train	12,920	19,380	25,841
Proportion of successful applications	75%	75%	75%
Total number of additional learners	9,690	14,535	19,380

Assumed take-up in any one year (i.e. 2011-12 onwards after phasing-in completed and right applies in all businesses)	1.2% of total eligible population (i.e. of the 2.2m) – (20% of estimated demand)	1.8% of total eligible population – (30% of estimated demand)	2.4% of total eligible population – (40% of estimated demand)
Total number of requests for time to train	26,936	40,403	53,871

Proportion of successful applications	75%	75%	75%
Total number of additional learners	20,202	30,302	40,403

Table 2a – Year 1

Take-up	1.2%	1.8%	2.4%
Number studying at Level 2 (20% of total learners)	1,938	2,907	3,876
Number studying at Level 3 (10% of total learners)	969	1,454	1,938

Table 2b – Year 2 and on

Take-up	1.2%	1.8%	2.4%
Number studying at Level 2 (20% of total learners)	4,040	6,060	8,081
Number studying at Level 3 (10% of total learners)	2,020	3,030	4,040

Table 3a – Year 1

Additional qualifications	1.2%	1.8%	2.4%
Number of additional Level 2 qualifications	1,279	1,919	2,558
Number of additional Level 3 qualifications	543	814	1,085

Table 3b – Year 2 and on

Additional qualifications	1.2%	1.8%	2.4%
Number of additional Level 2 qualifications	2,667	4,000	5,333
Number of additional Level 3 qualifications	1,131	1,697	2,263

Table 4a – Year 1

Take-up assumptions	Total Benefit from Qualifications Gained
1.2%	£39m
1.8%	£58m
2.4%	£77m

Table 4b – Year 2

Take-up assumptions	Total Benefit from Qualifications Gained
1.2%	£81m
1.8%	£121m
2.4%	£162m

Table 6a – Annual Costs for employers (Year 1)

	Costs to Employers	Proportion	Total Benefit from Qualifications Gained		
			1.2%	1.8%	2.4%
Successful	£319	75%	£3,093,698	£4,640,546	£6,187,395
Unsuccessful	£90	24.8%	£288,380	£432,571	£576,761
Tribunal	£5,822	0.2%	£150,446	£225,670	£300,893
Lost Productivity (expressed as foregone earnings)	£5,126k per L2/3		£14,902,039	£22,353,058	£29,804,078
TOTAL £			£18m	£28m	£37m

Table 6b – Annual Costs for employers (Year 2 and on)

	Costs to Employers	Proportion	Total Benefit from Qualifications Gained		
			1.2%	1.8%	2.4%
Successful	£319	75%	£6,449,582	£9,674,373	£12,899,164
Unsuccessful	£90	24.8%	£598,128	£897,192	£1,196,256
Tribunal	£5,822	0.2%	£313,643	£470,465	£627,286
Lost Productivity (expressed as foregone earnings)	£5,126k per L2/3		£31,067,008	£46,600,512	£62,134,016
TOTAL £			£38m	£58m	£77m

Table 7a – Costs and benefits summary year 1

COSTS	1.2%	1.8%	2.4%
Employers	£18,434,563	£27,651,845	£36,869,127
Government	£7,369,148	£11,053,721	£14,738,295

Individual	£290,706	£436,059	£581,412
Total Costs	£26,094,417	£39,141,625	£52,188,834
BENEFITS			
Total Benefits to employees, business and economy from Qualifications Gained	£38,760,456	£58,140,685	£77,520,913
OVERALL ANNUAL NET BENEFIT	£13	£19m	£25

Table 7b

COSTS	1.2%	1.8%	2.4%
Employers	£38,428,361	£57,642,541	£76,856,722
Government	£15,362,822	£23,044,232	£30,725,643
Individual	£606,049	£909,073	£1,212,098
Total Costs	£54,397,231	£81,595,847	£108,794,463
BENEFITS			
Total Benefits to employees, business and economy from Qualifications Gained	£80,805,815	£121,208,722	£161,611,630
OVERALL ANNUAL NET BENEFIT	£26m	£40m	£53m

Analysis and Evidence for Wales

Table 1

Potential take up	Year 1	Year 2	SOURCE
	2010-11	2011-12	
	Large Employers	All Employers	
Number of people in employment in Wales, who have been in employment for 26 weeks or more	500,051	1,022,600	Annual Population Survey Apr07 – Mar08
Proportion not receiving any training	163,830	357,910	35% of economically active (Future Skills Wales Survey, 2003, employer survey element)
Proportion of non-learners interested in learning	40%	40%	NALS 2005
Potential 'interested' client group	65,532	143,164	
Potential client group 'not currently interested', or already receiving training	434,519	879,436	
Proportion of 'interested' group who may want to take up the right	13%	13%	NALS
Proportion of 'not currently interested' / already receiving training group who may want to take up the right	5%	5%	
Total potential demand	30,245	62,583	

Assumed take-up in Year 1 (i.e. in 2010-11 the right will apply in businesses with 250 or more employees)	1.2% of total eligible population (i.e. of the 0.5m) – (20% of estimated demand)	1.8% of total eligible population – (30% of estimated demand)	2.4% of total eligible population – (40% of estimated demand)
Total number of requests for time to train	6,049	9,074	12,098
Proportion of successful applications	75%	75%	75%
Total number of additional learners	4,537	6,805	9,074

Assumed take-up in any one year (i.e. 2011-12 onwards after phasing-in completed and right applies in all businesses)	1.2% of total eligible population (i.e. of the 1m) – (20% of estimated demand)	1.8% of total eligible population – (30% of estimated demand)	2.4% of total eligible population – (40% of estimated demand)
Total number of requests for time to train	12,517	18,775	25,033
Proportion of successful applications	75%	75%	75%
Total number of additional learners	9,387	14,081	18,775

Table 2a – Year 1

Take-up	1.2%	1.8%	2.4%
Number studying at Level 2 (37% of	1,679	2,518	3,357

total learners)			
Number studying at Level 3 (18% of total learners)	817	1,225	1,633

Table 2b – Year 2 and on

Take-up	1.2%	1.8%	2.4%
Number studying at Level 2 (37% of total learners)	3,473	5,210	6,947
Number studying at Level 3 (18% of total learners)	1,690	2,535	3,379

Table 3a – Year 1

Additional qualifications	1.2%	1.8%	2.4%
Number of additional Level 2 qualifications	1,108	1,662	2,216
Number of additional Level 3 qualifications	457	686	915

Table 3b – Year 2 and on

Additional qualifications	1.2%	1.8%	2.4%
Number of additional Level 2 qualifications	2,292	3,439	4,585
Number of additional Level 3 qualifications	946	1,419	1,893

Table 4a – Year 1

Take-up assumptions	Total Benefit from Qualifications Gained
1.2%	£33m
1.8%	£50m
2.4%	£66m

Table 4b – Year 2 and on

Take-up assumptions	Total Benefit from Qualifications Gained
1.2%	£68m
1.8%	£103m
2.4%	£137m

Table 6a – Annual Costs for employers (Year 1)

	Costs to Employers	Proportion			
			1.2%	1.8%	2.4%
Successful	£319	75%	£1,448,411	£2,172,616	£2,896,822
Unsuccessful	£90	24.8%	£135,014	£202,521	£270,029
Tribunal	£5,822	0.2%	£70,436	£105,654	£140,872
Lost Productivity (expressed as foregone earnings)	£5,126k per L2/3		£12,790,900	£19,186,349	£25,581,799
TOTAL £			£14m	£22m	£29m

Table 6b – Annual Costs for employers (Year 2 and on)

	Costs to Employers	Proportion			
			1.2%	1.8%	2.4%
Successful	£319	75%	£2,997,047	£4,495,571	£5,994,094
Unsuccessful	£90	24.8%	£279,371	£419,057	£558,742
Tribunal	£5,822	0.2%	£145,746	£218,619	£291,493
Lost Productivity (expressed as foregone earnings)	£5,126k per L2/3		£26,466,887	£39,700,331	£52,933,774
TOTAL £			£30m	£45m	£60m

Table 7a- cost and benefit breakdown year 1

COSTS	1.2%	1.8%	2.4%
Employers	£14,444,761	£21,667,142	£28,889,522
Government	£6,322,060	£9,483,089	£12,644,119
Individual	£249,522	£374,283	£499,045
Total Costs	£21,016,343	£31,524,514	£42,032,686
BENEFITS			
Total Benefits to employees, business and economy from Qualifications Gained	£33,095,477	£49,643,216	£66,190,954
OVERALL ANNUAL NET BENEFIT	£12m	£18m	£24m

Table 7b – cost and benefit breakdown year 2

COSTS	1.2%	1.8%	2.4%
Employers	£29,889,052	£44,833,578	£29,778,742
Government	£13,081,585	£19,622,377	£26,163,170
Individual	£516,311	£774,466	£1,032,621
Total Costs	£43,486,947	£65,230,421	£86,973,894
BENEFITS			
Total Benefits to employees, business and economy from Qualifications Gained	£68,481,051	£102,721,577	£86,574,164
OVERALL ANNUAL NET BENEFIT	£25m	£37	£50m

ANNEX C: Outline of Admin Burden Information Obligations Relating to 2003 Regulations

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

ANNEX D – DATA RELATING TO GRAPHS USED IN SECTOR ANALYSIS SECTION

Sector Skills Council	Training Expenditure per employee
Government Skills	£375
Improve	£550
Skillfast	£575
GoSkills	£675
Skills for Logistics	£825
SkillsActive	£1,050
Skills for Health	£1,125
Skillsmart Retail	£1,225
Cogent	£1,250
Financial Services Skills Council	£1,425
Skills for Justice	£1,425
e-skills UK	£1,475
Semta	£1,575
Automotive Skills	£1,600
Creative & Cultural Skills	£1,700
Non-SSC employers	£1,875
Skillset	£1,975
Lifelong Learning UK	£2,075
Proskills UK	£2,275
Skills for Care & development	£2,275
Summitskills	£2,450
Asset Skills	£2,500
People 1st	£2,575
Construction skills	£2,750
Energy & Utility Skills	£2,925
Lantra	£2,975

Graph 1

Sector Skills Council	Proportion below L2
Skillfast	49.5
Skills for Logistics	42.9
Improve	39.4
Proskills UK	37.1
Skillsmart Retail	36.6
People 1st	33.6
Asset Skills	33.4
Lantra	31
Automotive Skills	30.4
GoSkills	29.5
Cogent	26.7
Energy & Utility Skills	26.6
Semta	25.4
Construction skills	23.8
SkillsActive	23.3
Skills for Care & development	20.1
Skills for Justice	18.2
Financial Services Skills Council	15.7

Skills for Health	15.7
Government Skills	14.4
Creative & Cultural Skills	13.4
e-skills UK	13.3
Lifelong Learning UK	11
Skillset	10.4

Graph 2

Sector Skills Council	Training Expenditure per employee	Proportion below L2
Lantra	£2,975	31
Cogent	£1,250	26.7
Proskills UK	£2,275	37.1
Improve	£550	39.4
Skillfast	£575	49.5
Semta	£1,575	25.4
Energy & Utility Skills	£2,925	26.6
Construction skills	£2,750	23.8
Automotive Skills	£1,600	30.4
Skillsmart Retail	£1,225	36.6
People 1st	£2,575	33.6
GoSkills	£675	29.5
Skills for Logistics	£825	42.9
Financial Services Skills Council	£1,425	15.7
Asset Skills	£2,500	33.4
e-skills UK	£1,475	13.3
Government Skills	£375	14.4
Skills for Justice	£1,425	18.2
Lifelong Learning UK	£2,075	11
Skills for Health	£1,125	15.7
Skills for Care & development	£2,275	20.1
Skillset	£1,975	10.4
Creative & Cultural Skills	£1,700	13.4
SkillsActive	£1,050	23.3