

information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

12. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

“the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;

the Department should not agree to hold information received from third parties “in confidence” which is not confidential in nature;

acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner”.

For further information about the confidentiality of responses, please contact the Information Commissioner's Office via telephone on 01625 545745 or visit the web-site at www.informationcommissioner.gov.uk.

Please note that the Department will handle appropriately any personal data you provide in accordance with the Data Protection Act 1998.

The proposal

Introduction

13. An initial consultation on proposals to increase the holiday entitlement in Northern Ireland to reflect the number of permanent bank and public holidays was conducted between July and October 2006. 25 responses were received to that consultation and a Departmental Response to the consultation has been published separately. A copy of the Departmental Response can be found on the Department's website at www.delni.gov.uk.
14. Having considered the responses to the broad principles in the initial consultation, the Department is now consulting on detailed proposals and on draft Regulations to implement this commitment.

Benefits for staff of increased holiday

15. The Department believes that the ability to take holiday is an important component of work-life balance. Research shows that people use holiday, and particularly bank holidays, to relax, to spend time with their families and to go on a day trip or short break. It is estimated that around 140,000 workers will benefit from the additional entitlement in Northern Ireland.
16. The Department believes that increasing the paid holiday entitlement will help staff to manage their work with their other responsibilities, will help to reduce stress levels and will be beneficial to families.

Impact on business of increased holiday

17. Many staff already receive at least the equivalent of 6 weeks' paid holiday and there should be minimal impact on employers that already give their staff 6 weeks' leave, or give 4 weeks' leave in addition to paid bank holiday leave. The cost of increasing the leave for an individual member of staff from 4 weeks to 6 weeks is approximately 4% of employers' wage costs. Research carried out by the Department of Trade and Industry ("DTI") indicates that the policy cost of implementing an additional 8 days in GB would be around £3.2bn - £4.4bn. This would, pro-rata, give an indicative cost in NI of around £140m for 10 days.
18. GB research also suggests that some sectors will be more affected than others, with the hospitality and retail sectors particularly affected. The impact on individual small businesses may be significant as it may be harder for them to absorb the additional costs. Smaller businesses are most likely to be affected.
19. There will also be administrative costs both in introducing the increase in holiday and in managing an increased holiday entitlement. To implement the proposals, employers affected would be required by the Employment Rights (Northern Ireland) Order 1996 to notify staff in writing of the changes to holiday entitlements. This notification, however, does not need to be

personalised and may take the form of a circular notice that goes to every affected member of staff, or a statement on a payslip. To support employers in implementing the changes, the Department proposes to make available a ready-reckoner for the new holiday entitlement, which it believes will reduce the administrative costs of the changes.

20. The Department has sought to minimise the impact on businesses that give their staff the equivalent of 6 weeks' holiday already. Under the proposed Regulations, the Department believes that there would be no impact on those that currently give 30 days (or 20 days plus bank and public holidays) except:
 - i. Where a worker is required by his employer to take leave on bank and public holidays as part of his statutory holiday entitlement and the bank or public holiday happens to fall whilst he is on some other form of leave (such as maternity or sick leave). In such circumstances, he would generally be entitled to take another day off instead so as not to be deprived of his statutory entitlement, or;
 - ii. Where an employer allows payment to be made in lieu of taking leave in excess of the current 4 week statutory entitlement. Under the proposed Regulations, it would not be permissible to give payment in lieu of any of the proposed 6 week leave entitlement, although payment in lieu would still be permissible for contractual holiday in excess of 6 weeks.

Scope

21. These proposals extend to all workers covered by the Working Time Regulations, including agency workers and those otherwise covered by the Road Transport (Working Time) Regulations (Northern Ireland) 2005. These proposals do not extend to those covered by the Merchant Shipping (Hours of Work) Regulations 2002, the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 or the Civil Aviation (Working Time) Regulations 2004 which are the responsibility of the Department for Transport in Great Britain and are of UK-wide extent. The Department will liaise with colleagues in GB to investigate the feasibility of Northern Ireland workers within these sectors availing of similar rights to those covered by the Working Time Regulations, subject to sector-specific constraints.
22. These proposals relate to Northern Ireland. Similar proposals are being brought forward by (DTI) for England, Scotland and Wales.

Increasing the entitlement

23. Under these proposals, the statutory entitlement to paid holiday will increase:

- i. From 4 weeks to 4.8 weeks on 1 October 2007, and;
- ii. From 4.8 weeks to 6 weeks on 1 October 2008.

24. The maximum statutory holiday entitlement will be 30 days.

Calculating the entitlement

25. If a worker's holiday year begins before 1 October, the additional holiday entitlement will be calculated by multiplying the proportion of his holiday year that is left to run by the holiday entitlement that applies from 1 October.

Example

A worker whose holiday year runs from 1 January would receive a holiday entitlement as follows:

Leave year beginning 1 January 2007

12 months at 4 weeks annual entitlement: = 4 weeks

3 months (1 October 2007 → 1 January 2008) at 0.8 weeks' additional entitlement:
 $3 \div 12 \times 0.8 = 0.2$ weeks

Total entitlement = 4.2 weeks (of which 0.2 weeks may be carried over)

Leave year beginning 1 January 2008

12 months at 4 weeks annual entitlement: = 4 weeks

9 months (1 January 2008 → 1 October 2008) at 0.8 weeks additional entitlement:
 $9 \div 12 \times 0.8 = 0.6$ weeks

3 months (1 October 2008 → 1 January 2009) at 2.0 weeks' additional entitlement:
 $3 \div 12 \times 2.0 = 0.5$ weeks

Total entitlement = 5.1 weeks (of which 1.1 weeks may be carried over)

Leave year beginning 1 January 2009

Total entitlement = 6 weeks

26. A table showing the calculated leave entitlements can be found inside the back cover of this document. A week's holiday relates to the week that you usually work. If you usually work 3 days a week, then a weeks' holiday is 3 days.

Examples

Using the example of the worker above:

Leave year beginning 1 January 2007

Holiday entitlement = 4.2 weeks x 3 days = 12.6 days

Leave year beginning 1 January 2008

Holiday entitlement = 5.1 weeks x 3 days = 15.3 days

Leave year beginning 1 January 2009

Holiday entitlement = 6 weeks x 3 days = 18 days

For a worker working six days a week:

Leave year beginning 1 January 2007

Holiday entitlement = 4.2 weeks x 6 days = 25.2 days

Leave year beginning 1 January 2008

Holiday entitlement = 5.1 weeks x 6 days, capped at 30 days = 30 days

Leave year beginning 1 January 2009

Holiday entitlement = 6 weeks x 6 days, capped at 30 days = 30 days

27. At present, the four-week holiday entitlement is rounded up to the nearest whole day in the first leave year, but not in subsequent leave years. It is proposed that there would be no rounding up to the nearest day of the total (6 weeks') holiday entitlement required under the draft Regulations, although employers may wish to round holiday up for ease of administration. Rounding down is not permissible. There will be no qualifying period for the additional entitlement but in the first year employers can limit workers taking more leave than they had deemed to accrue in the same way as the current four week entitlement.

Calculating weekly working hours

28. The current four-week holiday entitlement is treated as being 'excluded days' under the Working Time Regulations, regulation 4(6), meaning that time off cannot be used to reduce the average number of hours worked

during the relevant reference period. The Department proposes that the additional holiday would not be considered as 'excluded days' and may therefore be included as non-working time for the purpose of calculating weekly working hours, just as contractual leave in excess of the statutory entitlement may be treated at present.

Payment in lieu of taking holiday

29. The initial consultation sought views on whether there should be the facility to provide payment in lieu of taking the additional leave ('buying out'). Whilst many supported the ability to buy-out the additional holiday, others were concerned about the potential for abuse and felt that giving payment in lieu of taking holiday was contrary to the purpose of the Regulations, namely to enable those that currently receive only four weeks' leave to take more holiday. The Department therefore proposes not to enable any of the statutory holiday entitlement of 6 weeks to be bought out, except on termination of employment as at present.

Carrying holiday over to the following holiday year

30. The initial consultation also sought views on whether there should be the facility to carry leave over from one leave year to another. There was concern that a right to carry leave over that could be asserted by either party would significantly increase the administrative burden for employers in maintaining staff cover. However it was also suggested that not providing the ability to carry leave over would have an inadvertent impact of restricting current leave arrangements, even though some employers may give more than 6 weeks' holiday already. Whilst it is preferable that staff take their holiday within the leave year, the Department recognises that there may be some situations, such as an extended holiday to visit family overseas, when the ability to carry holiday over would be advantageous.
31. The Department therefore proposes to provide the ability for some or all of the additional holiday entitlement to be carried over into the following leave year, subject to the agreement of both the worker and the employer. There will be no automatic right to carry holiday over and employers will be able to refuse any request to carry holiday over in such a way. A minimum of four weeks' holiday must be taken in every leave year.

Other holiday provisions

32. These proposals relate to increasing the amount of the holiday entitlement (and how that additional holiday may be treated); other aspects of the holiday entitlement in the Working Time Regulations will remain unchanged, including the calculation of a week's pay. Employers will still be able to require holiday to be taken at specific times (such as a plant shutdown or on bank holidays) or to refuse requests to take leave at other times (such as

busy work periods). The current notice arrangements for requesting holiday, refusing requests or requiring holiday to be taken will remain the same as at present. Enforcement arrangements through Industrial Tribunals will also be unchanged.

The Draft Regulations

33. The draft Regulations can be found overleaf.

Commentary

34. Regulation 1 provides the citation details for the Regulations and states that they will come into operation on 1 October 2007. The draft Regulations principally concern amendments to the Working Time Regulations (Northern Ireland) 1998.
35. Regulation 2, paragraph 1, provides that the Working Time Regulations (Northern Ireland) 1998 shall be amended.
36. Regulation 2, paragraph 2, inserts a new regulation 13A into the Working Time Regulations after the current regulation 13 (which contains provisions for the current four-week holiday entitlement):
 - i. Paragraphs 1 & 2 of the new regulation give details of an additional holiday entitlement. The additional holiday entitlement will be 0.8 weeks for any leave year starting on 1 October 2007 (paragraph 2(a)), rising to 2 weeks on 1 October 2008 (paragraph 2d). Paragraphs 2(b) and (c) give details of how the additional holiday entitlement is calculated when leave years do not start on 1 October. The proportion of an individual's leave year that falls into a statutory leave year (1 October – 30 September) is multiplied by the additional holiday entitlement applicable for that leave year.
 - ii. Paragraph 3 caps the total statutory holiday entitlement (the holiday given by regulation 13 of the Working Time Regulations and by the new regulation 13A) at 30 days.
 - iii. Paragraph 4 provides that the worker's leave year for the additional leave should be the same as for the four week entitlement.
 - iv. Paragraph 5 describes how the additional entitlement is calculated for staff that join part-way through their leave year.
 - v. Paragraph 6 enables the additional leave to be taken in instalments (i.e. the 0.8 or 2 weeks do not have to be taken in a block), but specifies that payment cannot be given in lieu of leave being taken except when the worker's employment is terminated.
 - vi. Paragraph 7 enables a relevant agreement (such as a contract of employment or a collective agreement) to allow some or all of the additional holiday entitlement to be carried over into the next leave

year. Any such agreement would require the agreement of both employer and member of staff.

37. Regulation 2, paragraph 3, revokes regulation 13(6), which rounds any leave entitlement during the first year of employment to the nearest whole day.
38. Regulation 2, paragraphs 4 to 6, make consequential amendments to regulations 14 (payment on termination of employment), 15 (notice arrangements for holiday), 15A (holiday in the first year of employment), 16 (holiday pay), 18 (excluded sectors), 30 (remedies) and Schedule 2 to take account of the additional leave entitlement under the proposed regulation 13A.

DRAFT STATUTORY RULES OF NORTHERN
IRELAND

2007 No.

EMPLOYMENT

**The Annual Leave (Amendment to Working Time Legislation)
Regulations (Northern Ireland) 2007**

Made - - - - *** 2007*
Coming into operation - *1st October 2007*

The Department for Employment and Learning, makes the following Regulations in exercise of the powers conferred on it by Article 15 of the Work and Families (Northern Ireland) Order 2006(a):

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Annual Leave (Amendment to Working Time Legislation) Regulations (Northern Ireland) 2007 and shall come into operation on 1st October 2007.

(2) These Regulations extend to Northern Ireland only.

Amendment to the Working Time Regulations (Northern Ireland) 1998

2.—(1) The Working Time Regulations (Northern Ireland) 1998(b) shall be amended in accordance with paragraphs (2) to (7).

(2) After regulation 13 (entitlement to annual leave), insert—

“Entitlement to additional annual leave

13A.—(1) Subject to paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).

(2) The period of additional leave to which a worker is entitled under paragraph (1) is—

- (a) in any leave year beginning on 1st October 2007, 0.8 weeks;
- (b) in any leave year beginning before 1st October 2007, a proportion of 0.8 weeks equivalent to the proportion of the year beginning on 1 October 2007 which would have elapsed at the end of that leave year;
- (c) in any leave year beginning after 1st October 2007 but before 1st October 2008, 0.8 weeks and a proportion of another 1.2 weeks equivalent to the proportion of the year beginning on 1st October 2008 which would have elapsed at the end of that leave year;

(a) S.I. 2006/1947 (N.I. 16)

(b) S.R. 1998 No. 386; Regulation 13 was amended by regulation 3 of S.R. 2002 No. 93; There are other amendments which are not relevant to these Regulations

(d) in any leave year beginning on or after 1st October 2008, 2.0 weeks.

(3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 30 days.

(4) A worker's leave year begins for the purposes of this regulation on the same date as the worker's leave year begins for the purposes of regulation 13.

(5) Where the date on which a worker's employment begins is later than the date on which his first leave year begins, the additional leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.

(6) Leave to which a worker is entitled under this regulation may be taken in instalments but it may not be replaced by a payment in lieu except where the worker's employment is terminated.

(7) A relevant agreement may provide for leave to which a worker is entitled under this regulation to be carried forward into the subsequent leave year."

(3) Regulation 13(6) shall be omitted.

(4) In regulation 14(1)(b) and (3), 15(1), 16(1), 18(2) and paragraph 1(a) of Schedule 2, after "regulation 13" insert "and regulation 13A".

(5) In regulations 15(2)(a), 15A(1) and 30(1)(a)(i), after "regulation 13" insert "or regulation 13A".

(6) In regulation 15A(2), after "regulation 13(1)" insert "and regulation 13A(2), subject to the limit contained in regulation 13A(3),".

Sealed with the Official Seal of the Department for Employment and Learning on ***2007.

Name
A senior officer of the
Department for Employment and Learning

Respondents' details

PLEASE COMPLETE THE FOLLOWING DETAILS

Name _____

Organisation (if applicable) _____

Address _____

Email: _____

Please tick the box below that best describes you as a respondent to this consultation:

<input type="checkbox"/>	Sole Proprietor
<input type="checkbox"/>	Micro Business (up to 9 staff)
<input type="checkbox"/>	Small Business (up to 50 staff)
<input type="checkbox"/>	Medium Business (50 to 250 staff)
<input type="checkbox"/>	Large Business (over 250 staff)
<input type="checkbox"/>	Business Representative Organisation/Trade Body
<input type="checkbox"/>	Trade Union or Staff Association
<input type="checkbox"/>	Social Enterprise
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Individual / employee
<input type="checkbox"/>	Other (please describe):

If you are responding on behalf of an organisation; who does the organisation represent?

If applicable, how were the views of members assembled?

Questions

Your views are sought on the following questions:

Question 1: Draft Regulations

Draft Regulations are included in the consultation document. Do you have any comments on the detailed drafting of the proposed changes to the law? If so, please specify.

Yes

No

Question 2: Inadvertent impacts

Are there any other consequences of these Regulations, which the Department might not have anticipated? Please specify.

Yes

No

Question 3: Supporting implementation

Have you any specific suggestions for additional steps that the Department might take (e.g. make available draft standard letters for workers) which might make it easier for employers to implement these regulations?

Question 4: Guidance requirements

Are there any particular issues you would find it helpful to see covered in the guidance accompanying these Regulations?

Annex A: Holiday Entitlement Table

This table enables the increased holiday entitlement for existing members of staff to be calculated. The statutory entitlement for a member of staff will depend on when their leave year begins; to work out their entitlement, read across the table from the start of the leave year. For example:

A member of staff whose leave year begins on 1 April will have a holiday entitlement of:

- 4.4 weeks in the leave year April 2007 – March 2008;
- 5.4 weeks in the leave year April 2008 – March 2009; and
- 6 weeks in the leave year April 2009 – March 2010 and onwards.

Leave year start:	2006-07:	Calculation:	2007-08:	Calculation:	2008-09:
1 November	4.07 weeks	$1 \div 12 (x 0.8) = 0.0666$ $0.0666 + 4 = 4.07$	4.9 weeks	$11 \div 12 (x 0.8) = 0.7332$ $1 \div 12 (x 2.0) = 0.1666$ $0.7332 + 0.1666 = 0.8998$ $0.8998 + 4 = 4.9$	6 weeks (capped at 30 days).
1 December	4.13 weeks	$2 \div 12 (x 0.8) = 0.1333$ $0.1333 + 4 = 4.13$	5 weeks	$10 \div 12 (x 0.8) = 0.6666$ $2 \div 12 (x 2.0) = 0.3332$ $0.6666 + 0.3332 = 0.9998$ $0.9998 + 4 = 5$	
	2007:		2008		2009:
1 January	4.2 weeks	$3 \div 12 (x 0.8) = 0.2$ $0.2 + 4 = 4.2$	5.1 weeks	$9 \div 12 (x 0.8) = 0.6$ $3 \div 12 (x 2.0) = 0.5$ $0.6 + 0.5 = 1.1$ $1.1 + 4 = 5.1$	6 weeks (capped at 30 days).
	2007-08:		2008-09:		2009-10:
1 February	4.27 weeks	$4 \div 12 (x 0.8) = 0.2666$ $0.2666 + 4 = 4.27$	5.2 weeks	$8 \div 12 (x 0.8) = 0.5333$ $4 \div 12 (x 2.0) = 0.6666$ $0.5333 + 0.6666 = 1.199$ $1.199 + 4 = 5.2$	6 weeks (capped at 30 days).
1 March	4.33 weeks	$5 \div 12 (x 0.8) = 0.3333$ $0.3333 + 4 = 4.33$	5.3 weeks	$7 \div 12 (x 0.8) = 0.4666$ $5 \div 12 (x 2.0) = 0.8333$ $0.4666 + 0.8333 = 1.2999$ $1.2999 + 4 = 5.3$	
1 April	4.4 weeks	$6 \div 12 (x 0.8) = 0.4$ $0.4 + 4 = 4.4$	5.4 weeks	$6 \div 12 (x 0.8) = 0.4$ $6 \div 12 (x 2.0) = 1.0$ $0.6 + 0.5 = 1.4$ $1.4 + 4 = 5.4$	
1 May	4.47 weeks	$7 \div 12 (x 0.8) = 0.4666$ $0.4666 + 4 = 4.47$	5.5 weeks	$5 \div 12 (x 0.8) = 0.3333$ $7 \div 12 (x 2.0) = 1.1666$ $0.3333 + 1.1666 = 1.4999$ $1.4999 + 4 = 5.5$	
1 June	4.53 weeks	$8 \div 12 (x 0.8) = 0.5333$ $0.5333 + 4 = 4.53$	5.6 weeks	$4 \div 12 (x 0.8) = 0.2666$ $8 \div 12 (x 2.0) = 1.3333$ $0.2666 + 1.3333 = 1.5999$ $1.5999 + 4 = 5.6$	
1 July	4.6 weeks	$9 \div 12 (x 0.8) = 0.6$ $0.6 + 4 = 4.6$	5.7 weeks	$3 \div 12 (x 0.8) = 0.2$ $9 \div 12 (x 2.0) = 1.5$ $0.2 + 1.5 = 1.7$ $1.7 + 4 = 5.7$	
1 August	4.67 weeks	$10 \div 12 (x 0.8) = 0.6666$ $0.6666 + 4 = 4.67$	5.8 weeks	$2 \div 12 (x 0.8) = 0.1333$ $10 \div 12 (x 2.0) = 1.6666$ $0.1333 + 1.6666 = 1.7999$ $1.7999 + 4 = 5.8$	
1 September	4.73 weeks	$11 \div 12 (x 0.8) = 0.7332$ $0.7332 + 4 = 4.73$	5.9 weeks	$1 \div 12 (x 0.8) = 0.0666$ $11 \div 12 (x 2.0) = 1.8333$ $0.0666 + 1.8333 = 1.8999$ $1.8999 + 4 = 5.9$	
1 October	4.8 weeks	$12 \div 12 (x 0.8) = 0.8$ $0.8 + 4 = 4.8$	6 weeks	$0 \div 12 (x 0.8) = 0$ $12 \div 12 (x 2.0) = 2.0$ $0 + 2.0 = 2.0$ $2.0 + 4 = 6$	

people:skills:jobs:



Department for
**Employment
and Learning**
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INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

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