

Good Jobs: Employment Rights Legislation: Small and Micro Business Impact Assessment

Introduction

The Economic Vision for the Department for the Economy has four key objectives.

- To increase the proportion of working-age people in Good Jobs.
- To promote regional balance.
- To raise productivity.
- To reduce carbon emissions.

The Department has adopted the Carnegie Framework as its definition of a good job. This framework identifies seven dimensions of job quality: terms of employment; pay and benefits; health, safety and psychosocial wellbeing; job design and the nature of work; social support and cohesion; voice and representation; and work life balance.

An economy that creates good jobs is good for everyone. Good jobs can help boost productivity and economic growth. It also creates a sense of security for workers and their families by ensuring decent pay and promoting a good work-life balance.

The Department wishes to examine how its employment law framework can be strengthened to help deliver good jobs for all, by ensuring a minimum standard of rights and ensuring good employers can operate on a level playing field.

The Department is therefore consulting on ways it can enhance our employment legislation. It seeks views on how employment legislation can enhance four aspects of a Good Job:

- Terms of Employment
- Pay and Benefits
- Voice and Representation
- Work-life balance.

The consultation invites views and seeks evidence on a wide range of possible policy interventions across a range of issues. The feedback gathered during this consultation will inform an Employment Rights Bill and a supporting programme of secondary legislation.

Our economy has many small and micro businesses and it is important that the Department considers the impact of policy proposals on these businesses. These businesses play a vital role in growing our economy and providing employment and good jobs. While this is the initial stage in the policy development process, the Department has given some early consideration to the potential impact on small and micro businesses. Individual regulatory impact assessments on potential policy options, contain an early assessment on the possible costs and benefits to small and micro businesses, where data has been available to allow the Department to conduct an analysis. This initial Small and Micro Business Impact Test (SAMBIT) supplements the small and micro businesses impact assessments contained in those regulatory impact assessments and considers the policy as a whole.

These impact assessments have been conducted on the basis of the information available to the Department at this time. However, further analysis will be carried out throughout the policy development process and as more data becomes available. Any feedback and evidence provided as part of this consultation process will also inform the next stage of the process and help the Department carry out more refined regulatory and SAMBIT assessments on its policies.

Preliminary Assessment

1. Do the regulations apply to small businesses or affect the business environment in which they operate?

Yes, employment legislation applies to small businesses. Businesses which employ people will have to comply with the regulatory framework of employment rights and responsibilities, except where there is a specific exemption.

2. What are the characteristics of small businesses likely to be affected?

Employment legislation applies to all small businesses who have employees and/or workers. Sole traders and the self-employed will not be affected as their employment rights differ from employees and workers.

Consideration of alternative approaches

3. Examining whether alternative approaches (including, but not limited to, exemptions, simplified inspections and less frequent reporting) are appropriate for small and micro businesses:

The purpose of this consultation is to seek views and gather evidence on how we need to amend or enhance our employment legislation. For many aspects of our employment relations framework, we seek views on whether legislation, codes of practice or best practice guidance might be the best way of addressing an issue. We would particularly welcome views of small businesses on these issues.

It is an accepted principle that employees/workers are generally able to access the same framework of employment rights and responsibilities, regardless of the size of their employer. This means that exemptions for small and micro businesses are not always possible. There are, however, some instances of differences in regulatory obligations in employment law for small businesses and micro businesses, where it makes sense to do so. These differences currently exist in information and consultation requirements; redundancy notification requirements and certain obligations relating to trade union recognition and operation in workplaces.

The Department is inviting views on whether it should change the legislation which sets out how an employer must inform and consult appropriate workplace representatives of employees affected by a transfer to a new company (sometimes

known as a TUPE transfer). The Department wishes to seek views on whether micro-businesses should be exempt from the requirements in TUPE legislation which requires employers to inform and consult appropriate workplace representatives of employees affected by a transfer to a new company. In practice, some small employers invite the employees to agree that they will all be representatives, and all are consulted together. A micro-business exemption would allow employers to now inform and consult directly with their employees if they have fewer than 10 employees. The Department wishes to further explore whether employers with fewer than 50 employees or transferring fewer than 10 employees should also be exempt.

The Department is also inviting views on what exemptions might be appropriate for small and micro businesses in relation to any reform of the law in relation to the proposals contained in the voice and representation chapter of the consultation, particularly in relation to trade union access and trade union recognition.

4. Examining whether small and micro businesses (those with fewer than 50 employees) can be given a complete or partial exemption from new rules, and whether alternative approaches are appropriate:

It is an accepted principle that employees/workers are generally able to access the same framework of employment rights and responsibilities, regardless of the size of their employer. This provides eligible workers with broadly equal access to rights and protections.

For most aspects of employment law, it would not be appropriate to give a full or partial exemption to small and micro businesses. However, in recognition of the practical differences in how small businesses engage with and consult their staff, the Department is inviting views on how to simplify the information and consultation requirements in a TUPE scenario so that small businesses could consult directly with their employees.

The Department is also seeking views on whether there should be any small and micro business exemptions to changes to trade union legislation.

The Department is consulting on proposals to introduce new rights to leave and pay for parents whose babies need neonatal care. These proposals include a new paid right to leave for working parents that meet the eligibility criteria. Pay would be set at the statutory rate which is currently £184.03 for up to a maximum of 12 weeks. Claims would be processed and paid by employers who can then claim reimbursement from government. While this right to paid leave would apply to all eligible workers, in recognition of the increased administrative and regulatory impact this may have on small businesses, it is proposed the proportion an employer can claim back would be based on the business' total NICs 1 costs.

Businesses with more than £45,000 NICs 1 costs would receive 92% of the cost. Those with less than £45,000 NICs 1 costs would receive 103% of the cost. Due to this model of recouping costs, the expected overall impact on businesses is likely to be negligible, as while larger businesses will be impacted by paying 8% of the

payment, smaller and medium businesses will be compensated for the additional administrative burden placed on them.

By introducing a statutory paid right to leave in these circumstances, workers would benefit from having access to leave when they need it. Employers would benefit from the provision of a statutory entitlement that creates a standardised process for managing paid leave in these circumstances. It will also enable employers that have or wish to have contractual arrangements which would permit their employees to take leave in these circumstances to be wholly or partially reimbursed.

5. Examining whether a lighter regulatory regime would be appropriate for small and microbusinesses.

It is generally accepted that most employment rights apply equally to all eligible workers, regardless of the size of their employer. In the majority of instances, a lighter regulatory regime would not be appropriate for small and micro businesses. However the Department is considering some exceptions as outlined in this SAMBIT and supporting regulatory impact assessments, on individual policy options. These potential exceptions aim to recognise the impact on small and micro businesses.

The Department is also seeking views on whether regulatory intervention, codes of practice or best practice guidance may be the most effective intervention for some of the policy options in this consultation.

Scoping

6. How serious is the problem the proposal seeks to address in relation to smaller businesses?

An economy that creates and maintains good jobs is beneficial to everyone. Many employers, including those in smaller businesses, already treat their employees fairly and provide good working conditions. However, it is important to create a regulatory level playing field so that rogue employers cannot obtain a competitive advantage by treating their workers unfairly.

Some of the policy options being considered in this consultation, may assist small businesses by providing them with the support they need to provide paid statutory leave to workers facing difficult personal challenges (for example should a baby need neo-natal care). Smaller employers would be able to seek reimbursement from the government at a rate of 103%, rather than the 92% rate available to larger businesses.

7. What changes will smaller businesses have to make to the way their business operates?

Smaller business, like all employers, would have to familiarise themselves with any new regulatory requirements that may be introduced in a new Employment Rights Bill and supporting package of secondary legislation.

Smaller businesses, like all employers, may have to implement changes in their administrative, payroll or HR processes as required, depending on the specific content of any Employment Rights Bill and supporting package of secondary legislation.

8. Is there likely to be a greater impact on the operations and performance of smaller business than others (It is normal for the impact of measures to bear more heavily on small businesses because they do not enjoy the economies of scale of larger businesses)?

It is recognised that many small businesses may find it more challenging to adapt to any new legislative changes as they may not have dedicated human resources departments to help them adjust for, prepare for and implement those changes.

9. What are the likely approximate costs and benefits of the proposal for small business?

Costs

A more detailed breakdown of the estimated costs on small businesses is contained in the individual regulatory impact assessments that have been conducted for each of the potential policy options considered in the consultation paper, where sufficient data has been available at the time of carrying out these assessments.

Costs can include familiarisation costs associated with understanding any new policy and, where appropriate, the ongoing costs associated with implementing the policy in future years.

For some policy options, there may only be transitional or familiarisation costs, as the ongoing cost of continuing to implement the policy may be cost-neutral.

Benefits

In terms of small business benefits, many of the benefits of legislation which help facilitate good jobs are non-monetisable. Employers may benefit from the retention of valued staff and increased employee engagement. Small businesses may benefit by being able to attract staff on a more equitable basis with larger employers – particularly in terms of providing access to paid statutory leave such as neo-natal care leave and pay.

Research suggests that good jobs can have a positive impact on productivity.

10. Will exempting (either fully or partially) smaller businesses from the policy materially affect the potential benefits from the policy?

Yes. The majority of businesses are SMEs, many of which would be small and micro businesses. Applying an exemption would have the potential to significantly and negatively impact the effectiveness of the policy aim of increasing the proportion of the working age population in good jobs, as it would exclude many workers from any enhanced framework of employment rights and responsibilities.

While an exemption for small and micro businesses would not necessarily be appropriate in most circumstances, the Department is giving consideration to some of the exemptions and specific adjustments that can be made for small businesses, as outlined in this SAMBIT.

However, the Department also wishes to explore what other means of support it can provide to small businesses to support them through any transition. The consultation specifically seeks views on what support would be appropriate.

Where legislative change is preferred over guidance or other interventions, the Department will consider what aids and support it can provide. This could include the production of guidance that may help businesses of all sizes comply with their regulatory obligations. Support could include more detailed information on websites such as NIDirect and NIBusinessInfo, as well as the creation of templates that small businesses may be able to adapt for their own purposes (for example, templates of written statements). The Labour Relations Agency is also available to provide advice and support to small and micro businesses.

The information provided to the Department during the consultation process will help inform the best way to support small businesses. It will also help the Department complete a further SAMBIT later in the policy process.

11. Are there alternative approaches for smaller businesses, which would not materially affect the potential benefits from the policy?

This SAMBIT outlines the circumstances where alternative approaches or exemptions might be appropriate for smaller businesses for certain matters that are explored in the consultation document.

For other potential policy options, alternative approaches for small businesses may not be possible without materially affecting the potential benefits of the policy of supporting good jobs by enhancing the employment law framework.

Impact Test

12. Is there likely to be a greater impact on the operations and performance of small and micro business than others?

Small and micro businesses may potentially find it more difficult to adapt to and comply with any new employment rights legislation. However, they may also benefit from the non-monetary benefits associated with an economy that supports good jobs. Businesses with engaged workers in good jobs may benefit from increases in productivity.

Conclusion

This document examines the likely impact on small businesses. The Department will invite views on the content of this small and micro business assessment during the consultation. Comments are welcomed in respect of any potential mitigations that could be provided for small and micro businesses – for example, exemptions, guidance, training or advice. A further analysis will be undertaken following the consultation process.

Approved by: Colin Jack

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