



Increasing the holiday entitlement: a further consultation

The TUC Response

1: Introduction

The Trades Union Congress is the voice of people at work. Our 62 member unions represent more than 6.5 million working people.

In our response to the DTI's first round of consultation we welcomed the proposals to increase the statutory paid annual leave entitlement, which is currently the bare minimum allowed by European law. This initiative chimes with a number of the Government's other policy aims, including making work more attractive, facilitating a better work-life balance and improving the quality of family life.

One of the flaws in the existing Working Time Regulations (WTR) is that employers can count public holidays as part of the four weeks' paid annual leave entitlement guaranteed by the European Union Working Time Directive. For some part-time women workers in particular this has meant that they must take nearly all of their annual leave entitlements on public holidays. In contrast, many other EU countries treat public holidays as additional to statutory annual leave entitlements.

There is no valid reason why UK workers should have to settle for lower standards than their European colleagues. The UK economy is generally sound and is sustaining record levels of employment. Furthermore, most analysts believe that the economy is set to continue to perform relatively well.

Our experience of the introduction of similar measures in the past, most notably the right to four weeks' paid leave in the Working Time Regulations 1998, was that the new rights were absorbed without causing any measurable side effects.

The TUC's view is that the UK can well afford to give its hard-pressed workers more time off and that the proposed increases should be implemented in full as soon as possible.

2: The Government's proposals for increasing the statutory entitlement to paid annual leave

In its manifesto for the 2005 General Election the Labour Party proposed to extend the four weeks' minimum paid holiday guaranteed by the Working Time Regulations (1998):

*'We have introduced, for the first time, an entitlement for every employee to four weeks' paid holiday, and we propose to extend this by making it additional to bank holiday entitlement'*¹.

In June 2006 the DTI launched an initial consultation and the TUC responded in September of that year.

In January 2007 the Government launched a second round of consultation², which included firmer proposals for increasing the statutory entitlement to annual leave, including draft regulations.

¹ 'Britain Forward Not Back', The Labour Party 2005, p27

The Government proposes to add 1.6 weeks to the existing minimum statutory annual leave entitlement, thus increasing the entitlement for full-time workers by 8 days, with a pro-rata increase for part-time workers.

The DTI intends to implement the increase to leave rights in two parts:

- 1 October 2007 - increase to 4.8 weeks
- 1 October 2008 - increase to 5.6 weeks

In order to meet this timetable, draft regulations will need to be passed by a parliamentary 'affirmative resolution'³ by 1 July at the latest.

The DTI's proposals include a number of positive aspects: they will apply not just to employees but also to the broader category of 'workers'; workers will be able to carry over the extra days subject to agreement with their employers; there will be no provisions for employers to buy-back the extra days; and the Government has resisted employer pressure to introduce a qualifying period for the extra entitlements.

Negative aspects include: a cap of 28 days entitlement, which disadvantages workers who are contracted to work 6 days per week and are already entitled to 24 days per year; there will be no round up for part days entitlement in the first leave year and the round up provisions for the existing entitlement in the first leave will be abolished; the extra days of leave will be excluded from calculation of the 48 hour week limit and the nightwork limit.

Parallel legislation will be needed in order to cover seafarers, aviation pilots and air cabin crew.

3: The UK can afford to increase the statutory paid leave entitlement without delay

Previous increases in statutory leave entitlements and public holidays have had no discernable negative effects on the economy or employment. In particular, introducing the statutory entitlement to 4 weeks' paid annual leave in the WTR was achieved without generating any detrimental side effects.

It is worth noting that increasing the statutory minimum leave entitlement is in line with a long-term historical trend. Largely because of the success of trade unions in setting better standards through negotiation, most workers already get leave standards that are more generous than the proposed entitlement. The average full-time worker currently gets 33 days of leave in all, comprising 5 weeks' paid annual leave plus 8 public holidays.

² 'Increasing the holiday entitlement: a further consultation', DTI, Jan 2007.

³ See House of Commons Information Office Fact sheet L7 'Statutory Instruments' (Revised January 2007), p4 for further details of the affirmative resolution procedure:
<http://www.parliament.uk/documents/upload/LO7.pdf>

It follows that setting the new standard merely establishes a floor on leave entitlements in order to prevent exploitation and overwork for those who have missed out on the general improvements in leave entitlements.

The UK economy is robust enough to sustain these increases without difficulty. As the table below demonstrates, independent predictions suggest that the economy is, at worst, likely to continue on much the same course.

Economic and labour market outlook 2006-2008

<i>Economic outlook</i>	2006	2007	2008
GDP annual growth rate (%)	2.7	2.5	2.3
Employment growth (annual, %)	0.8	0.8	0.7
Employment growth (000s)	230	233	205
Claimant unemployment (000s)	960	980	1,010
Average earnings (annual growth)	4.1	4.3	4.3
Inflation (RPI-X)	3.9	3.0	2.6
Inflation (CPI -inflation target index)	2.7	2.0	2.0

Sources: HMT June 2006, TUC calculations⁴.

There is no evidence that increasing the minimum statutory entitlement to annual leave would have an adverse impact on jobs, productivity or competitiveness. On the contrary, there will be some personnel benefits to businesses that will offset the cost of the extra leave days.

Furthermore, the average beneficiary will gain just under 4 extra days paid annual leave per year. Furthermore, the beneficiaries are reasonably well spread across the industrial sectors. Whilst this increase will be very worthwhile, it will not be too difficult for employers to absorb in one go.

4: The TUC welcomes some aspects of the proposals⁵

The TUC would have preferred the Government to create a positive right to take public holidays as paid time off, with sufficient flexibility for employers to run their businesses on these days. Our preferred model is still the successful Republic of Ireland *Organisation of Working Time Act* (1997).

The partial Regulatory Impact Assessment for the Government's proposals, which we believe overstates their true cost (see below), suggests that the TUC's preferred model would have cost 1.3 per cent more than the current proposals⁶. For a maximum expenditure of £53 million, our model would have produced the positive benefits of making it easier for workers to get their rights and bolstering our public holidays as national days of celebration.

⁴ Source - 'Forecasts for the UK Economy: A Comparison of Independent Forecasts', HMT, Feb 2007.) TUC calculated employment growth in thousands by applying HMT predictions to ONS employment statistics.

⁵ DTI Consultation paper question 7

⁶ 'Increasing the Holiday Entitlement: Partial Regulatory Impact assessment', DTI, Jan 2007, pps 18-21

Turning to the current proposals, in our view the regulations are largely drafted in a way that accurately reflects the Government's intentions⁷.

However, we believe that the exclusion of the new leave days from the calculation of the 48-hour weeks set by the WTR will lead to some undesirable inadvertent impacts that have not been previously considered⁸. This issue is discussed in more detail in the next section.

The DTI proposes that the new entitlements be brought forward as an amendment to the WTR, which means that they will cover not just employees but also the broader category of 'workers', which includes agency workers and the dependant self-employed who are not really running their own businesses.

This approach also means that the new entitlements will apply to the offshore oil and gas industry, which has been subject to a long running dispute about what the annual leave entitlements in the WTR mean for workers in that sector.

We also asked that workers should be allowed to carry over some or all of the new entitlement into the next leave year, subject to genuine agreement with the employer. See also section 9 below.

Well-regulated carry-overs are in keeping with the intention of the manifesto commitment. However, in order for this proposal to work fairly, the enforcement regime must be tightened. See section 11 below.

We also asked that employers should not be able to buy back entitlements. We feared that any proposals to allow buy-backs from extra 1.6 week entitlement might lead to workers losing out, with many vulnerable workers being put under pressure by employers to forego their leave.

We are also aware that a number of employers lobbied the Government to introduce a qualifying period for the extra rights, similar to the arrangements that were deleted from the WTR by the European Court of Justice case taken by the broadcasting trade union BECTU.

The Government was quite right to resist this pressure and should continue to do so. Such an arrangement would certainly not be in keeping with workers' legitimate expectations of what the manifesto commitment should deliver.

5: The TUC is still concerned about some aspects of the proposals⁹

The TUC is particularly concerned that the Government proposes that the entitlement to 5.6 weeks leave might be capped at 28 days. The TUC argues that this would be unfair to those who are contracted to work 6 days per week¹⁰. As 6-

⁷ DTI consultation paper question 1

⁸ DTI consultation paper question 2

⁹ DTI consultation paper question 7.

¹⁰ The Working Time Regulations stipulate that workers are entitled to 1 full days rest per week and a recent ECJ judgement confirms that the rest entitlement must be taken. Thus nobody should be

day per week workers must already get 24 days paid annual leave under the WTR, the cap would mean that they would only be entitled to 4 extra days leave under the new proposals.

The cap would also be problematic in the offshore industry, where many workers work a 14 days on/ 14 days off pattern.

It cannot be right that those who work the longest should gain so little. The TUC therefore proposes that the cap be increased in order to deal with this anomaly.

The TUC calculates that increasing the cap would give extra leave entitlements to about 350,000 workers who work more than 5 days per week. This total includes 70,000 part-time and 280,000 full-time workers.

The TUC is also concerned that the Government plans to treat the extra entitlement in a different way to the existing 4 weeks statutory annual leave when it comes to calculating the average 48 hour limit on weekly working time set by the WTR.

We believe that this proposal urgently needs to be revised for two reasons:

- excluding the new leave days from the calculation would allow employers to force workers to work extra hours in the remaining working days in the calculation period;
- treating the statutory entitlements in two different ways introduces an unnecessary complication into the regulations that will make them both harder to understand and harder to enforce.

For workers who have not signed the opt-out but who work at or close to 48 hours per week, this proposal would be likely to give more time off with one hand and take it back with the other. We do not believe that this is in keeping with the spirit of the manifesto commitment¹¹.

Finally, the removal of the round-up provision in the first year of employment will leave some workers with slightly lower entitlements.

6: The scope of the regulations - seafarers and mobile aviation workers

Most workers draw their statutory holiday entitlements from the WTR but a minority of workers will need to be covered by amendments to other legislation. The Government has already announced that it will protect sea fishermen and inland waterway workers in this way. The Government must also take steps to ensure that seafarers and mobile aviation workers are protected.

There has been some debate about whether any amendment is needed in order to protect aviation pilots and cabin crew, with the DfT wondering whether any pilots would actually gain from such a measure or whether they all have

contracted on a regular basis to work for 7 days per week. However, special provision needs to be made for workers in the offshore industry who commonly work a 2 weeks on/ 2 weeks off pattern.

¹¹ DTI consultation paper question 2.

contractual rights that are in excess of the statutory minimum - unfortunately this is not the case.

The TUC sees this matter as a simple one. The Government has made a promise that must be fulfilled for all UK workers. Therefore, parallel measures must be brought forward in order to protect all workers that are not covered by the WTR.

7: Calculating the number of people who will benefit

There is still considerable debate over the number of workers who will benefit from this increase. The TUC's estimates are considerably lower than those of the Government and the Low Pay Commission. The TUC is working to resolve this dispute, which will have two possible outcomes:

- either a greater number will benefit than we had previously estimated; or
- fewer people will benefit than the Government has estimated, which would undermine the case for phasing in the new entitlements.

As reported in our response to the first consultation, the TUC used unpublished data from the ONS Labour Force Survey in order to calculate that there would be just over 2 million beneficiaries amongst those respondents who said that they were employees. Our subsequent research suggests that there are also up to 0.5 million beneficiaries who designate themselves as self-employed but are also 'workers' for the purposes of the WTR.

Thus our estimation is that, in total, about 2.5 million workers stand to gain. If this calculation is correct then the Government's proposals will bring about an improvement in working conditions for a very substantial number of people. About 1 in 12 of the UK workforce would gain extra holiday entitlements¹².

However, the DTI's partial Regulatory Impact Assessment (RIA) for this measure suggests that a total of 6 million workers will benefit¹³.

As the Labour Force Survey questions are not very well suited for estimating the number of beneficiaries, the DTI commissioned a new survey to measure the impact of the leave proposals. At the time of writing the TUC has not been able to evaluate the results of the Government survey in detail. However, we fear that they may have made a couple of over-optimistic assumptions:

- The RIA suggests that 4.4 million employees will benefit. We fear that the Government may have included all those workers who currently get less than 4.0 weeks entitlement. It is important to calculate the number of workers whose current entitlement is between 4.0 and 5.6 weeks. Around 1 in 3 of those who should get 4.0 weeks leave at the moment are not actually getting their rights, and this situation will not change because the overall entitlement is increased.

¹² For comparison, the introduction of the 4 weeks' leave entitlement in the WTR (1998) is said to have benefited 3.1 million employees plus an unknown number of 'workers' who classify themselves as self-employed. Source: '1999 Compendium of Regulatory Impact Assessments', Employment Relations Research Series number 53, DTI, 1999, p.110.

¹³ 'Increasing the Holiday Entitlement: Partial Regulatory Impact Assessment', DTI, Jan 2007, p8.

- The RIA also estimates that 1.5 million non-employee 'workers' will benefit. This is based on the assumption that 6 per cent of the UK workforce are 'workers' rather than employees or self-employed. However, this assumption needs to be deployed with care in order to avoid double-counting, because in surveys many people who should be counted as 'workers' will say that they are actually employees. As about 1 in 6 of the UK workforce say that they are self-employed, it seems more likely that only between 300,000 to 600,000 workers will benefit.

Filtering out non-compliance with the existing leave entitlements suggests that the DTI's new research might actually predict that around 3.6 million workers¹⁴ will benefit from the new proposals.

This hypothesis fits quite well with the fact that, taking no account of annual leave entitlements, the LFS reports the number of employees having problems with public holidays as just 3.1 million (the question is not asked to the self-employed, which might account for the missing 0.5 million).

Note that we would be happy to be proved wrong on this point, as this would mean that more workers would benefit.

Even if our hypothesis holds up, this is still very good news indeed for time-poor workers, as the number of beneficiaries might be 1.1 million higher than the TUC's initial prediction.

However, there is thus still a strong possibility that the DTI and LPC have both overestimated the impact of these proposals. It would certainly not be proper to penalise workers because employers are not meeting their existing duties. Therefore, if the number of beneficiaries is found to be considerably less than previously estimated, then this greatly strengthens the case for introducing the measures without phasing.

8: Partial Regulatory Impact Assessment

If our critique still holds when we are given full access to the DTI's research then this will have profound implications for the RIA¹⁵.

Assuming, for a moment, that all the assumptions in the RIA hold true except for the number of beneficiaries, which is revised in the way indicated in the previous section, then the cost of implementing the extra leave entitlements falls drastically - by 39 per cent for 3.6 million beneficiaries and by 58 per cent for 2.5 million beneficiaries.

The estimated annual labour cost of the measure would then fall from £3.3- £4.4 million down to £2.0 billion-£2.7 billion for 3.6 million beneficiaries, or even down to £1.5 billion-£1.8 billion for 2.5 million beneficiaries.

¹⁴ The calculation is (4.4 million employees minus 1.3 million existing non-compliance = 3.1 million) plus, say, 550,000 'workers' who say that they are self-employed.

¹⁵ DTI consultation question 3

A further point to consider when measuring costs is that, whilst some time-poor managers and professionals will benefit from these proposals, the majority of the beneficiaries are expected to be amongst the lower paid occupations. Therefore, calculating labour costs based average earnings overstates the real cost of the proposals.

In addition, we should note that those who get poor holiday entitlements are likely to earn less than the median salary for their occupation.

Turning to the benefits of the proposals, talking into account the number of part time workers and those who have entitlements between the exiting statutory minimum and the new entitlements, the TUC calculates that the average beneficiary will gain 4 extra days leave per year.

This is, of course, a real financial benefit to these workers. Once we can agree how many workers will benefit from these proposals then we can identify the true extent of this element of the financial benefit, which will be the same as the wages cost to the employer.

However, as the RIA hints¹⁶, this is not a zero-sum game in which workers gain a fixed sum because employers lose the same sum. Rather, increased holidays are likely to have some positive personnel management effects that will be modest but worthwhile.

In addition, the proposal to increase statutory annual leave entitlements has its roots in health and safety protection. It is right that it should benefit all workers, including by helping to prevent stress, which is a major and growing source of work-related illness across the occupational spectrum.

It is likely that a higher leave entitlement will have a modest positive effect on recruitment, retention and motivation, and a slightly stronger positive effect on the incidence of staff absence through physical and mental illness.

Whilst these effects are difficult to quantify, they do have to be very big before they have a measurable impact on the cost of the proposals. For example, if the average beneficiary who gains 4 days extra leave also takes 0.5 days less sickness absence per year - which is not an unreasonable hypothesis - then the labour costs of these proposals will be 12.5 per cent less than the DTI's estimate.

Turning briefly to consumer demand, it is likely that a substantial increase in paid annual leave entitlements will bring substantial economic benefits for the tourism, travel, retail, hospitality and leisure industries.

The TUC's estimate suggests that 10 million extra leave days will be taken as a result of the new rights (2.5 million workers x 4 days), whilst the DTI's RIA estimate, which we believe to be over-generous, would mean that 23.5 million extra leave days would be taken (5.9 million beneficiaries x 4 days). These are substantial figures, which should have a strongly beneficial effect on the 'holiday' sectors.

¹⁶ Some of the benefits for staff are also benefits for employers. See 'Increasing the Holiday Entitlement', DTI, Jan 2007, p10, para 20.

In particular, there has been some concern about the impact on the hospitality and retail sectors¹⁷. However, it is most likely that there will also be a substantial offsetting increase in consumer demand for these services.

According to the partial RIA, these sectors employ just over one third of those who will gain extra leave¹⁸. If just half of the cost of paying extra leave for these workers is offset by increased turnover - again, not an unreasonable assumption - then the overall cost of the leave proposal will fall by a further 17.5 per cent.

We would thus suggest that the offsetting demand and personnel benefits of the new leave entitlements are unlikely to be worth less than 30 per cent of the labour cost of these measures.

Taking all of these factors into account, the table below shows a range of estimates for the labour cost of the leave rights varying between £1.1 billion and £4.4 billion.

The DTI needs to meet the TUC as soon as possible in order to discuss the details of its research with a view to reconciling the discrepancy in our estimate of the number of beneficiaries.

The TUC believes that these figures strongly suggest that there is no need to phase the introduction of the new rights.

Revised estimate of the labour cost of the leave proposals

	Labour cost - no offsetting employer benefits	Labour cost - less 30% offsetting employer benefits
2 million beneficiaries	£1.5-£1.8 billion	£1.1-£1.3 billion
3 million beneficiaries	£2.0-£2.7 billion	£1.4-£1.9 billion
6 million beneficiaries	£3.3-£4.4 billion	£2.3-£3.1 billion

Source: DTI Partial RIA, ONS Labour Force Survey and TUC calculations

9: Regulatory guidance

The DTI intends to support the regulations by introducing regulatory guidance. The TUC believes that it is very important to make the guidance as clear and accessible as it can possibly be. Therefore, we would like to talk to the DTI about it in detail before it is piloted.

¹⁷ See 'Increasing the Holiday Entitlement: Partial Regulatory Impact Assessment', DTI, Jan 2007, p11, para 22. Note that the hospitality sector = hotels, catering, restaurants, cafes, bars, take-aways and canteens.

¹⁸ Ibid, p25.

We would also, of course, also be happy to continue the process by giving feedback on the piloted version¹⁹.

In terms of content²⁰, one priority must be for the guidance to set clear rules about how the carry over provisions will work. Our key concerns are to ensure that carry-overs are genuinely voluntary, and that workers are actually able to take the leave that they have carried over into the next year.

We note that the question of the accrual of annual leave during sickness absence will be dependant on the European Court of Justice's verdict on the House of Lords referral of the *Ainsworth v Commissioners of the Inland Revenue* case.

This certainly should not delay the guidance from making it clear that carry-overs must be allowed in cases where an employee cannot take all of their annual leave because of maternity, paternity or adoptive leave entitlement.

The guidance should also make it clear that the new rights are statutory *minimum* standards, which should not be used as a means to reduce existing contractual standards where these are better than the legal minimum.

10: Awareness

Awareness of the existing statutory annual leave rights is nowhere near as high as it should be. A DTI survey found that only 8 per cent of those who did not get four weeks paid annual leave knew that they had such an entitlement²¹.

The introduction of the new rights should be accompanied by a Government campaign to raise awareness of the improved entitlements.

11: Enforcement

In order to make the new rights meaningful they must be rigorously enforced²². A vital cornerstone of the new arrangements must be a statutory provision to prevent opportunistic employers from levelling down existing contractual entitlements to annual leave and public holidays.

Our key concern is that the enforcement regime for the existing statutory paid annual leave rights is rather weak. At the moment a worker can only enforce their holiday rights by taking a case to an employment tribunal. Taking such a course of action is extremely daunting for a worker, and abuse remains rife.

It is a strong cause for concern that more than a million full-time employees still say that they have less than 4 weeks annual leave entitlement²³. The current

¹⁹ DTI consultation question 6

²⁰ DTI consultation question 5

²¹ 'A Survey of Workers Experiences of the Working Time Regulations, Employment Relations Research Series No.31, DTI, 2004, p.47

²² DTI consultation question 4.

²³ 6% of full-time employees. Source: Labour Force Survey Microdata Service Autumn 2006

figures closely match the Government's earlier findings based on the data for the year 2,000²⁴.

Furthermore, although the statutory minimum entitlement for a full-time employee working 5 days per week has been 12 days (20 leave days minus 8 public holidays) since 1998, some 362,000 full-time employees still report that they have less than 12 days' leave, including 214,000 employees who say that they have no leave entitlements at all.

Given that part-time workers are more likely to lose out on their holiday rights than full-time workers, our best estimate is that around 1.3 million UK workers are losing out on their existing statutory holiday rights.

The forthcoming amendments to the regulations give the Government a good opportunity to deal with the problem of employers not complying with the existing entitlements.

Two changes to the current enforcement regime are urgently needed:

First, the fact that employment tribunals can only hear cases brought by individual workers is a strong barrier to enforcement, since most workers fear to be the first to submit a tribunal application.

It is strongly desirable that workers and their trade unions should be able take representative and group cases²⁵ to employment tribunals, rather than every single worker having to submit a separate application.

Representative actions²⁶ and Group Litigation Orders²⁷ are already allowed in the courts in certain circumstances. It is thus an anomaly that employment tribunals cannot hear representative actions and that their powers to manage group litigation are less extensive than those of the courts.

To facilitate good enforcement it is particularly desirable that trade unions should be able to bring cases to employment tribunals on behalf of groups of workers and that unions can be a party in such cases. This would greatly strengthen workers' ability to enforce the annual leave entitlements.

Second, to supplement the tribunal route there should be a mechanism by which workers can raise complaints with a government agency. There are two candidates for this role, namely the Health and Safety Executive and HM Revenue and Customs, who run the Minimum Wage Enforcement Unit.

²⁴ DTI, 2004, op cit, p.19

²⁵ Representative action - where one or more persons represents another or a group of others on a claim (known as a 'class action' in the USA). Group action - where there are a large number of claims with common or related issues in fact or law. These may be case managed to ensure greater consistency and save costs.

²⁶ Civil Procedure Rules, parts 19.6/19.7

²⁷ Ibid, parts 19.10-19.15

The HSE already has responsibility for enforcing the *limits* set by the Working Time Directive (48 hour week and the nightwork limit), but not the annual leave and break entitlements.

HM Revenue and Customs is already finding considerable abuse of the holiday provisions as part of its minimum wage investigations. There is a relatively close fit between the profile of companies who breach the NMW Act and the WTR holiday provisions and both these issues are about delivering statutory pay to vulnerable workers.

The worker would also need to be confident that their complaint would be pursued. The Government has managed to establish this kind of complaint investigation regime for enforcing the national minimum wage. Similar arrangements should be put in place to ensure that workers will be able to benefit from the new paid holiday rights and the enforcement regime must be properly resourced and be supported by an extensive front-line inspection regime.

12: Reviewing the number of public holidays

The TUC is campaigning for the creation of new public holidays. With the economy doing well there is no reason why UK workers should get fewer days off than their European colleagues.

The TUC's polling found that 99 per cent of UK workers are in favour of creating extra public holidays. The Government should look again at the merits of creating new days of national celebration.

13: Conclusions

The TUC welcomes the chance to contribute to this second consultation and looks forward to commenting on draft guidance at an early date. The main points of our response are summarised below:

- The proposal to increase statutory annual leave entitlements has its roots in health and safety protection. It is right that it should benefit all workers, including by helping to prevent stress, which is a major and growing source of work-related illness across the occupational spectrum.
- The new standard will merely establish a floor on leave entitlements in order to prevent exploitation and overwork for those who have missed out on improvements in leave entitlements in recent years.
- The economy is performing well and the UK can easily afford this measure.
- The TUC welcomes some aspects of the proposals: they will cover the broader category of 'workers' rather than just employees; they will clearly cover the offshore industry; workers will be allowed to agree with their employers to carry-over some or all of the new leave days into the following leave year.
- The TUC is concerned about some aspects of the proposals: capping the entitlement at 28 days will unfairly disadvantage those who are contracted to work more than 5 days per week; excluding the new leave days from the calculation of the WTR limits will unfairly allow employers to ask workers to put in more hours to compensate for their leave.

- The Government must ensure that all workers benefit from the commitment to increase the minimum paid leave entitlement. Therefore parallel measures must be brought forward for all workers not covered by the main WTR, including seafarers and mobile aviation workers.
- The TUC is concerned that the DTI appears to have over-counted the number of beneficiaries by counting those who are still being cheated out of their existing entitlements and by double counting some non-employee 'workers'. The TUC would be happy to be proved wrong on this point, since this would mean that more people would really benefit.
- In any case, this issue needs to be cleared up as soon as possible. If the TUC's suspicions are correct, then the cost of the measure is much less than the estimate in the RIA would suggest.
- Furthermore, the RIA does not include the personnel and demand benefits to employers that might reasonably be expected to stem from the new entitlements.
- Taking these factors into account, the labour cost of these proposals might be as little as one third of the RIA estimate, which suggests that the new entitlements should be introduced in October 2007 without phasing.
- The enforcement regime needs to be strengthened so that workers can receive their statutory holiday rights. Access to employment tribunals should be made easier by allowing representative and group actions. In addition, the Government should consider setting up a mechanism for investigating workers' complaints about statutory annual leave entitlements.
- It is essential that the regulations are supported by good regulatory guidance. The TUC would therefore happy to be consulted on draft guidance.
- One key concern is that the guidance should spell out in detail how carry-overs will work, including advice about the interplay between statutory annual leave and other statutory leave rights.
- This consultation also presents a good opportunity to review the UK's public holiday entitlement, with the aim of creating new national days of celebration. Such a measure would have overwhelming public support.