

<b>Title:</b> <b>Theme B: Pay &amp; Benefits</b>  Working Time Regulations – Holiday Pay Reference Period	<b>Regulatory Impact Assessment (RIA)</b>
	<b>Date:</b> 22/06/2024
<b>Lead department or agency:</b> Department for the Economy	<b>Type of measure:</b> Primary Legislation
	<b>Stage:</b> Initial
<b>Other departments or agencies:</b> N/A	<b>Source of intervention:</b> Domestic NI
	<b>Contact details:</b> <a href="mailto:goodjobsconsultation@economy-ni.gov.uk">goodjobsconsultation@economy-ni.gov.uk</a>

### Summary Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary? (7 lines maximum)</b> The minimum statutory requirement for paid holidays each year is 5.6 weeks. The amount of pay that a worker receives for the holidays they take depends on the number of hours they work and how they are paid for those hours. For workers who do not receive fixed pay, under the current legislative framework, an employer should look back at a worker's previous 12 paid weeks (known as the holiday pay reference period) to calculate what a worker should be paid for a week's leave. Several high profile court cases have shone a light on the potential deficiencies with this 12 week reference period, not least significant fluctuations for seasonal workers. It is now widely accepted that a reference period of 52 weeks represents a fairer and more robust approach.	
<b>What are the policy objectives and the intended effects? (7 lines maximum)</b> The objective of the policy is to ensure that the holiday pay calculations for workers are not affected by seasonal fluctuations and more fairly reflects the average pay for workers whose pay varies across the year.  This approach would align with key court case judgments about holiday pay calculations and bring our legislation into alignment with Britain. Not only would this change ensure that variable hours workers receive a more reflective holiday pay entitlement of actual hours worked over the period of 12 months, it would also make it easier for employers who operate across the UK to calculate holiday pay in a consistent manner.	
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum)</b> Option 1 – Legislate to change the holiday pay reference period to 52 weeks from 12.	
<b>Will the policy be reviewed?</b> Not formally but routine, regular updates from OITFET will enable us to ascertain if the number of holiday pay claims are reducing as a result.	<b>If applicable, set review date:</b> Informal, ongoing.

Cost of Preferred (or more likely) Option		
Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
£0.4 best estimate	N/A	£0

<b>Does Implementation go beyond minimum EU requirements?</b>	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Is this measure likely to impact on trade and investment?</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input checked="" type="checkbox"/>
Are any of these organisations in scope?	<b>Micro</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Small</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	<b>Medium</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Large</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: Kellie Spratt Date: 22-06-24.

# Summary: Analysis and Evidence

# Policy Option 1

Description: Statutory – change the 12 week reference period to a 52 week reference period.

## ECONOMIC ASSESSMENT (Option 1)

Costs (m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (m) (Present Value)
	(constant price)	Years		
<b>Low</b>	£0.15	<b>1</b>	<b>Optional</b>	<b>£,Optional</b>
<b>High</b>	£0.7		<b>Optional</b>	<b>Optional</b>
<b>Best Estimate</b>	£0.4			£0.4

**Description and scale of key monetised costs by ‘main affected groups’** Maximum 5 lines  
The introduction of this option would apply to all workers who work variable hours.

In order to estimate how many workers are likely to be affected we have relied on assumptions contained within a UKG Impact Assessment on a ‘Right to request a more predictable working pattern’, which identifies a figure of 719,000 workers in Britain with highly variable work patterns<sup>1</sup> or 2.2% of the total number of people employed in Britain. The same proportion of workers, in the north of Ireland would equate to 17,837 people or 2.2% of the total 801,800<sup>2</sup> locally employed workforce.

Cost implications will be two fold: there will be familiarisation costs for those affected (businesses who employ variable hours workers) when the new legislation comes into force and some businesses may require updates to their IT systems. This will be dependent on how they calculate holiday pay entitlement currently.

It is assumed that medium/large businesses would have capacity to administer this change and incur minimal cost. However, small & micro businesses would likely incur costs to make structural changes to their infrastructure and may to contract an IT service provider to make the necessary changes.

This is anticipated at 60 minutes at an hourly rate of £25.00<sup>3</sup> rising to £29.49 per affected business when non-wage labour costs are included. This is assumed to be a one off cost.

The familiarisation costs are based on a senior official spending 15 minutes familiarising themselves with the new provisions, at the quarter-hourly rate of £7.62.

We have no accurate way of calculating the total familiarisation and IT Service costs as we have no way of knowing how many businesses will be impacted. Therefore, we have calculated a low, medium and high estimated familiarisation and IT Service cost, based on 10%, 25% and 50% of businesses operating in the north of Ireland which employ 1 or more people, as of 2024, 39,205<sup>4</sup>.

Low (10%) – Familiarisation costs £29,874.21 and IT Service cost £115,615.55 = £145,489.76

Medium (25%) – Familiarisation costs £74,685.53 and IT Service cost £289,038.86 = £363,724.39

High (50%) – Familiarisation costs £149,371.05 and IT Service cost £578,077.73 = £727,448.78

We have taken the average of these 3 figures as our best estimate for the potential cost to business of this policy change. This average is: £412,220.98. £0.4m one off cost to business.

In Britain, a full regulatory impact assessment was not produced for this provision as its impact was identified as being marginal on the costs of business, charities, or voluntary bodies.

**Other key non-monetised costs by ‘main affected groups’** Maximum 5 lines  
None anticipated.

Benefits (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
	(constant price)	Years		
<b>Low</b>	<b>Optional</b>		<b>Optional</b>	<b>Optional</b>
<b>High</b>	<b>Optional</b>		<b>Optional</b>	<b>Optional</b>

<sup>1</sup> [Parliament UK website](#)

<sup>2</sup> [NISRA website - June 2024 labour market report](#)

<sup>3</sup> [Employee earnings in NI 2023 | Northern Ireland Statistics and Research Agency](#)

<sup>4</sup> [Invest NI website - NI business base 2023](#)

<b>Best Estimate</b>				
<b>Description and scale of key monetised benefits by 'main affected groups'</b> Maximum 5 lines				
None anticipated.				
<b>Other key non-monetised benefits by 'main affected groups'</b> Maximum 5 lines				
It is anticipated that a 52 week holiday pay reference period would make it more straightforward for employers to calculate entitlements for variable hours workers, as well as alignment with Britain benefitting those businesses which operate in both jurisdictions. It will also introduce a fairer and more reflective calculation method for workers.				
<b>Key Assumptions, Sensitivities, Risks</b> Maximum 5 lines				
None anticipated.				

### **BUSINESS ASSESSMENT (Option 1)**

<b>Direct Impact on business (Equivalent Annual) £m</b>				
<b>Costs: 0.4</b>	<b>Benefits:</b>	<b>Net:</b>		

### **Cross Border Issues (Option 1)**

<b>How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland)</b> Maximum 3 lines				
The same policy is in place in GB.				
In the south of Ireland, the holiday pay reference period is 13 weeks.				

### **Evidence Base**

The minimum statutory requirement for paid holidays each year is 5.6 weeks. These 5.6 weeks are formed from two pots of leave; four weeks based on EU law and 1.6 additional weeks under domestic law.

The amount of pay that a worker receives for the holiday they take depends on the number of hours they work and how they are paid for those hours. For individuals who generally receive fixed pay, they will expect to receive the same amount at the end of a pay period whether they were on a holiday or not.

The situation becomes more complicated when a worker does not work fixed or regular hours and so does not receive the same amount in each pay period.

For workers who do not receive fixed pay, an employer should normally look back at their previous 12 paid weeks (known as the holiday pay reference period) to calculate what a worker should be paid for a week's leave. This, however, can be complex, particularly for individuals whose roles are subject to seasonality and irregular working hours. Due to this complexity, there is a risk that individuals may not receive their correct entitlement.

The Department is seeking views on replicating the approach in Britain and expanding the holiday pay reference period from 12 weeks to 52 weeks.

This change was recommended in 2019 as part of the "Good Work, A Review of Modern Working Practices" (The Matthew Taylor Report)<sup>5</sup> with a view to reducing risk of an incorrect entitlement calculation for those who work irregular or variable hours.

<sup>5</sup> [GOV.UK website - Taylor review modern practices](#)

Introducing this policy option, it is envisaged, will make the calculation process fairer and more robust, as well as making it more straightforward for employers to calculate entitlements.

As highlighted above, information has been used from a British Impact Assessment on 'Right to request a more predictable working pattern', in an attempt to identify numbers of workers on variable contracts, as a route to establishing impact of introducing this policy option.

It identifies a figure of 719,000 workers in Britain with highly variable work patterns<sup>6</sup> or 2.2% of the total number of people employed in Britain. The same proportion of workers here would equate to 17,837 people.

Cost implications would be two fold; there will be familiarisation costs and updates to IT systems. Costs are not anticipated to be recurring.

The familiarisation costs are based on a senior official spending 15 minutes familiarising themselves with the new provisions, at a quarter-hourly rate of £7.62. IT Service costs were anticipated at 60 minutes at an hourly rate of £25.00 rising to £29.49 per affected business when non-wage labour costs are included.

While there is a low number of affected individuals, we have no evidence to indicate how many employers those individuals work for, therefore, we have supplied a range of familiarisation costs calculating if 10%, 25% or 50% of businesses were affected.

The number of businesses operating in the north of Ireland which employ 1 or more people, as of 2024, 39,205.

Low (10%) – Familiarisation costs £29,874.21 and IT Service cost £115,615.55 = £145,489.76

Medium (25%) – Familiarisation costs £74,685.53 and IT Service cost £289,038.86 = £363,724.39

High (50%) – Familiarisation costs £149,371.05 and IT Service cost £578,077.73 = £727,448.78

We have taken the average of these 3 figures as our best estimate for the potential cost to business of this policy change. This average is: £412,220.98. £0.4m one off cost to business.

In Britain, a full regulatory impact assessment was not produced for this policy change as its impact was identified as being marginal on the costs of business, charities, or voluntary bodies – de minimis.

## **Working Time Regulations – Holiday Pay Reference Period Small and Micro Business Impact Assessment**

### **Preliminary Assessment**

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

Yes. The proposed policy approach, if implemented, will apply to all businesses which employ an individual(s) on a variable or irregular hours contract and whose holiday pay entitlement, to this point, had been calculated on a 12 week reference period basis.

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<sup>6</sup> [Parliament UK website](#)

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

Payroll systems may need updated if the payroll system uses a 12 week calculation period. Only those small businesses that employ an individual(s) on a variable or irregular hours contract and whose holiday pay entitlement, to this point, had been calculated on a 12 week reference period basis, will be affected.

### **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:**

An alternative approach is not suitable for this policy proposal.

Further consideration will be given to the impact on the sector before implementation take place. This may be in terms of support, provision of template to follow, advice etc.

#### **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:**

Not appropriate for this policy proposal.

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

Not appropriate for this policy proposal.

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

Not known. Any business regardless of size that employs variable hours workers will need to implement the change.

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

Holiday pay calculation and potential payroll changes. If implemented, those smaller businesses which employ an individual on a variable or irregular hours contract and whose holiday pay entitlement, to this point, had been calculated on a 12 week reference period basis, will be required to review their process for calculating holiday pay entitlements, and may be required to review contractual terms with affected workers.

#### **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)?**

Anecdotally, in terms of having less resources available to manage employment relations matters, the time required to implement this policy may disproportionately affect smaller businesses, however, there is no quantitative data available to identify the size of businesses which employ individuals on variable or irregular hours contracts and so, the extent of the impact on small businesses is not known.

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

Costs cannot be definitively identified. An attempt has been made, however, to calculate the familiarisation costs and IT service costs.

The best estimate being £412,220.98. This is a one-off cost. There will be no recurring costs. The actual cost could be lower.

In terms of benefits, however, it is anticipated that a 52 week holiday pay reference period would make it more straightforward for business to calculate entitlements for variable hours workers. It will also align the position between ourselves and Britain benefitting those businesses which operate in both jurisdictions. Additionally, assessing a person's entitlement to holiday pay over a 12 month period, instead of a 12 weeks is a fairer and more robust approach for workers with seasonal fluctuations in their work.

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

Not appropriate for this policy proposal.

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

Not appropriate for this policy proposal.

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

Potentially but not to any great extent. The impact on businesses as a whole is expected to be small. The extent of the impact of the policy will be dependent upon the number of workers employed on variable and irregular hour contracts which use a 12 week holiday entitlement reference period.

Inherent resource limitations in smaller businesses may, however, result in a greater short term impact but this will be dependent upon the structure of each employer.

**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.

Approved by: Kellie Sprott

Date: 22/06/2024.