

The background of the entire page is a photograph of construction workers in silhouette, carrying a long pipe up a hill. The scene is bathed in a warm, orange-red light, likely from a low sun, creating a strong gradient from dark red at the bottom to bright yellow at the top. The workers are in a line, each supporting the pipe on their shoulder, moving uphill from left to right.

dti

SUCCESS AT WORK

Increasing the holiday entitlement – an initial consultation

Summary of consultation responses and the Government's response to the consultation

JANUARY 2007

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1. The consultation process

Consultation document

1. The consultation was launched and the consultation document published on 13 June 2006. The consultation document was developed following informal discussions with a cross-section of stakeholders (including businesses, representative organisations and trade unions) to ensure that the consultation sought views on the main issues around the Government's intention to increase the holiday entitlement to reflect the number of bank and public holidays. The consultation document asked ten specific questions, as well as respondent data to enable detailed analysis of the responses to be conducted. The consultation questions are attached at Annex A.

Publicising the consultation

2. The consultation launch was supported by a press notice and a dedicated webpage. Copies of the consultation document were sent to around two hundred business and union stakeholders and was made available on the DTI website as pdf documents.
3. It was initially believed that micro-enterprises and small businesses were less likely to give at least 28 days' holiday (pro-rated) to staff already, and that such businesses were therefore likely to be particularly affected by the proposals to increase the holiday entitlement. Efforts were made therefore to ensure that small businesses were consulted on the proposals. Details of the consultation, including a link to the consultation webpage, were sent to around 1,600 small businesses on the Small Business Service's consultation database. A number of representative organisations and unions also drew their members' attention to the consultation.
4. The consultation webpage also offered to add those who wished to be kept in touch with the development of the holiday proposals to an email distribution list. Shortly before the close of the consultation on 22 September 2006, an email was sent to the 800 people on the distribution list, attaching a 'Word' version of the consultation response form.

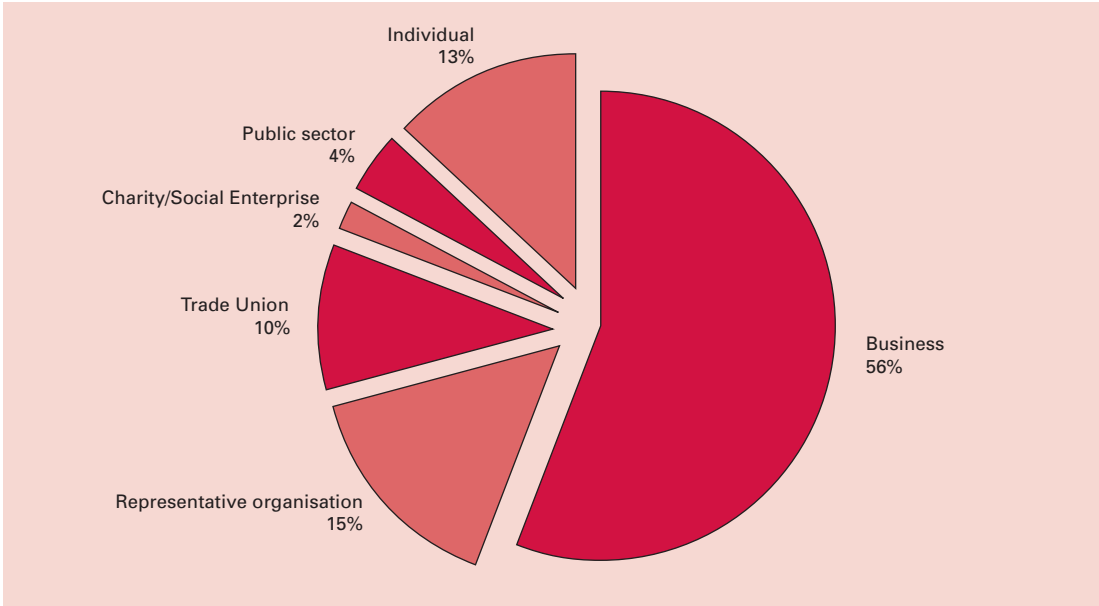
Consultation meetings

5. To support the consultation, a series of open consultation meetings were held, focusing in particular on the scope for flexibilities around the additional leave ('carry over' and 'buy out') and phasing the introduction of the additional leave. The DTI hosted meetings in Exeter, Manchester and London and the Welsh Office hosted a further meeting in Swansea. In total, ninety-four people attended the four meetings and a list of organisations represented can be found at Annex D. A focus group with small businesses was held in Worcester, organised by the Forum for Private Business, and presentations on the proposals were made to the Small Business Council's Better Regulation Interest Group and ACAS' Employer Contact Group. Meetings were also held with a number of individual stakeholders to discuss their concerns.
6. The points raised in all of these meetings have been included in the consultation responses.

Responses to the consultation

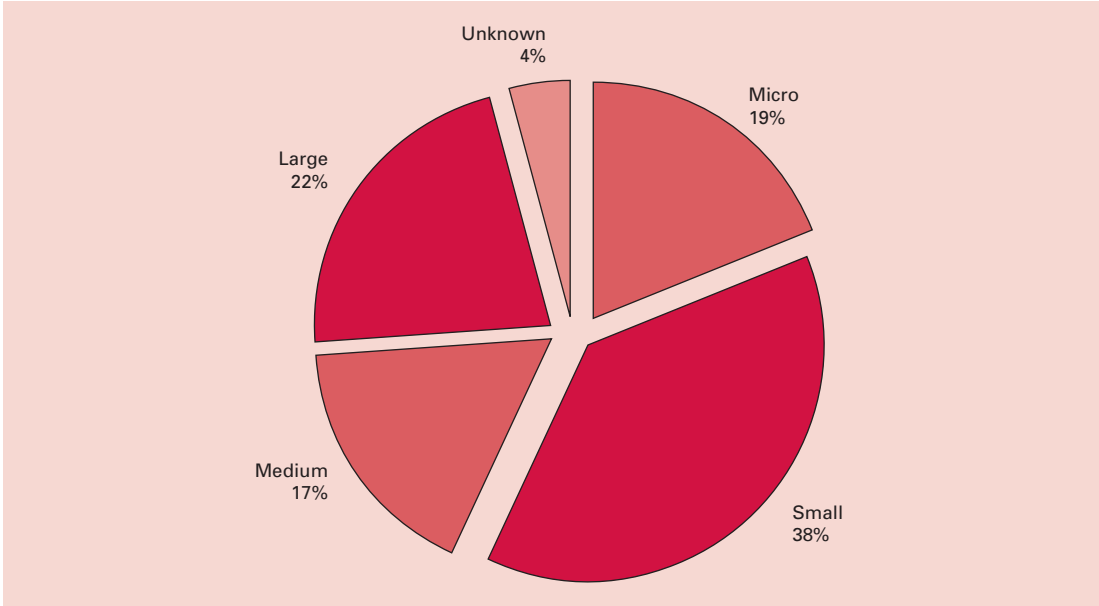
7. A total of 344 written responses to the consultation were received; a list of respondents can be found at Annex C. Whilst the majority of these responses used the consultation response form and addressed the ten consultation questions specifically, a number of respondents submitted more fulsome responses. The breakdown of respondents is shown in Chart 1.

Chart 1: Composition of respondents (total: 344 responses)



8. Information about the size of business was sought on the consultation response form to enable any particular impacts depending on the size of the business to be assessed. The breakdown of business respondents by size is shown in Chart 2.

Chart 2: Business respondents by size (total: 195 responses)



Evaluating the consultation

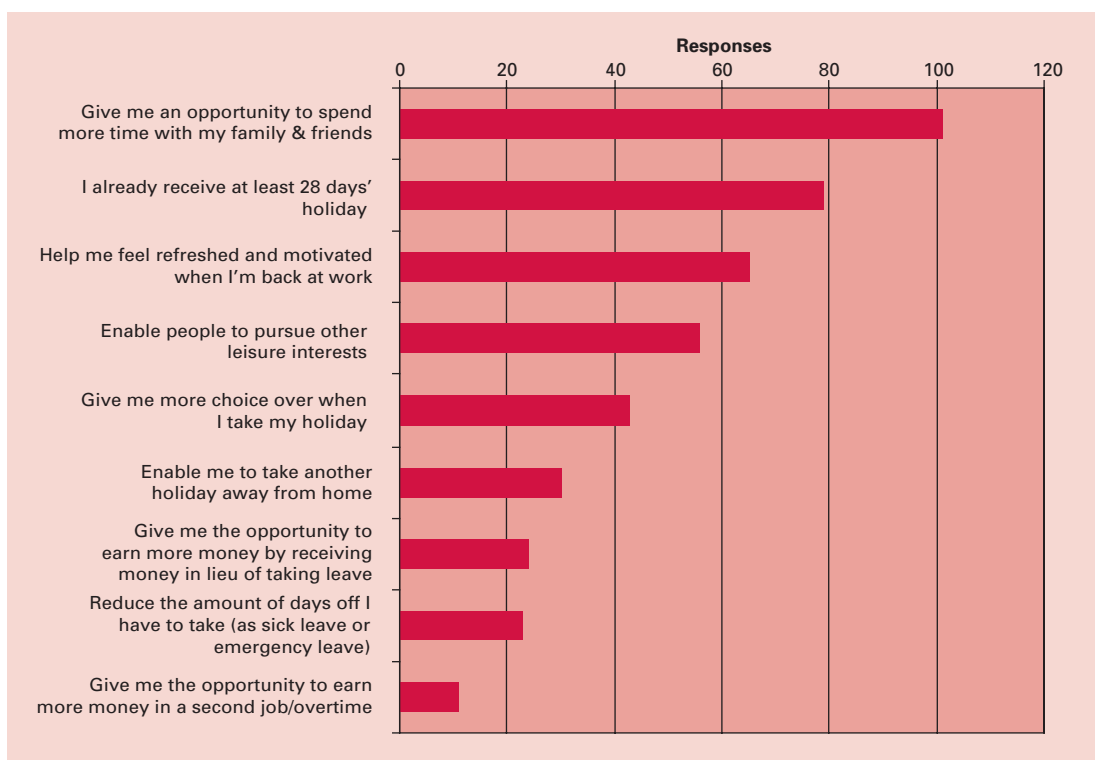
- 9.** The consultation process was evaluated following the close of the consultation by contacting by email a random sample of:
 - Those who had responded in writing;
 - Those who had attended a consultation meeting, and;
 - Those who had asked to be kept informed but who had not responded formally to the consultation.

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

2. Benefits of increasing the holiday entitlement

10. The consultation sought views on the likely benefits to staff of increasing the holiday entitlement, with the response form suggesting a number of alternatives. Respondents were asked to tick three of the possible benefits as a member of staff. The responses are shown in Chart 3.

**Chart 3: Benefits to staff of increasing the holiday entitlement
(total: 186 responses)**



Work-life balance

11. The most popular response was that the additional holiday would enable staff to spend more time with family and friends. A number of emails were received from individuals, citing the impact at present of including time off for bank holidays within the four weeks' holiday entitlement. A typical response was:

'At present, I get 20 days [holiday entitlement] in January. Eight are taken for bank holidays. Four are taken for Christmas shutdown. I have to take five in February, leaving three days to have between February and December, which is ridiculous. My children have 87 days off a year from school. I spend no time with them at all in holidays.' (Individual)

Motivation

- 12.** Many respondents also identified increased motivation as a key benefit to staff of increased holiday. Some respondents felt that holiday would also lead to a reduction in sickness absence, as more holiday would reduce stress levels, and increased safety at work through reduced tiredness. Respondents also linked the additional holiday entitlement with the health and safety objectives of the Working Time Directive:

'Eight extra days holiday would help people rest and recuperate, making them less likely to take time off and more productive when at work.'
(Amicus)

'A period of leave will mean the employee is more likely to return to work in a refreshed state leading to an increased level of productivity. Holiday enables the employee to cope with any other demands that they might have on their time, reducing the chance that these issues might 'spill over' in to the work place.' (Business Services Association)

Voluntary work

- 13.** Some respondents identified the opportunity to participate in other leisure interests as a key benefit. Research suggests that 'lack of time' is a major limitation on the likelihood of staff to undertake voluntary work. One respondent highlighted the problem:

'I do voluntary work as a school governor and have had to use 2 days of my holiday entitlement this year for deputy head interviews which is a significant proportion of the total' (Individual)

Other forms of leave

- 14.** A small number of respondents said that an increased holiday entitlement would reduce the amount of other leave – such as sick leave or time off without pay – that they had to take:

'If my children or I are ill, I have to take time off without pay. If you have an appointment with [the] dentist or doctors [you] could take a days holiday.' (Individual)

'...A press release issued by the Chartered Management Institute...drew attention to research into the difficulties managers faced in taking their full allowance of annual leave. It also highlighted the different activities undertaken by men and women during periods of annual leave:

- 27% of women visit the doctor or dentist, compared with 16% of men
- 31% of women use it to catch up on sleep, compared with 16% of men
- 68% of women catch up with domestic chores, compared with 14% of men.

It would seem therefore that annual leave is valued as a means of protecting health and ensuring that essential tasks are carried out, and that these options are especially important for women.' (PCS)

European comparisons

15. A number of respondents highlighted differences in the statutory holiday entitlement between the UK and other European countries:

'We are lagging behind our European counterparts with the number of statutory holidays that workers get...Only the Netherlands has fewer public holidays than the UK, but Dutch workers have more annual leave.' (GMB)

Already receiving at least 28 days' holiday

16. A significant number of those responding to the consultation – 42% of those identifying benefits to staff – already receive at least 28 days' holiday each year (pro-rata for part-time staff). This proportion is less than the Annual Leave Entitlement Survey suggests, which found that 81% of employees currently receive a holiday entitlement of at least 28 days, probably reflecting the fact that staff currently not receiving 28 days' holiday or more are more likely to respond to the consultation.

'UK employers already tend to offer well above the statutory minimum of 20 days paid annual leave. Figures available from IDS show that almost two-thirds (61%) of UK employers offer either 25 or 25 1/2 days to their staff, with an additional quarter (23%) offering more holiday allowance to their staff. Furthermore, the trend over the last year has been for more employers to increase holiday allowance than to cut it.' (CBI)

Validity of question

17. Other respondents felt that asking about the benefits of holiday was a loaded question:

'You might as well ask me about what I like about the weekend or what would I like to do if I won the lottery.' (Newmor Group Ltd)

Government response

18. **The Government believes that increasing the holiday entitlement will have a strong benefit in enabling staff to strike a better work-life balance and to spend more time with friends and family. The Government notes that many other European countries already enjoy a similar number of statutory holidays (if not more) than those proposed. The Government further notes that most employers already give at least 28 days' holiday (pro-rata) to their staff, recognising the benefits of holiday to their business in reducing stress, raising productivity and maintaining motivation. The Regulatory Impact Assessment accompanying the draft regulations will consider the costs and benefits of the increase in holiday entitlement in more detail.**

3. Impacts on employers

19. The consultation asked respondents to comment on the impacts of the proposal on employers. Respondents were asked to identify one main impact – providing 6 options, including an ‘other’ box and the option for further comment, and for comments on the impact on working practices (such as shift patterns, annualised hours or flexible benefits).
20. A number of respondents surveyed their members to assess the impact on them. The Forum of Private Business reported that 53% of respondents to their member survey currently offered staff at least 28 days’ holiday. The Institute of Directors reported that 95% of members currently gave at least 28 days’ holiday (including bank holidays). The British Hospitality Association estimated that 62% of staff in the sector did not currently receive the equivalent of 28 days’ holiday per year.

Main impact on employers

21. The responses on the main impact on employers are shown below in Chart 4, showing that “No impact” was the most common response (even amongst employers), followed by the cost of recruiting. Further analysis of the comments given showed that costs more generally were of clear concern (including additional wages and loss of business as well as recruiting). Comments by the Association of Licensed Multiple Retailers were indicative of those citing costs as a key issue:

‘Respondents were unanimous that the main impact on the business of increased holiday entitlement would be the pressure on the wages bill and the knock-on effect this would have on business profitability. The net effect of the proposals would be to increase the salary of those staff. For this reason, 45% of respondents believed that the proposed changes would impose an increase in wage costs of between 1-4%.’

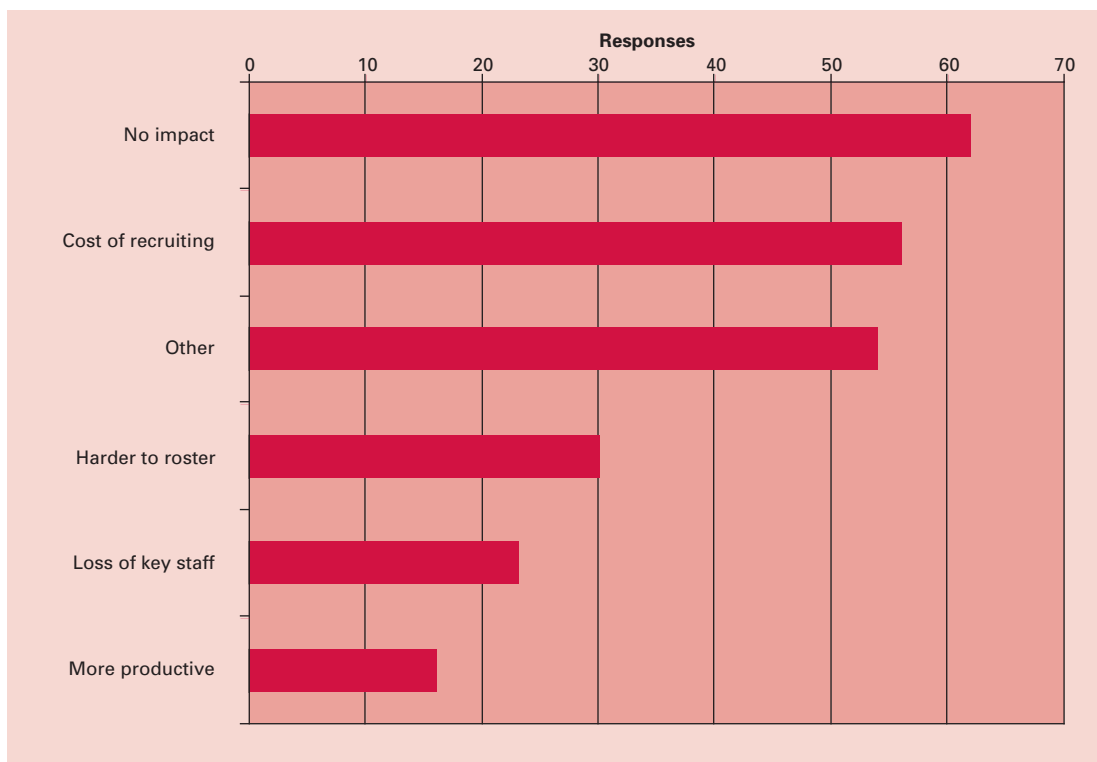
22. Where comments on costs were given, they were often imbedded among wider comments on the cumulative impact of recent legislative changes:

‘Biggest problem is the continued pressure on employment costs, caused not by a single initiative but by the cumulative impact of increase employment costs.’ (Association of Convenience Stores)

- 23.** Whilst recognising that the impact on businesses and employers is important, The TUC commented that the introduction of the current four-week holiday entitlement in 1998 had not caused widespread disruption for employers, a view echoed at consultation meetings:

'Although the proposals would benefit some 2 million workers this would only be a third as many as benefited from the introduction of the 4 weeks paid leave entitlement in the WTR. The 1998 increase was absorbed without any detrimental side effects.' (TUC)

Chart 4: Impact on business (total: 241 responses)



- 24.** Smaller companies, and in particular micro ones, were more likely to identify difficulties in covering the additional days due to an inability to 'absorb' costs or physical absences. A number of small and micro companies also commented on the negative impact on other staff (and in particular owner managers) in covering additional leave, while others offered reassurance:

'With only 20 employees (including director) it can be very difficult getting work done without too much pressure on other members of staff' (Fisher Research Ltd)

'We have gradually built up from 20 to 28 days over a period, at the time of the wages review it has been extremely well received, in many cases better than a pay rise.' (Birch Brothers Ltd)

- 25.** Several organisations already offering 28 days welcomed the level playing field the proposal would bring, both between employers and between different groups of staff at the same employer:

'My company grants 21 days holiday plus public holidays, all at full pay. I wish all my competitors did the same, if not already.' (Boylard Joinery Ltd)

'Currently some categories of staff already receive 28 days, while others (for historical reasons) only get 20. This change will make it fairer for those staff and remove any discrimination.' (McKenzie Myers Ltd)

- 26.** A few others were concerned that there would either be a demand among their staff to maintain the differential over the statutory minimum or that they would lose their competitive advantage when recruiting. When explored further in consultation meetings, however, participants agreed that any concerns of staff wanting to maintain the differential and more general misconceptions (that the new entitlement would be 5.6 weeks plus bank holidays, for example) would be removed if the increase was well supported with publicity and guidance:

'We currently give 30 days, but there will be a demand to maintain the differential over others – hence to increase to say 38 days.' (Mortgages for Business Ltd)

- 27.** Certain industries related their own specific issues – for example where specialist skills and/or personnel checks are needed, recruitment costs were of particular concern:

'As a care home, our recruitment costs are high enough, and higher than most other sectors, as we are required to undertake enhanced criminal record checks, must meet statutory training requirements, and are facing the cost of registering the members of the care staff with the General Social Care Council.' (Penny Pot Ltd)

Impact on working practices

- 28.** The most common response on the impact on working practices was difficulties in rearranging rosters. Comments were made to consider atypical working patterns when drafting and implementing the regulations and so to make the regulations as flexible as possible. Difficulties were also seen in calculating leave entitlements for part-time staff and in pro-rataing for part-years and the Government was asked to ensure 'reasonable advance notice' to make any necessary administrative changes:

'I can foresee potential problems with part time staff who work on 3 or 4 days a week. In our workplace those on this arrangement get their bank holidays if it would have been a working day for them. How would they be affected?' (Majestic Transformer Co)

- 29.** Other organisations noted their legal requirement to have a specified number of staff on duty at any one time as a particular difficulty, for example:

'Managing staffing arrangements to maintain childcare ratios may be more difficult for those nurseries most affected.'(National Day Nurseries Association)

- 30.** Some organisations commented that increasing the amount of holiday is likely to increase the number of conflicting holiday requirements:

'It would lead to less not more flexibility on dates etc, as we have circa 100 staff and if the half who do not have 28 days suddenly had them, it would make it more difficult in peak periods to obtain cover.' (Dalkeith Transport)

'There is a finite capacity in any business for adaptability and flexibility. Enhancing rights to be absent from work inevitably has implications for the ability of business to accommodate absence or flexible working in other cases. In continually extending the rights of employees to absence from work, the Government shows little sign of recognising these practical implications.' (EEF)

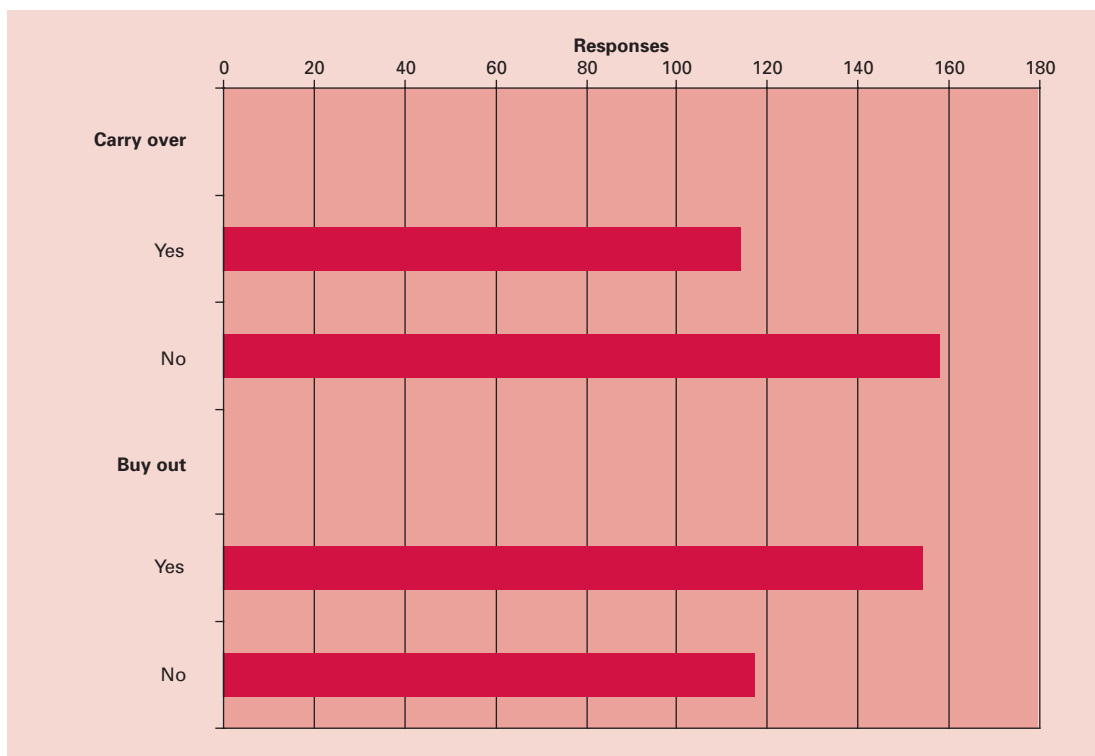
Government response

- 31.** Whilst recognising that most employers will not be affected directly by these proposals as they already give at least 28 days' holiday, the Government acknowledges the strength of concern about the cost impact on those businesses that will be affected. The Government recognises the particular challenges faced by smaller businesses in maintaining staff cover and by certain sectors likely to be particularly impacted, such as the hospitality sector.
- 32.** The Government notes the wider context of regulation on business and has asked the Low Pay Commission to take the increase in holiday entitlement into account when recommending the future level of the National Minimum Wage. The Regulatory Impact Assessment accompanying the draft regulations will consider the costs and benefits of the increase in holiday entitlement in more detail.

4. Flexibilities on managing the additional holiday

- 33.** Under the European Working Time Directive, workers are entitled to take four weeks' paid holiday in any holiday year. As a general rule, the four weeks' holiday should not be carried over to the following leave year, nor should payment in lieu to taking leave be made (except on termination of employment). As the additional holiday entitlement would be additional to the four weeks' entitlement under the Directive, there is scope to enable some or all of that leave to be carried over to the following leave year ('carrying over'), or for payment in lieu of taking leave to be made ('buying out'). The consultation sought views on whether there should be the ability to carry over or buy out the additional leave and, if so, how such arrangements should work in practice. The responses on carry over and buy out are shown in Chart 5 below.

Chart 5: Responses on carry over and buy out (Total: 272 & 271 responses respectively)



Carrying over

- 34.** Of the 272 respondents expressing an opinion, 42% agreed that there should be the ability to carry leave over to the following year and 58% disagreed. However, it is clear from comments made that a high number of respondents thought that the question was seeking views on an entitlement to carry leave over, rather than a facility to do so. They expressed concern that, as an employer, they would have to allow staff to carry leave over, rather than having the discretion to allow carry over, or not:

'Absolutely no benefit in building this into statute. If companies wish to implement this, then that's fine.' (Mortgages for Business)

'Strongly opposed the right to carry over – should be an entirely discretionary matter between employer and employee. Business must be left to decide for themselves' (Federation for Small Business)

- 35.** Concern focused on the potential impact on a business if staff took extended leave in the following year and on the administrative burden in managing carried over leave:

'Employers feel that the ability to carry over any or all of the additional 8 days would be an unreasonable administrative burden to place on business. It is inadvisable to make this a statutory right. Employers should have the freedom to offer these arrangements to incentivise their staff should they feel able to.' (British Chambers of Commerce)

'Important that holiday is taken in same holiday year. Would place an unnecessary and unreasonable burden on employers otherwise as difficult to provide cover of somebody off for 7.2 weeks in same year.' (Individual)

- 36.** Other respondents commented that carry over was an important flexibility for holiday in excess of the statutory minimum. A CIPD survey has found that 65% of employers already enable staff to carry some leave over to the following year:

'[We] urge government to allow the option of carrying over the additional days. This flexibility may prove of particular assistance in businesses such as holiday parks where maximum flexibility is required to allow smooth operation' (British Holiday & Home Parks Association Ltd)

- 37.** Some expressed concern that not allowing carry over would restrict the flexibilities that companies currently enjoy in handling contractual leave above the statutory minimum:

'...trade slows down between December-April. In order to help cashflow during these months, we allow staff to carry over any days over and above their 4 week allocation to be used by April. To remove this flexibility would have serious financial implications.' (SCH Ltd)

- 38.** Some suggested that any leave carried over to the following leave year should be taken within a defined period in that year (typically within the first three months of the following leave year). Others suggested that carry over should be allowed only in exceptional circumstances:

'It is acknowledged that the health and welfare of employment is paramount and annual leave should be exhausted by employees each year. There are however some exceptions where carry over may need to be given, such as for employees on maternity/adoption leave, sick leave or disability leave and therefore [we] believe that in some circumstances carry over should be possible.' (FDA)

- 39.** Other respondents highlighted the diversity aspects of allowing carry over in enabling staff to build up a longer period of leave:

'Carry over is likely to have a positive equality impact. It is likely to disproportionately benefit ethnic minority employees who are more likely to want to take long trips to see extended family, Muslim staff who want to participate in the Haj, and women as they are more likely to have primary caring responsibilities and may need the extra days in the next leave period to discharge these responsibilities (e.g. school summer holidays, caring for someone after operation).' (Individual)

'It is our view that this option should be allowed for flexibility. Carry over is also useful for workers who may want to take longer holidays to visit family overseas or take time off for religious holidays or to participate in religious events.' (GMB)

Buying out

40. Of the 271 respondents expressing an opinion, 57% agreed that there should be scope to provide payment in lieu of taking the additional leave and 43% disagreed.

41. A number of those supporting the ability to provide payment in lieu of taking the additional holiday already allow staff to receive payment in lieu of contractual leave and commented that there was strong support amongst staff for such arrangements. Some staff would prefer to receive payment rather than taking leave over and above the four-week statutory minimum:

'[Employers] feel very strongly that individuals who chose not to go on holiday should have the option to take payment in lieu. With house prices and the cost of living as they are, some of our younger staff want to earn as much as they can. We feel that freedom of choice is important and politicians should not be telling us what to do.' (Representative organisation)

42. Respondents from sectors that currently suffer recruitment problems (such as residential care and construction) said that the opportunity to provide payment in lieu of leave would help with this:

'Whilst appreciating that this would add to the complexity of the new regulations and administration of leave entitlement, we believe this flexibility to be essential for our business. A significant concern for our business is not just the cost of the new holiday entitlement but the difficulty in providing appropriate cover to replace the increased days taken by employees...The flexibility afforded by the buy-out would alleviate some of the pressure to find additional hours if, as we believe, flexibility would be attractive for our employees. We believe that many employees would prefer to work the additional days and receive pay in lieu for additional leave. We certainly believe they should be offered that choice.' (Business)

- 43.** Some employing staff on a casual basis or using temporary staff felt that buying out the additional leave would make the new arrangements easier to administer, but others thought that employers would not require the additional flexibility:

'Buying out holiday entitlement would help agencies to administer the bank holiday pay for temps – particularly if it was on the basis of 'rolled up pay' (Recruitment and Employment Confederation)

'As the vast majority of IoD members already provide a more generous leave entitlement for their employees than the required statutory minimum, and do not count bank holidays as part of that minimum, it is unlikely that many would require the flexibility to buy out some of the statutory entitlement.'

- 44.** Several respondents commented that enabling buy out would run contrary to the overall objective of the proposals to improve work-life balance and to give staff more time away from the workplace:

'Any buyout will increase administrative costs in the business, adds complexity and the original spirit and intent of the current 20 days holiday entitlement was to give employees time off from work. Any buy-out of the additional 8 days contradicts the original intent of the [Working Time Regulations] as a piece of H&S legislation.' (British Airways Plc)

- 45.** Others were concerned that low-paid staff in particular would feel compelled to take payment in lieu, either under pressure from their employer or because of their personal financial position:

'It should be remembered that the companies likely to be affected by this change are the more unscrupulous employers and there is a real danger that such a 'buy out' loophole will allow these managers to apply undue pressure to vulnerable workers' (RMT)

'We therefore fear that any proposals to allow buy-backs from extra 1.6 week entitlement might simply lead to workers losing out, with many vulnerable workers being put under pressure by employers to forego their leave. There is a danger that buy-backs would become a desirable way out for poor managers with deadline problems, giving them a motive to pressure workers to sell their entitlements.' (TUC)

- 46.** Others felt that the effect of buying out the additional leave would be merely to give a pay rise and could be open to abuse by employers:

'Although I am not supportive of increasing statutory leave, if it goes ahead, an option to 'buy out' the additional holiday would just amount to a pay rise' (Business)

'This could be misused by bad employers to 'buy out' but reduce pay' (Individual)

- 47.** Respondents also raised concerns that the option to give payment in lieu of leave could lead to staff falsely taking sick leave in order to hold back their holiday entitlement to be bought out:

'Selling holidays would encourage people to 'go sick' and not take holidays that could be exchanged for cash' (Construction Confederation)

Agreeing flexibilities

- 48.** The consultation asked how flexibilities such as carry over and buy out should work in practice, including how any such flexibilities should be agreed between staff and employers. Of those who expressed an opinion, the majority (97%) agreed that carry over or buy out should be mutually agreed between staff and employer, with many respondents making reference to including in employment contracts or to agreeing with information and consultation groups, such as unions or staff associations:

'Flexibilities should remain a contractual matter between employer and employee: this works well at present and should not be changed. A number of members mentioned the importance of line management responsibility in administering these matters, and would not want to see this superseded by inflexible regulations.' (CBI)

- 49.** There was some difference of opinion, however, of who should have the final say, with businesses suggesting that the employer should have the final say and unions, the member of staff.

- 50.** The question of how explicit the regulations should be about the ability to carry over or provide payment in lieu of leave was discussed at the consultation meetings. The Working Time Regulations at present are silent about any carry over or buying out of leave in excess of the statutory minimum. The regulations to increase the holiday entitlement could remain silent or could make any buying out or carry over explicitly permitted or forbidden. The preference expressed at the consultation meetings was for the regulations to be explicit, even though this would increase their complexity, as ambiguity would only lead to confusion and would require case law to resolve. If the regulations were silent, there would not be the scope to require mutual agreement for any flexibilities:

'If the regulations are silent on carry over or buy out, then there is scope for abuse.' (UCATT)

'Small firms like things spelt out in an uncomplicated, uncomplex way.' (Northants Chamber)

'If the regulations are silent on the issue, then the guidance should be explicit' (National Caravan Council)

Government response

- 51.** The Government notes that the majority of employers currently offer the ability to carry over contractual leave in excess of the four-week entitlement to the following leave year. The Government does not wish to constrain this flexibility and therefore proposes to provide the ability to carry some or all of the additional holiday over to the following holiday year (although employers will not be required to offer carry over to staff).
- 52.** The Government agrees that the ability to provide payment in lieu of taking the additional leave could be open to abuse by both employers and staff, and that routine buying out of holiday would defeat the intention of these proposals to increase the amount of holiday. The Government therefore proposes that there should not be the ability to provide payment in lieu of taking the additional holiday entitlement.
- 53.** The Government agrees that carrying holiday over should be subject to mutual agreement by both employer and the member of staff. The Government believes that the legislation should be explicit about the ability to carry holiday over to remove any ambiguity.

5. Phasing the introduction

54. Respondents were invited to comment on the Government's proposal to phase in the introduction of the additional holiday from 1 October 2007 (with the statutory entitlement increasing from 4 weeks to 4.8 weeks) and on options for the timetable of introducing the remaining holiday thereafter.

No phasing

55. Of the total 344 consultation responses, 210 (61%) commented on the proposal to phase the introduction of the additional holiday. Some of those respondents thought that the proposed introduction date of October 2007 was too soon, while others felt that sufficient warning had been given in Government manifestos and that there should be 'no further delay'. Some also thought that an initial increase of 4 days was too high and that there should be a number of changes of one or two days a year. However the most popular choice (29%) was that the proposals should not be phased-in, but rather introduced all in one go. Arguments for this were divided between those that wanted the increase to be introduced as soon as possible (all introduced in October 2007), and those that preferred a single introduction to minimise administrative changes but at a later date:

'Do not see the need to have a phase in period. Is not a significant increase and should be available immediately' (Prospect)

'Ideally implementation should be in a single step from October 2009, so as to postpone cost increases, avoid repeated changes and give businesses longer to adapt' (National Caravan Council)

'The burden and expense of two changes in systems, policies and procedures outweighs the marginal cushioning effect of a two-stage implementation'. (Kent Police)

Interaction with the leave year

- 56.** Whilst the CBI and other respondents supported an October implementation, several respondents expressed concern that the proposed October implementation date did not correspond to the holiday year that they operated, and that they would have to make two calculations for each change in the holiday entitlement to reflect part-year increases in entitlement. Some favoured a January implementation date (as their holiday year followed the calendar year); others April (as their holiday year followed the financial year). Others suggested that there be no fixed month for implementation, but that the regulations apply from an organisation's next leave year after October 2007.

'Most employers' holiday leave years start in either January or April. To commence the increase in October would cause employers more administration, as the annual leave will have to be re-calculated. Introducing the change from January or April would undoubtedly reduce the administrative burden on the employer.' (Croner Consulting)

'Implementation should occur no earlier than 2007, with an October date being preferred by CBI members' for a number of reasons. One relates to the Better Regulation agenda – the CBI is fully supportive of grouping the introduction of employment legislation into two 'red tape days' and wishes to see this continued in the event of further employment legislation.' (CBI)

- 57.** Others were less concerned about the timing of implementation as long as sufficient and well-publicised warning and guidance were given. It was suggested sufficient warning was needed for a number of reasons including time to make administrative changes, build costs into contracts or tenders and to arrange necessary cover. Publicity and guidance were considered necessary in the interest of both employer and employee to ensure that both parties were aware what was required of them and when:

'The Government's implementation plan should ensure that employers and employees are fully aware of what is required of them at each stage.' (Birmingham Chamber of Commerce)

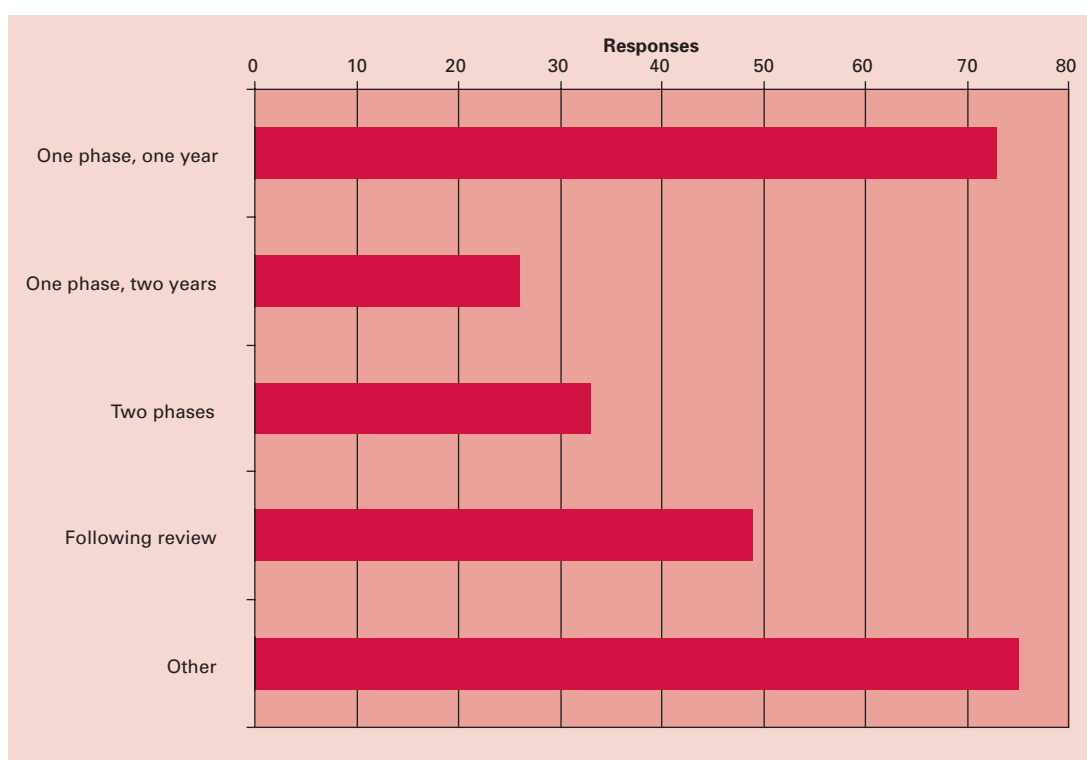
- 58.** A few organisations expressed their dismay that the proposal to increase the holiday entitlement had not been the subject of earlier consultation on the broad principle, even though the commitment to make time off for bank holidays additional to the four-week holiday entitlement had already been made by the Government in their Election Manifesto.

Options for phasing

- 59.** The consultation provided 5 options as to how and when the remaining 0.8 weeks (4 days) could be introduced. The options were:
- in one go, one year after the increase to 24 (1 Oct 2008);
 - in one go, 2 years after the increase to 24 (1 Oct 2009);
 - in 2 phases increasing to 26 days in 2008 and 28 in 2009;
 - The timing of the second increase should be reviewed after the implementation of the first increase from 1 Oct 2007; and
 - Other.

The responses to these options are shown below in Chart 6.

Chart 6: Phasing the remaining holiday (total: 256 responses)



- 60.** A number of respondents commented on other options, among which 41 respondents stated that the increase should never be introduced. 54 organisations asked that there be no phase in but that the full 1.6 weeks be implemented in one go. The 'other' option was also used by 3 organisations to ask that the increase be introduced at 2 days per year and by another 3 that it be introduced at one day per year. Some of the organisations that expressed a preference other than a phase in then selected their preferred alternative or "second choice" option, should the additional entitlement be phased in.
- 61.** At the consultation meetings, most organisations stated that any announcement on the timing of implementation must include the timing of implementation for the full entitlement. For example introducing 4 days in October 2007 and not announcing the date of a further introduction until after a review would be unacceptable as it would not allow sufficient planning. Clarity was preferable to ambiguity and uncertainty.

Government response

- 62.** The Government recognises the administrative burden on employers of changing holiday entitlements but believes that the benefits of phasing the introduction of the increase in holiday entitlement in enabling employers to adjust outweigh the additional administrative costs. The Government notes that the calculation of the increased holiday entitlement may be more complex if the implementation date for the entitlement does not co-incide with an employer's leave year. Whilst many companies have a January-December or April-March leave year, the current default leave year in the Working Time Regulations is October-September and the Government believes that the increase in the entitlement should be consistent with this.
- 63.** The Government notes the differing views on the timing of the introduction of the remaining leave. The Government does not wish to increase any administrative burden on employers by increasing the holiday entitlement more than twice and the Government agrees with the need for predictability. The Government recognises that employers that currently give their staff at least 28 days' holiday are keen to see a 'level playing field' on holiday entitlement.
- 64.** The Government therefore proposes that the holiday entitlement should increase to 4.8 weeks from 1 October 2007 and to 5.6 weeks from 1 October 2008.

6. Other comments made

65. A wide range of other comments and issues were raised in response to the consultation:

The need to amend employment contracts

66. A number of respondents were concerned that the increase to the holiday entitlement would require them to write and agree new employment contracts with their staff, even though they already gave a total of at least 28 days' paid holiday (pro rata) as four weeks' holiday plus paid leave for bank holidays. One representative organisation estimated that 80% of their members would have to amend their employment contracts to reflect the increased entitlement:

'We are an SME and already 'comply' with the proposed requirements. Could the regs please be written in a way that would not require the reissue of all staff contracts? This would cost an estimated £150 in staff time per member of staff plus legal fees of about £1000. We would have to get new ones drafted, consult with staff on them etc. Very time consuming and costly.' (BASEC)

67. **The Government, in developing these proposals, has sought to minimise the impact on employers that already give at least 28 days' holiday (either as time off on bank holidays or through additional contractual leave). We believe that the majority of employers will not need to amend their current contracts of employment to reflect the increased holiday entitlement. It is hoped that the amendments for those that do need to change their contracts will be straightforward and minimal.**

Capping the maximum entitlement at 28 days

68. The consultation document proposed that the statutory holiday entitlement would be subject to a maximum of 28 days, so that those working six days a week who currently have a statutory entitlement to 24 days' holiday (four six-day weeks) would have an entitlement of 28 days' under the proposed changes. Whilst one representative organisation welcomed this proposal, a number of individuals and unions opposed it as being unfair on those working six days a week who, they argued, were most in need of the additional holiday:

'There is no explanation in the consultation document that explains why the Government plans to pro-rata down the statutory entitlement for those who work less than 5 days per week, but by virtue of limiting the leave entitlement to a max of 28 days, will not pro-rata up the entitlement for those that work in excess of 5 days per week...It seems anomalous that this approach means the workers working the longest hours and so arguably the most in need of measures to ensure work-life balance and all the other benefits of holidays, will be proportionately disadvantaged. We believe that...the implementation of a 28 day max just has the effect of treating those working longer hours less favourably...The obvious loophole for unscrupulous employers seeking to reduce the impact of the enhanced holiday entitlement will be to change the working patterns of employees...by increasing the number of workers who work 6 days per week. This will have negative effects on employees and most likely the lowest paid that the consultation paper seeks to benefit.' (Association of Teachers & Lecturers)

'Most employers who already give the public/bank holidays in addition to the statutory minimum leave entitlement give the eight days to five or six-day workers and pro-rata to part-time workers...The legislation already disadvantages six-day week workers in its application of statutory guarantee pay (payable for the first five workless days or the number of days worked in a week if less than five) and I would respectfully suggest that the legislation, when amended, should not further disadvantage this group of workers.' (Individual)

- 69.** The Government recognises that around 1.3 million staff work a six-day week, although many of those do so in two different jobs rather than the same job, and that those working six days a week in the same job stand to benefit proportionately less than those working less than six days a week because of the maximum entitlement of 28 days. However it is the intention of the Government to increase the holiday entitlement to give a baseline minimum of 28 days (pro-rata for part-time staff), rather than to regulate to give a variable entitlement to 5.6 weeks.
- 70.** The Government notes that many of those working six days a week already receive additional contractual holiday above the statutory minimum. The Government does not believe that placing a cap on the holiday entitlement will provide a sufficient incentive, on its own, to change shift patterns to six-day working. The Government therefore proposes to keep the proposed maximum entitlement of 28 days.

Future additional bank holidays

- 71.** Because of the link between the additional holiday entitlement and bank holidays, some respondents raised whether the holiday entitlement would be extended in the future to take account of any additional one-off or permanent bank holidays. Employers wanted the legislation to make clear that any new bank holidays would not automatically result in a further increase in the holiday entitlement, whilst unions wanted the legislation to make an automatic increase in holiday:

'It should be made clear that the entitlement is 20 days + 8 days, not 28 days + 8 days, and to avoid confusion if any extra bank holidays are introduced over time.' (Rentokil Initial Facilities Services)

'The wording of the new legislation should be such that any future public holidays including the one-off ones, like the Millennium in 2000 would be automatically included... This will bring holiday entitlements in Britain to the average level of entitlement in Europe.' (T&G)

- 72.** The Government has made clear during the Parliament progress of the Work and Families Act that the intention was to increase the holiday entitlement to reflect the number of current, permanent bank and public holidays, rather than to provide provision for any future one-off or permanent bank holidays to be included in the holiday entitlement. The Government confirms that position; under the proposed legislation, any future changes to bank or public holidays would not result in an automatic increase in holiday entitlement.

Maintaining differential holiday entitlements

- 73.** Concern was expressed both in some of the consultation meetings and in written responses that there would be pressure to retain current differentials in holiday entitlement if the statutory minimum was increased from four weeks to 5.6 weeks, with workers that currently received several days above the statutory minimum wanting to keep the same number of additional days in excess of the new statutory minimum:

'Better paid workers will generally get more days paid holiday than lower paid workers. To say that the current situation disproportionately disadvantages lower paid workers is to ignore this fact. If you increase lower paid workers' paid holiday by eight days, higher paid workers will require eight further days to maintain the differential.' (Dental Practitioners Association)

'As an employee, having battled to get 28 days holiday a year from my boss, 20 statutory days and 8 extra contractual days, I believe that there should be some provision made in the new law to allow employees to retain at least some of those contractual days they fought hard to receive and also receive the 28 new statutory days. Otherwise winning the right to those contractual days will have been lost and I, like many others, when the statutory days increase to 28 days, will only be receiving the minimum once again.' (Individual)

- 74. The Government proposes to increase the statutory minimum holiday entitlement; retaining differential contractual holiday entitlements will be a matter for discussion and negotiation between employer and staff. The Government does not intend to require the maintenance of differentials in the legislation.**

Implementation in Northern Ireland

- 75.** The consultation related to England, Scotland and Wales, with responsibility for this policy area devolved to the Department for Employment and Learning in Northern Ireland who have been consulting in parallel. One respondent raised concerns if the implementation of the additional holiday entitlement in Northern Ireland differed from that in England, Scotland and Wales:

'We also trade in Northern Ireland and notice that they are subject to separate (but similar) consultation. As a business our policies apply across all of the UK and the Isle of Man so any difference in approach would be extremely difficult or perhaps impossible to manage.' (Marks & Spencers)

- 76. The Government is working closely with the Northern Ireland authorities to ensure coherence between holiday arrangements in Great Britain and in Northern Ireland. However, the implementation in Northern Ireland will ultimately be a matter for the Northern Ireland authorities to decide.**

Implementation offshore

- 77.** A number of respondents raised whether the new entitlements would extend to those working in the oil and gas industry offshore, outside UK territorial waters but on the continental shelf, referring to a number of ongoing Employment Tribunal cases in which the application of the current Working Time Regulations has been challenged:

'[We believe] that the new rights should apply to all workers in line with the WTD 1998. Therefore workers in the offshore industries and those working in territorial waters and continental shelf area should not be excluded. This would also mean that the new proposal should apply to some expatriate workers.' (T&G)

'The industry has faced considerable difficulties over the interpretation of the existing Working Time Regulations and it's important that the Government's proposed changes do not exacerbate the situation. Offshore working patterns already allow for generous time off well in excess of the envisaged 28 day maximum, and it is the industry position that all bank holiday entitlement is compensated for by field break.' (UKOOA)

- 78.** An amendment was made to the Working Time Regulations, which came into force on 1 October 2006, relating to offshore work. While the Government did not consider the previous regulations to be inadequate the amendment confirmed, for the avoidance of doubt, that the definition of offshore work included work in the British sector of the Continental Shelf as well as within territorial waters. The additional entitlement will extend to workers covered by the existing Working Time Regulations, including those involved in offshore work.

Including the additional holiday when calculating working hours

- 79.** Two respondents expressed views on whether the additional holiday entitlement should be counted as 'working time' (as the current four-week entitlement is) or as 'non-working time' (as all contractual holiday in excess of the four-week entitlement is) for the purposes of calculating weekly working hours, limited to 48 hours under the Working Time Directive subject to an opt-out:

'Extra holidays may be used to justify longer working hours at other times...There is a worry that the current plans will lead employers to simply increase the number of hours they expect staff to work on other days in order to cover the costs of the time off. [We believe]...that measures should be put in place to prevent employers from finding new loopholes to negate the benefits of more time off for workers.' (Amicus)

'It is absolutely critical to the road transport industry that these additional days leave do not count towards the average weekly working hours under the provisions of the Road Transport (Working Time) Regulations 2005... Any amendment to Regulation 13 in the WTR must ensure that these additional days are not counted as excluded days.'
(Road Haulage Association)

- 80.** The Government notes that contractual holiday that exceeds the statutory minimum required by the Working Time Directive is not considered as 'excluded days' for the purpose of calculating the maximum weekly working time. The Government proposes to adopt the same approach for the additional holiday entitlement; the additional 1.6 weeks will not be excluded when calculating the maximum weekly working time.

Bank holidays in addition to the statutory entitlement

- 81.** It appeared that some respondents misunderstood the proposal, believing that the increased holiday entitlement would be in addition to time off for bank holidays, rather than including time off for bank holidays, whilst others identified the potential for confusion over this proposal:

'The draft regulations will need to be clear to avoid employers currently giving 28 or more days from being 'caught' out and having to give a further 8 days holiday.' (Individual)

'Our staff have 20 days paid annual leave. The 8 bank holidays are payment in lieu or paid 'extra time' for staff working. Increasing annual leave to 28 days would make it 36 days.' (Grace Bridge Ltd)

'For those companies that already pay bank holidays, the proposed law should make it clear that the extra 8 days replace any bank holidays which their contract already entitles them to, otherwise they could claim 28 days plus the 8 days extra making 36 days in all.' (Posture Products Ltd)

- 82.** The Government is clear that the increase to the holiday entitlement is to a new maximum of 28 days; employers that already give their staff 28 days' holiday (either as 20 days' holiday plus paid time off on the bank holidays, or as 28 days' holiday entitlement) will comply with the proposed legislation.

Impact on the level of the National Minimum Wage

- 83.** The consultation stated that the Low Pay Commission (LPC) would be asked to take the increase in holiday entitlement into account when recommending the level of the National Minimum Wage (NMW). A number of unions and representative organisations commented on the link to the level of the NMW:

“Government is urged to take account of the proposed additional holiday entitlement in the context of the NMW. The LPC should be required to offset the impact of the costs of additional leave entitlement when considering revisions to the level of the NMW.” (BH&HPA)

The new provisions are about removing a loophole used by unscrupulous employers and should have no impact on the national minimum wage or any future planned increases by the Low Pay Commission.’ (Amicus)

- 84.** **The Government recognises that many of the sectors likely to be affected by the increase in holiday entitlement may also be affected by any increase in the National Minimum Wage. The Government has therefore asked the Low Pay Commission to take the increase in holiday entitlement into account when recommending the future level of the National Minimum Wage. The Government has shared the information gathered in the initial consultation and in the Annual Leave Entitlement survey with the LPC, and will make the information gathered in the final consultation available to them in due course.**

Longer notice period for contracts and tenders

- 85.** A number of employers and representative organisations expressed concern that the proposed October 2007 implementation date would give insufficient time for the additional costs to be factored into their contracts and tenders, many of which were long-term arrangements:

‘As with most businesses of a similar nature, where such agreements are entered into, budgeting processes are stringent and services carefully costed. Budgets are prepared to take account of long periods of time and have to take account of increasing contractual terms. [We are] concerned that to increase the annual holiday entitlement by 40% could potentially have a significant effect on costing in such... arrangements.’ (Business)

'Long term public sector contracts... (over several years) often contain provision within them to allow for an uplifting of rates if legislation affects the cost of employing staff (e.g. an uplift of the minimum wage). If such provisions are not contained within contracts then public authorities should be encouraged to renegotiate their contracts... to take into account the 3% extra spend on the wages bill.' (REC)

- 86.** The Government recognises the importance to businesses tendering for long-term contracts of cost predictability to enable future increases in costs to be built into quotes and tenders. However, the Government notes that the commitment to make the statutory holiday entitlement additional to paid time off for bank holidays was first made in early 2005 and subsequently reiterated in March 2006 in the Government's statement on employment policy, *Success at Work*. The Government believes that sufficient notice has been given to business of the Government's intention to increase the holiday entitlement and therefore reaffirms that the additional holiday entitlement will be phased in from 1 October 2007, subject to Parliamentary approval.

Regulatory burden on smaller businesses

- 87.** Many smaller businesses and their representative organisations expressed concern at the increased administrative burden on small and medium enterprises (SMEs) in implementing new legislation:

'Support and advice for SMEs requires an approach that recognises their needs are different from large organisations. Evidence abounds that SMEs feel over-regulated, over-burdened and over-complicated on compliance issues. Clarity, brevity and relevance when communicating with the SME population will have greater impact and increased success. Guidance could include case studies of companies that already provide annual holiday entitlement equal to or more than the proposed revised statutory minimum and evidence of good practice.' (Northants Chamber)

- 88.** The Government notes the concern over the potential burden on small businesses of administering the additional holiday entitlement. The Government will provide guidance to help employers implement the increased holiday entitlement and will work with the small business community to ensure that the guidance tackles the key issues for small businesses in an accessible and easy-to-use way.

Favouring the informal economy

89. Concern was expressed by some respondents at the consultation meetings and in written responses that the additional holiday entitlement would provide a further incentive for some businesses to move into the informal economy. Whilst the specific impact of these proposals may be quite modest, it was suggested, the cumulative effect of increases in employment rights would be to encourage greater non-compliance:

'Believe there will be a temptation for certain types of small service suppliers to move into the 'black economy' and work for cash on these extra days.' (Small Business Council)

90. **Whilst the Government recognises that increasing the holiday entitlement may provide an incentive for employers not to comply with the legislation, the Government does not believe that the relatively small costs involved would provide sufficient incentive alone for employers to move into the informal economy.**

Impact on term-time working

91. Recognising the increasing diversity of working patterns and arrangements, the consultation sought views on working patterns that may require special consideration in implementing the increased holiday entitlement. Term-time working arrangements (where permanent staff typically do not work, or work reduced hours, during school holidays) were highlighted by a number of respondents:

'Atypical situations such as term-time only work require separate provision.' (Cambian Education & Healthcare)

'Workers that work irregular hours should get as many days off as they work in four average working weeks. There should be a worked example showing how to work out their average working week, which is the total of all hours worked over the past twelve weeks (or over the number of weeks they have worked if this is less than twelve), and then divide by twelve (or by the number of weeks they have worked).' (GMB)

'Can I also ask you to take into account the particular difficulties of an industry which employs part-time workers who may well work different days, shifts and hours every week. We have coped with the need to give four weeks by closing the business for complete weeks and paying the staff for those periods. Closing for 0.8 weeks would result in some staff

having a full week off and others working their usual weekly hours. How would I be expected to calculate the time off due to a person who worked two shifts (6 hours) one week, four shifts (11 hours) the next and maybe one shift (3 hours) the next. How many hours would they be expected to do the following week if they were due 0.8 weeks holiday? This is a very real problem which does not seem to be addressed by your proposals.’ (National Federation of Fish Friers)

- 92. The Government wants the legislation implementing the increased holiday entitlement to be as simple and clear as possible and believes that atypical working patterns, such as term-time working, does not need specific provision in the legislation. The Government will, however, ensure that the guidance covers the most common atypical working patterns.**

Part-time staff who don't work on bank holidays

- 93.** Several respondents raised the eligibility of part-time staff for paid leave on bank holidays on days of the week when they would not usually be working, following a recent European Court of Justice ruling on the issue. One respondent pointed out that part-time staff that otherwise would not receive time off for bank holidays would gain under the proposals:

‘We believe that the Government’s proposals...will have a serious and damaging effect on small businesses. For example, many part-time workers will only work on particular days. If their working day does not normally fall on a Friday or Monday then their current leave will be unaffected by bank holidays, yet under the Government’s proposals they will still receive an increase in their entitlement.’ (ALMR)

- 94. The Government is aware that the recent ECJ ruling on equal treatment for part-time staff on time off for bank holidays has raised a number of questions for employers. The Government believes that the proposal to increase the holiday entitlement to reflect the number of bank holidays will clarify the situation and make it easier for employers to calculate time off for bank holidays for part time staff.**

Choosing to work on a non-working day

95. One respondent was concerned that increasing the holiday entitlement to take into account time off for bank holidays could lead staff to request to work on bank holidays when the business would otherwise be closed:

'Giving employees the choice to take bank holiday leave when they choose could result in them wanting to work on bank holidays where normally the operation would be closed. Potentially this could result in buildings and services having to be opened or made available to employees wishing to work on bank holidays.' (BT plc)

96. **The Government does not propose to change the current right of employers to decline requests by staff to take leave or to require staff to take leave on certain days, subject to notice. An employer therefore would not be prevented from specifying shutdowns when all staff would be required to take holiday, including on bank holidays.**

Impact on service-related holiday

97. A number of respondents commented in consultation meetings or in written responses that increasing the holiday entitlement would restrict their ability to reward long service with additional holiday entitlement:

'Holidays are one incentive that employers can use to reward longevity of service and good working practice. To apply 8 extra days just for turning up and doing the bare minimum can give the wrong message...This and other cost increases do not leave much resource left for businesses to motivate the team to excel.' (Combers Ltd)

98. **The Government is aware that a number of employers reward long service with increased holiday entitlements. Such service-related leave is already constrained by the Age Discrimination Regulations 2006. Whilst the scope to give service-related leave may be further constrained by an increase in the holiday entitlement, many employers that give service-related leave already give at least 28 days' holiday before the service-related leave is included, and so will not be directly affected by these proposals.**

Interaction with other forms of leave

- 99.** The interaction between the additional holiday entitlement, particularly whether the entitlement accrues whilst staff are on maternity or sick leave, was raised in a number of written responses and contributions at the London consultation meeting. An appeal to the House of Lords (known as the Ainsworth case) regarding the accrual of the four-week holiday entitlement whilst on long-term sick leave has been referred to the European Court of Justice:

'I think the legislation needs to clarify how to treat employees on maternity leave with relation to stat holiday. I feel it is not clear that they should accrue public holidays whilst on maternity leave, and this would be an opportunity to protect their rights to accruing all holiday entitlement, including public holidays which they are not technically getting on mat leave.' (Business)

'Please take opportunity to clarify accrual whilst absent – long term sick, maternity etc. If leave is to be a rest from work, why does it accrue in situations when employees are not at work?' (Unite Response)

'Entitlement to be linked to attendance (Ainsworth) – currently case law indicates that absence for a whole year invalidates entitlement to paid leave, but the consultation document makes no reference to this nor indeed as to what entitlement reductions there may be for lesser periods of absence. This is an important issue which should be clarified.' (British Apparel & Textile Confederation)

- 100.** The Court of Appeal judgment on the Ainsworth case made it clear that those who had not been at work at all during the leave year due to sickness were not entitled to paid leave under the Working Time Regulations or any payment in lieu on termination. The judgment was appealed to the House of Lords which has recently referred it to the European Court of Justice to address certain questions about the right to leave under the Working Time Directive as it relates to individuals on sick leave. A reference on similar issues has also been made by the German court.

- 101.** If the Government were to address the interaction between the additional holiday entitlement and sick leave through these regulations, there is a risk that the regulations to increase the holiday entitlement would have to be amended in the light of a future ECJ ruling on the Ainsworth case. For that reason, the Government does not intend to specifically address the interaction between the holiday entitlement and other forms of leave in these regulations.

Effectiveness of enforcement

- 102.** The consultation document stated that the enforcement mechanism for the additional holiday entitlement would remain the same as the current arrangements for the four-week entitlement, with recourse to Employment Tribunal (ET). A number of unions responding to the consultation expressed concern at the accessibility and effectiveness of current enforcement arrangements:

'NASUWT has concerns about the lack of effective enforcement of the current provisions contained in the WTR. The Union seeks assurances that a review will be conducted urgently to strengthen the current enforcement procedures and ensure that all employers implement the new provisions as soon as possible.'

- 103.** The annual leave entitlement in the Working Time Regulations is currently enforced through Employment Tribunals and the Government does not propose to change the arrangements for the increase in the holiday entitlement.

Stipulating when holiday is taken

- 104.** The consultation document also stated that the current right of employers to refuse requests for holiday at certain times, or to require staff to take holiday at certain times, would remain unchanged and would apply to the additional holiday entitlement. A number of employers supported retaining these flexibilities:

'Business must retain its current unfettered right for the employer to decline leave requests for holidays at times that are inappropriate for the business.' (BH&HPA)

'Give 28 days but don't specify what days it should be taken on. In other words don't oblige bank holidays to be taken on that particular day. Give employers and employees the option of opting out of the fixed bank holiday.' (ISKCON Ltd)

- 105.** The Government confirms that it intends to retain the current rights for employers to refuse leave requests or to require leave to be taken at specific times.

Pro-rata for part-timers

- 106.** Two respondents said that the additional holiday entitlement should not be pro-rated for part-time staff, but that they should receive an additional eight days' paid holiday:

'The FDA believes that bank holidays should not be pro rated for part-time staff and they should have the benefit of all bank holidays.'

- 107.** The Government made clear during the Parliamentary passage of the Work and Families Act that the increase in the holiday entitlement would be applied pro-rata for part-time staff. The Government confirms that this remains its position.

Levelling down premium pay or holiday entitlements

- 108.** A number of respondents commented that some employers may use the increase in holiday entitlement to reduce contractual holiday allowances to the new statutory minimum ('levelling down') or to reduce contractual premium rates of pay for bank holiday working:

'Many employers already provide leave either at 25 days or over per annum and in addition give the extra 8 days leave as paid time off. The proposals unless carefully drafted mean that employers will use this opportunity to in fact reduce total leave.' (Business)

'The legislation must make it clear that the new rights provide statutory minimum standards. They must not be used as an excuse to reduce existing contractual arrangements where these are better than the proposed statutory minimum standard.' (TUC)

'Our main concern in this area is not how businesses cope, but what will be the possible reaction of some companies to the issue of paid Bank Holidays' legislation. It is possible that they will look again at their premium payment provisions and try to level down to the single time in the legislation. In other words, they may see the provision of paid Bank Holidays' legislation as a benefit, a way to cut costs and not a cost to be added to the business.' (USDAW)

- 109. The Government does not intend to make any provision within the regulations to address entitlement to contractual holiday or premium rates of pay for working on bank holidays.**

Coverage of proposals

- 110.** In employment legislation, those considered 'workers' (such as agency staff or church ministers) do not have all the rights and responsibilities that those considered 'employees' (those with a contract of employment) have. A few respondents raised the coverage of the new entitlement:

'T&G prefers the use of the word 'worker' which covers all workers as defined in the WTD. This will particularly offer full employment protection to these vulnerable groups of workers.'

'The new rights should apply to the broader category of 'workers' rather than just to employees, thus following the existing rule in the Working Time Directive. The definition of 'worker' is rather broader than that of 'employee' as it includes all temporary workers and some self-employed workers.' (TUC)

- 111. The Government intends to amend the Working Time Regulations to increase the holiday entitlement and therefore the increase will apply to those covered by the Regulations, namely 'workers', rather than just employees.**

Qualifying period for the additional holiday

- 112.** A few businesses and representative organisations suggested that the additional holiday entitlement should be subject to a qualifying period of service before staff gained the additional entitlement. The statutory holiday entitlement was subject to a three-month qualifying period when it was first introduced in 1998 until the European Court of Justice ruled this illegal:

'We also believe that there should be a minimum qualifying service for the extra entitlement of at least one year.' (Fuller Smith & Turner)

'Given that the additional holiday entitlement is not covered by the [European Working Time] Directive, we would suggest that the additional entitlement does not accrue until after the first 3 months of employment (as was the case with all statutory holiday when the Working Time Regulations were first implemented)... If the additional entitlement did not accrue in the first 3 months, then this would lessen the impact of the increased holiday entitlement on employers, in respect of employees who leave within that period.' (Business)

- 113. Whilst a qualifying period for the increase in holiday entitlement would reduce the costs to employers that use temporary or casual staff, the Government believes that it would increase the complexity of the regulations and the administrative burden for all employers. The Government therefore does not propose to specify a qualifying period of service for the increase in holiday entitlement.**

Rounding up to the nearest day

- 114.** Two respondents raised the current rounding up of the statutory holiday entitlement to the nearest half-day, with an employer proposing no rounding-up and a union proposing that rounding up be retained for the increased holiday entitlement:

'Under [the Working Time Regulations] where the leave that has accrued is a fraction of a day, this is rounded up to the nearest half day. Casual workers usually have a separate contract during each assignment, rather than an umbrella contract covering times when they are and are not working. This means that with each assignment the casual worker effectively begins a new year of employment under the regulations, and will therefore accrue an entitlement to take at least half a day's leave for each assignment, however short that assignment is. For example, a casual worker who worked one day a week would be entitled to half a day's holiday each week. This could make it disproportionately expensive, and administratively burdensome, for employers to use casual staff. For this reason, we would like to see...workers only accrue an actual twelfth of the full year's entitlement with no rounding up.' (Business)

'We would hope that the amending regulations are rounded up to the nearest half day as this is in line with the Working Time Regulations calculation for accrual where the fraction is treated as a half day if it is less than a half day and a whole day if it is more than a half day). We would welcome the availability of an online calculator to make this clearer.' (GMB)

- 115.** Increasing the holiday entitlement to 5.6 weeks is likely to increase the number of part-days' holiday and therefore the effect of rounding up on increasing the costs is likely to be much greater. The Government proposes that the regulations should not require rounding up of holiday entitlement to the nearest half- or full-day. The Government notes that many employers are likely to round up the holiday entitlement for ease of administration and is considering an online calculator to make the increased entitlements easier to calculate.

Annex A: Consultation questions

Question 1

As a member of staff, what are the three most important benefits an increased holiday entitlement would give you? Please tick no more than three boxes.

- Give me an opportunity to spend more time with my family & friends
- Reduce the amount of days off I have to take (as sick leave or emergency leave, for example)
- Enable people to pursue other leisure interests (such as hobbies, sport, shopping, voluntary work etc)
- Give me the opportunity to earn more money in a second job/overtime
- Give me the opportunity to earn more money by receiving money in lieu of taking leave, if my employer allows it
- Enable me to take another holiday away from home
- Give me more choice over when I take my holiday
- Help me feel refreshed and motivated when I'm back at work
- I already receive at least 28 days' holiday (or equivalent for part-time staff)
- Other (please describe):

Question 2

As a business, what do you believe may be the main impact on your business of increased holiday entitlement? Please tick one box only.

- No impact – staff already receive at least 28 days' (5.6 weeks') holiday
- of recruiting extra staff to cover holiday periods
- Loss of key staff on holiday periods
- Staff more productive and motivated
- Harder to roster staff to ensure full cover
- Other (please describe):

Question 3

What working practices (such as shift patterns, annualised hours or flexible benefits) may face difficulties if the proposed approach of extending the statutory holiday entitlement from 20 to 28 days (4 weeks to 5.6 weeks) were implemented?

Please explain:.....

Question 4

Flexibilities on holiday may help businesses and staff manage the additional holiday, although this would increase the complexity of the regulations and add to administrative burdens for business. Should there be an option to carry over some or all of the additional 8 days' (1.6 weeks') holiday from one holiday year to the next?

- Yes
- No

Question 5

Flexibilities on holiday may help businesses and staff manage the additional holiday, although this would increase the complexity of the regulations and add to administrative burdens for business. Should there be an option to 'buy out' some or all of the additional 8 days' (1.6 weeks') holiday, that is, give payment in lieu of taking leave?

- Yes
- No

Question 6

The Government proposes to phase in the introduction of the additional holiday, with the statutory entitlement increasing from 20 days to 24 days (4 weeks to 4.8 weeks) from 1 October 2007. Do you have any comments on this proposal?

Please explain:.....

Question 7

Should the remaining increase in the annual holiday entitlement from 24 to 28 days* (from 4.8 weeks to 5.6 weeks) be introduced:

- In one go, one year after the increase from 20 days* to 24 days* (from 1 October 2008)
- In one go, two years after the increase from 20 days* to 24 days* (from 1 October 2009)
- In two phases, increasing to 26 days* in 1 October 2008 and 28 days* from 1 October 2009
- The timing of the second increase should be reviewed after the implementation of the first increase from 1 October 2007
- Other – please describe:

* for full-time staff; pro rata for part-time staff

Question 8

As a business, which one measure would be most helpful in reducing the impact of increased holiday, bearing in mind that the administrative burden may be increased as a result? Please tick one box only.

- The ability to buy out/pay in lieu of the additional holiday
- The ability to carry the additional holiday over to the following year
- A longer period to introduce the extra holiday entitlement
- Other (please describe):

Question 9

How should any particular carrying over or buying out of the additional holiday entitlement work in practice? For example, should it be subject to mutual agreement between employer and members of staff?

Please explain:.....

Question 10

Do you have any other comments on the proposal to increase the holiday entitlement, as outlined above?

Please explain:.....

Annex B: Evaluation of the consultation exercise

- B1.** The consultation process was evaluated following the close of the consultation by contacting by email a random sample of:
- Those who had responded in writing;
 - Those who had attended a consultation meeting, and;
 - Those who had asked to be kept informed but who had not responded formally to the consultation.

Those responding in writing

- B2.** Those who had responded in writing were asked:
- a. **How easy was the consultation document to read and understand?**
The consultation document was described as 'very easy to understand' by two-thirds of those responding, with the remainder describing it as 'fairly easy' or 'quite easy' to understand.
 - b. **Did the response form (if you used it) enable you to make all the points you wanted to?**
Of those responding to the evaluation survey, 71% said that the response form enabled them to make the points that they had wanted to. Others said that there was insufficient space on the form to write a lengthy response, and that 'the questionnaire assumed a line of thought with which I did not agree'. Another respondent felt that the questionnaire was over-structured and led respondents by the hand too much.
 - c. **Was it easy to respond to the consultation? How could we have made it easier, if at all?**
Some of those answering this question found the form over-long and repetitive. Others commented that the pdf format of the response form on the internet made it much harder to complete the form and return it electronically, although some said that it was easier to respond once a Word version of the form was emailed out to those on the distribution list.
 - d. **Were you content with the consultation process and, if not, how could we have improved it?**
The majority of those surveyed were content with the consultation process. Suggestions for improving the process included a better format for the electronic version of the response form or earlier awareness of the consultation to enable a wider cross-section of views to be gathered. One responded wanted to know how the data collected in the consultation exercise would be processed and how the findings would affect the outcome of the proposals.

Those attending a consultation meeting

B3. Those attending one of the consultation meetings were asked:

a. **Did you find the meeting useful/informative?**

All those responding to the evaluation said that they had found the meeting useful and informative. The opportunity to hear the views of other interested parties was cited as a particular benefit of the meeting. One respondent felt that 'it would have been more helpful to have been involved in the debate about whether this measure should be implemented in the first place.'

b. **Were you able to make your views known?**

Most of those responding felt that they were able to make their views known, although some found the size of the London meeting and the use of a microphone daunting, suggesting that the use of syndicate groups would have made it easier for them to put their points across.

c. **Were you content with the meetings; if not, how could we have improved them?**

Those responding were content with the consultation meetings. One respondent felt that it would be important to recognise that opinions expressed at the meetings may not be representative of a body of opinion. Many felt that the meetings had been well run, and that the venue and other arrangements were appropriate.

d. **Any other comments on the consultation and/or meetings?**

Some responding felt that the details of the meeting had been notified at short notice, which had made it harder to collate the views of others. Others felt that some of the comments made by attendees at the meetings were tangential to the proposals to increase the holiday entitlement.

Those expressing an interest but not formally responding to the consultation

- B4.** Those that expressed an interest by asking to be kept informed of developments, but who had not formally responded to the consultation were asked why they had not responded and what, if they had wished to respond, would have made it easier to do so. Of those replying, 67% said that they had never intended to respond but had merely wished to be kept informed. Of the remainder, 10% said that they did not have enough time to respond, 10% that the form was too difficult to complete (largely because of the pdf format of the electronic form) and 6% had no strong opinions on the issue. Others were deterred from responding by a lack of anonymity or because they saw 'no point' in responding.

Conclusions of the evaluation

- B5.** The evaluation exercise would suggest that most of those who wanted to respond to the consultation were able to do so, although a more accessible format for the electronic form would have made it easier to complete a response and return it by email. The consultation document was easy to understand, and the response form was easy to complete, but may have been over-structured. The consultation meetings were a very informative and useful addition to the consultation process, enabling the viewpoints of others to be explored.

Annex C: Written consultation responses

Business: Large

ABNA Ltd

Adepta

Advanced Processing Ltd

British Airways plc

British Nuclear Group

BT Plc

Cambian Education
& Healthcare

Cleaning Logistics Ltd

Cornwall Care Ltd

Croner Consulting

Frederic Robinson

Fresh & Wild Ltd

Fuller Smith & Turner PLC

Helphire Group plc

Housing Units Ltd

Interclean

ITV Productions

Manchester Airport Group

Marks & Spencer plc

Mitchells & Butlers

Network Rail

Rentokil Initial Facilities
Services (UK) Ltd

Royal Mail Group

Tarmac Ltd

Unite Response

Walsingham

West Bromwich Building Society

+ 14 confidential responses

Business: Medium

4c Inns Ltd

Adept Care Group

Anne Gray Care Ltd

Blue Bell Wilmslow Ltd

Bradford Grammar School

Bryan Cave

C T Baker Ltd

Dalkeith Transport

Diverse Production Ltd	Andromica Video System Ltd
Flame Skill	Base 35 Hair Design
Fylde Coast Medical Services Ltd	Believe UK Ltd
Imes Group	Bristol Design
ISKCON Ltd	Buccaneer Ltd
JB&S Lees	Cake Creators Ltd
Johar Ltd	Cateractive Ltd
La-z-boy Recliners	Charter Travel
Magnum Packaging NE Ltd	Dairsie Autopoint
Marubeni Europe Plc	Employease
Newmor Group Ltd	Fonman Castle Estate
Positive Lifestyles Ltd	Ingoldale Park
SCH Ltd	Karate Kid Ltd
The Millbrook Garden Company Ltd	Magna Communications Ltd
Vista Retail Support Ltd	Meddiquest Limited
+ 10 confidential responses	Mindex Ltd
Business: Micro	Onn Target Ltd
Accounting, Taxation & Business Services	Polytec Personnel Ltd
All Tied Up Ltd	Posture Products Ltd

Roberts Clarke Independent
Financial Solutions Ltd

SBG

Seven Communications Ltd

Southend Training Services Ltd

The CME Personnel
Consultancy Ltd

The Flower Shop

The Minster Group

The Therapy Agency

UK Storage Company

Valerie Tall Ltd

Willclean Cleaning Services

Zymolysis Ltd

+ 3 confidential responses

Business: Small

4Tec Security

AC Controls Ltd

An Serve

Andrews Computer Services Ltd

BASEC

Birch Brothers Ltd

Boyland Joinery Ltd

Brocklesby Limited

Building Tecnic

CE Manufacturing Ltd

Combers Ltd

Cuckoo Gap Ltd

Deepdale Farms

Downs Cottage Care Home

Eve Taylor (London) Ltd

Fisher Research Ltd

Frinton Gallery Ltd

Grace Bridge Ltd

Greggains Ltd

Hamilton House

Harbour Rise Rest Home

Helmsley Estate

Hoops a Daisy Bridalwear

J&C Devlin

J&R Marble Co Ltd

Japan Satellite Television
(Europe) Ltd

Kinders Mill Ltd

Krop & Co

Laurel Care Home Ltd

Little Ones Childcare Ltd

Majestic Transformer Co

Maldon House

Molly Maid

Molly Maid Farnborough

Mortgages for Business Ltd

PD Supplies

Penny Pot (Clacton) Ltd

Photogenic Ltd

Playday Nursery

Premier Blinds and Awnings

Quarry Mount Care Ltd

Red House Welfare
and Housing Society

Smartenergy Ltd

Stoneham Golf Club

Sunrise Software

The Old School House

The Uplands Nursing Home

The White Apron

Yew Tree House

+ 19 confidential responses

Business: Unknown size

Cardwell Nursery Garden Centre

Farm Supplies Ltd

Investors in People UK

McKenzie Myers Ltd

Per Pro

Ridgeways Coaches

Wyggeston's Hospital

Charity/Social Enterprise

Aberlour Childcare Trust

Lutheran Council of Great
Britain/International Lutheran
Student Centre

Orkney Blide Trust

Scottish Low Pay Unit

Voluntary Action Rotherham

Working Families

+ 2 confidential responses

Individuals

Forty-four responses were received from individuals

Public sector bodies

ACAS

East Lancashire Hospitals NHS Trust

Dacorum Borough Council

Kent Police

Middlesborough Primary Healthcare Trust

Newcastle University

North West Local Authorities' Employers Organisation

Tourism South East

University of Bedfordshire

Wyre Borough Council

+ 2 confidential responses

Representative Organisations

ACCA

Association of Convenience Stores

Association of Labour Providers

Association of Licensed Multiple Retailers

Association of School and College Leaders

British Association of Leisure Parks, Piers and Attractions

British Hospitality Association, British Bars and Pubs Association & Business in Sport and Leisure

Birmingham Chamber

British Apparel & Textile Confederation

British Chambers of Commerce

British Holiday & Home Parks Association

Business Services Association

Care Forum Wales

CBI (Confederation of British Industry)

CIPD (Chartered Institute of Personnel and Development)

Cleaning & Support Services Association	National Caravan Council Ltd
Confederation of Passenger Transport (UK)	National Care Association
Construction Confederation	National Day Nurseries Association
Dental Practitioners Association	National Federation of Fish Friers
EEF (Engineering Employers Federation)	NFU (National Farmers Union)
Employment Lawyers Association	Northants Chamber
English Community Care Association	Recruitment and Employment Confederation
Federation of Small Businesses	Road Haulage Association
Federation of Tour Operators	Small Business Council
Forum of Private Business	Society of Maritime Industries
Hampshire Care Association	UK Cleaning Products Industry Association
Independent Footwear Retailers Association	UK Offshore Operators Association (UKOOA)
Independent Schools Council	Universities and Colleges Employers Association
Institute of Directors	Vale of Glamorgan Care Homes Association
Keoghs Solicitors	West Yorkshire Chambers of Commerce Group & Bradford District Chamber of Trade
Langleys Solicitors	
Local Government Employers	+ 4 confidential responses

Trade Union/Staff Association

Amicus

ASLEF

Association of Educational
Psychologists

Association of Teachers & Lecturers

Association of Licensed Aircraft
Engineers

Association of Principal Fire Officers

Bakers, Food & Allied Workers Union

Coventry University Unions

FDA

General Federation of Trade Unions

GMB

NASUWT

PCS Head Office + 1 local branch

Portman Group Staff Association

Prospect

RMT

Royal College of Nursing

Scottish TUC

Stable Lads Association

T&GWU Head Office, Birmingham
Power & Engineering District
Committee + 1 local branch

TUC

UCATT

Union of Finance Staff

UNISON

University & College Union

USDAW Head Office + 4 local
branches

Annex D: Consultation meeting participants

Abode Hotels	Commission for Racial Equality
Adepta	EEF (Engineering Employers Federation)
Association of Licensed Aircraft Engineers	English Community Care Association
Amicus	Facilities Management Assoc
ASK Restaurants	Frederic Robinson Ltd
Association of Convenience Stores	Federation of Small Businesses
British Association of Leisure Parks, Piers and Attractions	GMB
Johar Ltd	Halfords
Bon Marche	Hays Specialist Recruitment
Bradford Grammar School	Interclean
British Airways	ITV Productions
British Hospitality Assoc	J & R Marble
Business In Sport & Leisure	J Grodzinski & Daughters Ltd
Cambian Education and Healthcare	Kelly Services
Caravan Club	Lambeth Council
CIPD (Chartered Institute of Personnel and Development)	MacLellan International
CME Personnel Consultancy	Michael Abakhan Ltd
Confederation of Passenger Transport (UK)	Middlesbrough PCT
	MidlandHR

Consultation meeting participants

National Association of Head Teachers	The White Apron Restaurant
National Caravan Council	TUC
National Care Assoc	UCATT
Northamptonshire Chamber	UCEA
PACT	UK Training (Worldwide) Ltd
Pegasus Security Group Ltd	UNISON
Recruitment and Employment Confederation	USDAW
Regular Cleaning	Volt Europe
Rentokil Initial	Whole Foods Market
RMT	
SC Support & Care Services Ltd	
SCEC	
Tampopo Ltd	
The Kingsley Centre Ltd	
The Therapy Agency	



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