

**EXPLANATORY MEMORANDUM TO
THE FLEXIBLE WORKING (ELIGIBILITY, COMPLAINTS AND REMEDIES)
(AMENDMENT) REGULATIONS 2010**

2010 No. 2991

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument amends the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002. It widens one of the conditions under which certain employees may request a contract variation in their working pattern to include employees with parental responsibility for children aged under 18. At present the right applies to employees with parental responsibility for children aged under 17 or aged under 18 in the case of disabled children
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The statutory right to request a flexible working contract variation is set out in section 80F of the Employment Rights Act 1996 (inserted by the Employment Act 2002). The Flexible Working (Eligibility, Complaints and Remedies Regulations) 2002 set out which employees are entitled to exercise this right.
 - 4.2 Employees are entitled to request a contract variation in order to care for a dependent child or to care for an adult in certain circumstances. If the request is made in order to care for a child, it must be made before the child's 17th birthday or the 18th birthday in the case of a disabled child.
 - 4.3 This instrument amends the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002, so that a request must be made before the child's 18th birthday.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England, Wales and Scotland.
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 Employment Act 2002 introduced new rights for working parents and provides a statutory right for a qualifying employee to apply to his employer for a change in his terms and conditions of employment to facilitate childcare.

7.2 At present employees with caring responsibilities for children aged under 17 or, where the child is disabled, aged under 18 have a statutory right to request a variation to their working pattern and employers have a statutory duty to seriously consider such requests and only reject them against good business grounds

7.3 On 30 September, the Government announced its decision to extend the right to request flexible working to parents of 17 year olds from 6 April 2011. Extending the right to request flexible working to parents of 17 year olds will provide a further 300,000 working parents the right to request a change in their working pattern to accommodate critical periods in their child's life, whilst ensuring that businesses have the flexibility to refuse requests on business grounds.

7.4 Ultimately the Government has committed to extend the right to request flexible working to all employees, consulting with business on how best to do this.

7.5 The extension to parents of 17 year olds will show the direction of travel for the changes to come.

Consolidation

7.6 This order does not consolidate any other instrument.

8. Consultation outcome

8.1 No specific consultation was undertaken as the decision was taken to extend the right to request, and no variance of the process was considered for this extension. A full consultation will take place on the extension to the right to request flexible working to all employees.

9. Guidance

9.1 Guidance that takes account of the change will be available for employers via www.businesslink.gov.uk and for employees via www.direct.gov.uk. To ensure that employers and employees are aware of the changes, the guidance will be in place 3 months prior to the regulations coming into force on 6 April 2011.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people the law was designed with small businesses in mind. Small businesses can and do benefit from flexible working as much as larger employers, and evidence evidence shows that small employers are the most likely to accept requests for flexible working. In the attached Impact Assessment, the Small Firms Impact Test Annex presents the distribution of estimated eligible parents and compares this to the distribution of all employees by workplace size across the economy. The indication is that small and medium sized workplaces would not be disproportionately affected.

12. Monitoring & review

12.1 The Department for Business Innovation and Skills will continue to monitor the new measure to establish the effects of employment policy aimed at improving work-life balance. The Forthcoming Fourth Work Life Balance Employees Survey 2010 will assist in monitoring and evaluating the success of the extension to the right to request flexible working.

13. Contact

Sammy Harvey at the Department for Business, Innovation and Skills (BIS). Tel: 020 7215 4268 or email: sammy.harvey@bis.gsi.gov.uk

BIS | Department for Business
Innovation & Skills

IMPACT ASSESSMENT

**EXTENDING THE RIGHT TO
REQUEST FLEXIBLE WORKING TO
PARENTS OF CHILDREN AGED 17**

OCTOBER 2010

Title: Extending the right to request flexible working to parents of children aged 17 Lead department or agency: Employment Relations Other departments or agencies:	Impact Assessment (IA)
	IA No: BIS0120
	Date: 13/10/2010
	Stage: Final
	Source intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Andrew Death/Sheila Honey	

Summary: Intervention and Options

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

The right to request flexible working was introduced in April 2003 following a report¹ by the Work and Parents Taskforce which found that if there was no intervention parents might drop out of the labour market and employers may fail to recognise the full benefits of flexible working. In addition there is the risk that parents may leave their jobs either for lower skilled work or unemployment, or family life may suffer if parents and carers cannot work flexibly. Since the introduction of the right to request flexible working, calls for the scope of the law to be extended have continued and the Government now wishes to extend the right to parents of children under 18. This will contribute to fairness since currently some parents are covered whilst others are not. This is also the first step in the Government's commitment to extend the right to request flexible working to all.

What are the policy objectives and the intended effects?

This change will give parents of all children regardless of age or disability the same right to request flexible working, as well as making it simpler for employers and employees to identify whether they are eligible to make a request.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

In the previous consultation regarding the extension of the right to request to children under 17, the majority of stakeholders highlighted that educational support is of increasing concern for parents. The arguments in favour of selecting under 18 are that this would be consistent with the current right for a disabled child. The option of leaving the right to request age limit at under 17 was considered but this does not meet the policy objectives. We will consult on extending the right to request to all later in the year, but this would require primary legislation to achieve. In the interests of fairness it was decided to equalise all parents rights first.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed
01/2015

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

Ministerial Sign-off For final stage Impact Assessments:

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

Signed by the responsible Minister:



..... Date: 13/10/2010

¹ Published as *About Time: Flexible Working* in November 2001.

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £21.1m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Negligible	£2.3m	£20.1m

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

Additional procedural costs to employers of £1.3m (including £456,000 admin burden) plus £975,000 in costs of making adjustments to working patterns.

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

It is assumed that the extension of the existing law will have negligible implementation costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Negligible	£4.9m	£41.2m

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

Savings to employers from higher productivity (£1.1m), lower labour turnover (£1.2m) and reduced absenteeism (£63,000) in year 1 (total £2.4m). Subsequent years include benefits accrued from the previous years new working arrangements this leads to a total net present value of benefits over the 10 years of £41.2m

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

Better work-life balance for employees and improved family life, increased labour supply, improved health and wellbeing.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Cost-Benefit figures and admin burden totals are based on working assumptions about the likely take-up rates and 'deadweight requests' as well as assumptions regarding potential recruitment and absenteeism benefits to parents of 17 year old. To calculate the total benefit value over ten years, it has been assumed that there will be benefits from employees working flexibly from the previous 5 years.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB: 0.456	AB savings:	Policy cost savings:	Net: 0.456	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/04/2011		
Which organisation(s) will enforce the policy?			Tribunals Service		
What is the total annual cost (£m) of enforcement for these organisations?					
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 0%		Benefits: 0%
Annual cost per organisation (excl. Transition) (Constant Price)	Micro £0.34	< 20 £1.23	Small 2.81	Medium £9.29	Large £173.1
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...	Impact	Page ref within IA
Statutory equality duties²? <u>Equality and Human Rights Commission: General guidance</u>	Yes	20
Economic impacts		
Competition? <u>Competition Impact Assessment</u>	Yes	19
Small firms? <u>Small Firms Impact Test</u>	Yes	20
Environmental impacts		
Greenhouse gas assessment? <u>http://www.defra.gov.uk/environment/index.htm</u>	No	
Wider environmental issues? <u>Guidance has been created on the Defra site</u>	No	
Social impacts		
Health and well-being? <u>Health: Health Impact Assessment</u>	No	
Human rights? <u>Ministry of Justice: Human Rights</u>	No	
Justice?	No	
Rural proofing? <u>Commission for Rural Communities</u>	No	
Sustainability? <u>Defra: Think sustainable</u>	No	

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Implementation).

No.	Legislation or publication
1	<i>About Time: Flexible Working</i> in November 2001, www.delni.gov.uk/taskforce_proposals.pdf
2	<i>Work and Families: Choice and Flexibility – A Consultation Document</i> , published February 2005, URN 05/847
3	Section 80(G)(1)(b) of the <i>Employment Rights Act 1996</i>
4	<i>The Third Work-Life Balance Employees Survey</i> , March 2007, Employment Relations Research Series No.58
5	<i>Imposing a Duty on Employers to Seriously Consider Requests for Flexible Working from the Parents of Young and Disabled Children</i> , 2002 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 40, www.berr.gov.uk/files/file11440.pdf ,
6	<i>Extending the scope of the right to request flexible working (Full)</i> , 2006 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 74, www.berr.gov.uk/files/file38874.pdf
7	<i>Health of Children and Young People</i> , ONS 2004
8	<i>CIPD recruitment, retention and turnover: annual survey 2009</i> , CIPD, www.cipd.co.uk/
9	ONS Labour market statistics Q4 2009
10	<i>United Kingdom National Accounts - Blue Book 2009</i> , ONS 2009, www.statistics.gov.uk/statbase/product.asp?vlnk=1143
11	<i>Findings from the survey of Employment Tribunal Applications 08</i> , Employment Relations Research Series No 107, BIS, http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008.pdf
12	Flexible Working (Procedural Requirements) Regulations 2002
13	Annual Survey of Hours and Earnings (ASHE) 2009, ONS

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
Total annual costs	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
Transition benefits	0	0	0	0	0	0		0	0	0
Annual recurring benefits	2.4	3.4	4.3	5.0	5.6	5.6	5.6	5.6	5.6	5.6
Total annual benefits	2.4	3.4	4.3	4.9	5.5	5.5	5.5	5.5	5.5	5.5

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing);
- Costs and benefits of each option;
- Risks and assumptions;
- Administrative burden and policy savings calculations;
- Wider impacts;
- Summary and preferred option with description of implementation plan.

Problem under consideration

The right to request flexible working was introduced in April 2003 following a report³ by the Work and Parents Taskforce, led by Professor Sir George Bain. The Taskforce was established by the Government with the remit of developing the detail of legislation to give parents of young children a right to request flexible working and to have that request seriously considered by their employer.

The Taskforce's considered view, in light of the many representations it received and the research available to it, was that the right to request flexible working should *initially* be introduced for those with caring responsibility for children up to the age of six, or up to the age of 18 for disabled children.

The Government accepted this recommendation. Based on the taskforce's findings it believed that if there was no intervention:

- parents might drop out of the labour market because they are not able to change their working patterns to fit around caring responsibilities;
- employers may fail to recognise the full benefits of flexible working because of cultural resistance or lack of awareness; and
- parents leave their jobs: where they either become unemployed or consider other jobs which may be lower paid or lower skilled but provide more suitable flexible working arrangements; or, where they stay in their jobs, family life may suffer if parents and carers cannot work flexibly

Since the introduction of the right to request flexible working, calls for the scope of the law to be extended have continued with parents of all older children the clear focus of attention.

Following a major public consultation⁴ in 2005, the Government decided that the legislation should be extended to carers of adults: this extension came into effect on 6 April 2007. The legislation was further extended in April 2009 to parents with caring responsibility for children of 16 years and under as a result of a review and recommendations by Ms Imelda Walsh, HR Director of J Sainsbury plc.

In carrying out her review, Ms Walsh used the report of the Work and Parents Taskforce as a starting point. The research available to the Taskforce showed that there was a considerable level of demand for flexible working from parents with children of all ages. This view was supported by employers who already offered flexible working to their employees. They reported that whilst most requests from parents to work flexibly were associated with the child's birth, when the child started school around five, and when they changed school at 11, there were still a significant number of requests received from parents of children at other ages.

As a result of these arguments the Government now wishes to extend the right to parents of children aged 17 (up to but not including 18) in line with the right for parents of disabled children.

³ Published as *About Time: Flexible Working* in November 2001.

⁴ *Work and Families: Choice and Flexibility – A Consultation Document*, published February 2005, URN 05/847.

Rationale for Intervention

The intention of the proposed legislation is that employers give serious consideration to requests for flexible working arising from employees who are the parents of older children, aged under 18.

The duty to consider will thereby encourage dialogue between employers and employees about how the demands of family life can be accommodated without damaging business performance.

As indicated above, previous IAs identified certain risks of not having a right to request. Evidence suggests that whilst flexible working is widespread there is still a minority of employees to whom flexible working is not available.

Policy Objectives

To provide those with caring responsibility for children aged under 18 with the same choices in balancing work and childcare responsibilities through flexible working as are available to those with caring responsibility for children 16 and under and disabled children under 18, whilst ensuring that businesses have the flexibility to refuse requests on business grounds.

Options Identification

In the previous consultation regarding the extension of the right to request to children under 17, the majority of stakeholders highlighted that educational support is of increasing concern for parents. The arguments in favour of selecting under 18 are that this would be consistent with the current right for a disabled child. The option of leaving the right to request age limit at under 17 was considered but this does not meet the policy objectives.

Costs and Benefits

First of all, cost and benefit estimates are provided for the extension of the current policy to cover parents of children aged under 18. It should be noted that this impact assessment is considering the *marginal* effect of extending the right to request to parents of older children. Clearly parents of children aged 16 and under and of disabled children under 18 will already be covered by the legislation and hence are not included in the estimates of eligible parents discussed below⁵.

1. Background

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

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

The law does not provide an automatic right for parents to work flexibly. This reflects the reality of the workplace where there will sometimes be circumstances when an employer is unable to accommodate

⁵ For instance, where employed parents have one child aged 15 and one aged 17 they would already be covered by the law and so are not counted here.

an employee's desired work pattern. There are eight business grounds specified in legislation under which a request can be refused⁶.

Take-up of flexible working

BERR's Third work-life balance employee survey⁷ showed that over the last two years, 17 per cent of employed parents made a change in how they regularly work for a sustained period of time. Twenty-two per cent of women said that they had made a request to change the way that they work in the past two years as compared to 14 per cent of men. Women made up 57 per cent of all those requesting a change.

There were also significant differences by work status: 28 per cent of those who were working part-time at the time of the research had approached their employer to request a change in their working pattern within the past two years. This compares to 15 per cent of full-time workers.

In most cases, requests were either fully (60 per cent) or partially (18 per cent) agreed to. Women were more likely than men to be successful in making a request: 66 per cent of female workers had their requests fully agreed to, as compared to 53 per cent of male workers.

In the large majority of cases (87 per cent) requests were accepted outright; however, 13 per cent said that they had only had their request to change the way that they worked agreed once they had negotiated or appealed against an original employer decision.

Over half of all employees interviewed (56 per cent) were aware of the new right. A higher proportion of parents with children aged under six (65 per cent) were aware of the right to request than were other employees (53 per cent).

Availability of Flexible working

The availability of flexible working can be measured using the Work Life Balance Employer survey (2008). All employers were asked whether they would consider a request to change a working pattern from *any* employee. A small number (8%) said they would not. Of those who would not consider a request to change a working arrangement 13 per cent reported that they would not consider a request from managers and the same proportion that no groups of staff would be considered.

Where flexible working arrangements were available, the Work Life Balance Employer survey asked employers whether they placed any restrictions on the types of employees who were eligible to use them. For each of the five flexible *working time* arrangements covered (i.e. excluding home-working), four in ten employers who provided these arrangements said that not all employees were eligible. Eligibility restrictions were least common for working reduced hours for a limited period. Part-time working was least likely to be universally available, with 38 per cent of establishments reporting that some employees would not be eligible.

Despite flexible working being so widespread, the evidence shows that there is still a proportion, albeit a smaller one than identified in earlier surveys, whom would still benefit from the right to request and need the encouragement the right provides to consider flexible working with their employers.

⁶ Section 80(G)(1)(b) of the Employment Rights Act 1996 list the following eight grounds for refusal of a request for flexible working:

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

⁷ The Third Work-Life Balance Employees Survey, March 2007, Employment Relations Research Series No.58

2. Eligibility

To be eligible to make a request under the current right for children age 16 and under, a person must satisfy the following criteria:

General

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

Parents

- Be the parent, or have caring responsibility for a child aged under 18
- Have responsibility for the upbringing of the child and be making the application to enable them to care for the child
- Be either:
 - the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has been granted a residence order in respect of a child; or
 - married to or the partner or civil partner of the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or of a person who has been granted a residence order in respect of a child.

Assumptions

1. Earlier impact assessment work

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

2. Take-up of flexible working arrangements and deadweight

We have assumed that some requests will be regarded as 'deadweight' i.e. requests that would have occurred in the absence of any policy change. It is not straightforward to estimate the deadweight effect.

Using data from the Third Work-life Balance Employees survey (WLB3) we have estimated the level of requests that would have occurred in the absence of any policy change (the deadweight). Data from WLB3 showed that 24% of mothers who are employees and have a youngest child aged 12-17 made a request to change how they regularly work over the last two years. If requests were spread evenly this equates to 12% a year. The equivalent figure for fathers is 7%. The WLB3 data was collected in 2007 when parents with a youngest child aged 12-17 were not covered by the legislation on right to request flexible working.

We assume that parents with a youngest child aged 17 will make requests (in the absence of legislation) to the same extent as the WLB3 results for parents with a youngest child aged between 12 and 17. Whilst this is not perfect, it is the best available evidence we have. The deadweight rate therefore for mothers is assumed to be 12% and 7% for fathers who have a youngest child aged 17.

Note that for both mothers and fathers the deadweight is not zero among full-time 'non-flexible' employees because some may obtain flexibilities not captured in surveys (e.g. changing starting and

⁸ See respectively *Imposing a Duty on Employers to Seriously Consider Requests for Flexible Working from the Parents of Young and Disabled Children*, 2002 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 40, www.berr.gov.uk/files/file11440.pdf, and *Extending the scope of the right to request flexible working (Full)*, 2006 Compendium of Regulatory Impact Assessments, Employment Relations Research Series No. 74, www.berr.gov.uk/files/file38874.pdf

finishing times that do not fit into a formal flexi-time scheme). Also, nor is deadweight 100 per cent for those with part-time or other 'flexible' working options. Many parents will have changed jobs to secure these types of working (and thus made their 'request' via the jobs market rather than internally). In other cases, the 'flexibility' might be an incidental feature of a job they had taken for other reasons and thus no request for change had been made.

3. New requests in addition to deadweight

It is very difficult to estimate the precise number of additional requests to work flexibly in addition to deadweight. We have assumed that extending the right to request will only affect parents with children with a youngest child aged 17. We have also assumed that overall take-up will increase for parents of a youngest child aged 17 and that the effect will be greater on mothers. We therefore estimate on a cautious basis that additional take-up (over and beyond deadweight) will be a 2 percentage point increase for mothers and a 1 percentage point increase for fathers in take-up rates.

4. Estimated eligibility and new working arrangements

Table 1 below shows the number of eligible parents, number of new requests and the estimated number of new working arrangements per annum expected from parents of older children⁹.

Table 1. Estimated number of eligible parents and of new working arrangements*

Scope of law	Number of entitled employees	Number of additional entitled employees	Number of additional requests	Number of additional deadweight requests	Number of additional new requests	Additional number of new working arrangements p.a.*
Parents of children aged under 17	8,253,000	-	-	-	-	-
Parents of children aged under 18	8,541,000	291,000	33,000	29,000	4,600	4,000

Source: LFS Q4 2009, BIS estimates. *Excluding deadweight requests

The chart below illustrates the relationship between entitled employees and number of new working arrangements.



As indicated above, based on evidence from the Work Life Balance Surveys¹⁰, estimates of deadweight and take-up have been made broken down by gender and current working pattern. Based on these estimates we calculate that extending the right to parents of children aged under 18 will result in 33,000 requests (around 12% of newly eligible parents) but that of these we estimate that the majority (29,000) will be deadweight, and the remainder (4,600) will be *additional* requests.

⁹ The calculations for table 1 and the following tables include parents of disabled children; these, however, are already covered by the law. Following ONS 2004 Health of Children and Young People report and BERR calculations the number of disabled children under 18 is estimated to be in 2008 less than 7,000, hence a relatively small proportion of all children and consequently negligible impact on the costs and benefits estimates. ONS report used two separate sources of data, data from the General Household Survey and data from Family Fund and Trust's register of applications.

¹⁰ *The Third Work-Life Balance Employees Survey*, March 2007, Employment Relations Research Series No.58 and *The Third Work Life Balance Employer Survey*, December 2007, Employment Relations Research Series No 86.

Also based on the Work Life Balance surveys, we have assumed in this impact assessment that 87 per cent of requests are successful, and of those that are not, 25 per cent will go to appeal. Of those only 2 per cent are successful. Details are provided in Table C1 in Annex C. Of the 4,600 additional requests to work flexibly, it is estimated that 4,000 will be accepted and lead to new working arrangements.

5. Accounting for disabled children aged under 18

The existing legislation covers disabled children aged under 18 and hence these are not included in the current analysis. See footnote no.7 below for further details.

Benefits

A number of benefits have been identified that may result from the extension of the right to request flexible working.

The principal benefits to business of the proposals are:

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

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

Wider benefits

We also recognise that there are likely to be wider benefits of this policy, namely:

- Better work-life balance for employees
- Increased labour supply due to availability of more flexible working opportunities
- Improved health and wellbeing.

It is not possible however, to quantify these wider benefits.

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

1. Reduced vacancy costs and increased skill retention

Where flexible working enables parents to remain in the labour market, there will be benefits in terms of reduced staff turnover costs and increased skill retentions. There are no reliable figures on the cost to fill a post that becomes vacant. In order to find a suitable measure, for the purposes of this IA, we have assumed a cost of £6,315¹¹.

There may be broader savings to employers through reduced turnover among the parents of children aged under 18. At present, many working parents have some form of flexible working pattern, but to achieve this, a proportion will have had to change their job. Parents may leave their jobs for others with more flexible working patterns but which may be lower paid or lower skilled.

¹¹ Since 2004 CIPD have carried out an annual survey on recruitment and turnover covering between 715 and 905 UK organisations. The survey asked about the costs of labour turnover and costs of recruitment. In its latest 2009 survey the average cost of labour turnover per employee was £6,125. This has been updated to 2010 prices by applying a growth rate of 3% per annum. However, the CIPD figure is based on relatively few organisations providing information on the cost of overall labour turnover.

In 2009 CIPD estimates a labour turnover rate of 15.7 per cent¹² and of these, 21 per cent¹³ of individuals left their place of employment to either have - or to look after their - children. To estimate the effect of the policy it is assumed that the introduction of a right to request flexible working for parents of children aged under 18 will prevent 2 per cent of employees leaving their jobs to look after family members. The savings made through lower recruitment costs are presented in the table below.

Table 2. Estimated savings in recruitment costs as a result of lower labour turnover

Scope of law	Estimated number of employees who leave their job to have or look after children	Estimated number of employees who decide to remain with their existing employer as a result of the scope of law being extended	Additional employer savings in recruitment costs as a result of extending scope of law **
Parents of children aged 17	9,600	190	£1.2m

Source: LFS Q4 2009 and BIS estimates. ** rounded to nearest million.

2. Increased productivity and profits

Evidence has shown that flexible working arrangements can have a beneficial effect in terms of increased productivity, output and ultimately profits.

BERR's third Work Life Balance Survey found that 12 per cent of employers thought that flexible working and leave arrangements had a negative effect and 47 per cent reported positive effect, with the remainder reporting no impact¹⁴. Overall 36 per cent of firms reported a net positive impact on productivity¹⁵. BERR's Third Work Life Balance Survey is based on responses from 1,456 managers. In addition to asking managers what the effects of flexible working had been on productivity at the establishment they were also asked about the perceived effects of flexible working on employee relations, motivation and commitment, recruitment, labour turnover and absenteeism. For the most part, employers thought that flexible working and leave arrangements had a positive effect or no effect on employees and human resources management at the establishment. At least around four in ten employers thought that flexible working and leave arrangements had a positive effect on each of the six criteria. Relatively small proportions perceived these practices to have a negative effect.

Table 3 presents the estimated increase in profits as a result of employees being more productive after a request for flexible working is accepted. Here we have assumed that 36 per cent of new working arrangements will result in an increased level of productivity for employees who adopt a new working arrangement.

A further assumption was made that a notional level of 5 per cent output gain would be achieved for the 36 per cent of new working arrangements that result in increased productivity¹⁶. A 5 per cent level was chosen because employers must have realised a significant rise in productivity to report that flexible working has had a positive impact on their firm. A further assumption was made that improved productivity leads to higher output. It was then assumed that 15.4 per cent of the increased output will represent gross profit. The 15.4 per cent figure represents the ratio of gross operating surplus to domestic output of product for the entire economy¹⁷. The table below presents the increased gross profit as a result of improved productivity.

¹² CIPD, Recruitment and turnover survey 2009

¹³ CIPD, Recruitment and turnover survey 2009. In 2009 21 per cent of people who left their job, did so to have or look after their children. In 2007 the figure was 18 per cent and 27 per cent for 2008.

¹⁴ We assumed that the 13 per cent of employers that did not answer or refused to answer perceived the same effect on productivity as those who did answer.

¹⁵ 47.2 per cent - 11.5 per cent = 35.7 per cent ~ 36 per cent.

¹⁶ To calculate output per worker the following sources and calculation have been used. In October-December 2009 there were 24,763m employees (source: ONS Labour market statistics Q4 2009). UK output in 2009 was £2,512,632m (ONS Blue Book 2009).

¹⁷ The Gross operating surplus is taken from the United Kingdom Economic Accounts, Q3 2007 Table 12, series ABNF (gross operating surplus). The Domestic Output of products comes from the 2009 Blue Book.

Table 3. Increased profits as a result of increased productivity - parents of older children

Extra gross profits (Total) p.a.

Scope of law

New working arrangements	4,000
Arrangements with increased productivity	1,500
Increase in profit	£1.1m

Source: BIS estimates. Figures have been rounded

3. *Reduced absenteeism rates*

BERR's third work life balance survey also showed that a net of 33per cent of firms report a positive effect on absenteeism as a result of flexible working and leave arrangements¹⁸. The CIPD surveyed found that on average the cost of an employee being absent per year is £713¹⁹.

An assumption was made that 22 per cent of new working arrangements will result in lower employee absenteeism. This figure represents two-thirds of the work-life balance findings. We have made this adjustment downwards to reflect that parents of older children will have lower levels of absenteeism compared to parents of younger children and therefore use of the average effect is not appropriate. A further assumption has been made that the cost of absenteeism prior to making a request is £713 per year and after a request is accepted the cost of absenteeism falls by 10 per cent. It is assumed that the absenteeism cost falls because flexible working allows employees to reduce the incidences of absence per year. Table 4 below presents the savings made by employers as a result of lower absenteeism.

¹⁸ After controlling for those employers that did not answer we have 10.4per cent of employers thinking that flexible working had a negative effect on absenteeism and 43.7per cent thinking that it has a positive effect.

¹⁹ CIPD, cost of being absence in 2009 £692, we then applied a annual growth rate of 3per cent to provide a 2010 figure of £713.

Table 4. Savings in absence costs - parents of older children

Scope of law	Savings in absence costs
New Working arrangements	4,000
Arrangements where absence falls (22%)	890
Saving of 10% on absence costs	£63,000

Source: BIS estimates. Figures have been rounded

4. Summary of quantifiable benefits

The table below provides a summary of the quantifiable benefits adding together the savings in recruitment cost (Table 2), the quantifiable benefits of increased productivity (Table 3) and the quantifiable savings in absence costs (Table 4).

Table 5. Total additional quantifiable benefits - parents of older children

Scope of law	Total additional quantifiable benefits
Reduced labour turnover	£1.2m
Increased productivity	£1.1m
Reduced absenteeism	£63,000
Total Benefits	£2.4m

Source: BIS estimates. Figures have been rounded.

5. Sensitivity analysis of assumptions made to estimate benefits

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

Table 6. Summary of sensitivity analysis

Benefit	Assumption	+/- 10 per cent change in assumption leads to +/- change in benefit
Savings in recruitment costs as a result of lower labour turnover	2 per cent of parents with youngest child aged 17 (who leave their job to look after family) do not leave their job	£120,000

Increased profits as a result of increased productivity	5 per cent increase in output for workers who increase output	£114,000
Savings in absence costs	Cost of absenteeism falls by 10 per cent for new working arrangement where absenteeism is expected to fall	£6,000

Source: BIS analysis

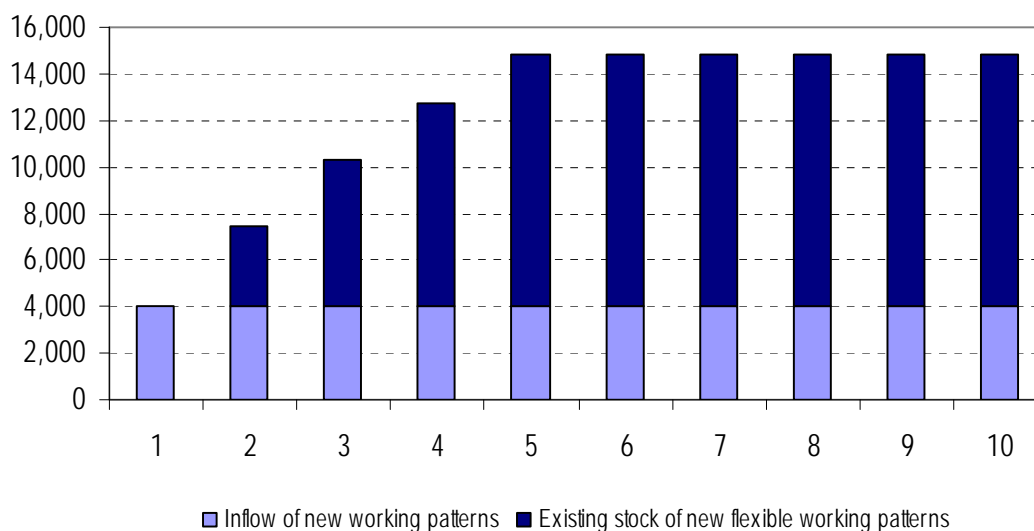
6. Aggregation of Benefits

In calculating the benefits over a ten year period, this impact assessment has attempted to take into account the potential stream of benefits from employees working flexibly from previous years as a result of successful additional requests to work flexibly. For example if employees who adjust their working patterns in year one of the policy are not included in the pool of employees affected in year two this implies that firms only benefit from a single year in the form of reduced absenteeism, and reduced labour turnover. This is an extreme assumption as many employees are likely to work for several years after adjusting their working patterns for the same employer. Hence, it is likely that using this approach the net present value of benefits over a 10 year horizon will be an underestimation of the benefits.

One alternative assumption is to cumulatively add up the existing stock of workers who adopt new working patterns to the annual inflow of new working patterns. Using turnover rates from CIPD (and adjusting for reduced turnover as a result of the policy) 15.6% of employees with a child aged 17 who change their working patterns are assumed to leave their job per annum. To factor in that the magnitude of benefits may diminish as the child ages we arbitrarily assume the policy effect stops after a period of 5 years from the point an employee changes their working patterns. This assumption by definition constrains the anticipated growth in flexibly working as a result of the policy.

Chart 2 below plots the cumulative number of new working patterns (annual new inflow of 4,000 plus share of existing stock from the previous year). In year one the total stock of new working patterns equals the annual inflow of new working patterns. Between years 2 to 5 the stock of workers increases to 15,000. The stock stabilises in year 5 and remains at 14,809 in years 5 to 10 (this is by design and ensures that the stock of flexible workers does not continuously grow). In terms of total levels of parents with a youngest child aged 17 working flexibly in year 10 the total stock will reach 154,809 (the current 140,000 workers measured in 2009 plus an additional 14,809 because of the anticipated policy effect). This represents a percentage increase of 10.6% over ten years or around 1.0% on an annual compound basis. These assumptions are cautious given the 3.0% annual compound growth rate in the levels of parents with a youngest child aged under 6 working flexibly since 2003.

Chart 2. Stock of new flexible working patterns including annual inflow over 10 years



Source: BIS estimates

Adjusting the benefits stream over 10 years to incorporate inclusion of existing stocks of flexible workers leads to a **net present value of benefits of £41.2m** over 10 years compared to £21m based on measuring the benefits on just inflows.

It should be noted that the total benefits summed up over ten years is affected by assumptions made on how long the policy effect lasts (in this case we have assumed that the policy effect lasts for 5 years) and the level of benefits in each year. For simplicity we have assumed that the 'unit benefit' (the benefit per new working pattern as a result of the policy) remains constant irrespective of the time elapsed from the date the request was accepted. For example the unit benefit one year on after a request is accepted is the same as two years on and so on. These assumptions made could differ depending on the population group affected.

When considering future extensions in the right to request these assumptions will be revisited and when evaluating previous impact assessments on the right to request for parents with younger children or carers of adults these assumptions will again be revisited.

Further details on these calculations are provided in Annex D.

Costs

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

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

These are considered in turn.

1. Implementation costs

The extension of the right to request flexible working would result in one-off Implementation costs for business. These are estimated and discussed in detail in part 3 below. It is assumed that the extension of the existing law will have negligible implementation costs. Firms are already familiar with how to process a request for flexible working. The cost of communicating the change in eligibility 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.

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

2. Procedural Costs

2.1 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).

Experience has also shown that as a result of the formal right to request acting to accelerate culture change in the workplace, many applications are considered on a more informal basis, which again significantly reduces the procedural costs.

We estimate 2 hours of employee time, and 3 hours of management time to process a request that is dealt with formally. It is assumed that with requests that are dealt with informally it takes half an hour of employee time and one hour and a half of management time to process the request. Details on the time to process a request are provided in table 6 below. This works out at approximately £62 per request.

It is likely in practice that for 'deadweight' requests, i.e. those where employees are already allowed to work flexibly, the average procedural cost is likely to be much less. Even where flexible working is guaranteed, the cost of any existing procedure for changing working patterns – however informal - must be subtracted. Adopting the methodology used in earlier impact assessments a notional cost of £21 is assumed for each deadweight request

2.2 Average cost of appeal or internal grievance stage

The appeal stage will involve a written statement of appeal by the employee, a meeting (where the employee may be represented) and a written response by the employer. Where requests reach this stage, it is likely that both employees and managers take more care and attention over their written

communications. The meeting may also be longer and more wide-ranging. It is therefore assumed that the average cost is double that of the first stage, namely £123 per request.

2.3 Average cost of external dispute resolution stage

The average cost to an employer of an application to an Employment Tribunal - £4,553²⁰ - 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. For this extension the number of requests likely to be taken to external dispute resolution is very small – probably less than 5. Costs are not likely to be great.

The total procedural cost per annum is presented in table 7.

2.4 Administrative Burdens

Annex B sets out the PwC administrative burden information obligations associated with the Flexible Working (Procedural Requirements) Regulations 2002²¹. This allows us 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.

As the underlying unit cost (i.e. the hourly rate for management and employee time) is the same, the differential is in terms of time commitment. These are set out in the table below.

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
	Employee time	2	0.5	0	0
Average time to processing requests at first stage (rejected)	Management time	3	1.5	1	1
	Employee time	2	0.5	0	0
Average time to processing requests at first stage (deadweight request)*	Management time	1	0.5	0.33	0.33
	Employee time	0.67	0.17	0	0
Average additional time per request taken to appeal stage**	Management time	6	3	2	2
	Employee time	4	1	0	0

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

²⁰ Source *Findings from the survey of Employment Tribunal Applications 08*, Employment Relations Research Series No 107, BIS

²¹ i.e. the introduction of the right to request flexible working for parents of children under 6 and disabled children under 18.

In terms of administrative burdens these will fall on employers only and estimates of time required are given in Table 6 above. We assume initially that administrative burden costs apply to all formal and informal requests, although it is reasonable to assume that informal requests may not always result in formal written notification from the employer.

Also based on the Work Life Balance surveys , we have assumed in this impact assessment that 80 per cent of requests are informal hence it is likely that only a small proportion of employees will request a written confirmation

The resulting costs of administrative burdens to employers are presented in table 7 below and reflect the split between formal and informal requests outlined above.

3. Cost of accommodating requests for flexible working

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

Employers can reject requests on 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.

On average the costs of accommodating requests for flexible working might be a week of HR time, split between HR manager and HR clerk, for requests that ask to work part time. For other types of requests we have assumed the equivalent of 1 day' HR time to accommodate the request. Another assumption has been made that around a quarter of all requests are to work part time, hence the average cost of accommodation is 2 days wages. We have assumed that half a day will be needed by the HR manager and a day and half of clerk time.

Using average earnings from the 2009 Annual Survey of Hours and Earnings and allowing for 21per cent for non-wage labour costs, this produces costs of £98.47 for half a day of HR manager time and £142.77 for a day and half of HR clerk time²². The annual cost of adaptation is assumed to be constant for each of the various proposals because evidence from the LFS suggests that the stock of parents who work flexibly is approximately constant over time.

The total procedural costs and the cost of making adjustments to working patterns for the first year are presented in the table below. The last three columns of table 7 below show a) the additional cost to employers per year due to the new law and b) of this the increase in administrative burdens.

Summary of costs

	Total procedural cost (£ millions)	Total costs of making adjustments to working patterns (£ millions)	Additional cost to employer (£millions)	Of which administrative burdens
Table 7 Summary of annual procedural costs and cost of accommodating requests*				
Scope of law				
Parents of children aged 17	1.3	0.97	2.3	0.456
Source: BIS estimates				

²² All the wage figures above are based on 40per cent of average gross weekly earnings plus 21per cent of non-wage labour costs i.e. total cost of accommodation in days = 0.25 x 5 days + 0.75 x 1 day = 2 days (this equates to (2/5) of a weeks wages).

Risks

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

Enforcement

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

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

Overall the number of claims for the flexible working jurisdiction has been relatively small, accounting for less than 0.1 per cent of all ET claims since the first right to request flexible working was introduced in early 2003. Furthermore following the extension of the right to request to carers of adults in April 2007, there was not a significant increase in claims: in the year to March 2007 there were a total of 235 ET claims, whereas in the year to March 2008 there were 271 ET claims. Again, when the right to request was extended to parents of children aged 16 and under, claims rose from 266 in March 09 to 350 in March 2010.

We therefore assume that an extension of the right to request to parents of children aged under 18 will have a marginal effect on the number of ET claims.

Recommendation and summary table of costs and benefits

Table 9 presents a summary of the estimated quantifiable costs and benefits.

Table 9. Summary of quantifiable costs and benefits		
Scope of law	Annual Costs (£m)	Annual Benefits (£m)
Parents of children aged under 18	2.3	2.4

Source: BIS estimates. Figures have been rounded

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

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their actual costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>It is intended to extend the Right to Request to all employees in 2011. The review of the extension to parents of children under 18 should not be undertaken in isolation. It is proposed therefore, that it will be incorporated into the review of the later wider extension expected in 2017. Should this wider extension not take place, this will be evaluated in 2015 when the new right has become established.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The review will examine whether the take-up of flexible working increases as a result of the right to request procedure. It will also explore the degree to which requests are accepted, employer attitudes to flexible working and the level of disputes via Employment Tribunal claims. It will seek to establish whether productivity increases with flexible working; whether labour turnover is reduced and whether absenteeism is reduced, in line with the assumptions made in this IA.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>It is planned that the Work Life Balance series of surveys will continue and these can be designed to form the central part of the evaluation process. In addition data will be available for other survey sources such as the Workplace Employment Relations survey 2011 and future Fair Treatment at work surveys. Other sources of data will be available from the Labour Force Survey and Employment Tribunals Service.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The 4th Work Life Balance survey of employees to be undertaken in 2010/2011 will be designed to provide a baseline on the use of the right to request flexible working by all employees, including parents of children aged 17. Data will also be available from the Labour Force Survey of more general take-up of flexible working.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Increase take-up of flexible working by parents of older children</p> <p>Increased use of the right to request procedure</p> <p>Continued high levels of requests accepted</p> <p>Continued low levels of Employment Tribunal Claims regarding flexible working</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>The next Work Life Balance survey of employees to be undertaken in 2010/2011 will be designed to provide a baseline of the use of the right to request all employees and by parents of children aged 17 prior to the new right being in place. Data will also be available from the next Workplace Employment Relations Survey (2011) from employees and employers on availability and use of flexible working. Regular monitoring of take-up of flexible working will be undertaken using Labour Force Survey data. Employment Tribunal claims will also be monitored annually to assess whether disputes are rising.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.

Annex A: SPECIFIC IMPACT TESTS

1. Competition Assessment

Business sectors affected

The table below shows the number of additional employees by broad sector who would be eligible to request flexible working if the current law was extended to those with parental responsibility for older children. Overall the sectoral impact is likely to be minimal. The distribution of eligible employees across sectors is in fact very similar to the overall distribution of all employees.

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

	total employees	parents of youngest children aged 17
A-B: Agriculture & fishing	0.5 %	0.9 %
C,E: Energy & water	1.8 %	1.0 %
D: Manufacturing	10.5 %	10.4 %
F: Construction	6.2 %	4.3 %
G-H: Distribution, hotels & restaurants	18.9 %	15.0 %
I: Transport & communication	8.5 %	8.2 %
J-K: Banking, finance & insurance etc	15.5 %	13.4 %
L-N: Public admin, educ & health	32.9 %	43.0 %
O-Q: Other services	4.8 %	3.7 %
total	100 %	100 %

Source: LFS Q4 2009

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

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

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

Table A2. Competition assessment.

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

Source: BIS

2. Small Firms Impact Test

The proposed amendment to the regulations would apply to firms of all sizes. Table A3 presents the distribution of estimated eligible parents and compares this to the distribution of all employees by workplace size across the economy. The indication is that small and medium sized workplaces would not be disproportionately affected.

Table A3 Estimated additional eligible employees by size of the company as per cent of total employees

	total employees	parents of youngest children aged 17
1-10	19.1 %	18.9 %
11-19	9.0 %	8.3 %
20-24	5.1 %	3.3 %
25-49	14.6 %	14.4 %
50-249	24.9 %	30.8 %
250-499	8.7 %	7.4 %
500 or more	18.6 %	16.9 %
Total	100 %	100 %

Source: LFS Q9 2009. Assuming that the "do not know but under 25" have the same distribution as the 1-10,11-19,20-24 groups, and the "do not know but between 50 and 499" have the same distribution as the group 50-249 and 250-499.

3. Equality Impact Assessment

Overall, the proposal will enhance equity and fairness since they provide families with greater flexibility. An initial equality impact assessment suggests there would not be any disproportionate effects by gender or disability. This will be supplemented by a full analysis for the final impact assessment.

Table A4 Estimated additional eligibility by gender and disability of employees

	total employees	parents of youngest children aged 17
Male	50.9 %	41.5 %
Female	49.1 %	58.5 %
Disabled	13.0 %	18.4 %
Not disabled	87.0 %	81.6 %
Total	100 %	100 %

Source: LFS Q4 2009

It is important that the proposals outlined above do not have a disproportionate effect on any one ethnic group. Table A6 indicates that the proportions of eligible parents are similar for all employees and so no ethnic groups and will be disadvantaged from the new provision.

Table A5 Estimated additional eligibility by ethnicity of employees

total employees

parents of youngest children aged 17

White	91.0 %	93.3 %
Mixed	0.7 %	0.2 %
Asian or Asian British	4.4 %	3.4 %
Black or Black British	2.0 %	1.7 %
Chinese	0.4 %	0.2 %
Other	1.4 %	1.3 %
Total	100 %	100 %

Source: LFS Q4 2009

ANNEX B: OUTLINE OF ADMIN BURDEN INFORMATION OBLIGATIONS RELATING TO 2002 REGULATIONS

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

ID	IO Description	Information Metric
30371	<p>Providing an employee with written notice of the decision relating to a request for a contract variation.</p> <p>Specifying in the written notice:</p> <ul style="list-style-type: none"> - the contract variation agreed to and date on which the variation is to take effect, where your decision is to agree to the application; or - the prescribed grounds for refusal where the application is turned down. 	No of requests for a contract variation in relation to flexible working
30411	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 C: FLEXIBLE WORKING ESTIMATES FOR PARENTS OF OLDER CHILDREN

Numbers of requests accepted by employers

Requests can be accepted by employers at a number of stages: when a request is first made; at the appeal or internal grievance stage; and following recourse to external dispute resolution (either an Employment Tribunal or another form of dispute resolution). BIS's third work life balance employee survey showed that 87 per cent of new requests are accepted at first stage and 25 per cent of unsuccessful cases are taken to appeal stage. We assumed that 20 per cent of new requests are accepted at appeal stage, 2 per cent of unsuccessful requests referred to external dispute resolution, of which 20 per cent to be successful.

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

Table C1: Progress of requests through the various stages	
Scope of law	Parents of children aged 16 and under
Parents of children aged 17	291,000
1) No. of new requests	4,610
2) Proportion accepted at first stage (0.87=87per cent)	0.87
3) No. of requests accepted at first stage =1x2	4011
4) Proportion of requests taken to second stage (0.25=25per cent)	0.25
5) No. of second stage requests =(1-3)x4	150
6) Proportion accepted at second stage (0.2=20per cent)	0.2
7) No. of requests accepted at second stage =5x6	30
8) No. of requests turned down by employer= 5-7	120
9) Proportion referred to external dispute resolution (0.02=2per cent)	0.02
10) No. of additional external dispute resolution cases=8x9	2
11) Proportion successful at external dispute resolution stage	0.2
12) No. of requests accepted at external stage = 10x11	0.05
13) No. of requests unsuccessful at external stage = 10-12	1.5
14) Total no. of new working arrangements = 3+7+12	4041

ANNEX D: AGGREGATION OF BENEFITS

This flexible working impact assessment has attempted to take into account the potential stream of benefits from employees working flexibly from previous years as a result of successful additional requests to work flexibly. For example if employees who adjust their working patterns in year one of the policy are not included in the pool of employees affected in year two. This implies that firms only benefit from a single year in the form of reduced absenteeism, increased productivity and reduced labour turnover. This is an extreme assumption as many employees are likely to work for several years after adjusting their working patterns for the same employer. Hence, using this approach it is likely that the net present value of benefits over a 10 year horizon will be an underestimation of the benefits.

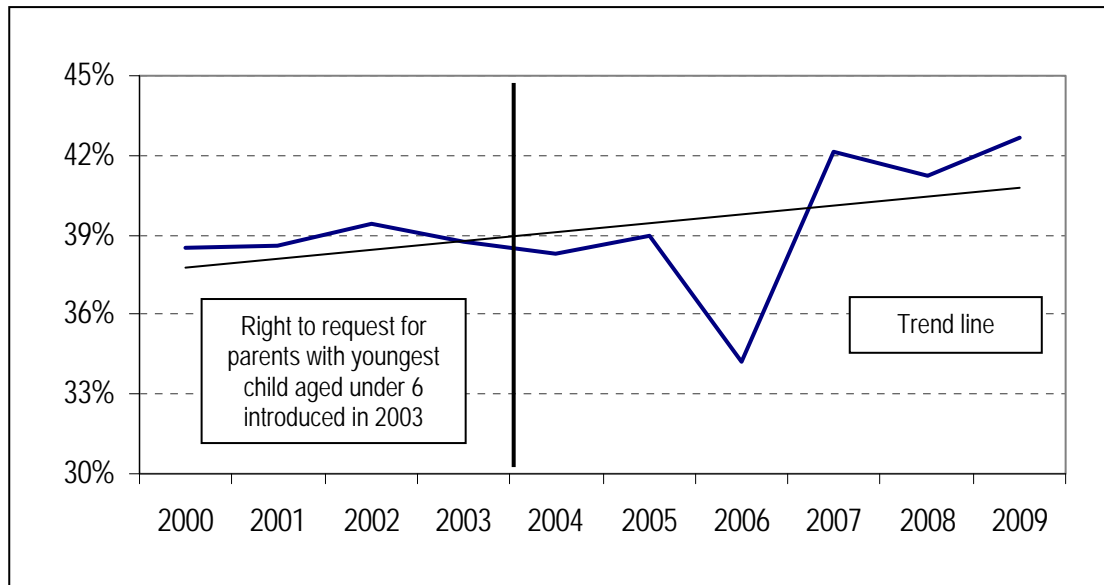
One approach to address this extreme assumption is to aggregate the 'inflow' of new working patterns on a cumulative basis. Simply adding up the estimated 4,000 new working patterns each year would lead to an overestimation as employees are likely to move jobs (or leave the labour market) over this period and the benefits from working flexibly are likely to diminish as the child gets older. We assume that the primary reason parents with a youngest child aged 17 make a request is because of their caring duties for that child. For different groups in the labour market the magnitude of benefits will be different as time progresses from a request being accepted by an employer.

This note models a scenario where benefits are added up cumulative based on a 'stock' approach of workers affected by the policy and incorporates that the benefits will diminish as the child ages.

Evidence

Chart 1 below shows the proportion of employees with a youngest child aged under 6 who have some form of flexibility in their job²³. Between the period 2000 and 2009 proportions working flexibly have been rising. In particular from 2003 (when the right to request was first introduced for parents with a youngest child aged under 6) to 2009 proportions working flexibly increased by around 4% points. In terms of growth in levels of parents working flexibly from 2003 the level has grown by around 19% between 2003 and 2009, this is equivalent to an annual compound growth rate of 3% per year.

Chart 1. Proportion of employees with a youngest child aged under 6 working in a job with some form of flexibility*



Source: BIS analysis of UK Labour Force Survey. *Employees with more than 6 months length of service

²³ Flexibility includes part-time working, flexi-time, term-time working, job shares, annualised hours, nine-day fortnights and four and a half day weeks and zero hours contract.

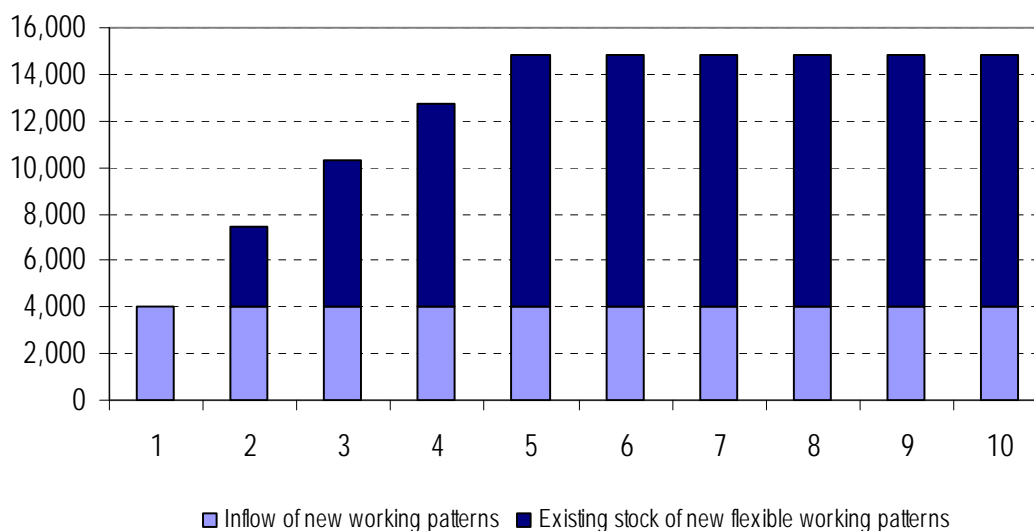
Based on LFS data for 2009 around half (49%) of parents with a youngest child aged 17 have some sort of flexibility in their job, (140,000 out of a total of 288,000).

Alternative assumptions

One alternative assumption to the current approach taken in the impact assessment is to cumulatively add up the existing stock of workers who adopt new working patterns to the annual inflow of new working patterns. Using turnover rates from CIPD (and adjusting for reduced turnover as a result of the policy) 15.6% of employees with a child aged 17 who change their working patterns are assumed to leave their job per annum. To factor in that the magnitude of benefits may diminish as the child ages we arbitrarily assume the policy effect stops after a period of 5 years from the point an employee changes their working patterns. This assumption by definition constrains the anticipated growth in flexibly working as a result of the policy.

Chart 2 below plots the cumulative number of new working patterns (annual new inflow of 4,041 plus share of existing stock from the previous year). In year one the total stock of new working patterns equals the annual inflow of new working patterns. Between years 2 to 5 the stock of workers increases to 14,809. The stock stabilises in year 5 and remains at 14,809 in years 5 to 10 (this is by design and ensures that the stock of flexible workers does not continuously grow). In terms of total levels of parents with a youngest child aged 17 working flexibly in year 10 the total stock will reach 154,809 (the current 140,000 workers measured in 2009 plus an additional 14,809 because of the anticipated policy effect). This represents a percentage increase of 10.6% over ten years or around 1.0% on an annual compound basis. These assumptions are cautious given the 3.0% annual compound growth rate in the levels of parents with a youngest child aged under 6 working flexibly since 2003.

Chart 2. Stock of new flexible working patterns including annual inflow over 10 years



Source: BIS estimates

In 2009 48% of employees with a child aged 17 were employed in a job with some element of flexibility. Given predicted growth rates in the stock of flexible workers this figure is expected to rise to 53% in 2014 and then remain at around this rate.

Effect on stream of benefits

Adjusting the benefits stream over 10 years to incorporate inclusion of existing stocks of flexible workers leads to a **net present value of benefits of £41.2m** over 10 years compared to £21m based on measuring the benefits on just inflows. In terms of sensitivity analysis benefits based on assuming a continuous stream of benefits (that carry on beyond 5 years after a change in working pattern) would lead to a net present value of benefits of £46m over 10 years. Although, under this approach as time elapsed from the policy implementation date there would reach a point where there would be a very large group of parents with a child aged 17 working flexibly.

It should be noted that the total benefits summed up over ten years is affected by assumptions made on how long the policy effect lasts (in this case we have assumed that the policy effect lasts for 5 years) and the level of benefits in each year. For simplicity we have assumed that the 'unit benefit' (the benefit per new working pattern as a result of the policy) remains constant irrespective of the time elapsed from the date the request was accepted. For example the unit benefit one year on after a request is accepted is the same as two years on and so on. These assumptions made could differ depending on the population group affected.

When considering future extensions in the right to request these assumptions will be revisited and when evaluating previous impact assessments on the right to request for parents with younger children or carers of adults these assumptions will again be revisited.

© Crown copyright 2010

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
www.bis.gov.uk

URN 10/1217