



Department  
for Business  
Innovation & Skills

## COLLECTIVE REDUNDANCIES

Government Response to  
consultation on changes to the  
rules - Impact Assessment

DECEMBER 2012

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<b>Title:</b>  <b>Collective Redundancy Consultation: Government Response</b> <b>IA No:</b> BIS0347 <b>Lead department or agency:</b> BIS <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b> <b>Date:</b> 18/12/2012 <b>Stage:</b> Final <b>Source of intervention:</b> Domestic <b>Type of measure:</b> Secondary legislation <b>Contact for enquiries:</b> Vivien Brighton
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
£m	£m	-£ TBCm	Yes	OUT

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

The UK transposition of the Collective Redundancies Directive is causing bad quality consultation about large-scale redundancies. The law requires that redundancies affecting 100 or more employees cannot take place until at least 90 days after the start of consultation. Most employers argue that 90 days is unnecessarily long and undermines productivity, hampering necessary change. There is also evidence of confusion and disagreement between employers and employee representatives about the process and aims of consultation, which prevents effective consultation from taking place. The preferred option will address these issues and allow the parties to concentrate on the key issues.

**What are the policy objectives and the intended effects?**

The aim of the proposed policy is to create a simple, understandable process that promotes quality consultation and will:

- allow the parties to engage in consultation that is best suited to their circumstances;
- improve business flexibility to restructure effectively; and
- reduce business burdens.

Balance the needs of employees made redundant with those that remain.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- 1 - Do nothing
- 2a - Reduce the minimum period before redundancies can take effect to 30 days.
- 2b - Reduce the minimum period before redundancies can take effect to 45 days.
- 3 - Improve the guidance available to help provide clarity for the parties involved. This is a non-regulatory measure
- 4 - Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations.

The preferred option is a combination of the non-regulatory option 3 alongside regulatory options 2b and 4. This will help to improve consultation practice by providing more clarity over key issues and business flexibility by reducing the minimum period before consultation can take effect.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 01/2016

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/A		Non-traded: N/A

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

Signed by the responsible SELECT SIGNATORY:

Date:

# Summary: Analysis & Evidence

## Policy Option 1

**Description:** Option 2 (a) Reduce the minimum period before redundancies could take effect to 30 days

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: TBC
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate				TBC	
<b>Description and scale of key monetised costs by ‘main affected groups’</b> Employers: reduction in output from employees made redundant more quickly. Employees: reduction in the amount of time paid by their current employer, and therefore in the pay received. We expect this reduction in pay to total £252m per annum across all affected employees. <b>All monetised costs are subject to review, and components of the Net Benefit calculation are essential in the Business Assessment, so both figures are given as TBC.</b>					
<b>Other key non-monetised costs by ‘main affected groups’</b>  Employees: Potential reduction in period of time in which to search for a new job. Exchequer: possible short-term increase in employment tribunal claims relating to consultation in redundancy situations.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate				TBC	
<b>Description and scale of key monetised benefits by ‘main affected groups’</b> Employers: reduction in wage costs by allowing large scale redundancies to take place more quickly. We currently estimate this to be in the region of £290m per annum. <b>All monetised benefits are subject to review, and components of the Net Benefit calculation are essential in the Business Assessment, so both figures are given as TBC.</b>					
<b>Other key non-monetised benefits by ‘main affected groups’</b> Employers: increased flexibility in making business changes, potential for improved productivity relative to current situation. Employees: reduction in period of uncertainty, possible reduction in stress experienced Whole economy: this measure would facilitate resources moving to more productive uses more quickly, it should therefore be net beneficial to the UK economy.					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	3.5
In understanding the scale of the issue we rely upon the European Restructuring Monitor which provides data on planned levels of redundancies rather than the eventual numbers of redundancies. NOTE the Business Assessment (OIOO) is still being reviewed, as components of this form the net benefit assessment, this is also marked as to-be-confirmed (TBC). Once verified these figures will be published.					

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: TBC			In scope of OIOO?	Measure qualifies as
Costs:	TBC	Benefits:	TBC	OUT
		Net:	TBC	

# Summary: Analysis & Evidence

## Policy Option 2

**Description:** Option 2(b) Reduce the minimum period before redundancies could take effect to 45 days

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: TBC
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					TBC
Description and scale of key monetised costs by ‘main affected groups’					
Employers: reduction in output from employees made redundant more quickly. We currently estimate this to be in the region of £230m per annum.					
Employees: reduction in the amount of time paid by their current employer, and therefore in the pay received. We expect this reduction in pay to total £252m per annum across all affected employees. We expect that this impact will be lower than for policy option 2a, but it is not possible to quantify the difference.					
Other key non-monetised costs by ‘main affected groups’					
Employees: Potential reduction in period of time in which to search for a new job.					
Exchequer: possible short-term increase in employment tribunal claims relating to consultation in redundancy situations; possible very small increase in job seeker's allowance claims.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					TBC
Description and scale of key monetised benefits by ‘main affected groups’					
Employers: reduction in wage costs by allowing large scale redundancies to take place more quickly. We currently estimate this to be in the region of £290m per annum. We expect that this impact will be lower than for policy option 2a, but it is not possible to quantify the difference.					
Other key non-monetised benefits by ‘main affected groups’					
Employers: increased flexibility in making business changes, potential for improved productivity relative to current situation. The impact will be lower than for policy option 2a					
Employees: reduction in period of uncertainty, possible reduction in stress experienced					
Key assumptions/sensitivities/risks					Discount rate (%) 3.5
In understanding the scale of the issue we rely upon the European Restructuring Monitor which provides data on planned levels of redundancies rather than the eventual numbers of redundancies. It is difficult to quantify the difference in impact between this option and option 2(a), but it is expected that option 2(a) would involve a bigger employer benefit. NOTE the business assessment (OIOO) is still being reviewed, as components of this form the net benefit assessment, this is also marked as to-be-confirmed (TBC).					

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m: TBC			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: TBC	Net: TBC	Yes	OUT

# Summary: Analysis & Evidence

## Policy Option 3

**Description:** Improve guidance on carrying out collective redundancy consultations

### FULL ECONOMIC ASSESSMENT

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

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

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

**Other key non-monetised costs by 'main affected groups'**  
 Exchequer: production of guidance will entail a minimal amount of additional staff time.

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

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

**Other key non-monetised benefits by 'main affected groups'**  
 Employers: improves certainty and provides greater clarity on their obligations for running collective redundancy consultations. Potential for higher quality consultations between employers and employees ensuring a more constructive relationship.  
 Employees: will benefit from any improvement in the quality of consultation, leaving them better placed to find alternative employment or maintain their existng employment relationship.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>
Realisation of the benefits of this option is dependent on the guidance being a clear and simple to understand product that can be well communicated to those affected.	

### BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

# Summary: Analysis & Evidence

## Policy Option 4

**Description:** Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
<b>Other key non-monetised costs by 'main affected groups'</b> Employers: for those employing significant numbers of fixed-term employees, there may be limited familiarisation costs. The majority of this impact is expected to be limited to the Higher Education sector.					
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
<b>Other key non-monetised benefits by 'main affected groups'</b> Employers: provides certainty on the extent of their obligations for running collective redundancy consultations with regard to fixed-term employees. Potential for a reduction in costs where employers that make extensive use of fixed-term contracts no longer feel obliged to run collective consultations. Again, the majority of this impact is expected to be limited to the Higher Education sector.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
We assume that the businesses primarily affected by this option would belong to the Higher Education sector, as we have not received any evidence that fixed-term contracts have been an issue in other sectors. However, there is a possibility that there will be a broader impact across further sectors.					

### BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

# Evidence Base (for summary sheets)

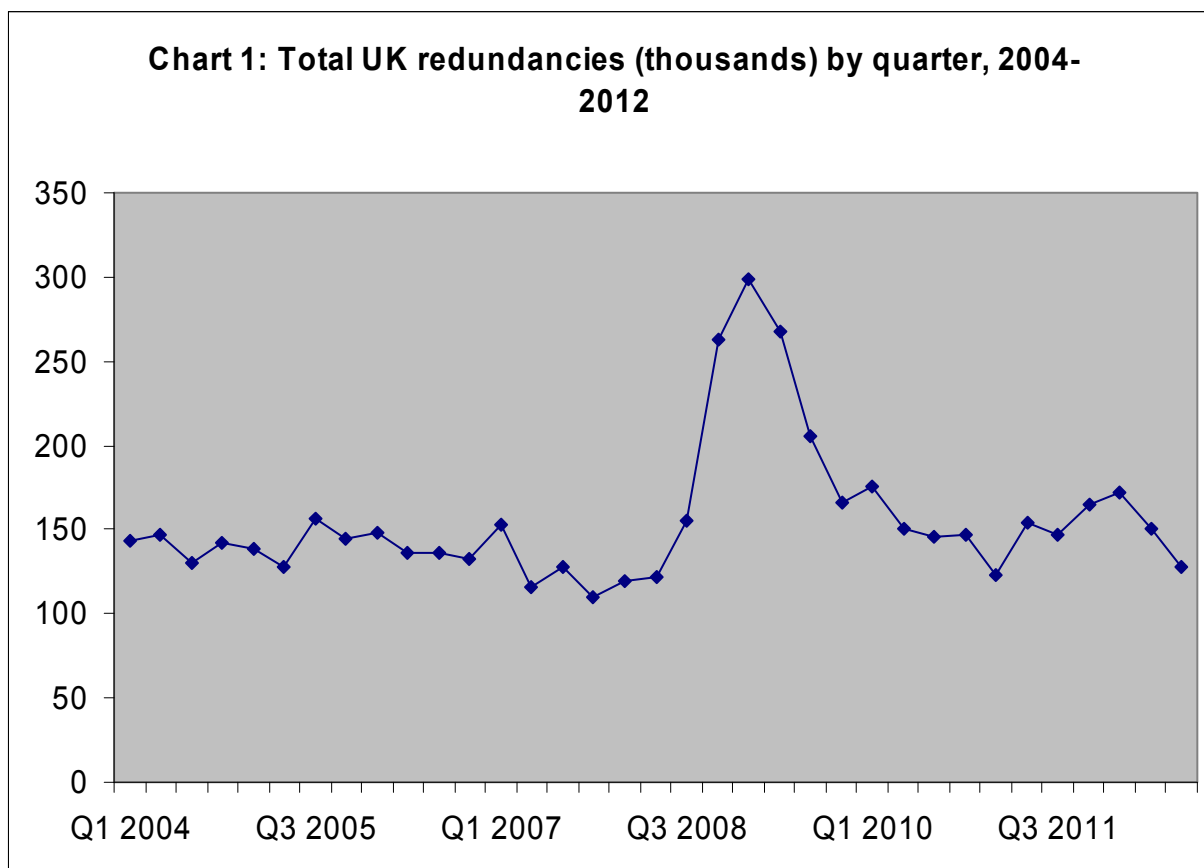
## Background

1. This impact assessment considers changes to the rules surrounding collective redundancy consultation where employers are considering making 100 or more people redundant. These situations are often referred to as “large scale redundancies” throughout this text.
2. **Note:** as the business (or one-in-one-out) assessment needs to be verified by the Regulatory Policy Committee, final conclusions on the size of the regulatory out are not presented. Similarly as the components of this calculation also feature in assessment of the overall net benefit of these proposals, the overall net benefit is not presented. Both figures are presented as “TBC” or to-be-confirmed. As soon as these figures have been verified they will be published.
3. There are over 29 million people employed in the UK. The UK labour market is characterised by a high degree of churn – there is significant movement between jobs and between employment, unemployment and inactivity in a given year. Table 1 below demonstrates some of these movements in the period between quarter 4 of 2011 and quarter 3 of 2012 (note that this is just one year and comes from an ONS (Office for National Statistics) experimental series, but it illustrates the magnitude of movements). For example, this shows nearly 3.5 million movements out of employment in this period.
4. Redundancies are one reason why employees will leave their current employment. Labour Force Survey (LFS) data shows that the same period as Table 1, 614,000 people were made redundant. Whilst the two data sources are not directly comparable, this represents about 18 per cent of the gross outflows from employment.

<b>Table 1: Gross and Net Flows by Work Status Q4 2011 – Q3 2012</b>			
millions, totals may not add due to rounding			
	<b>EMPLOYMENT</b>	<b>UNEMPLOYMENT</b>	<b>INACTIVITY</b>
<b>Gross inflows</b>	4.1	3.61	3.36
<b>Gross outflows</b>	3.48	3.82	3.74
<b>Net flows</b>	0.62	-0.21	-0.41
Source: ONS, Labour market flows (Experimental statistics), working-age population, seasonally adjusted			

5. Quarterly redundancy figures back to 2004 are illustrated in Chart 1 below, which shows that apart from a peak in the recent recession, these have typically been around 150,000 individuals per quarter. After a redundancy some will move directly into other employment, whilst some will move to unemployment or inactivity (outside the labour market) for a period of time.

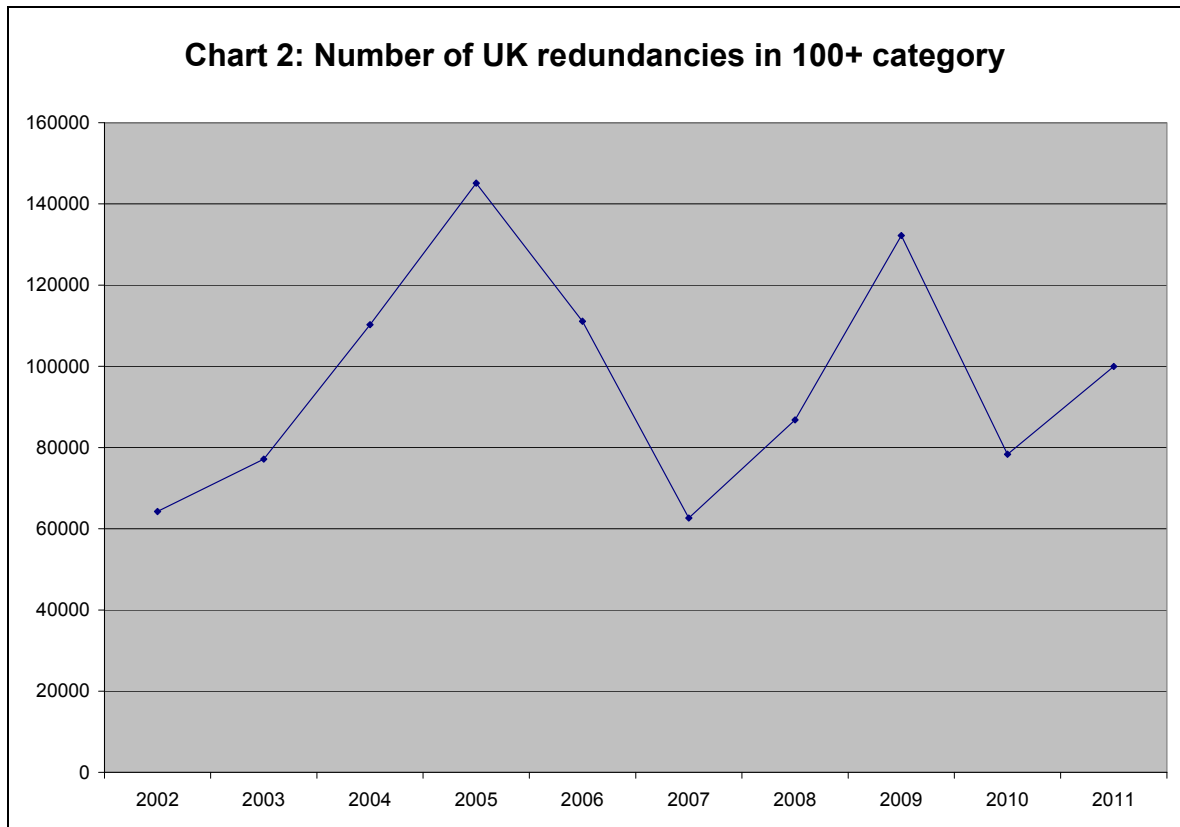




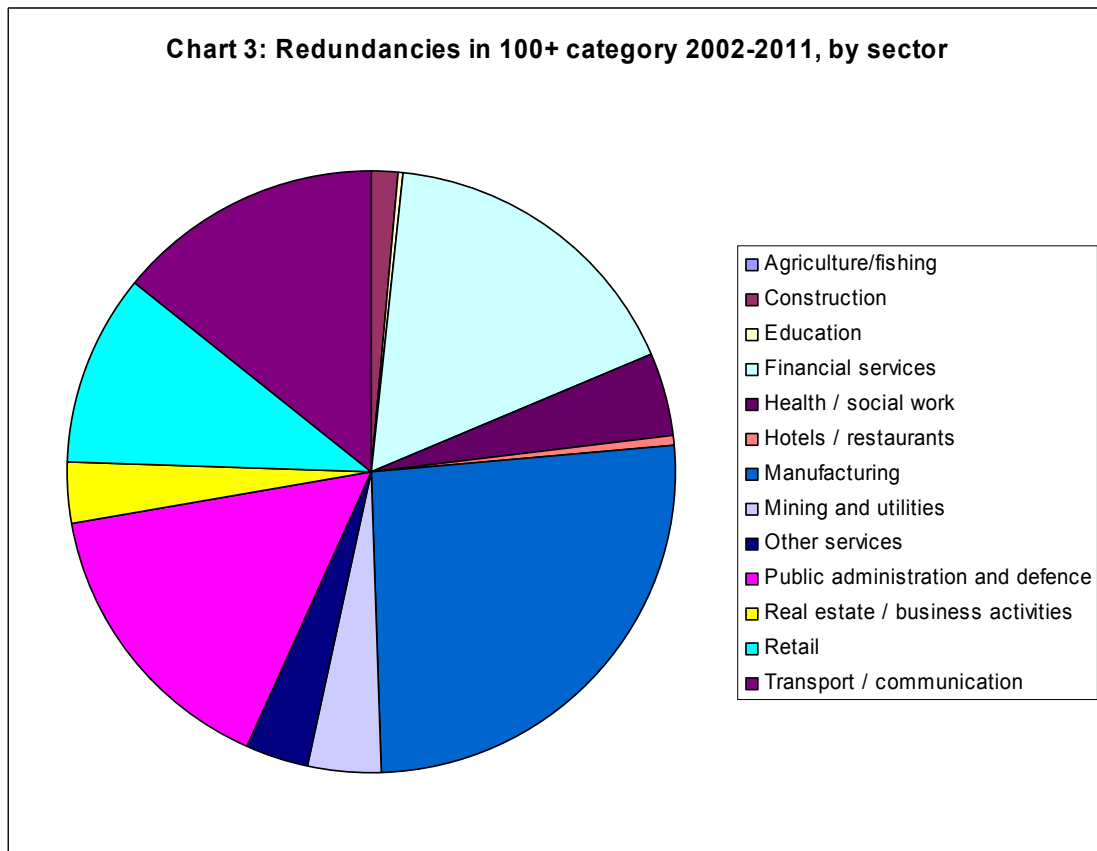
Source: Labour Force Survey

6. Large scale redundancies (where 100 or more people are made redundant in one exercise) are subject to collective redundancy consultation rules (the subject of this impact assessment). There is some uncertainty around the number of redundancies stemming from such large scale exercises. Where an employer is engaging in collective consultation about redundancies they have a duty to inform the Secretary of State for Business, via completion of an “HR1” form to the Insolvency Service. The collection of this information is to allow Government (via Job Centre Plus) to offer assistance to those being made redundant. Some of this information was used through the consultation stage impact assessment; however, this response stage assessment uses the European Restructuring Monitor instead, as this period has revealed this source to be more robust.
7. The European Restructuring Monitor is maintained by Eurofound and gathers information about planned redundancies via press reports across European countries<sup>1</sup>.
8. This data source is used throughout this Impact Assessment due to the systematic way it is collected and the ability to break down the data to look at sectors, reasons for redundancies and pick out large scale redundancies. Eurofound note that in many countries the figures under-represent total large scale collective redundancies due to under-reporting, but that this is less of an issue with the UK as the media tends to be quick to report planned redundancies. Over the period 2002 – 2011, this data suggests that average annual redundancies from large scale collective consultation were 96,770. The pattern of large scale collective redundancies is illustrated in Chart 2.
9. Chart 3 below uses European Restructuring Monitor data to show a breakdown of large scale redundancies by sector. Manufacturing, financial services, public administration and transport and communication were amongst sectors with the highest proportions of large scale redundancies. When considered against the proportions of those in employment in each of these sectors, these same sectors are over-represented in large-scale redundancy situations across this time period.

<sup>1</sup> ERM data can be found at <http://www.eurofound.europa.eu/emcc/erm/index.htm> whilst more information on the data limitations is set out <http://www.eurofound.europa.eu/emcc/erm/datalimitation.htm>

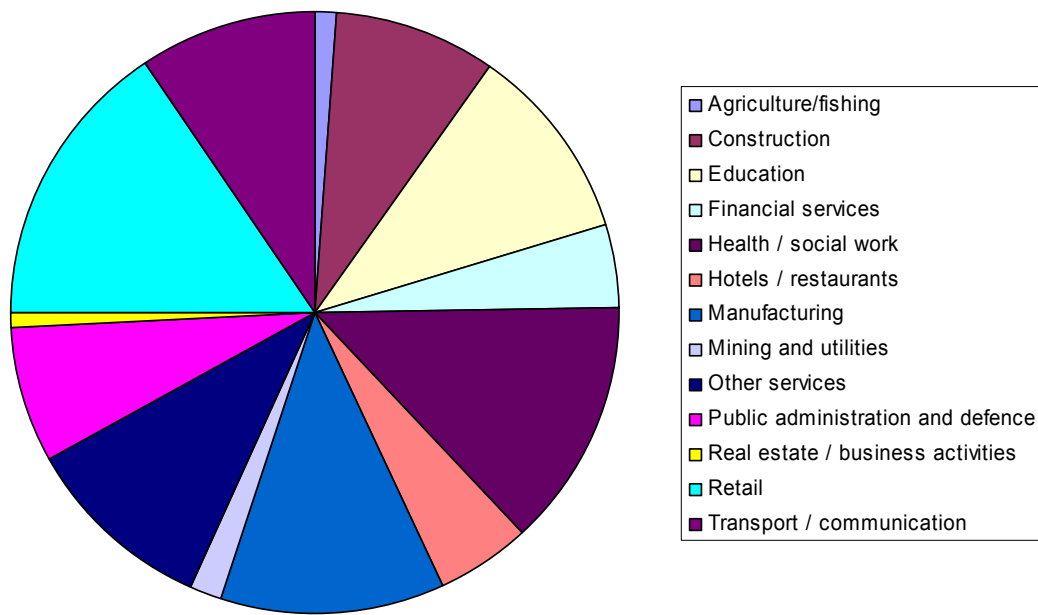


Source: European Restructuring Monitor



Source: European Restructuring Monitor

**Chart 4: Employment 2002-2011, by sector**



Source: Labour Force Survey

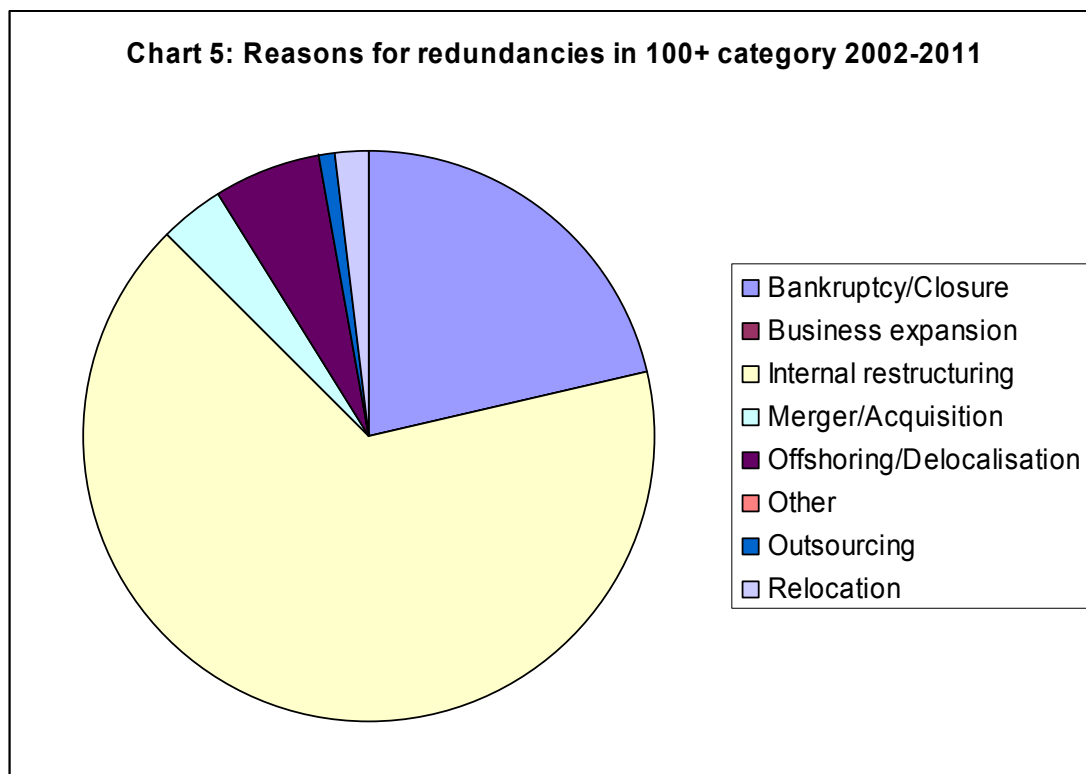
10. The UK has one of the most flexible labour markets in the world according to the OECD's employment protection index. However, the UK performs relatively less well on the component of that index that relates to collective redundancies and there may be room for greater flexibility here.
11. Some UK employers have argued that the current regime for collective redundancy consultation is harming their competitiveness on a global level. They state that it is much quicker to restructure in other, competitor, nations, both within the EU and beyond. However, further discussion in focus groups with employers suggests this is not a universal view, and that in fact many view the process as easier in the UK than the rest of the EU. Table 2 shows that, compared to the main competitor nations across Europe and globally, the UK has a much higher requirement for minimum periods before large-scale redundancies can take effect. However, the table does not tell the whole story. Some of the competitor nations listed (including France and Germany) rely on strict enforcement and monitoring regimes to ensure minimum standards of consultation where the UK relies on minimum periods before redundancies can take effect. Consultation period refers to time where the workforce is actively consulted on planned redundancies. The notice period follows from when a redundancy notice is issued.

Table 2: Collective redundancy requirements in other countries

Country	Consultation Required?	Notify government?	Number of redundancies required to trigger consultation	Minimum Consultation Period	Minimum Notice Period
<b>Belgium</b>	<b>Yes</b>	<b>Yes</b>	<b>50% of workforce if fewer than 11 total workforce 6 for some rules Else 10 employees</b>	<b>30 days</b>	<b>30 days</b>
<b>France</b>	<b>Yes</b>	<b>Yes</b>	<b>2</b>	<b>None</b>	<b>Under 100 - 30 days 100-249 – 45 days More than 250 – 60 days</b>
<b>Germany</b>	<b>Yes</b>	<b>Yes</b>	<b>5</b>	<b>None</b>	<b>None</b>
<b>Ireland</b>	<b>Yes</b>	<b>Yes</b>	<b>5</b>	<b>30 days</b>	<b>30 days</b>
<b>Spain</b>	<b>Yes</b>	<b>Yes</b>	<b>10</b>	<b>30 days</b>	<b>30 days</b>
<b>Italy</b>	<b>Yes</b>	<b>Yes</b>	<b>5</b>	<b>45 days</b>	<b>45 days</b>
<b>Netherlands</b>	<b>Yes</b>	<b>Yes</b>	<b>20</b>	<b>1 month</b>	<b>1 month</b>
<b>Poland</b>	<b>Yes</b>	<b>Yes</b>	<b>10</b>	<b>45 days</b>	<b>45 days</b>
<b>United States</b>	<b>No – But unions use collective agreements legislation to force it</b>	<b>Yes – if more than 100 employees affected</b>	<b>Dependent on collective agreement with union</b>	<b>None</b>	<b>60 days</b>
<b>Canada</b>	<b>Yes – Must set up a joint planning committee</b>	<b>Yes</b>	<b>None specified</b>	<b>16 weeks (112 days)</b>	<b>16 weeks (112 days)</b>
<b>Japan</b>	<b>No</b>	<b>Yes</b>	<b>N/A</b>	<b>None</b>	<b>None</b>

<b>Australia</b>	<b>Yes</b>	<b>Yes</b>	<b>15</b>	<b>None</b>	<b>None</b>
<b>New Zealand</b>	<b>Yes</b>	<b>No</b>	<b>1</b>	<b>None, but consultation must be genuine and allow the representatives an opportunity to input</b>	<b>None</b>

12. The last Workplace Employment Relations Survey (conducted in 2004) looked at the number of workplaces that had reported redundancies (of any scale) in the previous 12 months. It found that 13 per cent of workplaces had reported redundancies in the previous 12 months. A further 2 per cent had proposed redundancies that were later withdrawn. The study also looked into the reasons why employers had made redundancies, the most popular reasons were:
- Re-organised working methods (37 per cent of respondents cited this)
  - Lack of demand for products/services (28 per cent)
  - Improving competitiveness/cost reduction/efficiency (19 per cent)
13. The European Restructuring Monitor gives information on the reasons for large scale redundancies, with internal restructuring by far the most common reason, followed by bankruptcy/closure. The distribution of reasons will differ across the economic cycle, but for this reason the information is presented below as a 10-year average.



Source: European Restructuring Monitor

14. The last Workplace Employment Relations Survey (2004) explored what was covered during redundancy consultations. Common answers were:
- The criteria for selection for redundancy (86 per cent cited this)
  - Redundancy payments (59 per cent)
  - Options for reducing the number of redundancies (67 per cent)
15. However, the same study also asks whether consultation led to changes in managers' original proposals. In 78 per cent of cases the answer was "no". In 10 per cent of cases there were reductions in the numbers made redundant.

## Problem Under Consideration

16. Where an employer is proposing to dismiss 20 or more of its employees as redundant at a single establishment in a 90-day period they must consult about the redundancies with representatives of the affected employees. Where between 20 and 99 redundancies are proposed they cannot take effect until at least 30 days after the start of the consultation. Where 100 or more redundancies are proposed this consultation period increases to 90 days. After collective redundancy consultation has concluded, employees have individual notice periods which need to be honoured. This means that even in possible cases where consultation would reduce to 30 days, notice would still apply on top of this. The process is set out in Table 3.
17. The UK law has been in place largely unchanged since 1975 and it implements the EU Collective Redundancies Directive. It goes beyond the EU Directive in many respects. The most contentious aspect of 'gold-plating' is the inclusion in the UK law of the minimum periods before redundancies can take effect. The Directive requires only that redundancies cannot take effect until 30 days after the employer has notified the Government of the planned redundancies. The review of the UK rules considers how they can be improved and whether these instances of 'gold-plating' need to be removed.

**Table 3: The collective consultation Process**

Process triggered	<p><b>Employer identifies that there is the potential for collective redundancies.</b></p> <p><b>Employer begins consultation with employee reps in good time.</b></p> <p><b>Employer notifies Government that consultation has begun.</b></p>
Consultation with a view to reaching agreement	<p><b>Possible for employer and union to reach agreement before end of minimum time period.</b></p> <p><b>If agreement reached and consultation genuinely complete, redundancy notices can be issued but dismissal cannot take effect.</b></p> <p><b>The statutory period is a minimum period so it is possible for the consultation to run on longer should the employer choose.</b></p>
Day 30	<b>Final day of minimum time period for 20-99 redundancies</b>
Day 31	<b>Earliest that dismissals can take effect for collective redundancies involving 20-99 redundancies</b>
Day 90	<b>Final day of minimum time period for 100+ redundancies</b>
Day 91	<b>Earliest that dismissals can take effect for collective redundancies involving 100+ redundancies</b>

18. BIS conducted a Call for Evidence between November 2011 and January 2012 and followed this with a public consultation on proposals to change the rules between June and September 2012.
19. The Call for Evidence sought responses to questions on a number of issues but primarily focused on the impact of the 90-day minimum period before redundancies could take effect. Over 100 responses were received and they provided evidence of the operation of the collective redundancies rules in practice. Overall, the Call for Evidence showed that there is a high degree of confusion as a result of the current rules which is having a negative impact on business flexibility to restructure and is producing poor quality consultation. The lack of business flexibility

is making it harder for employers to react to changing market conditions. The poor quality consultation is causing employees to engage less in the consultation and redundancy processes and is having a detrimental impact on employee morale and productivity. The higher-level, 90-day, minimum period and the lack of a clear definition of an 'establishment' are at the heart of the confusion.

20. The Call for Evidence highlighted that lack of certainty and agreed understanding about the consultation process has driven negative behaviour by both employers and employees' representatives. This has resulted in a shift away from collective consultation on substantive issues and towards a focus on tactics surrounding the consultation process itself. This leads to poorer outcomes for both employers and employees, including low morale, a drop in productivity and potentially an increased risk of business failure. Responses to the BIS consultation confirmed the problems identified by the Call for Evidence.
21. It is unclear what proportion of redundancies are accounted for by large-scale collective redundancies, however, taking the annual average total of large scale redundancies from ERM and looking at this as a proportion of annual average redundancies (600,000 according to Labour Force Survey data) suggests this is about 16 per cent.
22. It is important to note that the rules on collective redundancy consultation do not affect only those employees eventually made redundant. The pool of employees involved in the consultation will often be considerably wider and the employer will need to select those to be made redundant from that pool. In this situation most employees will delay seeking alternative employment until their personal position is known. Others, especially those with transferable skills, may be unwilling to accept this uncertainty, resulting in the company losing employees that it may have identified as important to its future successful operation. Many stakeholders we talked to in focus groups during consultation highlighted the fact that the most talented individuals did leave to alternative roles in the face of this uncertainty. The Call for Evidence and the consultation also suggested that this uncertainty causes a drop in morale and productivity amongst staff.
23. The Call for Evidence and consultation highlighted that the impact of the current rules was not universal. Some issues were highly sector-specific. A particular example was that the application of the rules to the termination of fixed-term contracts at the end of the contract period impacts mostly in the Higher Education sector. Clarifying the situations where the rules do or do not apply to fixed-term contracts would have a potentially beneficial effect on these sectors.
24. It is also important to consider the impact of changes to the current rules on the ability of Government to offer support to employers and employees. Currently the Government can offer support through its agencies (for example Jobcentre Plus) to help affected employers find the right employees to move forward and to help employees find alternative training or employment opportunities. It is important that the new regime continues to allow the Government to offer this support.

## **Rationale for intervention**

25. In May 2010, the Government made a commitment to review employment laws "for employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive". The review of the collective redundancy consultation rules is one important contribution to this. Most respondents (across all respondent groups) to the consultation (which closed in September 2012) agreed that there was a problem which needed to be addressed.
26. Government intervenes in the labour market for efficiency and equity reasons. There are rules in place to cover how collective redundancies are undertaken to overcome information and market power problems which would prevail if left to the market. However, the Call for Evidence highlighted that the form of intervention could be more efficient. The current rules potentially affect the ability of businesses to operate.
27. It is important that employment law is suited to the labour market which it supports. As such, it is right that the Government should be considering changes to collective redundancy consultation rules that have been largely unchanged since 1975. The UK labour market is now more flexible and advances in IT and communications technologies have made consultation easier and faster to carry-out. Similarly, job-seekers have easier access to alternative employment or training



opportunities. The balance in this time period has shifted between collective employment rights and individual employment rights, with more emphasis on the latter. This effect is documented in the Acas Research paper “Conflict At Work: The Pattern of Disputes since 1980”.

[http://www.acas.org.uk/media/pdf/f/j/Acas\\_Research\\_Conflict\\_at\\_work\\_03\\_08-accessible-version-July-2011.pdf](http://www.acas.org.uk/media/pdf/f/j/Acas_Research_Conflict_at_work_03_08-accessible-version-July-2011.pdf)

28. It is important, therefore, to address the inconsistencies in the way that the law is applied by employers and employees’ representatives and to improve employer understanding of their obligations. This will help to improve the quality of consultation and will result in better outcomes for both employers and employees. The changes proposed are intended to contribute to a flexible labour market designed to help promote growth and to remove the gold-plating present in the current legislation.
29. Of the 160 responses to the Government consultation, 55% agreed with the Government’s overall approach in considering a reduction in minimum periods, 37% disagreed and 8% were unsure. A majority agreed with the aim to improve the quality of consultation and to introduce improved guidance.
30. When considering Government intervention, it is important to remember that the consultation period is followed by statutory or contractual notice periods for employees selected for redundancy. The intention of this notice period, and not of the consultation period, is to allow employees to seek alternative employment and to put their affairs in order.

## **Policy objective**

31. The aim of the proposed policy is to support growth through a flexible labour market by creating a simple, understandable process that promotes quality consultation and can be adapted to suit the needs of the variety of redundancy situations.
32. To achieve these aims it is necessary to create a framework that reflects modern working practices and the needs of the modern labour market. We want to help employers work with their employees to ensure that they have the right workers in the right jobs at the right time.
33. This process should be underpinned by a light-touch system of Government support, through agencies such as Jobcentre Plus and the Local Enterprise Partnerships. The Government should be in a position to offer support to employers and employees without distorting the employer’s decision making process.
34. We aim to encourage good corporate behaviour through a more flexible regime that is less reliant on statutory intervention and more reliant in awareness of the benefits that good quality consultation can bring.
35. By creating an alternative legislative framework and better quality consultation the new regime will aim to:
  - allow businesses and employees’ representatives the flexibility to engage in a consultation exercise that is best suited to their circumstances;
  - improve business flexibility to restructure effectively, ensuring that employers have the right people with the right skills in the right place at the right time;
  - increase the likelihood of agreement between employers and employees’ representatives;
  - increase employee buy-in to the decision-making process;
  - balance the interests of employees made redundant with those that remain; and
  - reduce business burdens.

## **Description of options considered (including do nothing)**

36. There is a clear case for a change in the current regime. There are a number of ways that this change can be achieved to allow for greater flexibility but retain a strong element of employee protection.
37. The following options are not mutually exclusive, and the combined effects of some options may in some cases be different from the individual effects.

- Option 1 - Do nothing

38. Making no change either to the legislative framework or the guidance would leave the existing complexities and inconsistencies in place. Whilst a developing set of case law on some of the current issues will help to offer some certainty to business, this is likely to be available only to those with dedicated legal advice. None of the responses to the consultation document suggested that Government should take no action at all.

- Option 2 – Reduce the minimum period before redundancies could take effect:

39. Reducing the minimum period before redundancies can take effect would help to alleviate business concerns about a lack of flexibility expressed in the Call for Evidence, and would reduce business costs including wage costs and management time. In practice, some reduction in the time taken may be expected, but the apparent reduction in wage and management costs is tempered somewhat by the fact that many employers will continue to consult beyond this minimum period where there is an identifiable benefit to doing so, for example investigating alternative opportunities for specialist staff with skills that the employer would wish to retain. This was borne out in the Call for Evidence where responses were clear that where consultation needed to take longer, it did. 71% of respondents to the consultation were in favour of a reduction in the minimum period.

40. The option would also help employees by reducing uncertainty around their future role within an organisation. Facing redundancy is a stressful position, as many responses to the Call for Evidence highlighted.

41. There are two options available to reduce the minimum period:

- a) Reduce it to 30 days

42. This would be the simplest option, ensuring that all collective redundancy consultations would require the same minimum period before dismissals could take effect. It is the option preferred by employers and 52% of the responses to the consultation document were in favour of 30 days.

43. Harmonising the minimum periods would mitigate the need to decide what the establishment is and allow consultation to concentrate on the substantive issues, rather than procedural issues.

44. The change would also improve certainty for the workforce by increasing the speed with which employees in the pool being consulted know whether or not they personally are going to be made redundant.

45. The change to a 30 day minimum period would require a degree of familiarisation, but that one-off cost would be far outweighed by the ongoing benefit of a less complex regime.

46. However, consultation identified a high level of concern from unions about the wider effect of a reduction to 30 days. There is a risk that this sends a signal that Government places less weight on the importance of the consultation process – and that less responsible employers treat the time period as a maximum rather than a minimum.

- b) Reduce it to 45 days

47. Discussions with stakeholders during the Call for Evidence suggested that most consultations reasonably conducted can be concluded in around 45 days, although there will always be differences in complexity. Reducing the period to 45 days would, therefore, have many of the same benefits as the reduction to 30 days in terms of lower wage and management costs for the employer.

48. This option would mean ongoing uncertainty over whether an employer was required to consult for 30 or 45 days. However, the issue would be less acute than with a 90-day period, given that large scale redundancy situations would only require 15 more working days, the incentive to fit into the shorter period is much reduced relative to the do nothing option. This would also reduce the risk that a proportion of employers treat the time period as a maximum at the expense of the quality of the consultation.

- Option 3 – Improve guidance

49. Assistance could be provided to both employers and employees by clarifying the current law through updated or improved guidance (non-statutory). This could be achieved by either

updating guidance on existing channels or through creating a wholly new Code of Practice setting out the suggested process of consultation.

50. Improved guidance would provide a degree of clarity for employers and employees and would help to improve employer confidence. Better guidance would improve understanding of the point at which consultation should start, the nature of the consultation and the type of information that should be provided to underpin the consultation. This option complements option 2a and option 2b in addressing the quality of consultation and reduces the risks that could be associated with those options.
51. Whilst it is probable that improved guidance will realise some benefits if introduced independently of option 2a or option 2b, it would not achieve legal certainty nor simplify the process to improve business flexibility. It would help to explain the process and to give both employers and employees a focus for establishing good consultative practices, but would not remove the main barriers to good quality consultation.
52. There would be minimal Exchequer costs in establishing and disseminating this guidance.

- Option 4 – Fixed term appointees

53. The call for evidence identified confusion and concern about the way the end of fixed-term contracts (FTCs) are handled in collective redundancy situations. In particular, the current law suggests that the dismissal of fixed-term appointees could be classed as a redundancy which may need to be included in the count for collective redundancy consultation, even where the reason for their dismissal is the natural ending of the contract which is not renewed.
54. However a recent Employment Appeal Tribunal case (*Stirling*) has cast some doubt on this. 35% of responses to the consultation considered that guidance was the right approach. But 58% of responses favoured a legislative solution instead of guidance. Legislation would create certainty, removing the current belief that employers need to engage in consultation over the natural end of fixed-term contracts. It would have benefits for employers who make regular use of FTCs, especially where their use or extension is dependent on external funding or is for a specific, short-term purpose, such as maternity cover. The Higher Education sector would be a particular beneficiary.

## Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

55. Detailed data on how collective redundancy consultations are conducted is limited, so BIS issued a Call for Evidence to improve understanding of how the current collective consultation rules affect business and to gain an early understanding of what impact possible changes might have. This was then followed with a 12 week consultation on the collective redundancy rules. This IA relies on information collected in the Call for Evidence and consultation – through written responses and focus groups, together with Labour Force Survey data on redundancies and data on large scale collective redundancies from the European Restructuring Monitor.
56. The objective of the policy is largely qualitative, around achieving a higher quality of consultation which should lead to better outcomes for employers and employees. However, the nature of the objective and the intervention means that the impacts are also largely qualitative and very difficult to quantify. Where impacts can be quantified this is set out and explained. In the consultation, a majority of respondents stated that we had correctly identified the impact of the proposed policies.

## Monetised and non-monetised costs and benefits of each option

### Who is Affected?

57. **Employers of 100 or more people** are subject to the longer, 90-day minimum period set out in the rules around large scale redundancies if they make 100 or more people redundant. Options 2(a) and 2(b) could reduce the amount of labour costs paid by these employers if consultation periods reduce, and allow them more flexibility to adjust to changing circumstances. However, this effect is partly offset by a reduction in output that would have been produced in many cases during consultation.
58. **Employees involved in collective consultation but not made redundant.** At least 50 per cent, and possibly up to 80 per cent of those employees subject to collective consultation are not actually made redundant. Options 2(a) and 2(b) would potentially shorten the period of consultation and if guidance is effective, improve the quality. This should reduce the negative impact on employees' morale and productivity.
59. **Employees made redundant.** Those that are made redundant as a result of a large scale collective exercise are likely to receive their redundancy notice more quickly than under the current situation, and therefore be paid for a shorter period of time by their current employer. Depending on their job search behaviour the changes will affect people differently. For some they may be able to move to a new job more quickly, for a small number of people this may cause them to need to claim job-seeker's allowance where they may previously have moved straight into alternative employment. Those that would have claimed JSA for a time anyway may do so sooner, but the evidence suggests the duration of time spent claiming JSA will be unaffected.
60. **Economy-wide.** Whilst changes in the rules will affect employers and employees involved in collective redundancy consultations, the economy-wide effect may be a rise in productivity if employees move more quickly to new employment or can move on more quickly within their current employment, as the identified impact of employees being less productive during collective consultation should be reduced. Whilst affected employers should also see a drop in labour costs (with associated reductions in output as workers leave more quickly), these effects are both local to the firm and aggregate at the economy level.

### Option 2a, Reduce the minimum consultation period to 30 days

## Employers carrying out collective redundancy consultations:

61. *Reduction in management time spent in conducting the consultation.* Many responses to the Call for Evidence noted that a reduced consultation period would save management time and therefore cost in dealing with a collective redundancy consultation. Consultees were not directly asked about this, but the situation was less clear cut. However, the intention of the proposal is to

achieve higher quality consultation through a simple, understandable process. This means that the process of consultation with staff may not take less time than it does currently in terms of management time, meetings with employees and employee representatives, just that once consultation is concluded employers do not face barriers (in terms of minimum time periods above 30 days) from going forward with their restructuring plans. On balance therefore, no cost savings are quantified for this effect, as a large reduction in management time is not anticipated.

62. *Reduction in wages and non-wage labour costs paid by employers carrying out collective redundancies as a result of the removal of the 90 day minimum period.* Although some reduction in the time employees are paid for is anticipated, it is not the case that this will be a reduction of 60 days (90 days current less 30 days proposed). Consultees were asked in their experience how long it took to reach agreement in collective consultations. Not many directly answered the question and for those that did, there was little consensus, with timescales ranging from 14 days to 6 months.
63. BIS also probed this point in Focus Groups carried out during the consultation period. It was clear in these groups that the most popular answer for how long the process took was 30 days. Nevertheless, there were respondents who said 90, and of those thinking that 30 days was typically enough, there was also acknowledgement that on occasion, it would take longer to reach agreement.
64. Discussions that had taken place with stakeholders during the Call for Evidence suggested 45 days was a reasonable length of time to successfully carry out collective consultation. It is reasonable to conclude that there will be considerable reduction in the time it takes between the start of a collective consultation and the time that some redundancies take effect. This is based on the volume of responses to the Call for Evidence that cited a reduction in wage costs as an impact of reducing the minimum consultation period, and the number of consultees, especially through focus groups, citing 30 days as typically long enough to reach agreement.
65. In quantifying these savings, we make the conservative assumption that agreement can be reached in 45 days on average. This means that wage savings apply for 45 days.
66. The methodology for monetising savings in wage and non-wage labour costs is as follows:
  - (A) Number of people made redundant as a result of collective redundancy situation involving 100 or more people: 96,773 based on European Restructuring Monitor data.
  - (B) Median weekly pay (£405 from ASHE 2012), plus 14.5 per cent non-wage labour costs (source: Eurostat<sup>1</sup>). This gives a median weekly labour cost of £463.73
  - (C) Time saving from removing the minimum time period for consultation (in other words how much quicker redundancies might take effect) in weeks. The assumption (as outlined above) is that this saving is 45 days, or 6.43 weeks
  - Total labour cost savings = A \* B \* C, this is 96,773 \* £463.73 \* 6.43 = £288.5 million
67. This calculation shows that relative to the current regulatory position, there may be labour cost savings for those wanting to make large scale redundancies of 100 or more people of up to £288.5 million. In practise, under a 30-day minimum consultation period there would be some employers who could make their adjustments sooner and benefit (in terms of labour costs) more than this. However, we do not know enough about the distribution of time taken to consult to quantify what additional savings this option could entail.
68. *Reduction in output that would have been produced.* The *net* savings to employers will be the total labour cost savings less the output that this labour would have produced. There are two key reasons to believe that this loss of output will be lower than the reduction in labour costs (and that there would be net savings).
69. Firstly, the decision to make large scale redundancies will be taken because there is not enough value produced for the cost of this labour.

<sup>1</sup> Eurostat publishes information on labour costs. This shows that for the UK, wages and salaries make up 85.5 per cent of labour costs.  
[http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lc\\_an\\_struc\\_r2&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lc_an_struc_r2&lang=en)

70. Secondly, whilst a collective consultation is underway, consultees in focus groups agreed with the view from the Call for Evidence that the collective consultation process itself reduces output, whilst impact on morale means that labour productivity falls and so output is lower.
71. The consultation asked what happens to regular business when large scale collective consultation is undertaken. BIS also probed the issue in focus groups. The answers suggested a lot of variation by sector and by reason. Many respondents acknowledged that morale was affected by collective consultation, and that productivity fell (this will affect all employees, not just those that eventually get made redundant). However, most felt that there was an impact on performance, and a consensus view was that although business-as-usual activity could often continue, implementing change or new innovations in ways of working would not be possible.
72. Putting a value on the output that would have been produced during this period is difficult. The responses of staff to collective consultation vary across sectors and situations. The reasons for the collective consultation matter. As a result, a conservative approach to calculating this effect is taken.
73. As illustrated in Chart 2, there are different reasons why collective redundancy situations arise. In some cases, it is because of bankruptcy or closure (21 per cent of cases). In other cases it is due to a fall in demand. In some of these situations there will be next to no output produced during collective consultation, in others output will be much higher.
74. Even beyond these 21 per cent of cases, it would still be expected that the output of workers to be made redundant is lower than the cost of their labour. When making the decision to make workers redundant, firms will only lay off those workers who are not contributing enough to justify their cost to the firm.
75. At the margin, this implies that a firm will let a worker go if the value of their output is even slightly below their cost. However, it is unlikely that all of the decisions within a large-scale redundancy will be made at the margin.
76. First, there are costs associated with the redundancy process – including but not limited to managerial time, impacts on morale and redundancy payments – that imply that the gap between output and costs must be sufficiently large to justify the costs of the redundancies. Even without these costs, if the value of workers' output is only just below the cost of their labour, firms (especially those that are neither bankrupt nor closing down) may instead try to improve productivity rather than let workers go. If employers believe there is a chance the situation will improve then they will be keen to avoid losing staff, only to incur significant costs in having to re-hire.
77. Further, where large scale redundancies take place, it is unlikely that all of the redundant employees will have been equally productive at just below their labour costs – the most productive of the employees let go may have necessitated a marginal decision, but this is unlikely to be true of the 100<sup>th</sup> most productive.
78. We wish to capture the fact that not all of the workers involved in the remaining 79% of cases (those not due to bankruptcy or closure) will have been producing enough to justify their labour costs. As we expect their output to vary between the extremes of zero and full output, we assume that the value of their output is uniformly distributed between 0 and 100% of their labour costs. To capture the fact that not all of the workers involved in the remaining 79 per cent of cases (those not due to bankruptcy or closure) will have been producing enough to justify their labour costs, we assume that the value of their output is uniformly distributed between 0 and 100 per cent of their labour costs.
79. Figure 1 shows the implications of this assumption. The whole of the rectangular area (blue and red) captures the cost of labour for these workers. The diagonal line from bottom left to top right shows the distribution of individual workers' productivity between 0 and 100 per cent and the lower red triangle therefore captures the expected value of these workers' total output. This output comes to half of the labour costs. Therefore, within these 79 per cent of cases, output that would have been produced would amount to 50 per cent of labour costs. Overall, therefore, the output that would have been produced will amount to 39.5 per cent of labour costs.

**Figure 1: Worker output in relation to labour cost**



80. *Productivity Benefits:* As highlighted above, a number of respondents to the Call for Evidence and consultation (through focus groups) highlighted that during collective consultation exercises the impact of that consultation can be very disruptive. It can affect staff morale, and lead to a reduction in productivity both through impact on morale and the time needed to deal effectively with the consultation. Some staff will leave to take-up other posts. In addition, collective redundancy exercises often happen due to internal restructuring or bankruptcy/closure. Focus groups also highlighted the view that changes to more productive ways of working were almost impossible to make in the midst of collective consultation.
81. Reducing the minimum consultation period should speed up the movement of resources to more productive uses across the economy, however, it is not possible to quantify this impact.

## Employees

82. *Employees who are made redundant after a collective redundancy consultation:* It is worth noting again that this option will apply to around 96,800 employees (according to European Restructuring Monitor data), which is a very small percentage of the employee population. Those made redundant not as part of a large scale (100 people or more) exercise will be unaffected, and currently have a 30 day minimum consultation period (for cases of 20 or more people) or no minimum period for small numbers of redundancies. The impact on employees is that where they are in a large scale collective redundancy and they are made redundant their redundancy situation may happen sooner.
83. *Reduction in wages received:* This would mean wages saved by employers are matched by wages lost to employees. The calculation for establishing what that reduction in wages paid by their existing employer is the same as that to establish the employer saving described in paragraph 61-66, with the exception that non-wage labour costs would not be included, this means £252m less received in wages.
84. These lost wages are the loss to the employee of no longer being with their current employer for these 45 days. However, the employee benefits from having an additional 45 days to spend as they choose, whether on new employment, seeking new employment, or leisure. Therefore, in estimating the total welfare impact on employees, we have to take into account the value to each of these employees of their next best option outside of their current employer.
85. The Department for Work and Pensions' cost-benefit framework<sup>2</sup> values the lost leisure resulting from moving from not being employed to being employed at 25 per cent of earnings when in work. On this basis, if all employees who are made redundant sooner as a result of this policy spend this additional time purely as leisure, their net loss comes to 75 per cent of their wages.
86. However, it is likely that many of those made redundant will spend at least some of these extra 45 days either in, or seeking new employment. Indeed, one of the key benefits to this policy is that enables labour to be deployed in more efficient ways more quickly. For these employees, the value of this additional time will be considerably higher than 25 per cent of their lost earnings. In some cases, a shorter consultation period will allow the employee to move to a better-paid job more quickly, incurring a net benefit.
87. We therefore expect that – similar to their output – the value of a worker's best outside option will vary within a known range, but lack clear evidence on the details of this distribution. We therefore again assume that this follows a uniform distribution – this time, between the 25 per cent and 100 per cent of the value of their wages (here we assume that if they had a better outside option they would already have moved to it.)
88. *Possible reduction in time to search for new employment:* Respondents to the Call for Evidence noted that a 90 day period does allow time for employees to look for alternative employment. During the consultation period, some individuals will actively seek alternative employment; whilst others will wait for receipt of their redundancy notice (after consultation) because at redundancy consultation stage it is often unclear which employees will actually be made redundant. BIS discussed this point further with consultees in focus groups. Employers reported that collective

<sup>2</sup> Found at <http://research.dwp.gov.uk/asd/asd5/WP40.pdf> Review of the DWP Cost Benefit Framework and how it has been applied, DWP working paper no 40, 2007.



consultations often led to their highest calibre staff seeking and finding work elsewhere. However, it appeared that most employees affected did not actively engage in job search due to the collective consultation.

89. For those that actively seek employment before redundancy notices are issued, they may have less time for this job search activity. The average duration of unemployment should not increase as a result of these measures. Once a collective consultation has concluded, redundancy notices can be issued, but employees are then given their notice period. Standard notice periods vary, but the most typical lengths are one month and three months. The purpose of notice periods is to give individuals time to search for employment and sort out their financial situation. This is not the purpose of collective consultation periods, because at collective consultation stage in most cases individuals are not *certain* that they will be receiving a redundancy notice themselves. Indeed as set out in paragraph 57, it is likely that at least 50 per cent of those involved in collective consultation will not actually be made redundant.
90. On the other hand, some respondents to the Call for Evidence highlighted a friction between the employees' desire to move on before the end of the consultation period and their desire to receive their redundancy payout. The length of collective consultation can exacerbate this problem especially where this leads to difficult decisions with job offers that would require them to resign from their current employment before they are made redundant.
91. At any one time there are around 450,000 job vacancies (as shown by ONS Labour Market Statistics). If people do become unemployed, most leave unemployment quickly. Of those making a new Job-Seeker's Allowance (JSA) claim, over half have left JSA within 3 months, over 70 per cent have left within 6 months, most to new jobs (as shown by administrative data).
92. *Subsequent employment:* There is evidence (including a paper by Borland et al "They Get Knocked Down. Do They Get Up Again? Displaced workers in Britain and Australia") that spells of unemployment can lead to lower future earnings. However, as discussed, it is unlikely that these measures would affect this further.
93. *Employees involved in collective redundancy consultations who are not made redundant:* It is not just the employees who are made redundant who are affected by collective redundancy consultations. From the data sources we have there is uncertainty, but less than 50 per cent (and quite possibly even less than 20 per cent) of those subject to collective consultation were actually made redundant. Collective consultations will involve a pool of employees, from whom the employer will need to make decisions about who will receive a redundancy notice. All employees involved in the consultation face uncertainty and stress over whether they will have their current job going forward, and equally over the position of their friends and colleagues. As this proposal means some reduction in consultation periods it could reduce uncertainty.

## Exchequer

94. For the reasons set out above in paragraphs 79 – 82, we do not anticipate an impact on costs relating to job seeker's allowance (JSA). In general, collective consultations will cover many more employees than are actually made redundant, therefore although some search for alternative employment in this time, others will wait for confirmation that they are actually going to be made redundant. The proposals should not affect average duration of unemployment, therefore the amount of time spent claiming JSA should remain the same and there would be no exchequer impact.
95. There is a risk that in relying more on agreement between employers and employees to determine when consultation is complete that there may be more disputes about this, which could result in additional claims to employment tribunals. This would be anticipated in the short term. Data from Her Majesty's Courts and Tribunals Service (HMCTS) shows that in the last financial year (2011-12) there were 8,000 claims accepted to employment tribunal for failure to inform or consult about redundancy. Many of these claims will be multiple claims (a number of individuals claiming against the same employer). This effect will be mitigated in the long-term by successful implementation of option 3 which should make employers' and employees' obligations clearer.

## **Option 2b: Reduce the minimum consultation period to 45 days (Preferred option)**

### **Employers**

96. *Reduction in management time spent in conducting the consultation.* As with option 2a, we do not anticipate a reduction in meetings or time spent actually consulting.
97. *Reduction in wages and non-wage labour costs paid by employers carrying out collective redundancies as a result of the removal of the 90 day minimum period. Reduction in output that would have been produced.* This option would reduce the minimum time for consultation relative to do nothing (90 days). As in our assessment of option 2a, a reasonable, but conservative assumption is that consultations can usually be concluded in 45 days. As a result the anticipated reduction in labour costs from option 2a applies here. In addition, the overall net savings to employers (from factoring in lost output) would also be the same as for option 2a. As noted in our assessment of option 2a, although we cannot fully quantify the effect, we believe there are likely to be slightly higher net savings to employers from taking forward option 2a, as those employers that can undertake collective consultation in less than 45 days will be able to do so.
98. *Productivity Benefits:* Again it is anticipated that this option would entail productivity benefits from allowing employers to change ways of working more quickly. Given that the anticipated time saving is the same across options 2a and 2b, the productivity benefits would be similar, but are not quantified.
99. This option would retain some specific regulation about the length of time needed for consultation. As a result it is less likely that this option would stop entirely the reliance on procedure because a differential will still exist between collective consultation involving 20 – 99 employees, and collective consultation in the large scale (100 plus) cases. That said, as large scale collective consultations would only need to last a further 15 days than those involving 20 – 99 employees the incentive to change behaviour due to the regulation is significantly reduced.

### **Employees**

100. As for employers, the likely impacts on employees are very similar to option 2a. Indeed as this length of time may well be consistent with the time taken to conduct successful consultation, there may be little difference between option 2a and 2b in how much quicker a redundancy may take effect. That said, it is likely that lost wages to employees will be slightly higher in option 2a than in option 2b.
101. This option is likely to lead to a shortening of the minimum consultation period and therefore bring forward the time when a redundancy takes effect. This may provide benefits to employees in reducing uncertainty and allowing them to seek alternative employment more quickly. It also could lead to less time in their current place of employment receiving wage payments. Similarly for employees not facing redundancy it will decrease the period of uncertainty before their situation is known.

## **Exchequer**

102. Altering the minimum time period as in this option may lead to more challenges at employment tribunal under the redundancy - failure to inform/consult jurisdiction. However, this impact is likely to be smaller than under option 2a, and is likely to be a short-term impact.
103. There is the potential that reducing the minimum periods could result in employees affected by very large-scale redundancies having less access to Government support and thus finding it more difficult to find alternative training or employment opportunities. This option would mitigate that impact to a degree when compared with option 2a, giving additional time for this support to be found. However, the Call for Evidence conducted, suggested that employers in these situations are unlikely to conduct shorter consultations and so the impact should be minimal.

## **Option 3: Guidance**

104. The guidance currently available does not set out clearly what constitutes good quality consultation. Nor does it address important issues including scope (for example when fixed-term appointees should be included in the threshold count) and the definition of an 'establishment'.
105. Improved guidance will provide a useful tool for employers and employees' representatives to allow them to gain a better understanding of the point at which consultation should start, what it should cover, how it should be conducted and when it can be deemed to have finished. It will, however, leave sufficient flexibility to allow the consultation to be tailored to the unique circumstances of the individual consultation.
106. *Certainty for Employers:* This will provide greater certainty for employers about their rights and responsibilities under the legislation. This will, in turn, allow them to conduct better quality consultation and reach better decisions. Employees will be more engaged in the process and will therefore suffer less reduction in morale and productivity.
107. *Possible improvement in quality of consultation and reduction in stress and uncertainty:* There is evidence of employers avoiding the 90-day minimum period and evidence of both parties prolonging or drawing out consultation for longer than necessary. These effects combined constrain consultation to a smaller unit of employees, and union engagement to a lower level of management.
108. If a better quality consultation can be achieved with maintenance of reasonable relations on either side, then the impact on the employee is likely to be positive, with some reduction in the uncertainty and stress involved. This was an impact highlighted by some respondents to the Call for Evidence. A more constructive process should improve employee morale at a difficult time.
109. Employees would benefit from improved quality consultation as they will be better placed to find alternative employment or to understand how they fit into the organisation in the future.
110. There would be minimal costs to the Exchequer in establishing a Code of Practice. It is hoped that a Code of Practice will help to minimise the impact of legislative changes on the number of employment tribunal cases.

## **Option 4: Fixed term appointees**

111. Legislation would clarify that fixed-term contracts coming to their agreed end would not count towards triggering the need for collective consultation.
112. As employees on fixed-term contracts will already have agreed to the terms and date of the ending of their employment on an individual basis, it is unclear whether there are any benefits to employers or employees from collectively consulting when a number of such employees are coming to the end of their contracts. There is therefore unlikely to be any costs to either party of making it clear that such consultations are not required.
113. Therefore the only significant impact of this option will be the reduction in costs to management and employees arising from the uncertainty on whether consultations are necessary in such situations, as well as from any consultations that do arise from this uncertainty. It would also have some benefits similar to those resulting from better guidance on other aspects of collective redundancy law, such as improving business flexibility and reducing the impacts on morale and productivity. There would be most benefit to those employers who make regular use of fixed-term contracts, especially where their use or extension is dependent on external factors, or for specific short-term purposes.
114. There would be minimal costs to the Exchequer in clarifying the legislation.

## Higher Education

115. Higher Education was identified through the call for evidence and consultation as the sector most affected by the uncertainty over the requirement to collectively consult with regard to fixed-term employees. This is due to many Higher Education institutions having a high proportion of their staff under fixed-term contracts, due to external uncertainty over the demand for teaching or the availability of funding for research projects.
116. According to 2011 data from the Higher Education Statistics Authority, 60,320 out of 181,185 academics in UK institutions are on fixed term contracts, just under a third of the above total. For research staff this proportion appears to be much higher – 77% of respondents to the 2011 Careers in Research Online Survey reported that they were in a fixed-term contract.
117. Several universities mentioned in their responses to the call for evidence and consultation that due to the numbers of fixed-term contracts that come to an end at different times in a year, they have had to undertake collective consultations on an ongoing basis rather than as one-off exercises. They also note that in the majority of cases these consultations do not change outcomes.
118. The uncertainty over collective consultation with fixed-term employees can therefore lead to significant costs to HE institutions as things stand. It is expected that much of any direct benefits from this option would be the reduction of costs in this sector.

## Familiarisation Costs

119. Going through collective consultation on redundancies is a one-off event for the majority of employers. As a result they will be familiarising themselves with the process anyway each time they embark on collective consultation. This means that these proposals do not impose additional familiarisation costs relative to the status quo.

## Wider impacts, Risks and Assumptions

120. An equality impact assessment has been carried out and is included at Annex A. These policy proposals are not expected to impact disproportionately on any protected group.
121. The policy is not applicable to small businesses as it only applies in large scale redundancies.

122. The policy intention is that improvements in the quality of consultation will compensate for the potential reduction in periods of consultation. It is possible, though, that some employers will reduce the amount of time for which they consult without addressing the quality of consultation. This could result in significant reductions in consultation periods over and above those envisaged and worse outcomes for employees. It is this nature of risk which makes option 2b a more attractive option than it may appear in just looking at potential quantified impacts.
123. Employers are free to dismiss their employees and re-employ them on altered terms and conditions of employment. Where this happens, they are currently required to consult as if it were a large-scale redundancy. Pursuing either option 2a or option 2b would make this easier, as it would not require 90 days' consultation. This could have an adverse effect on the quality of employees' continued employment, but would have a positive impact on employers' flexibility.
124. There is a further risk that a shorter minimum period could reduce the Government's ability to intervene in redundancies that could have a high social, economic or political impact. This could result in greater expense for the Exchequer due to longer-term unemployment of those affected. However, the Call for Evidence suggests that this risk is mitigated by the fact that, in the cases where Government can make a difference (for example in very large redundancies prompted by a single act such as disinvestment or a site closure), the employer tends to recognise the significance of their actions and runs either an extended consultation or offers an extended notice period. BIS consultation backed up this view.
125. As set out in Table 2, there have been concerns raised by some that the current collective redundancies regime harms international competitiveness. A possible indirect consequence of pursuing option 2a or 2b could be an improvement in international competitiveness. However, although minimum consultation periods in the UK are longer, there are other factors which make the picture less straightforward. It is therefore unlikely that these measures would have a significant impact on the attractiveness of operating a business in the UK.
126. The impact assessment relies on data around the level of large scale redundancies. The assessment recognises there are limitations in this data, but does assume that recent historical averages continue. Large scale redundancies will tend to increase in periods of recession or economic downturn, and have been higher in recent years due to our recent recession. It is for that reason that a 10-year average has been taken, to try to limit impacts of recession.

## Sensitivity Analysis

127. Given there is some uncertainty in the amount of time that might be saved by amending the legislation on minimum consultation periods it is important to consider how the net savings that have been calculated could be different.
128. **Time saved is less than 45 days:** The net benefits to employers in terms of reduced labour costs (offset by lost output) would fall in proportion with the number of days saved. This means for example if the time saved were 30 per cent less, the net saving to employers would also be 30 per cent less.
129. In addition, there is some uncertainty about how much output would have been produced by the affected employees where their redundancies take effect sooner. The central case presented (although this is believed to be conservative) assumes that output is reduced by 21 per cent. If this percentage increases, the net employer savings will increase proportionately.

### Direct costs and benefits to business calculations (following OIOO methodology)

**NOTE: These calculations are still being reviewed. As they are subject to revision final estimates are not presented at this stage. Once the Regulatory Policy Committee has verified an estimate, this will be published.**

130. Consultation has confirmed that pursuing either option 2a or 2b would involve a direct net benefit to business. It would have no impact on small or micro businesses as the rules only apply

where 100 or more people are being made redundant. It appears that this net benefit will be the same across those options as current average length of consultation is around 45 days. There is the potential to see slightly higher employer benefits (and in turn higher employee costs) in option 2a, but as noted it is not possible to quantify this difference.

131. Currently, employers are bound by regulation to wait longer than they often need to before giving notice. This means paying labour costs for longer than they would plan to in the way they wish to restructure their organisation.
132. Paragraphs 61 - 79 set out the calculation of annual net direct business benefits.
133. European Restructuring Monitor data shows that of large scale redundancies across the period 2002-11, 20 per cent of them were in predominantly public sector areas – public administration, education and health and social work. More recent data shows higher numbers of collective redundancy consultations in the public sector, but we take 20 per cent, given that the current high level of public sector collective consultations is likely to recede somewhat.
134. This means that the annual net employer benefits calculated in paragraphs 61 - 79 will need to be adjusted. 80 per cent of this figure will represent the annual net business benefit.

## Summary and preferred option

135. It is clearly important that employees are engaged in decisions which affect their future, and that this is done in a substantive, effective, and flexible way. A strong case was made by consultees for a combination of legislative change and improved guidance. The preferred option is therefore a combination of the non-regulatory option 3 alongside regulatory options 2b and 4. The Government believe this strikes an appropriate balance between ensuring employees are engaged in decisions about their future and allowing employers greater certainty and flexibility to take necessary steps to restructure.

**Table 3: Summary of Impacts**

	<b>Costs</b>	<b>Benefits</b>	<b>Net Impact</b>
<b>Employers</b>	The output that employees would have produced in the additional time they worked for that employer during collective consultation	Labour costs saved by employers due to redundancies taking place sooner (approx £290m)	OIOO: this measure involves a regulatory out, and net benefit to employers. Once the quantification of that effect has been verified, this will be published.
<b>Employees</b>	Wages that would have been received during the longer collective consultation period (approx £250m)	Greater certainty over job situation for those subject to large-scale collective consultation (employees made redundant and those that remain in the organisation). Most will be paid wages by alternative employers	Wages not paid from employer relative to current regulatory minimum consultation periods approx £250m.
<b>Exchequer</b>	Small risk of increased		Risk of minimal cost

	tribunal claims in the short-term		
<b>Economy-wide</b>		Resources move to more productive uses with less restriction	Likely to be positive impact on productivity but not measurable

## **Annex A: Equality Impact Assessment**

### **Equality impact assessment**

The Department for Business, Innovation and Skills (BIS) is subject to the public sector duties set out in the Equality Act 2010. Equality Impact Assessments are an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups. This Equality Impact Assessment takes a summary view of the equality impact of both proposals being taken forward by BIS on the rules regarding collective redundancy consultation.

The proposals considered here are:

- Proposal 1: Reduce the minimum periods before consultation can take effect
- Proposal 2: Improve Government guidance
- Proposal 3: Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations

The proposal's objectives are to create a simple, understandable process that promotes quality consultation and:

- allow the parties to engage in consultation that is best suited to their circumstances;
- improve business flexibility to restructure effectively;
- reduce business burdens; and
- ensure that affected employees are better equipped to re-enter the labour market after the redundancy.

The proposals are not expected to have a disproportionate impact on any protected group.

The Department for Business conducted a Call for Evidence between November 2011 and January 2012, and subsequently conducted a public consultation between June and September 2012. The responses to both the Call for Evidence and consultation did not highlight any specific equalities impact issues.

### **Proposal 1 – Reduce the minimum periods before consultation can take effect**

Currently, redundancies can only take effect at least 90 days after the start of consultation where 100 or more redundancies are proposed. In order to simplify the legislative framework, the Government proposes to reduce this to either 30 or 45 days to bring the minimum periods more in line with the minimum time period for effecting redundancies affecting 20-99 employees. The changed framework should provide for better quality consultation and better outcomes for both employers and employees.

The policy proposal is not expected to lead to a higher number of redundancies, nor is it likely greatly to reduce the time between the start of consultation and the dismissal taking effect. However, there is the potential that the proposed change will result in employees being dismissed up to 45 or 60 days earlier than is currently the case.



It is believed that this will not have an impact on the ability of employees to find alternative employment; indeed it is likely that the employees will be in a better position, emotionally, to seek alternative employment where the potential for improved consultation standards is realised. It is possible that employees will lose out on up to 60-days pay that they would receive under the current regime.

## **Proposal 2 – Improve Government guidance**

There is currently a lack of understanding amongst employers and employees of the law around collective redundancies. This is driving bad quality consultation that focuses too much on the process of consultation and not enough on the substantive issues at stake. In particular, confusion about the definition of an ‘establishment’ is leading some employers to break up redundancies into smaller chunks than might otherwise be the case and other employers to delay dismissals for longer than is legally necessary. Similarly employers and employees’ representatives do not always have an agreed understanding of the points at which consultation should start and end.

This confusion means that employees suffer from uncertainty about the process for redundancies and the point at which the decision as to whether they will face redundancy will be made. It delays the start of consultation with individual employees and has a negative impact on employee morale and productivity. Employees are also uncertain about when they can or should look for alternative employment or training opportunities.

Improving the available guidance will allow the Government to offer a degree of clarity on some of the most contentious issues. This should help to improve the quality of consultation. We do not expect this to reduce the number of redundancies which take place, but we do anticipate that it will have a positive effect on the affected employees’ experience of consultation and redundancy. This should result in employees feeling more positive about the final decision and as a consequence better-equipped to seek alternative training or employment opportunities, potentially reducing the length of time that they spend in unemployment.

## **Proposal 3 - Provide clarity in law on how fixed-term appointees should be treated in collective redundancy situations**

Although it could be argued that consulting with fixed-term appointees at the end of their contracts could increase their chances of deployment, in reality employers will redeploy those appointees whom they believe are valuable to their organisations. It is not clear what additional benefit collective consultation does in these circumstances, given that appointees are fully aware of the end dates in their contract. This seems predominantly to be an issue in the Higher Education sector. Given how limited the overall impact of this change would be it is not expected to have a disproportionate impact on any protected group.

## **Characteristics of those Made Redundant**

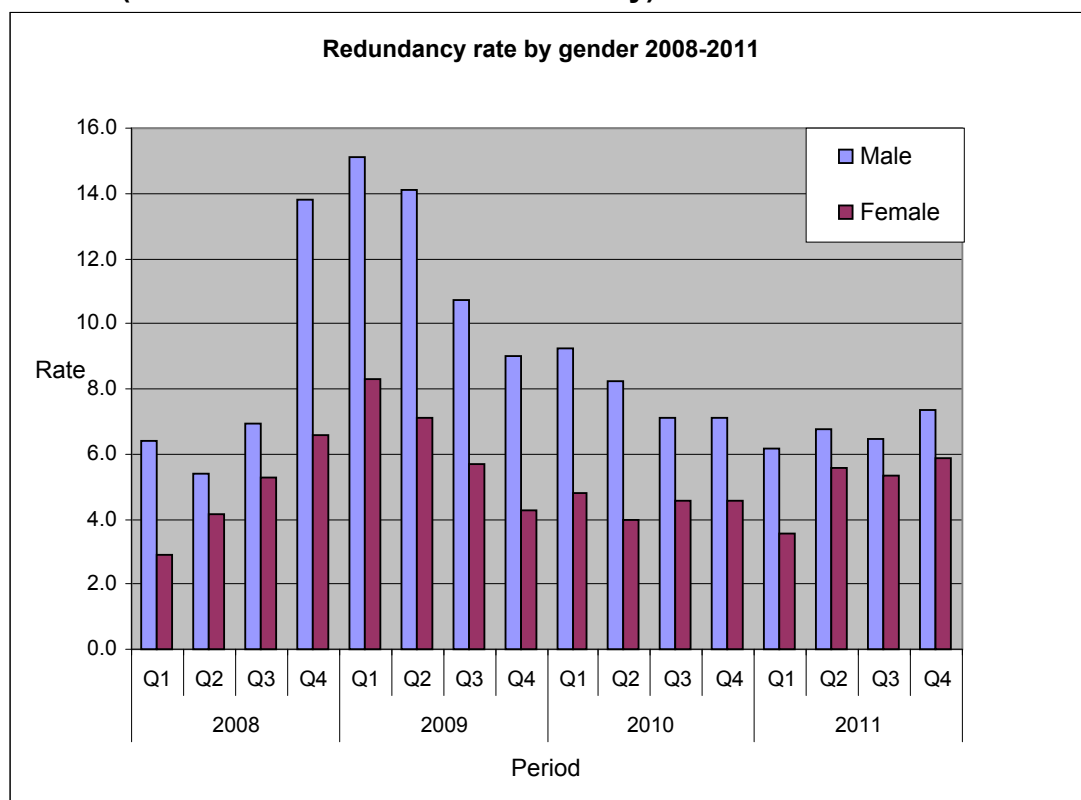
In the remainder of this assessment we consider what is known about the characteristics of those made redundant. There are no detailed breakdowns of the characteristics of those involved in collective redundancy situations involving more than 100 people. Similarly there is no data to reflect the number of employees involved in consultations who are not subsequently made redundant. Data from the Labour Force Survey is available to show how redundancy rates (a measure of redundancies relative to the number of employees in the particular group) vary by gender and by age.

Further breakdowns by protected characteristics are limited by small sample sizes, but where available, these are discussed below.

## Gender

Chart 1 shows variation by gender, although this period covers the recent recession where redundancies disproportionately affected men. As the chart shows, in recent quarters, this gender gap has narrowed, probably due to more redundancies happening in the public sector.

**Chart 1 (Source ONS Labour Force Survey)**

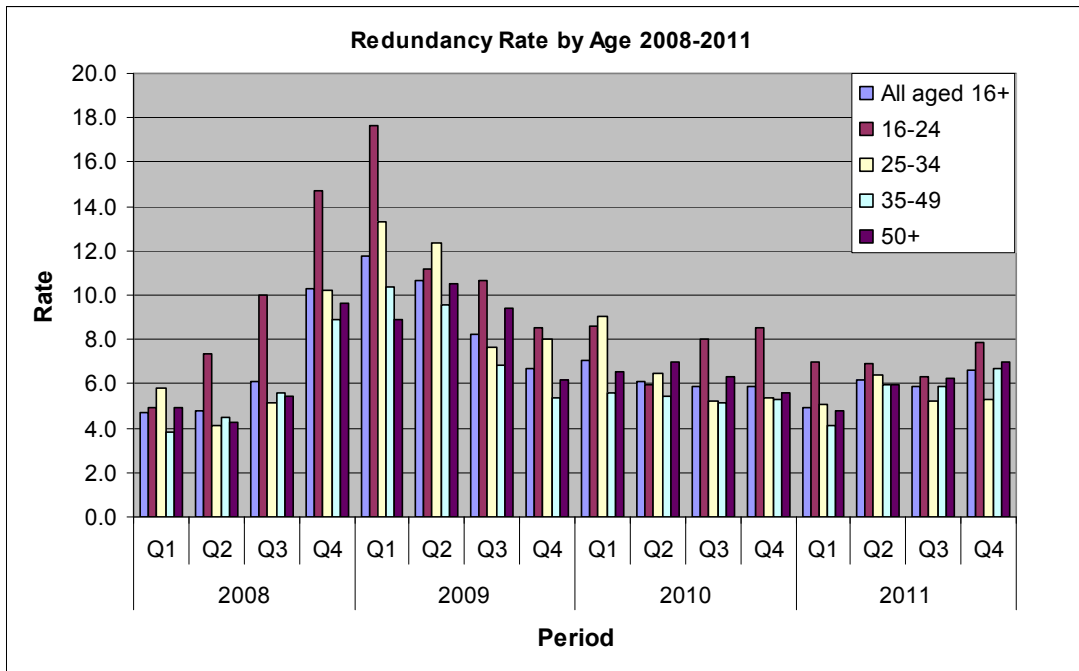


As far as this proposal is concerned it is hard to determine the gender proportions of those likely to be subject to large scale collective redundancies in the future. Further large scale redundancies in the public sector may affect women more, but manufacturing has typically also been a sector where large scale redundancies are more common. Here more men than women are employed.

## Age

Chart 2 shows redundancy rates by age. This shows that often the redundancy rate of 16 – 24 year olds is higher than the average across the working population, although the effect has been less marked in recent data.

**Chart 2**

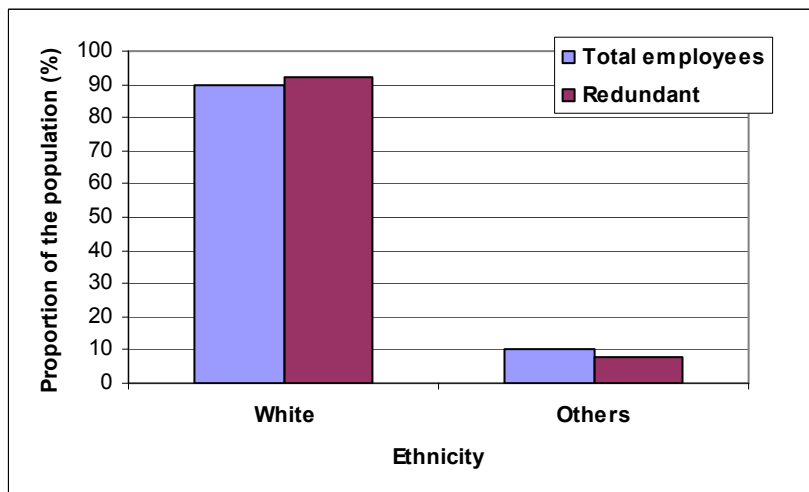


Source: Labour Force Survey

## Ethnicity

Sample sizes do not allow us to look at a full breakdown of ethnic groups. All we can tell is that the proportion of white people amongst the population of those made redundant is slightly higher than the proportion in the employed population as a whole. For other groups this effect is the other way round.

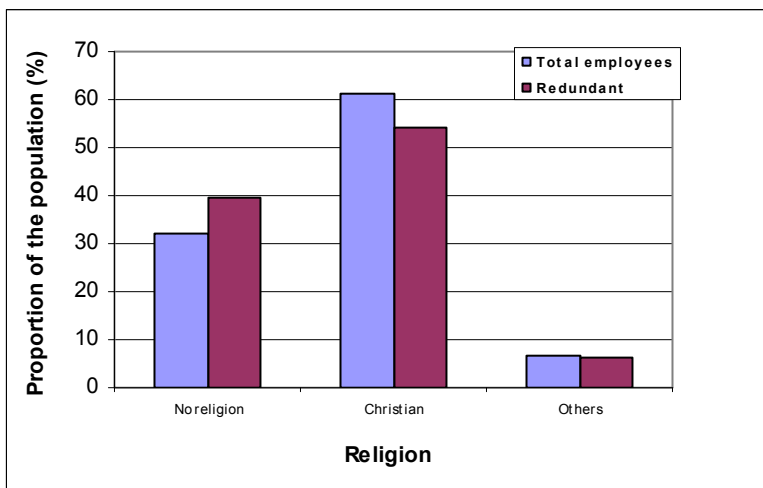
**Chart 3: Ethnicity – proportion of the working and redundant populations**



Source: Labour Force Survey

## Religion

Similarly for religion we cannot see breakdowns by different religions, except “no religion” and “Christian”. Those with no religion are slightly over-represented in the population of those made redundant. This is the other way around for those stating they are Christian.



Source: Labour Force Survey

## **Annex B: Post Implementation Review**

Changes made to the Collective Redundancy rules will be subject to post-implementation review.

This will look at whether the objectives of the changes have been met and whether any of the risks have been realised (or indeed whether any other unintended consequences have emerged). This will require review of information including:

- European Restructuring Monitor data on large scale collective redundancies (for example are there changes to the proportions of situations involving 100 or more employees)
- Administrative data on employment tribunal claims relating to consultation of employees in collective redundancy situations
- Feedback from business stakeholders on how the situation has changed, including work to determine changes in employer time and costs
- Feedback from employee stakeholders, including for example Jobcentre Plus, on what the impact has been on employees.

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