



WORK AND FAMILIES ACT 2006

Draft Flexible Working
Regulations

Summary of Responses
and Government Response
to the 2006 Consultation

9 NOVEMBER 2006

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WORK AND FAMILIES ACT 2006 – DRAFT FLEXIBLE WORKING REGULATIONS

SUMMARY OF RESPONSES AND GOVERNMENT RESPONSE TO THE 2006 CONSULTATION

INTRODUCTION

1. The Work and Families Act received Royal Assent on 21 June 2006. The Act provides, *inter alia*, the primary power to extend the right to request flexible working to carers of adults. The Government's intention is to define in regulations which carers will be covered by the law. On 31 January 2006, therefore, the Government published a consultation document¹ seeking views on the detail of proposed amendments to the 2002 flexible working regulations, including how to define carers.

2. The consultation closed on 25 April 2006. In addition to the proposed amending regulations extending the right to request flexible working, the consultation also covered the detail of proposed amendments to maternity and adoption leave and pay regulations. The Government published a Summary of Responses and Government Response² to the consultation on the maternity and adoption leave and pay regulations in June 2006.

BACKGROUND

3. The Employment Act 2002 added a new right into the Employment Rights Act 1996, which provided for parents of young and disabled children to apply for a change in their contracts to work flexibly. In its Response to the *Work and Families: Choice and Flexibility* consultation in October 2005, the Government announced *inter alia* its decision to extend the right to request to carers of adults.

4. The 2006 consultation on the draft regulations sought views on proposed amendments to the 2002 Regulations covering eligibility³, and how we should define who will be eligible for the new right to request flexible working. The regulations will be subject to the negative resolution procedure.

¹ "Work and Families – Choice and Flexibility. Draft Regulations on Maternity and Adoption Leave and Flexible Working." January 2006; URN 06/707. www.dti.gov.uk/files/file23932.pdf

² "Work and Families – Choice and Flexibility. Maternity and Adoption Leave and Pay Regulations. Summary of Responses and Government Response to Consultation." June 2006; URN 06/1492. www.dti.gov.uk/files/file31572.pdf

³ The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 (S.I. 2002/3236).

5. We invited general comments on the drafting of the Regulations, including whether they would achieve the stated objectives. In addition, however, we invited views on one specific point of policy: how should “relative” be defined for the purpose of determining which carers should be eligible to request flexible working from their employer?

Our proposal for defining “relative”

6. In the consultation document, we proposed taking the same approach to defining who should be covered by the new legislation as was taken in relation to parents of children. For the latter, we did not define the nature of care involved, but instead defined the relationship between the carer (i.e. the parent) and those they care for. This approach has proved to be straightforward, easy to understand and clear to both employers and employees.

7. In the draft Regulations, proposed new Regulation 3B is the key Regulation that will say how the law applies to carers. We proposed that the definition of “carer” should include an employee who is or expects to be caring for an adult who:

- (i) is married to, or the partner or civil partner of the employee; or
- (ii) is a relative of the employee; or
- (iii) falls into neither category (i) nor (ii), but lives at the same address as the employee.

8. We proposed two options for defining a relative:

Option 1: an **immediate** relative – this would include mother, father, adopter, guardian, parent-in-law, son, son-in-law, daughter or daughter-in-law.

Option 2: a **near** relative. In addition to those relatives included in option 1 this option would include brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent.

9. The proposed amendments to Regulation 2 contained these two options for defining a relative. Both Options 1 and 2 would include adoptive relationships. Option 2 would also include relationships of half blood (for example half-brother or half-sister).

10. Under either Option, partners of the employee and those living at the same address would be included. An employee would not be able to request flexible working to care for someone who is not a partner or relative unless they live at the same address.

Responses to the 2006 Consultation

11. 76 responses relating to the flexible working regulations were received. Of these, 26 were from employers and their representatives, 10 from trades unions, 17 from carer support organisations, campaigning organisations and charities, 5 from individuals and 18 from a variety of others, including academic institutions, legal advisers, professional bodies and local authorities. A number of face-to-face meetings were also held with the TUC, the CBI and IoD as well as with Carers UK and other carer support organisations and trades unions.

OPTIONS FOR DEFINING “RELATIVE”

12. Only four respondents favoured Option 1, which was deemed even by a number of employers or their representatives to be too narrow for modern-day society. Nearly half of all respondents (36) supported Option 2 or a variant of it, many wishing to cast the net more widely. The IoD and the CBI, while favouring Option 2, also advocated linking this to a definition of care, either in the Regulations themselves or in the proposed accompanying guidance.

13. Among caring support and campaigning organisations in particular, but also some trades unions and a major employer, there was a strong feeling that the proposed “relative” approach was inappropriate for today’s multi-cultural society, and many of these supported an approach championed for some time by Carers UK: this is that the definition of a carer needs to go beyond family relationships, partners or co-residents to include friends, neighbours, etc. Under this approach, a definition of carer derived from the Employment Relations Act (ERA) 1999 by Carers UK where a carer is caring for someone who “reasonably relies upon the employee for assistance.” was regarded as being a suitable definition for the extension of the right to request flexible working to carers.

14. The campaigning organisation for lesbians, gay men and bisexuals, Stonewall, commented that any definition of relative would fail to acknowledge the many gay people who are dependent on people other than their biological relatives, highlighting the fact that many such people depend on networks of friends and “families of choice”. This was echoed by Carers UK, the TUC and the Equal Opportunities Commission. The latter both also commented that broader kinship care networks were common within the black and minority ethnic (BME) population and therefore it was important to include this wider relative group so that BME communities would not experience disproportionate disadvantage from the Regulations.

Conclusions on the definition of “relative”

15. The aim of the flexible working legislation is to give employees the confidence to approach their employer to discuss their working arrangements and encourage this dialogue between both employers and employees. The legislation has been successful in bringing about a cultural change, with a “halo” effect whereby employers have been open to considering requests from all employees, not just those covered by the law.

16. Indeed, the DTI’s Third Work-Life Balance (WLB3) Employee Survey⁴ shows that, in considering requests for flexible working, employers show very little difference in their treatment of employees, i.e. they treat them very much the same regardless of whether they have children under six, have children over six or have no children at all.⁵ In addition WLB3 showed that 75% of all respondents said that their employer treated everyone the same when considering requests to work flexibly.

17. This confirms the effectiveness of the light-touch, minimum-standard nature of the legislation, with employers often prepared to go beyond the minimum required. Against this background, it seems unlikely that when considering requests for flexible working employers will be overly concerned about the precise definition of a carer, and many seem likely to consider requests from all carers.

18. We have considered the question of whether our approach would disadvantage gay and lesbian and BME communities. The assertions made are largely anecdotal. There is no data on whether gays and lesbians are more likely to be cared for by friends not living in the same household rather than by relatives, and hence would be disproportionately affected by a definition based on “relative”. Data available on whether particular communities are more likely to care for distant relatives or friends is also limited. Evidence from WLB3 shows that the majority of carers care for either their parents (55%) or a spouse or partner (19%).

19. Our analysis, using the General Household Survey 2000, shows that the ‘immediate’ relative definition may discriminate against some minority ethnic communities (particularly Indians, Bangladeshis and Pakistanis) as they are more likely to care for relatives other than parents, spouses or adult children. However, the “near relative” option

⁴ The full report will be published in the Autumn 2006. The executive summary is available at <http://www.dti.gov.uk/files/file32116.pdf>

⁵ 76% of fully or partially accepted requests were accepted for parents of dependent children under 6, 82% for parents of children over 6 and 77% for employees with no children.

covers the majority of those who care for others (around 80% of carers), including as part of broader kinship networks and so is unlikely to discriminate against minority ethnic groups. For further information please see paragraphs 96-98 and Annex A of the attached Final RIA.

20. Some employers argued that the definition should help employers manage demand for requests to work flexibly. The CBI pointed out that, for some companies, there is a limit to the amount of flexibility they can offer, meaning that the requests which employers receive in the future may be more difficult to accept. Similarly, the EEF made the point that it will usually always be possible for an employer to grant the first few requests to work flexibly, the difficulty only becoming apparent as more requests are made, possibly leading to a situation where a later applicant's request may have to be refused despite the fact that he/she has a much more pressing need than earlier applicants.

21. The CBI made the further point that a wider definition of eligible employees to include, for example, those with any adult care responsibilities, would not be acceptable to employers at present. The CBI was strongly of the view that the right must be extended gradually and reviewed to ensure its continued success. Similarly, the IoD said they would not be in favour of extending the scope beyond some definition of relative.

22. We will therefore define relatives as those listed in "near" relatives (as described in Option 2 in paragraphs 8 and 9 above), but with the addition of step-relatives as an additional category within this option. Widening the definition in this way will go some way towards meeting the wishes of those stakeholders who want as wide a definition as possible, whilst maintaining employer support by continuing the gradual approach favoured by employers and thus enabling them to continue to manage demand.

OTHER ISSUES ARISING FROM THE CONSULTATION

Level/nature of care

23. Seven respondents (all but one of whom were employers or their representative bodies, including the CBI) thought that a clear definition of the level and/or nature of care would be important to avoid abuse. The IoD and EEF thought this should be in the Regulations themselves, but others thought it would be sufficient to cover the point in the proposed accompanying guidance. The CBI and the National Hairdressers' Federation favoured restricting the right to carers of relatives entitled to receive Disability Living Allowance (DLA), the CBI making the point that, if this approach were successful, extending the right to further groups of employees with wider caring responsibilities in the future would be acceptable. The EEF thought the right should be

restricted either in this way or to carers of relatives aged over, say, 80: either way, the EEF thought the carer should be either the primary carer of the person being cared for or have substantial and regular caring responsibilities.

24. The CBI proposed amending Regulation 3B(1)(b) to say “An employee is entitled to make an application to his employer...if he is or expects *in the near future* to be caring for a person...”

Proof of care/caring

25. Four respondents (two employers’ organisations, a law firm representing employer clients and a trade association) thought that proof of the caring relationship should be required (or at least that an employer should be able to request it) in order to ensure that there is no abuse by employees. The CBI pointed out that, while in most cases employers will have a good knowledge of whether someone has children, this is less likely for other caring responsibilities. Thus, the CBI asked that the Government explore ways of ensuring that employees can provide evidence of their caring status, if required.

Conclusions on level/nature of care and proof of care/caring

26. Defining a level of care would be extremely complex because it is a subjective matter, which would be open to interpretation. Attempting to define a level of care in regulations is unlikely to make matters any clearer and would still be subject to legal interpretation. There are two additional points to consider: firstly, that any definition might deter some people from applying for flexible working if they felt that the definition did not cover their exact circumstances; and, secondly, it is not expected that anyone applying for what will be a permanent change in their contract of employment will be involved in anything but a substantial and regular level of care.

27. On the point raised by some employers that the right to request should be restricted to carers of relatives entitled to receive Disability Living Allowance, there are drawbacks to this approach. It could be viewed as an intrusion of the privacy of those in receipt of the Allowance, but perhaps more importantly it can take some time for a person to qualify for DLA so that a procedure based around this would not be responsive to someone needing care following the sudden onset of an illness or an accident. This approach would also be strongly opposed by carers groups and unions.

28. On the question of proof of a caring responsibility to ensure that there is no abuse of the new right by employees, it is worth noting that abuse has not been an issue under the current legislation. As with other employment rights, if an employer has reason to believe that an

employee is abusing a particular right, it would be open to him to invoke the company's normal disciplinary procedures to deal with it.

OTHER PROPOSED MINOR AND TECHNICAL AMENDMENTS TO THE 2002 REGULATIONS

29. In extending the right to request flexible working to carers of adults, we proposed bringing all the eligibility criteria – some of which are currently in primary legislation – into secondary legislation, i.e. the proposed amended regulations. Thus, the Work and Families Act provides for the requirement for a request for flexible working to be made before a child reaches the age of 6 or, if disabled, 18 to be moved from the Employment Rights Act 1996 into the secondary legislation. There were no objections to this change.

30. In addition, in extending the scope of the right to request flexible working to carers, a new definition of “partner” was needed because the current definition is based solely around caring for a child. This provided the opportunity to simplify the current definition, basing it on amendments relating to the Civil Partnerships legislation. There were no objections to this proposed amendment.

31. Since the flexible working legislation came into effect a new category of parental responsibility called “Special Guardianship” has been created in England and Wales. This is a new legal option providing permanence for children without the legal separation from their birth families which is involved in adoption. Special Guardians are likely to be relatives or foster parents who have an existing relationship with the child. As they have responsibility for all aspects of caring for the child, it follows that they should be able to request flexible working in the same way as foster carers and adopters currently can. We therefore recommend making a technical amendment to the Regulations to include Special Guardians.

32. Thus, as foreshadowed in the October 2005 *Government Response to the Work and Families: Choice and Flexibility* consultation document, we will work with external stakeholders to develop updated guidance on the revised flexible working legislation.

Conclusion on the proposed minor and technical amendments to the 2002 Regulations

33. We will proceed with the amendments which we proposed (as described in paragraphs 29-32 above). We will also set out in the regulations that an employee has the right to request flexible working

only to enable them to care for a child or an adult (Regulation 3 and Regulation 3B⁶).

NEXT STEPS

34. The Government is grateful to all those who took the time to respond to the consultation and to meet officials. The Government's intention now is to lay the Regulations in Parliament before the end of 2006, to come into force on 6 April 2007. In parallel, the DTI will develop, in association with external stakeholders including carers' organisations and employers, revised guidance on the flexible working legislation to reflect the extension of its scope to include carers of adults.

Department of Trade and Industry
9 November 2006

⁶ This is already explicit in the primary legislation.

RESPONDENTS TO CONSULTATION ON FLEXIBLE WORKING REGULATIONS

Action for Carers Surrey
Age Concern (as a member of the Parents and Carers' Coalition)
Aitkin, Olga CBE and Yvonne Perry
Allen, Janine
Allen and Overy
Amicus
Association of University Teachers
Bexley Council
Birmingham Law Society's Employment Law Committee
Bookpoint Limited
British Airports Association
British Association for Adoption and Fostering (BAAF)
British Psychological Society
British Telecom
Capgemini
Carers UK
Centrica Plc
Chartered Institute of Personnel and Development (CIPD)
Chemical Industries Association
Citizens Advice
Communication Workers Union
Confederation of British Industry
Counsel and Care
Curtis, Sandra
DLA Piper Rudnick Gray Cary UK LLP
Dudley Carers' Strategy Group & Dudley Carers' Forum
Educational Institute of Scotland
Employers for Carers
Engineering Employers Federation
Equal Opportunities Commission
Eversheds
Federation of Small Businesses
Fisk, Louisa
Forum of Private Business
Friends Provident PLC
GMB Union
Greater Manchester Chamber of Commerce
Help the Hospices
Hone, Stephen
Institute of Directors
Institute of Payroll and Pensions Management
Law Society
Liverpool John Moores University
M J Carter Associates Limited
Mayor of London (GLA)
Methodist Church
Miles, Caroline
NASUWT
NHS Employers
National Family Carer Network

National Hairdresser's Federation
National Union of Teachers
Newspaper Society
Northumbria University
Nottinghamshire Police
Parkinson's Disease Society
PricewaterhouseCoopers
Prospect
Recruitment & Employment Confederation
Relate
Rethink
Serco
Shannon, Richard L
Social Care Institute for Excellence
Somerset County Council
Southern Local Authorities Network
Stonewall
Tesco
Trades Union Congress
Travers Smith
Unison
Universities & Colleges Employers Association
University of Hertfordshire
Usdaw
Working Families

Extending the scope of the right to request flexible working

9 November 2006

Introduction

1. Employers who offer flexible working report that they do so because it makes business sense. The Government has recognised this and encouraged uptake through promoting best practice alongside targeted, light touch legislation.
2. The flexible working legislation, '*the right to request and duty to consider*', came into force in April 2003. It is designed specifically to help parents of children under 6 and disabled children under 18 manage their work and childcare responsibilities more effectively, in recognition of the particular challenges they face.
3. In the Government's consultation exercise *Work and Families: Choice and Flexibility* conducted in February 2005 the Government explored options for extending the right to request flexible working to new groups. In light of the responses received as part of the consultation and the accompanying Regulatory Impact Assessment (RIA) the Government announced its intention to take forward extending the scope of the law to employees who care for adults as the priority.
4. The final RIA produced after the consultation exercise in October 2005⁷ examined the costs and benefits of extending the scope of the law to employees who care for adults and looked at 6 different options for defining which carers will be covered by the legislation. The Work and Families Bill, which received Royal Assent on 21 June 2006, provided the primary power to extend the right to request flexible working to carers of adults, though did not itself define which carers would be covered by law.
5. A further consultation was conducted between January and April 2006⁸ with a view to seeking to arrive at a definition of carer. The

⁷ *Work and Families Bill: Choice and Flexibility*, Regulatory Impact Assessment, DTI, October 2005, URN 05/1585

⁸ *Work and Families: Choice and Flexibility, Draft Regulations on maternity and Adoption Leave and Flexible Working*, DTI, January 2006.
Online: www.dti.gov.uk/files/file23932.pdf

consultation narrowed the six original options down to two and the costs and benefits of these two definitions of carer were presented in the Partial RIA that accompanied the consultation in January 2006.

6. This final RIA presents below the estimated costs and benefits of extending the right to request according to the Government's preferred definition of carer.

Purpose and intended effect

Objective

7. To give carers more choice about how they balance their work and caring responsibilities in ways that meet the needs of business.

Background

8. Since April 2003, the flexible working law, commonly known as '*the right to request and duty to consider*', provides parents with children under 6 or disabled children under 18 with the right to apply to work flexibly, with a statutory duty on their employers to consider such requests seriously according to a set procedure.

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

10. The law does not provide an automatic right for parents to work flexibly. This reflects the reality of the workplace where there will be occasions when an employer is unable to accommodate an employee's desired work pattern. In such circumstances the legislation specifies the business grounds under which a request can be refused.

11. Research undertaken since the law was introduced shows that the law has had a positive impact. Employers are showing a willingness to accommodate requests wherever possible. The majority of employees (78 per cent) had their request either fully or partly accepted.⁹ Recent surveys show that 47% of new mothers work flexi-time compared to just 17% in 2002, and almost triple the number of new fathers now work flexibly.¹⁰

12. Seventy-four per cent of businesses surveyed by the CBI¹¹ have reported that the existing law has had either a positive, or no, impact on their business. Furthermore, the proportion reporting a positive impact has increased significantly from 21 per cent in 2005 to 31 per cent this year, and this is particularly the case in larger organisations¹². The

⁹ *The Third Work-Life Balance Employees Survey: Executive Summary*, Employment Relations research series No 58, DTI, July 2006, URN 06/1372.

Online: www.dti.gov.uk/files/file32116.pdf

¹⁰ *Maternity and Paternity Rights and Benefits: Survey of employees 2005*. Employment Relations Research Series No 50, DTI, March 2006, URN 06/836.

Online: www.dti.gov.uk/files/file27446.pdf

¹¹ *Employment trends survey*, CBI, September 2006

¹² Over 40% of firms with 500 or more employees reported a positive impact.

Chartered Institute of Personnel and Development (CIPD) found that employers do not consider the cost of one-off implementation to be a significant problem¹³. Additionally, evidence from the Government's former Work-life Balance Challenge Fund reveals that workplaces with flexible working policies have reported financial savings (81 per cent), reduction in staff turnover (68 per cent), a reduction in absenteeism (50 per cent) and improved productivity (50 per cent)¹⁴.

13. More recently, the 2004 Workplace Employment Relations Survey¹⁵ shows a substantial increase in the availability of flexible working and leave arrangements in British workplaces since 1998, including: homeworking (28 per cent, up from 16 per cent in 1998); term-time only working (28 per cent, up from 14 per cent); flexi-time (26 per cent, up from 19 per cent); job-sharing (41 per cent, up from 31 per cent); parental leave (73 per cent, up from 38 per cent); and paid paternity leave (92 per cent, up from 48 per cent). This increase in provision was also reflected in managers' greater understanding of employees' responsibilities outside of work - 65 per cent of managers believe that it was up to the individual to balance their work and family responsibilities, compared with 84 per cent in 1998.

14. In light of the apparent success of the law, the Government asked in its '*Work and Families, Choice and Flexibility*' consultation in February 2005 if there was a case for extending its scope to ensure more people with caring responsibilities have access to flexible working opportunities. The consultation document repeated the Government's view that carers of adults should be the priority and set out a series of options about how a carer should be defined.

Rationale for government intervention

15. If there is no government intervention:

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

Consultation Within Government

¹³ *A parent's right to ask: a review of flexible working arrangements*, CIPD, October 2003

¹⁴ *DTI Challenge Fund Round 4 Final Reports Evaluation*, PWC, July 2004.

¹⁵ See B. Kersley, et al (2006) *Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey*, Routledge, London.

16. This RIA has been developed in consultation with various Departments including the Department for Work and Pensions, the Department of Health, HM Treasury and Cabinet Office.

Public consultation

17. The Government published a consultation document¹⁶ on 31 January 2006 seeking views on the detail of proposed amendments to the 2002 flexible working regulations. This consultation followed publication of the Work and Families Bill, introduced in Parliament on 18 October 2005, and publication of the Government's Response¹⁷ to the wide-ranging consultation in early 2005¹⁸, setting out a series of commitments and proposals that build on the framework of support for working families.

18. The 2006 consultation on the draft Regulations closed on 25 April 2006. The consultation sought in part to arrive at a definition of which carers should be covered by the law.

19. The consultation document proposed that the definition of *carer* should include an employee who is, or expects to be, caring for an adult who is:

- (1) either married to, the partner or civil partner of, the employee; or
- (2) a relative of the employee; or
- (3) living at the same address as the employee.

20. In terms of (2) above, *relative* was defined on the basis of the following two options:

- Option 1: an *immediate relative*
- Option 2: a *near relative*

21. The scope of these definitions is discussed in more detail in the Options section below.

22. In total, there were 76 responses to the consultation. Only four respondents favoured Option 1, which was generally deemed to be too narrow for modern-day society. Nearly half of all respondents (36 responses, or 47% of the total) supported Option 2 or a variant of it, many wishing to cast the net more widely. Some employers, while favouring Option 2, also advocated linking this to a definition of care,

¹⁶ *Work and Families – Choice and Flexibility. Draft Regulations on Maternity and Adoption Leave and Flexible Working*, January 2006, URN 06/707; www.dti.gov.uk/files/file23932.pdf

¹⁷ *Work and Families: Choice and Flexibility – Government Response to public consultation*, DTI, October 2005; URN 05/1298. Online: www.dti.gov.uk/files/file16317.pdf

¹⁸ *Work and Families: Choice and Flexibility. A Consultation Document*, DTI, February 2005; URN 05/847. Online: www.dti.gov.uk/files/file11517.pdf

either in the Regulations themselves or in the proposed accompanying guidance.

23. Among caring support and campaigning organisations in particular, there was a strong feeling that the proposed *relative* approach was inappropriate for today's multi-cultural society, and many of these supported a definition of a carer going beyond family relationships, partners or co-residents to include friends and neighbours: in other words, the new right should be made available to all carers.

24. The campaigning organisation, Stonewall, commented that any definition of relative would fail to acknowledge the many lesbian and gay people who are dependent on people other than their biological relatives, highlighting the fact that many such people depend on networks of friends and "families of choice". This was echoed by Carers UK, the TUC and the Equal Opportunities Commission. The TUC and the EOC also commented that broader kinship care networks were common within the black and minority ethnic (BME) population and therefore it was important to include this wider relative group so that BME communities would not experience disproportionate disadvantage from the Regulations.

25. We have considered the question of whether our approach would disadvantage the gay and lesbian and BME communities. The assertions made are largely anecdotal. There is no data on whether gays and lesbians are more likely to be cared for by friends not living in the same household rather than by relatives, and hence would be disproportionately affected by a definition based on "relative". Data available on whether particular communities are more likely to care for distant relatives or friends is also limited.

26. Our analysis, using the General Household Survey 2000, shows that the 'immediate' relative definition is likely to discriminate against some minority ethnic communities (particularly Indians, Bangladeshis and Pakistanis) as they are more likely to care for relatives other than parents, spouses or adult children. However, the "near relative" option covers the majority of those who care for others (around 80 per cent of carers), including as part of broader kinship networks and so is unlikely to discriminate against minority ethnic groups.

27. Employers commented that there is often a limit to the amount of flexibility they can offer, meaning that the requests which employers receive in the future may be more difficult to accept. The CBI made the further point that a wider definition of eligible employees to include, for example, those with any adult care responsibilities, would not be acceptable to employers at present. The CBI was strongly of the view that the right must be extended gradually and reviewed to ensure its continued success.

28. Ministers have therefore decided to define relatives as "near" relatives (as described in Option 2), but with the addition of step-relatives as an additional category within this option. This definition will

cover around 80 per cent of all carers. Bearing in mind that the original right to request has brought about a cultural change in workplaces, with a “halo” effect whereby employers have also been prepared to consider requests from employees not covered by the law, it seems likely that more than 80 per cent of all carers will benefit from the new right. This would fit well with the light-touch, minimum standard nature of the legislation. This definition will go some way towards meeting the wishes of those stakeholders who want as wide a definition as possible, whilst allowing employers to continue to manage demand.

Options

29. As stated in the introduction the primary legislation in the Work and Families Bill amended the existing law to provide a power to allow the scope of the right to request flexible working to cover carers of adults. The 2006 consultation¹⁹ sought to arrive at a detailed definition of a carer to be covered by the law and which would be incorporated in the secondary regulations.

30. The Partial RIA that accompanied the 2006 consultation considered two possible options for defining carers. There it was proposed that the definition of ‘carer’ should include an employee who is or expects to be caring for an adult who is:

- (1) *either* married to, the partner or civil partner of the employee, *or*
- (2) a relative of the employee; *or*
- (3) living at the same address as the employee

Definition of ‘relative’

31. In terms of (2) above, the consultation document then sought to define *relative*, on the basis of the following two options:

- an **immediate** relative – this would include mother, father, adopter, guardian, parent-in-law, son/son-in-law or daughter/daughter-in-law²⁰; *or*
- a **near** relative – to include immediate relatives described above *plus* brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent.

32. The scope of the definitions is summarised in Table 1 below. It should be noted that under each definition partners of the employee or those living at the same address, regardless of relationship to the employee, are automatically included in both options.

¹⁹ *Work and Families: Choice and Flexibility, Draft Regulations on Maternity and Adoption Leave and Flexible Working*, DTI, January 2006, <http://reporting.dti.gov.uk/cgi-bin/rr.cgi> and www.dti.gov.uk/files/file23932.pdf

²⁰ aged 18 or over

Table 1: Scope of definition of relative

Nature of relationship to employee	Immediate relative	Near relative
<i>Anyone living at same address</i>	Yes	Yes
<i>Partner</i>	Yes	Yes
Parent, Parent-in-law	Yes	Yes
Adopter, Guardian	Yes	Yes
Son/daughter; son-in-law, daughter-in-law – aged 18+	Yes	Yes
Brother/Sister, Brother-in-law/Sister-in-law	No	Yes
Uncle/Aunt	No	Yes
Grandparent	No	Yes

NB: Both definitions include adoptive relationships; *Near relative* also includes relationships of half blood (half-brother, half-sister), as well as step relatives.

33. In light of responses received as part of the 2006 consultation²¹, the Government's preferred option is to define carers in terms of *near relative*, including step relatives.

34. This RIA hereon therefore focuses on the costs and benefits of extending the right to request flexible working using the *near relative* definition.

Costs and benefits

35. Cost and benefit estimates for these proposals are presented here based on the two definitions of *relative* presented above.

Assumptions behind the benefits and costings

36. There are no reliable figures on caring responsibilities. The General Household Survey (GHS) 2000 dataset provides the most recent comprehensive figures, where respondents have themselves defined the level of care provided.

37. The DTI considers that to use the GHS figures as they stand would significantly overestimate the total number of individuals with caring responsibilities impacting on the labour market. For instance, the GHS cites 72 per cent caring for fewer than 20 hours per week, and has a very wide definition of what constitutes caring²².

Carers with significant caring responsibilities

38. As requesting flexible working can lead to a permanent change in an employee's contract the DTI has assumed that only those carers with significant caring responsibilities are likely to make a request. It has also been assumed that one person in need of care is equal to one person providing care. In order to find a suitable measure of those individuals who are in significant need of care, for the purposes of this RIA we have assumed this can be represented by those in receipt of Disability Living Allowance or Attendance Allowance (DLA or AA)²³.

²¹ See section on consultation responses above for more detail

²² GHS Q19 categories are very loose, including "keeping an eye on", "keeping company", "taking out for a walk/drive".

²³ As at 31 May 2004, source: IAD Information Centre.

39. To scale down the GHS data so as to be representative of those providing a significant amount of care, the proportion of individuals in receipt of DLA or AA has been taken as a percentage of the total number of people caring for a partner, relative or friend (living in the same house or elsewhere).

40. In the absence of a central register of the disabled, for the purposes of the RIA we have assumed a disabled person to be an individual in receipt of DLA or AA, as the benefits are intended to assist individuals with a long-term disability.

41. DLA and AA consist of both a care and mobility element. It is unlikely that those who only receive the mobility element are in significant need of care. Experience suggests that not all disabled individuals claim DLA or AA, for social or other reasons, although this is difficult to quantify. To allow for individuals who do not claim but are in need of care, those who only claim the mobility element have been included in the overall figures.

42. The scaling down factor used here is 56 per cent and is based on all individuals in receipt of DLA or AA (3,702,320) divided by the total number of people caring for a partner, relative or friend (6,637,297).

43. Table 2 below represents the raw GHS figures for carers and the scaled down numbers that DTI considers representative of those providing a significant amount of care.

Table 2: Number of individuals cared for ('000)*

Scope of law	Unadjusted estimate	Adjusted estimate**
Caring for a near relative	5,270	2,940

Source: General Household Survey (GHS) 2000 (ONS), # IAD Information Centre and DTI estimates. *Rounded to nearest 10,000. **56% of raw estimate.

44. The GHS provides statistics on the number of individuals caring for a partner, parent/parent in-law, child aged over 16, other relatives and friends. The DTI has therefore made several assumptions in order to estimate the number of carers that appear in the above. The GHS does not directly report on the number of adult siblings receiving care. The DTI has assumed that one third of the relatives classified by the GHS as being another relative (i.e. not a child, partner or parent/parent in-law) are adult siblings. The remaining two thirds of this group of relatives were assumed to be aunts or uncles. The GHS reports a figure for the number of children cared for that are aged over 16. An assumption was made that 90 per cent of the children aged over 16 would be adults. The DTI has also assumed that 5 per cent of aunts/uncles or adult siblings live in the same house as their carer. We have assumed that 2.5 per cent of friends live in the same house as their carer.

Employment level of carers

45. The GHS reports a 53 per cent rate of employment for all carers. The DTI has assumed that the employment rate will be constant at 53 per

cent for all individuals irrespective of who they care for. This assumption is consistent with the Second Flexible Working Survey.

46. A further assumption has been made that the level of employed carers²⁴ has grown at the same rate of growth for all employees in the economy. The DTI's estimate of employed carers is based on GHS data from 2000: in order to obtain an estimate based on more recent data the employment level for carers was grossed up such that the ratio of employed carers to all employees in the economy in 2000 and 2006 are the same. An assumption has been made that the profile and number of carers in 2007 will be the same as 2006. The Table below presents the estimated number of employed carers.

Table 3: Estimated employed carers ('000)*

Scope of law (carer is caring for)	Adjusted No. of carers (2000)	Employed carers (2000)	Employed carers as a % of entire number of employees in the economy (2000)	Employed carers (2006)	Employed carers as a % of entire number of employees in the economy (2006)
Caring for a near relative	2,940	1,560	6.5%	1,628	6.5%

* Rounded to nearest 10,000. **Data is from LFS, second quarter 2006. The figures that appear in the Table assume an employment rate of 53%.

47. The estimate of the numbers of carers in employment were then scaled down to 91 per cent of the original estimate,²⁵ to reflect the fact that some carers will not have accumulated 6 months' continuous employment with their existing employer and will therefore not be entitled to make a request. Again, in the absence of reliable data, this scaling down factor assumes the same employment profile for employed carers as for parents with children under 6.

Table 4: Estimated number of employed carers providing a significant amount of care entitled to make a request*

Scope of law	Employees ('000)**
Caring for a near relative	1,481

Source: DTI estimate. * Figures have been rounded to the nearest 10,000. **These figures are 91% of the employed carers' (2006) estimate that can be found in Table 3.

48. Table 4 above sets out an estimate of the total number of carers providing a significant amount of care for all groups up to and including a near relative who would be entitled to make a request. It should be noted that an additional 1.164 million carers²⁶ providing less care would also be entitled to make a request. As stated earlier, we assume

²⁴ The proposed options will not apply to self-employed individuals.

²⁵ 91% = 3,746,000 (Number of employed parents with a child aged under 6) divided by 3,393,000 (Number of employed parents with a child aged under 6 and 6 months continuous employment with their current employer). Source: Labour Force Survey, Spring 2004

²⁶ i.e. 1.481 million divided by the scaling down factor of 56%

throughout that those providing a significant degree of care will be those most likely to make a request.

Benefits

Benefits to business

49. Many employers who adopt flexible working patterns report benefits to their business²⁷. They find that:

- staff morale improves and absenteeism decreases;
- skilled staff are retained and better returns are gained from training;
- staff turnover decreases;
- staff are easier to attract and recruitment costs are less; and
- changing market conditions are met more effectively.

More flexible working and a better family life

50. The Table below shows the number of new working arrangements (per year) expected from carers, according to a range of alternatives. Details on the assumptions that underpin the number of new working arrangements can be found in the Appendix C of the October 2005 RIA²⁸. Further details on the number of requests made can be found in Table 12.

Table 5: Estimated number of additional new working arrangements as a result of this option*

Scope of law	Number of new working arrangements p.a. ('000)
Caring for a near relative	315

Source: DTI estimate. *Figures have been rounded to the nearest 5,000. Number of new working arrangements represents 90% of new requests made, which can be found in Table 12.

51. The impact on the overall number of carers with flexible working arrangements (at any one point in time) will depend on job turnover and the average number of requests made per parent. Nevertheless, there is clear potential for a substantial impact. We estimate that for the first two years the number of requests will be equal to the figures represented in Table 5 above. In the third and following years we expect the number of requests to fall. This is because the stock of carers is assumed not to change significantly over time and the inflow of carers per year into the stock is assumed to be small.

Better employment prospects for carers

52. Greater opportunities for flexible working will enable some carers who would otherwise leave the labour market to remain in employment.

²⁷ Supporting evidence can be found in the DTI's second Work-Life Balance Survey. Source: Woodland et al., 2003, The Second Work-Life Balance Study: Results from the Employers' Survey – Main Report, DTI, Employment Relations Research series No. 22.

²⁸ *Work and Families Bill: Choice and Flexibility*, Regulatory Impact Assessments October 2005, DTI, URN 05/1585

It is at present difficult to quantify the number of carers who leave the labour market because they have no flexible working opportunities. However, it is reasonable to assume that some carers do leave the labour market because they are unable to work flexibly.

53. The rate of employment for all carers aged 16 and over is 53 per cent, while the rate of employment for all individuals aged 16 and over is 60 per cent²⁹. If it is assumed that, as a group, carers would have an employment rate of 60 per cent in the absence of caring responsibilities, we can assume that an additional 7 per cent³⁰ of carers would be in employment if they had no caring responsibilities. This group of individuals can be used to represent the target group of carers that would return to employment, so that the employment rate of carers and all individuals aged 16 and over is equated. To estimate figures for carers returning to employment the DTI has assumed that 10 per cent of the target group will return to employment as a result of the policy. The Table below sets out the estimates for each proposed definition of a carer.

Table 6: Estimated increase in labour supply by carers ('000)*

Scope of law	Number of carers	Target group to get back into work (7% of carers)	Increase in labour supply (10% of target group)
Caring for a near relative	2,940	210	21

Source: DTI estimates. * Estimates are rounded hence differences between sums of components are due to rounding. Number of carers is taken from Table 2.

Reduced vacancy costs and increased skill retention

54. Recent CIPD surveys³¹ have found that on average around 2 per cent of individuals reported the main reason for leaving their job was to look after family members. The labour turnover rate of carers is assumed to be 16.7 per cent³². To estimate the effect of the policy it is assumed that the introduction of a right to request flexible working for carers will prevent 10 per cent of employees leaving their employer to look after family members. The initial predicted impact (10 per cent) is assumed to be higher than for parents because employers will have to seriously consider requests from carers for the first time. The savings made by employers through lower recruitment costs are presented in the Table below.

²⁹ Source: ONS, this employment rate of 60.1% is for March-May 2006

³⁰ 7%=60%-53%.

³¹ CIPD, annual surveys on Recruitment, retention and turnover, 2004, 2005 and 2006. This figure has fluctuated from 2% in 2003, to 4% in 2004 to 1% in 2005. See www.cipd.co.uk for details.

³² The average labour turnover rate in the UK was 16.7% between 2003 and 2005 (source: CIPD, Recruitment, retention and turnover surveys, 2004, 2005 and 2006)

Table 7: Quantified savings in recruitment costs – carers ('000)*

Scope of law	Number of employed carers	Employees who leave their job to look after family members	Employees who remain with employer as a result of new law	Savings made by employers from lower recruitment costs £
Caring for a near relative	1,628	5.2	0.5	3,045

Source: DTI estimates. * Estimates are rounded.

Increased productivity and profits

55. A number of employers who responded to the consultation told us that through adopting flexible working practices they have improved the productivity of their businesses. This is consistent with the messages that we have previously heard and supports the findings of the DTI's second Work-Life Balance Study³³ which shows that 58.6 per cent of employers believe that flexible working has had a positive impact on productivity, 14.6 per cent reported a negative impact on productivity, 26.8 per cent reported no impact. We have assumed that overall 44 per cent³⁴ of firms experience a net positive impact on productivity.

56. We have assumed a uniform distribution of employees who work flexibly across the firms that were sampled in the Second Work-Life Balance Study. We can then assume that if 44 per cent of firms experience a net positive impact on productivity this is equivalent to assuming that 44 per cent of new working arrangements will result in an increased level of productivity per hour worked for employees who adopt a new working arrangement. From here on, any references to productivity gains refer to productivity per hour worked.

57. In addition to the DTI's second Work-Life Balance Study there are many other reports that find a link between flexible working and higher productivity. The Evaluation of the Work Life Challenge Fund found that 50 per cent of workplaces with flexible working policies have experienced improved productivity³⁵. The CIPD survey on flexible working also found an overall positive effect on productivity as a result of flexible working for the organisations that were sampled.³⁶

58. A number of employers who responded to the February 2005 consultation said that they had opened up flexible working opportunities to the whole workforce because they found it beneficial to their organisation to do so. They reported that flexible working: gives them an advantage when recruiting new staff; helps retain staff and in doing so retain valuable skills and experience; facilitates greater diversity amongst the workforce; and helps maintain a motivated and committed workforce.

³³ The DTI examined its own data source for the survey.

³⁴ 44%=58.6% - 14.6% . This calculation assumes that a firm that experiences a productivity gain can exactly cancelled out a firm who experiences a productivity loss.

³⁵ *DTI Challenge Fund Round 4 Final Reports Evaluation*, PWC, July 2004.

³⁶ *Flexible Working Impact and Implementation An Employer Survey*, February 2005.

59. Firms are therefore reporting gains to their productivity in a number of ways. Reduced staff turnover results in higher skill retention. We would expect a higher level of productivity if firms could retain highly skilled and experienced staff. The ability to recruit a more diverse workforce can help meet increasing customer demands and be open for business for longer periods. In addition lower absenteeism rates could result in higher productivity. For example it may take longer for workers to complete a task at work if they have to 'start and stop' their work several times because of absence. The DTI's second Work-Life Balance Study shows that morale and employee motivation can be improved as a result of flexible working. The DTI has assumed that improved employee morale could result in improved productivity.

60. A further assumption was made that a notional level of 4 per cent output gain would be achieved for the 44 per cent of new working arrangements that result in increased productivity. A 4 per cent level was chosen because employers must have realised a significant rise in productivity to report that flexible working has had a positive impact on their firm. The 4 per cent output gain is also equivalent to a saving of approximately one hour of work per week. This is assuming that the employee was originally working 25 hours a week and that after working flexibly they can produce the same output in approximately 24 hours per week. It was assumed that a manager would notice a saving of one hour and report a positive productivity impact when answering the DTI's second Work-Life Balance Survey.

61. Based on the above assumptions the additional output due to flexible working can be estimated. It was assumed that 14 per cent of the increased output would represent gross profit. The 14 per cent figure represents the ratio of gross operating surplus to domestic output of products for the entire economy³⁷. The Table below presents the increased gross profit as a result of improved productivity.

62. The increased gross profit is expected to double in the second year. This is because we have assumed that the number of requests accepted per annum is the same in the first and the second year. However, in the second year we have assumed that the stock of carers who work flexibly will include all the requests accepted in year one and it will include all the new requests accepted in year two. This assumption increases the stock of carers by a factor of 2 in the second year.

³⁷ Gross operating surplus is taken from the United Kingdom Economic Accounts series ABNF, table 12 (Gross operating surplus). Domestic output of products is taken from the Blue Book table 2.1.

Table 8: Increased profits as a result of increased productivity - carers*

Scope of law	Extra gross profits (£) In the first year	Extra gross profits (£) In the second year**
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Caring for a near relative	68m	135m
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Source: DTI estimates. Figures have been rounded. * i.e. a 0.25% increase in gross profit per new working arrangement.

** The gross profit in the second year is expected to be double because the stock of carers is expected to double in the second year. However the number of new requests accepted per annum is expected to be the same in the first and second year.

Reduced absenteeism rates

63. The DTI's second Work-Life Balance Employer Survey³⁸ also shows that a net of 44.5 per cent of firms report a positive effect on absenteeism as a result of flexible working and leave arrangements. The CIPD surveyed employers and found that on average the cost per year of an employee being absent in 2004 was £588³⁹. The price base for this RIA is 2007, hence an assumption was made that this cost would increase by 4.5 per cent per annum for the next three and a half years⁴⁰ (the estimated absence cost per employee is expected to be £686 in 2007). An assumption was made that 44.5 per cent of new working arrangements will result in lower employee absenteeism.

64. A further assumption was made that the cost of absenteeism prior to making a request is £686 per year and that after a request is accepted the cost of absenteeism falls to £617.40 (a fall of 10 per cent). It is assumed that the absenteeism cost falls because flexible working allows employees to reduce the incidences of absence per year. The above assumptions have been applied to the number of new working arrangements. The Table below presents the savings made by employers as a result of lower absenteeism. The savings in absence costs is expected to double in the second year because there will be twice the amount of carers working flexibly in the second year.

Table 9: Savings in absence costs - carers

Scope of law	Savings in absence costs for employers p.a. (£) In the first year	Savings in absence costs for employers p.a. (£) In the second year*
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Caring for a near relative	9.6m	19.3m
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Source: DTI estimates. Figures have been rounded. *The savings in absence costs doubles in the second year.

Summary of quantifiable benefits for extending the scope to carers

65. The Table below provides a summary of quantifiable benefits by adding together the savings in recruitment costs (Table 7), the quantifiable benefit of increased productivity (Table 8) and the quantified savings in absence costs (Table 9).

³⁸ The DTI examined its own data source for the survey.

³⁹ CIPD *Employee Absence Survey, 2004*.

⁴⁰ Three and a half years was assumed so that the new cost would reflect an estimate for the mid-point of the first year of introduction.

Table 10: Total additional quantifiable benefits – carers*

Scope of law (including disabled children)	Total additional quantifiable benefits	
	In the first year	In the second year
Caring for a near relative	£80.6m	£157.3m

Source: DTI estimate. * Figures have been rounded. Based on the sum of Tables 7, 8 and 9.

Costs

66. The principal costs to business of the proposals fall under three headings⁴¹:

- implementation costs of the proposals;
- procedural costs arising from exercise of the right to request flexible working; and
- the costs of accommodating such requests (when they are accepted).

67. These costs are considered in turn.

Implementation costs

68. This proposal would affect businesses of all sizes, therefore most businesses over time.

69. This option is assumed to have greater implementation costs than extending the law to parents of older children. Firms will have to spend more time familiarising themselves with the changes to the eligibility criteria, and possibly communicating the change to employees through changes to staff handbooks or statements of terms and conditions or through other routes such as company web sites.

70. The cost will primarily be in management time. The relevant assumptions are set out in the Table below. The average cost is assumed to be greater for a large firm than for a small firm. In large firms, more than one manager may be involved in implementing the new procedures. There are likely to be more detailed written procedures and guidance that need to be changed. There may also be costs in communicating changes to the workforce, for example through briefing meetings.

⁴¹ The price base for all the costs is 2007 prices.

Table 11: Implementation costs*

Firm size (number of employees)	Number of firms	Average management cost (hours)	Average cost per business	Estimated total cost to business
1-4	823,085	0.5	£16.21	£13.34
5-9	220,470	0.5	£16.21	£3.57
10-19	113,250	0.5	£16.21	£1.84
20-49	59,355	1	£32.42	£1.92
50-99	18,910	1	£32.42	£0.61
100-199	8,945	1	£32.42	£0.29
200-249	1,880	2	£64.84	£0.12
250-499	3,730	2	£64.84	£0.24
500+	4,510	3	£97.26	£0.44
Total	1,254,135			£22.4m

Source: DTI estimates based on 2005 SME Statistics (Small Business Service) and Annual Survey of Hours and Earnings 2005 (ONS).

Note: Management time is valued at £32.42per hour⁴².

71. Initial implementation costs are thus estimated to be £22.4 million. These are one-off costs. Most will be incurred in the period around when the legislation comes into force although in some cases, for example where smaller firms have no eligible employee at the time of implementation, the costs may not occur straight away.

Estimated number of requests

72. The Table below provides an estimate of the number of new requests per annum that might be made by employed carers. It is assumed that this option will have a take-up rate of new requests equal to 24 per cent of employed carers (who are also entitled to make a request). This take-up rate implies that approximately half the number of carers who currently work non-flexibly and a small proportion of workers who work flexibly will make a request in a single year.

Table 12: Estimated number of new requests by carers*

Scope of law	New requests p.a. ('000)
Caring for a near relative	350

Source: DTI estimate. * Figures have been rounded to the nearest 10,000.

Procedural costs of handling requests for flexible working

73. The costs of handling requests for flexible working will depend upon the number of requests. For more details on the assumptions underpinning the take-up rate of requests please see Appendix C of the October 2005 RIA⁴³.

⁴² Personnel, training and industrial relations managers (SOC code 1135) on average earn £808.5 per week, they work an average of 36.2 hours per week. Hence the hourly rate £22.33 (adding 30% for non-wage labour cost gives £29.03 per hour). Source 2005 Annual Survey of Hours and Earnings. An assumption was made that this cost will increase by 4.5% per annum for the next 2.5 years, hence the cost in 2007 is £32.42.

⁴³ *Work and Families Bill: Choice and Flexibility*, Regulatory Impact Assessments October 2005, DTI, URN 05/1585.

Average cost of handling a formal request under the law

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

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

76. In the original RIA, which accompanied the existing legislation, it was assumed that it should be possible to run through these stages in half a day of management time and half a day of employee time. It is not unreasonable to expect that as flexible working becomes more widespread, both employees and managers will be more efficient at handling requests – thus reducing time spent and associated costs⁴⁴.

77. Experience has also shown that as a result of the formal right to request acting to accelerate culture change in the workplace, many applications are considered on a more informal basis, which again significantly reduces the procedural costs. CBI figures show 53 per cent of requests are accepted at first stage, 16 per cent are discussed and a compromise reached, and 24 per cent are agreed informally with the line manager.

78. In light of this, the DTI has revised assumptions. We now estimate 2 hours of employee time, and 3 hours of management time is required on average to process a request that is dealt with formally. It is assumed that with requests that are dealt with informally it takes half an hour of employee and management time to process the request. It was assumed that 50 per cent of requests are dealt with formally or discussed at length and the remainder are dealt with informally. This works out at approximately £75 per request⁴⁵.

⁴⁴ DTI is currently considering measures to rationalise and improve Government guidance for employers on employment law generally, as part of the Employment Law Simplification Review. Such changes would be expected to help to reduce further the time and costs associated with handling requests for flexible working. Since this work is at an early stage, the calculations in this RIA do not assume any cost savings arising from it.

⁴⁵ With management time costing £32.42 per hour and employee time costing £14.40 per hour [average hourly wage is £9.92. Adding 30% for non-wage labour costs gives £12.90 (source: Annual Survey of Hours and Earnings Survey, 2005). It is also assumed that this cost will increase by 4.5% per annum for the next 2.5 years hence the cost in 2007 will be £14.40].

79. It is likely in practice that for 'deadweight' requests, i.e. those where employees are already allowed to work flexibly, the average procedural cost is likely to be much less. Even where flexible working is guaranteed, the cost of any existing procedure for changing working patterns - however informal - must be subtracted. A notional cost of £25 is assumed for each deadweight request⁴⁶.

Average cost of appeal or internal grievance stage

80. The appeal stage will involve a written statement of appeal by the employee, a meeting (where the employee may be represented) and a written response by the employer.

81. Where requests reach this stage, it is likely that both employees and managers take more care and attention over their written communications. The meeting may also be longer and more wide-ranging. It is therefore assumed that the average cost is double that of the first stage, namely £150 per request.

Average cost of external dispute resolution stage

82. The average cost to an employer of an application to an employment tribunal – is assumed to be £3,900 in 2007⁴⁷ - is used as a benchmark figure. The cost to the employer excludes any financial or non-financial costs borne by the employee at this stage.

83. Other sources of dispute resolution, e.g. the Acas Arbitration Scheme, may be cheaper for both parties.

84. The total procedural cost per annum is presented in the Table below.

Table 13: Summary of total procedural cost for the first year*

Scope of law	Total procedural cost
Caring for a near relative	£35m

Source: DTI estimates. *Figures have been rounded.

Cost of accommodating requests for flexible working

85. Employers may also face costs in accommodating a request for flexible working. Examples might include re-organising work schedules or adjustments to IT systems (e.g. to permit flexible rostering). In some cases, the potential costs could be more substantial (e.g. if another

50% of requests are dealt with formally cost = 3 hours of management time and 2 hours of employee time = 3 x (£32.42) + 2 x (£14.40) = £126.06 (£126 to nearest whole pound).

50% of requests are dealt with informally cost = 1/2 hour x (£14.40 per hour + £32.42 per hour) = £23.41.

Total cost of requests = 50% of £126.06 + 50% of £23.41 = £74.74 (£75 to nearest whole pound).

⁴⁶ Cost of deadweight = 1/3 x procedural cost of a new request (£75) = £25. Illustrative deadweight assumptions can be found in Appendix C of the October 2005 RIA.

⁴⁷ The average cost of making an application to an employment tribunal in 2004 was £3,383. It is assumed that this figure will increase by 4.5% per annum for the next 3.5 years.

employee had to be recruited to cover for an employee reducing their working hours). The above examples should not be considered as exhaustive.

86. Employers can reject requests on cost grounds but this does not imply that the additional costs of accommodating requests are zero. Employers will accept cases where some additional cost is involved.

87. The Work and Parents Taskforce considered that recruitment of a new employee to accommodate a request (which can be 10 per cent of annual labour cost) was unlikely to be an acceptable burden unless there were significant offsetting benefits (e.g. if this was the only way to retain a valued employee)⁴⁸. In most cases, costs were likely to be far less.

88. On average, therefore, the costs of accommodating requests for flexible working might be a week's wages (some 2 per cent of annual labour costs) for requests that ask to work part-time. For other types of requests we have assumed the equivalent of 1 day's wages to accommodate the request. Another assumption has been made that a quarter of all requests are to work part-time, hence the average cost of accommodation is 2 days' wages⁴⁹. Allowing 30 per cent for non-labour unit costs produces a cost of £184.87⁵⁰.

89. It is likely that requests accommodated at the appeal stage, or at the external dispute resolution stage, will be more finely balanced and therefore, on average, more costly to implement. The estimates above are, therefore, multiplied by factors of 1.5 and 2 respectively for the (small) number of requests that are successful at the appeal or external dispute resolution stage.

90. The total cost of making adjustments to working patterns for the first year is presented in the Table below.

Table 14: Summary of total cost of adjusting working arrangements – year 1*

Scope of law	Total costs of making adjustments to working patterns
Caring for a near relative	£59m

Source: DTI estimates. *Figures have been rounded.

91. We believe that the cost of adjusting working arrangements will be higher in the second year because employers will still be accommodating the requests they accepted in the first year. In addition to this employers will also incur a cost of accommodation for new working arrangements that are accepted in the second year. For simplicity it has been assumed that all carers who adopt a new working pattern in the first year will continue with this working pattern in the second year. The total cost of adjusting working arrangements in the

⁴⁸ See the discussion in chapter 6 of *About Time: Flexible Working*.

⁴⁹ i.e. 2 days = (0.25 x 5 days) + (0.75 x 1 day).

⁵⁰ This estimate is for 2007 and is based on ASHE 2005 (SOC code 4122); it has been assumed that wages will grow at 4.5% per annum between April 2005 and October 2007.

second year is therefore double the cost of the first year. The Table below presents the total cost of adjusting working arrangements for the second year of the option. In the third year we expect the total cost of adjusting working patterns to grow at a slower rate and eventually the cost will become stable, as the majority of the stock of carers who want to make a request will have made their request.

Table 15: Summary of total cost of adjusting working arrangements – year 2*

Scope of law	Total costs of making adjustments to working patterns
Caring for a near relative	£118m

Source: DTI estimates. *Figures have been rounded.

92. The following two Tables present the procedural cost, cost of adaptation and total cost to employers as a result of introducing the right to request flexible working to carers for the first and second year.

Table 16: Summary of annual estimated costs to employers for the first year*

Scope of law	Total procedural cost	Total costs of making adjustments to working patterns**	Estimated total cost to employers*
Caring for a near relative	£35m	£59m	£94m

Source: DTI estimates. * Excluding one-off implementation costs of £22.4 million (see Table 11). ** For the second year the cost of adjustment is expected to double.

Table 17: Summary of annual estimated costs to employers for the second year*

Scope of law	Total procedural cost	Total costs of making adjustments to working patterns**	Estimated total cost to employers*
Caring for a near relative	£35m	£118m	£153m

Source: DTI estimates. * Excluding one-off implementation costs of £22.4 million (see Table 11). ** For the second year the cost of adjustment is expected to be double the first years total.

Business sectors affected

93. Due to a lack of reliable data the DTI has been unable to estimate the impact by sector of extending the flexible working law to carers of sick and disabled relatives.

Unintended consequences

94. It is possible that carers who are not covered by the legislation and whose employers do not open flexible working opportunities to other staff may resent employees that are entitled to make a request under the proposed option. This could lead to lower morale amongst these staff in the workplace. However, the right to request is one element of the Government's strategy to promote a culture where flexible working is the norm across the workforce. The Government also facilitates the spread of flexible working by promoting best practice and many of the lessons learned from the former Work-Life Balance Campaign have been built into guidance. Backlash is not a significant issue that has arisen from the law to date and experience shows that

employers who offer flexible working across the workplace avoid such issues.

Equity and fairness

95. The proposed option will have a positive impact on carers of adults by helping them to achieve a better balance between work and caring responsibilities. The proposed option does not prevent other employees from making flexible working requests, and the DTI encourages employers to consider all requests for flexible working seriously and to only reject requests where there are clear business grounds for doing so.

Race equality impact assessment

96. It is important that the extension of the right to request flexible working to carers of adults does not have a disproportionate impact on some groups over others.

97. Further analysis of the GHS data has been carried out in an attempt to assess this impact across groups by ethnicity. The results show that there is a general tendency for higher rates of caring among women over men, as well as for part-time workers over full-time. However, there is generally little difference by ethnic group across either full- or part-time workers⁵¹.

98. The issue of the choice of definition of *relative* and its impact across ethnic groups has already been discussed in the section on consultation above. More detailed analysis of the data can be found in Annex A.

Small firms' impact test

99. The duty to consider flexible working requests will impact upon businesses of all sizes. It is a fair assumption that most businesses at some point will eventually employ an eligible carer.

100. Many small firms already offer some type of flexible working. A new CBI survey⁵² reports that 70 per cent of all small enterprises use part-time working and 44 per cent of small firms offer flexitime working. Small firms have also responded positively to flexible working requests. The CBI found that 89 per cent of requests made in companies with fewer than 50 employees were accepted, a further 10 per cent agreed after discussion and only 1 per cent were declined.

⁵¹ Source: General Household Survey, unpublished data. Where there are apparent differences the sample sizes are so small that GHS highlights their unreliability and warns that any analysis using these figures may be invalid. Data from the 2001 Census supports this finding, as, although the degree of caring among *Indian, Pakistani and Bangladeshi* women and men tends to be slightly higher than for other ethnic groups, once relative employment rates are taken into account the overall impact on employees is about the same. See also *Work and Families Bill RIA: Addendum on race equality impact assessment* – January 2006. Online: www.dti.gov.uk/files/file26943.pdf

⁵² CBI, *Employment Trends Survey 2006*.

101. Small firms may find it more difficult to accommodate some types of request than larger firms in similar lines of work. For example, there may be less scope to re-allocate duties. However, where this is in practice a significant problem, these are already valid grounds for a refusal.

Competition assessment

102. The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary.

103. The proposed legislation will affect all sectors of the economy. The cost of processing formal requests incurred by an individual firm will depend on the number of entitled employees employed by that firm and the number of requests made by members of staff. However, the average cost of processing a request and adapting working arrangements is assumed to be approximately constant across firms of different sizes.

104. The proposed legislation is not assumed to have any impact on market structure since firms can refuse requests on business grounds. The cost of implementation is not higher for new businesses compared to existing firms and does not therefore constitute a barrier to entry. Ongoing costs are assumed to be the same for existing and new businesses. The proposal will have a negligible impact on a firm's ability to determine its output, price, quality and range of products because requests can be refused on business grounds.

Enforcement, sanctions and monitoring

Enforcement

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

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

107. The Table below sets out the expected number of external disputes each year from carers of adults that will reach the external dispute resolution stage.

Table 18: Estimated number of external disputes – carers*

Scope of law	Number of external disputes
Caring for a near relative	350

Source: DTI estimate. * Figures have been rounded to the nearest 100.

108. The Table above shows that the expected number of disputes will be relatively small.

Sanctions

109. A tribunal can award an employee compensation if the employer does not comply with the procedure set out in the legislation, or if the

employee suffers a detriment or is dismissed for making an application for flexible working.

Implementation and delivery plan

110. Subject to parliament's approval the regulations will be in place by the end of 2006, at least three months before they are due to come into force on 6 April 2007. DTI will be updating the existing guidance on flexible working, in consultation with stakeholders, paying particular attention to the needs of carers. We have developed a communications strategy, which includes engaging with stakeholders up to and throughout the implementation and delivery period and is part of our work on raising awareness of this new right.

Post-implementation review

111. The most effective method of monitoring the extension of the right to request to carers is through surveys of employers and employees. DTI plan to have baseline surveys in place before the new legislation comes into force in April 2007. The Third Work-Life Balance Employee Survey has already been conducted. Fieldwork for the Third Work-Life Balance Employer Survey should be completed before next April. These two surveys address actual working practices as well as attitudes towards work-life balance and the right to request flexible working.

112. The fourth set of Work-Life Balance Surveys will be conducted a reasonable time after the introduction of the extension of the right to request, allowing its impact on employees and employers to be evaluated.

113. The following are considered important success measures for the extension of the right to request flexible working to carers:

- increased employer awareness of the right of carers to request flexible working;
- increased employee awareness of the right of carers to request flexible working (from a baseline of 42 per cent in 2005);
- a reduction in the level of unmet demand for flexible working by employees who have caring responsibilities;
- increased satisfaction with work-life balance and personal choice among employees who have caring responsibilities.

Summary and recommendation

114. The right to request flexible working is extended to carers from April 2007. The Government has consulted on the definition of a 'carer' and Table 19 below summarises the quantifiable costs and benefits of extending the right to request flexible working to carers using the Government's preferred definition of *near relative*.

115. The Government will work with stakeholders to revise guidance to reflect the needs of carers.

Table 19: Summary of quantifiable costs and benefits (£m)*

	First year	Second year
Total benefits	£80.6m	£157.3m
Savings in recruitment costs	£3.0m	£3.0m
Increased profits	£68m	£135m
Savings in absence costs	£9.6m	£19.3m
Total costs	£116.4m	£153m
Implementation costs**	£22.4m	-
Procedural cost	£35m	£35m
Cost of adjusting working arrangements	£59m	£118m

Source: DTI estimates. * Figures have been rounded. ** One-off cost in first year only

Declaration

I have read the regulatory impact assessment on *extending the scope of right to request flexible working* and I am satisfied that the benefits justify the costs

Signed

Date

Jim Fitzpatrick, Parliamentary Under-Secretary of State (Employment Relations and Postal Services. Minister for London)

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RACE EQUALITY IMPACT ASSESSMENT

It is important to ascertain by means of the race equality impact assessment that the proposed policy option does not have any differential or adverse impact on any particular race or ethnic group. Presented below is the analysis of two broad areas where this has been investigated: how caring responsibilities vary generally by ethnicity and whether there is any difference across ethnic group as to the type of person cared for.

Caring responsibilities by ethnicity

The most direct data source for this is to use the Census 2001 data. As an illustration the Census data shows degree of caring responsibilities of those of working age as follows:

Table A1: Caring responsibilities by ethnicity and gender*

Ethnic category	Men 15-64	Women 16-59
Chinese	5.9	7.3
White Other	6.4	7.9
Black African	6.8	8.0
Black Caribbean	8.1	10.8
White Irish	9.0	12.6
White British	10.6	14.8
Bangladeshi	11.6	15.6
Pakistani	11.8	16.2
Indian	12.0	13.8
All employees	10.4	14.2

Source: Census 2001. * Percentage of working-age population

The data show a wide variation by both ethnicity and gender. However, while Asian men and most Asian women (except Indian) have a higher incidence of caring responsibilities than do white British, other non-white ethnic groups have lower rates.

Furthermore any higher rates of caring among the Indian, Pakistani and Bangladeshi ethnic group are likely to be mitigated to some extent by the fact that they are less likely to be working as employees.

As our focus is on those caring patterns of those in work, General Household Survey data was obtained to provide more information on carers by ethnicity and working status to:

- compare to the findings presented above; and
- also provide greater consistency with GHS data used elsewhere in the analysis in this RIA.

The results are presented in Table A2 and A3 below:

Table A2: Caring responsibilities of those aged 16-64 and working full-time, by gender and ethnicity (per cent)*

Ethnic category	Men	Women	Total
White	12	15	13
Indian, Pakistani, Bangladeshi	13*	13*	13
Black, Chinese, Other	5*	11*	8*
All employees	12	15	13

Source: General Household Survey 2000.⁵³ *Due to small sample sizes, these estimates are unreliable and any analysis using these figures may be invalid. This disclaimer must accompany any use of these figures.

Table A3: Caring responsibilities of those aged 16-64 and working part-time, by gender and ethnicity (per cent)*

Ethnic category	Men	Women	Total
White	14	18	18
Indian, Pakistani, Bangladeshi	8*	24*	20
Black, Chinese, Other	8*	14*	11*
All employees	14	18	17

Source: General Household Survey 2000. *Due to small sample sizes, these estimates are unreliable and any analysis using these figures may be invalid. This disclaimer must accompany any use of these figures.

The results show that women, irrespective of ethnicity or working hours, tend to have higher rates of caring responsibilities. They also show that part-time employees are more likely than full-timers to have caring responsibilities.

By ethnicity the results are less clear-cut. Amongst full-time employees, Asian employees have around the same proportion of caring responsibilities as do white employees. Amongst black, Chinese and other non-white employees, fewer have caring responsibilities than whites.

For part-time employees, the gender differences are striking. Asian women have a much higher rate of caring responsibilities (24 per cent) than other groups, including Asian men (just 8 per cent), white men (14 per cent) and white women (18 per cent). Again, caring responsibilities amongst black, Chinese and other non-white employees are lower than for white or Asian employees.

It should however be noted that the sample sizes for non-white ethnic groups in the GHS are small – hence these apparent differences may be unreliable, and any analysis using these figures may be invalid.

Caring responsibilities by type of person cared for

In terms of the current policy proposals presented in the 2006 consultation, it is important to be clear that under the two definitions proposed – *immediate relative* and *near relative* – there would not be any differential impact according to race or ethnicity. In particular, there may be differences, possibly explained by cultural factors, by ethnic

⁵³ All figures from the General Household Survey (GHS) used in this RIA are for those who are employed.

group in terms of the wider *near relative* definition, where caring patterns for 'other relatives' could vary significantly.

116. Therefore additional data from the GHS on ethnicity were requested, though because of small sample sizes it was necessary to aggregate some of the ethnic groups into the following:

- White
- Indian, Pakistani, Bangladeshi
- Black, Chinese, Other

Table A4 below summarise the results by broad ethnic group:

Percentage of all carers by ethnicity	White	Asian*	Other non-white
Spouse	19	7	13
Child under 16	3	0	11
Child 16 and over	5	5	2
Parent	38	37	40
Parent-in-law	14	17	14
Other relative	20	59	16
Friend/neighbour	22	3	14
<i>Unweighted sample</i>	<i>2,233</i>	<i>39</i>	<i>40</i>

Source: General Household Survey, unpublished data based on Table 3.6 of carers 2000.
 * Indian, Pakistan or Bangladeshi.
 ** Due to small sample sizes, the estimates shown for all non-white employees are unreliable and any analysis using these figures may be invalid. This disclaimer must accompany any use of these figures.

From the Table it should be noted that over 96 per cent of the sample of carers is classed as 'white' - there were only 79 observations covering all the other ethnic groups. Hence, there are likely to be serious issues over data reliability in general and the paucity of observations certainly precludes any deeper investigation.

That said, the patterns of caring do appear to be quite similar for both the 'White' and 'Other non-white' groups. Where there is a marked difference is in the caring for 'other relatives' among the Asian group, with around three-fifths of carers providing care to *other relatives*,⁵⁴ compared with only around one-fifth for the 'White' and 'Other non-white' groups.

The wider of the two proposed definitions of carer in the consultation – *near relative* – would therefore not have any implications in terms of distribution of impact across ethnic groups, as 'other relative' would fall within the definition.

⁵⁴ 'Other relatives' include aunts, uncles and cousins. 'Near relative' includes aunts, uncles, siblings but not cousins.

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