

<b>Title:</b> Reducing the administrative burden of the Working Time Regulations <b>IA No:</b> DBT017(IAF)-23-LM <b>RPC Reference No:</b> <b>Lead department or agency:</b> Department for Business and Trade <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 08/11/2022			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
	<b>Contact for enquiries:</b> lm.correspondence@businessandtrade.gov.uk			
<b>Summary: Intervention and Options</b>				
<b>RPC Opinion:</b> Green				

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
£ 4,274.3m	£ 4,274.3m	- £ 496.6m	

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

The Working Time Regulations are derived from the European Union Working Time Directive and create various entitlements for workers including minimum rest breaks and maximum working hours, as well as an entitlement to paid annual leave. Having left the European Union, the Government has been taking the opportunity to review record keeping requirements under the Working Time Regulations, assessing whether the rules that currently apply work in the best interests of businesses and workers and deliver on the Government's objective of creating the conditions for growth. The Government is proposing removing the uncertainty for employers about their record keeping obligations after a 2019 judgment of the Court of Justice of the European Union (*Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*).

**What are the policy objectives of the action or intervention and the intended effects?**

The policy objectives are to:

- Provide legal clarity on the record keeping requirements in the Working Time Regulations;
- Reduce the administrative burden of the Working Time Regulations;
- Create the conditions for growth, investment and job creation;
- Ensure record keeping requirements set out in employment law are proportionate, supported by a robust evidence base, and provide flexibility for workers and employers;
- Promote good relations between workers and their employers;
- Encourage take-up of flexible working that can benefit both workers and employers.

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


We have assumed that the 'Do Nothing' position is the current status quo, i.e. no change in the current lived experience of businesses and workers. In practice, this means continued uncertainty as to whether the UK courts are bound by this judgment, and legal uncertainty for employers about their record keeping obligations. The potential reform is then considered relative to this position. Broadly, there are two proposed policy options:

- Option 0: Do Nothing, i.e. allow continued legal uncertainty about record keeping obligations.
- Option 1: The Government would legislate to remove the effect of the 2019 CJEU judgment.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Is this measure likely to impact on international trade and investment?			N/A		
Are any of these organisations in scope?		Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by Kevin Hollinrake MP, Minister for Enterprise, Markets and Small Business


 Date: 19/09/2023

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Option 1 – Legislate to remove the 2019 CJEU judgment from GB law

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2023	Time Period 10 years	Net Benefit (Present Value (PV)) (£m)		
			Low: 3,663.9	High: 6,882.8	Best Estimate: 5,293.2

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	N/A	N/A	N/A

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

N/A

### Other key non-monetised costs by 'main affected groups'

The non-monetised costs to businesses and workers are 'foregone benefits' if the 2019 CJEU judgment were to apply in Great Britain. The non-monetised benefits if the 2019 CJEU judgment were to apply could include: improvements in worker health and wellbeing, level playing field across businesses, and lower legal costs due to avoided or shorter Early Conciliation and Employment Tribunal cases. These impacts would occur in cases where more detailed record keeping leads to materially fewer instances of non-compliance with rest break entitlements; however, these impacts are expected to be limited.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	417.3	3,663.9
High	Optional	826.4	6,882.8
Best Estimate	451.3	624.4	5,293.2

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

The monetised benefits to business are 'avoided costs' if the 2019 CJEU judgment were to apply in Great Britain. The monetised transition costs if the 2019 CJEU judgment were to apply include: familiarisation costs and implementation costs for businesses to set up or upgrade record keeping systems. The monetised ongoing costs include: the cost of unproductive time spent by workers recording and submitting their daily working hours and the time spent by businesses to review records.

### Other key non-monetised benefits by 'main affected groups'

The non-monetised benefits to businesses, workers and the Exchequer are 'avoided costs' if the 2019 CJEU judgment were to apply in Great Britain. The non-monetised costs to businesses, workers and the Exchequer if the 2019 CJEU judgment were to apply include: periodic review of record keeping systems, incentives to move to a self-employment model, lower take-up of flexible working, damage to the worker-employer relationship.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5
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If the 2019 CJEU judgment were to be implemented, it is estimated that this would lead to a one-off, upfront cost of around £450m and an ongoing cost of around £1bn per year. How this is reflected in EANDCB and NPV figures depends on the timing of a domestic court ruling that finds that the judgment applies in GB in the counterfactual. The timing of this event is ex-ante unknown. The 'avoided costs' are considered as direct and, for the purposes of the cover sheets, we have constructed a dummy counterfactual whereby a domestic court case occurs mid-way through the appraisal period in the counterfactual, i.e. after five years. We have taken an overall cautious approach in our analysis and used sensitivity analysis where assumptions are uncertain. This includes our interpretation of the steps required for workers and businesses to comply with the judgment, which is uncertain as the judgment leaves a certain degree of flexibility.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs:</b> 0.0	<b>Benefits:</b> 614.9	<b>Net:</b> -614.9	

## Policy Context

1. The Working Time Regulations (WTR) are derived from the European Union Working Time Directive (EU WTD) and create various entitlements for workers including minimum rest breaks and maximum working hours, as well as an entitlement to paid annual leave. The European Union Working Time Directive was intended to protect workers' health and safety by setting minimum requirements in relation to working hours, rest periods, and entitlement to paid annual leave. Before the regulations came into effect there were no general regulations in Great Britain relating to working time or entitlement to leave.
2. Having left the European Union, the Government has been taking the opportunity to review record keeping requirements under the Working Time Regulations, assessing whether the rules that currently apply work in the best interests of businesses and workers and deliver on the Government's objective of creating the conditions for growth.
3. This Impact Assessment (IA) focuses on the specific proposal in the consultation to remove uncertainty for businesses around retained European case law that imposes time-consuming and disproportionate requirements on business for working hour records to be kept for almost all members of the workforce.
4. A 2019 judgment of the Court of Justice of the European Union (CJEU) ruled that 'Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured'<sup>1</sup>. The judgment held that records must be kept in relation to the right to a minimum daily rest period of 11 consecutive hours in each 24-hour period; the right to a minimum uninterrupted period of rest of 24 hours in each seven day period; and the right to a maximum weekly working time of 48 hours per week. The judgment noted that other sources of evidence, such as witness statements, the production of emails or the consultation of mobile phones or computers, did not enable the number of hours the worker worked each day and each week to be objectively and reliably established.
5. This is a more onerous administrative burden on both employers and workers than the existing record keeping requirements. The Working Time Regulations states that 'adequate' records should be kept to demonstrate compliance with specific provisions, but does not prescribe the specific form that working time records should take. HSE guidance in 2019 indicated that 'there is no specific need to keep records of actual daily working time' and 'it is not necessary to create records specifically for the purposes of these Regulations, and employers may be able to use existing records maintained for other purposes such as pay. If it is clear that particular workers or groups of workers are unlikely to reach the various limits (e.g. because they always work a set 40-hour week), this requirement can be met simply by making occasional checks to ensure that nothing has changed'<sup>2</sup>.
6. Great Britain has not amended its own legislation in light of the 2019 CJEU judgment<sup>3</sup>. However, since 1<sup>st</sup> January 2021, the judgment forms part of retained EU law under the European Union (Withdrawal) Act 2018. If a case were to be brought, there is a reasonable likelihood that domestic courts determine that UK law means that all working hours need to be recorded for almost all workers. The timing of such a judgment in British courts is unknown. There could also be some question around how the 2019 CJEU judgment would be 'read into' domestic law. This places employers in a difficult situation in trying to be compliant with the law as employers are currently uncertain about their record keeping obligations.

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<sup>1</sup> Judgment of the Court (Grand Chamber) of 14 May 2019 *Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*

<sup>2</sup> <https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Education/EDU - HR e-briefing - Record Keeping and the Working Time Regulations>

<sup>3</sup> The 2019 CJEU judgment, and hence this Impact Assessment, focus only on Great Britain (England, Scotland, Wales) as Working Time Regulations are transferred to Northern Ireland as part of devolution of Employment Law.

## Rationale for Intervention

7. This Impact Assessment focuses on the policy decision to either preserve or remove the current uncertainty related to the 2019 CJEU judgment. The proposals do not seek to remove the fundamental protections provided by the Working Time Regulations and employers will still need to keep adequate records to demonstrate compliance with the Working Time Regulations, as is currently prescribed in legislation.
8. The CJEU judgement did not give workers any new substantial rights and therefore, workers will not lose any workers' rights with the introduction of this legislation. Instead, the proposal intends to remove the risk of increased requirements on businesses to keep records that were disproportionate to the cost, administrative burden and the effect on workers.
9. The following sub-sections summarise the evidence base across the following areas:
  - a) The possible administrative burden due to the 2019 CJEU judgment.
  - b) Trends in working hours since the introduction of the WTR and the level of non-compliance with rest periods and limits on working time.
10. This section then summarises our survey evidence, initial pre-consultation with expert labour market stakeholders, and the Retained EU Employment Law consultation. Finally, based on the available evidence, we then present our overall assessment on the rationale for intervention.

### a) Status Quo: Recording of working time

11. The Department for Business, Energy & Industrial Strategy (BEIS)<sup>4</sup> commissioned a survey of around 1,500 HR professionals and decision-makers to improve the evidence base on whether employers are currently recording working hours in a way that would be consistent with the 2019 CJEU judgment and the potential cost if the judgment applied to all businesses. As mentioned previously, the judgment is a more onerous administrative burden on both employers and employees than the pre-existing record keeping.
12. The fieldwork for the BEIS-commissioned employer survey was undertaken by YouGov between 2nd and 15th December 2021 and the figures were weighted to be representative of the business population by size, sector and industry. The figures from the survey that are used in this Impact Assessment are calculated on bases of at least 50 respondents (bases of fewer than 50 respondents are considered statistically unreliable by YouGov).
13. The BEIS-commissioned employer survey asked the following question: 'For roughly what proportion of your workforce does your organisation formally record working hours?'. The inclusion of the term 'formally' was intended to prompt businesses to include staff in cases where there is a degree of intention and structure behind the record keeping process. We note that businesses record the working hours of their staff for a wide range of reasons, including for payroll purposes and to comply with National Minimum Wage legislation, and that a business reporting that they record the working hours of their staff does not necessarily mean that this is due to the judgment.
14. We did not refer specifically to the 2019 CJEU judgment in the survey to mitigate the risk that it would unintentionally lead to the businesses complying with the record keeping requirements laid out in the judgement that this legislation will prevent coming into place. This was a concern because survey respondents would need to familiarise themselves with the judgment details and consider the implications for their business before responding to the survey. We have interpreted a positive response to the survey question as indicating that businesses already record the working hours of the relevant staff in line with the 2019 CJEU judgment. We think that this interpretation sets a relatively low bar for the systems that would comply with the 2019 CJEU judgment and is, therefore, a cautious approach for the purposes of estimating the benefits of removing the effects of the

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<sup>4</sup> On 7th February 2023, BEIS was split into three new departments creating the Department for Science, Innovation and Technology, the Department for Energy Security and Net Zero, and the Department for Business and Trade (DBT). This legislation is being taken forward by the DBT.

judgment. In practice, we expect that businesses might need to amend their record keeping process for some of these staff.

15. The YouGov data shown in Table 1 indicates that around a third of businesses formally record the working hours of all of their workforce, with this figure broadly consistent across business sizes, with the exception of businesses with between 250-499 employees, where this figure drops to about a quarter. Around 26% of businesses do not formally record the working hours of any of their workforce. The figure is considerably higher for small and micro businesses (45%) than it is for large businesses (13-15%).
16. The responses further indicated some variation across sectors (not shown in the table). The sectors where businesses are more likely not to formally record the working hours of *any* of their workforce include Information and Communication (45%), Finance and Insurance (41%), and Education (38%). By contrast, the sectors where businesses are more likely to formally record the working hours of most (51-100%) or all of their workforce include Transport and Storage (74%), Hotels, Catering and Restaurants / Arts, Entertainment and Recreation (69%), Healthcare (69%) and Construction (69%).

**Table 1: Share of businesses that formally record working hours of their workforce, by business size (rounded to nearest %)**

Business Size	Share of businesses formally recording working hours of...			
	None of their workforce	Some (1-50%) of their workforce	Most (51-99%) of their workforce	All of their workforce
Micro and small (2-49)	45%	10%	15%	30%
Medium (50-249)	31%	13%	21%	34%
Large (250-499)	13%	31%	33%	23%
Large (500+)	15%	17%	33%	36%
All businesses	26%	16%	26%	32%

*Base population: All survey respondents (1,517) minus 'Don't Know' responses to this question (86). Base population has been weighted to be representative of the business population by size, sector and industry.*

17. The YouGov business survey asked further questions to the subset of respondents that formally record the working hours of at least *some* of their workforce. These questions were intended to provide an indication of the potential one-off and ongoing costs associated with extending the requirement for detailed record keeping of workers' working hours to the whole workforce and business population. The questions were only asked to this subset as they signalled some experience of record keeping systems on recording hours, suggesting that their responses may be more robust, and with consideration for survey burden on the remaining businesses.
18. Table 2 summarises the responses to the question on whether business' record keeping systems were fully automated (e.g. timestamps automatically record when a worker clocks in and out and these records are automatically stored in a central database), partially automated (e.g. workers must engage with an IT system to record their hours) or manual (e.g. workers must fill in and submit physical timesheets). Around 29% of businesses use fully automated systems, with a similar number using manual systems. The most common response (44%) was a partially automated system. Micro and small businesses are considerably more likely to use manual systems (57%) compared to medium (15%) and large businesses (19-21%).

**Table 2: Share of businesses that use fully automated, partially automated and manual systems, by business size (rounded to nearest %)**

Business Size	Fully automated	Partially automated	Manual
Micro and small (2-49)	14%	30%	57%

Medium (50-249)	43%	41%	15%
Large (250-499)	35%	44%	21%
Large (500+)	29%	51%	19%
All businesses	29%	44%	28%

*Base population: All survey respondents that formally record the working hours of at least some of their workforce (1058) minus 'Don't Know' responses to this question (54). Base population has been weighted to be representative of the business population by size, sector and industry.*

19. Table 3 summarises the responses to the question on the estimated one-off cost to business of setting up a new record keeping system (in cases where no systems are currently in place) or extending an existing system to the whole workforce (in cases where businesses already formally record the working hours of most of their workforce). The most common response (40%) for the cost to set up a new record keeping system was over £1,000, with a further 38% indicating a cost between £400 and £1,000 and 21% indicating a cost of less than £400. When considering the cost of extending an existing system to the whole workforce, the one-off costs were estimated to be overall lower, with a smaller share indicating a cost of over £1,000 (23%), a similar share indicating a cost of between £400 and £1,000 (35%) and a larger share indicating a cost of less than £400 (43%). The responses also varied by business size, with larger businesses more likely to indicate a higher cost to set up or upgrade record keeping systems, suggesting that the set-up cost are, at least to some extent, a function of the number of workers that the system is intended to cover. Around a third of respondents provided a "Don't Know" response, suggesting that the question was particularly difficult to respond to and the estimates should be interpreted with some caution.

**Table 3: Estimated one-off cost of setting up new record keeping system or extending existing system to whole workforce, by business size (rounded to nearest %)**

<b>Business Size</b>	<b>Less than £400</b>	<b>Between £400 and £1,000</b>	<b>More than £1,000</b>
<b>One-off cost of setting up new record keeping system</b>			
Micro and small (2-49)	56%	38%	6%
Medium (50-249)	23%	50%	27%
Large (250-499)	10%	43%	47%
Large (500+)	6%	34%	60%
All businesses	21%	38%	40%
<b>One-off cost of extending existing record keeping system to whole workforce</b>			
Micro and small (2-49)	80%	18%	2%
Medium (50-249)	51%	39%	9%
Large (250-499)	33%	44%	23%
Large (500+)	25%	38%	37%
All businesses	43%	34%	23%

*Base population: All survey respondents that formally record the working hours of at least some of their employees (1,058) minus 'Don't Know' responses (question on setting up new record keeping system: 369; question on extending to whole workforce: 387). Base population has been weighted to be representative of the business population by size, sector and industry.*

20. Table 4 summarises the responses to the question on the estimated time required per week for each worker to record their working hours. Most respondents (62%) indicated that worker spend up to 8 minutes per week recording their working hours, with the remaining 33% indicating between 9 and 15 minutes per week and 5% indicating more than 15 mins per week. There is limited variation across business sizes, with larger businesses tending slightly towards the higher range.

**Table 4: Estimated number of minutes per week needed for each employee to record their working hours, by business size (rounded to nearest %)**

<b>Business Size</b>	<b>4 mins or lower</b>	<b>Between 5 and 8 mins</b>	<b>Between 9 and 15 minutes</b>	<b>16 mins or higher</b>
Micro and small (2-49)	46%	22%	28%	4%
Medium (50-249)	48%	19%	30%	4%
Large (250-499)	41%	12%	40%	7%
Large (500+)	38%	23%	34%	5%
All businesses	41%	21%	33%	5%

*Base population: All survey respondents that formally record the working hours of at least some of their employees (1,058) minus 'Don't Know' responses to this question (62). Base population has been weighted to be representative of the business population by size, sector and industry.*

21. The responses to the question on the time saved by moving from a manual to either a partially or fully automated record keeping system are shown in Table 5. The most common response is that a partially automated system reduces some (1-50%) of the time required to record working hours, whilst a fully automated system does appear to provide an additional boost in terms of time saved.

**Table 5: Estimated share of time saved by moving from a manual to partially or fully automated record keeping system, by business size (rounded to nearest %)**

<b>Business Size</b>	<b>The time taken for each worker to record their working hours decreases by...</b>			
	<b>0%</b>	<b>1-50%</b>	<b>51-99%</b>	<b>100%</b>
<b>Manual to partially automated record keeping system</b>				
Micro and small (2-49)	13%	50%	34%	2%
Medium (50-249)	19%	47%	30%	4%
Large (250-499)	10%	57%	28%	5%
Large (500+)	7%	56%	30%	7%
All businesses	10%	54%	30%	6%
<b>Manual to fully automated record keeping system</b>				
Micro and small (2-49)	7%	41%	19%	33%
Medium (50-249)	12%	48%	22%	18%
Large (250-499)	7%	33%	35%	25%
Large (500+)	9%	40%	30%	21%
All businesses	9%	40%	28%	22%

*Base population: All survey respondents that used a partially automated system (441) or a fully automated system (287) minus 'Don't Know' responses (question on moving from manual to partially automated: 84; question on moving from manual to fully automated: 20). Base population has been weighted to be representative of the business population by size, sector and industry.*

22. Overall, the YouGov business survey data – namely that many businesses do not currently record working time and the significant unit costs of implementing a system to do so – suggests that a requirement for detailed records of the working hours of all workers could impose a significant administrative burden on businesses. The 2019 CJEU judgment is a significant extension of the existing record keeping requirements and presents unique appraisal challenges (e.g. the recurring, frequent nature of the record keeping). The potential size of the cost burden is estimated in more detail in the 'Direct Costs and Benefits' section of this Impact Assessment.

23. In theory, the survey evidence presented does not preclude that some businesses may have already amended their record keeping systems to align with the 2019 CJEU judgment. We consider

this unlikely as, based on a rationality argument, they have a profit-making incentive to wait until the uncertainty is resolved one way or another before implementing costly changes to their processes. To explore this further, we have conducted a comparative analysis between the results of the 2021 YouGov business survey and evidence collected by The Chartered Institute of Personnel and Development (CIPD) in 2019, prior to the 2019 CJEU judgment<sup>5</sup>. The surveys are not completely comparable<sup>6</sup> but can provide an indication of whether some businesses have already started to amend their record keeping systems. The surveys can also provide an indication of whether there are longer-term trends (such as due to technological advancements or changes in working patterns) that could lead to the benefits of removing the effect of the 2019 CJEU judgment decreasing over time (i.e. the prevalence of detailed record keeping of working hours increases over time regardless of the 2019 CJEU judgment).

24. As shown in Table 6, the overall share of businesses recording the working hours of their staff in 2019 and 2021 appears similar. The data appears to show that large businesses have shifted slightly towards more record keeping (around 85% formally recorded the working hours of at least some of their workforce in 2021, compared to around 80% in 2019) whilst micro and small and medium businesses have shifted slightly in the other direction (between 55 and 69% formally recorded the working hours of at least some of their workforce in 2021, compared to between 59 and 73% in 2019). There are some clear limitations to comparing only two points in time to infer longer-term trends (in addition to the differences in survey methodologies).

**Table 6: Share of businesses that formally record the working hours of their workforce in 2019 and 2021, by business size (rounded to nearest %)**

Business Size	Share of businesses formally recording working hours of...			
	None of their workforce	Some (1-50%) of their workforce	Most (51-99%) of their workforce	All of their workforce
<b>2021 survey</b>				
Micro and small (2-49)	45%	10%	15%	30%
Medium (50-249)	31%	13%	21%	34%
Large (250-499)	13%	31%	33%	23%
Large (500+)	15%	17%	33%	36%
All businesses	26%	16%	26%	32%
<b>2019 survey</b>				
Micro and small (2-49)	41%	12%		47%
Medium (50-249)	27%	17%		56%
Large (250-499)	20%	18%		62%
Large (500+)	18%	20%		63%
All businesses	26%	17%		57%

*2021 survey – Base population: All survey respondents (1,517) minus ‘Don’t Know’ responses to this question (86). Base population has been weighted to be representative of the business population by size, sector and industry.*  
*2019 survey – Base population: All survey respondents (2,104). Base population has been weighted to be representative of the business population by size, sector and region.*

<sup>5</sup> Total sample size was 2,104 senior HR and decision makers in the UK. Fieldwork was undertaken between 21/03/2019 – 23/04/2019. The survey was carried out online. All figures were weighted and are representative of UK employers by size, sector and region.

<sup>6</sup> Both surveys asked “For roughly what proportion of your workforce does your organisation formally record working hours?” and were run by YouGov. However, there are some differences between the surveys. For example, the response options for the 2019 survey were: 1-25%, 26-50%, 51-75%, 76-100%, Not applicable – we don’t formally record the working hours of our workforce; while the response options for the 2021 survey were: 0%, 1-25%, 26-50%, 51-75%, 76-99%, 100%, Don’t Know. There are also some differences in the weighting process across both surveys (e.g. the 2019 data weighting included the regional dimension).



25. To illustrate how the cost burden due to the 2019 CJEU judgment would be disproportionate to the scale of the potential benefits, we assess the available evidence on the potential degree of non-compliance with limits on weekly working time and minimum daily and weekly rest periods. This consists of a triangulation of evidence from the Labour Force Survey (LFS), BEIS Public Attitudes Tracker, Advisory, Conciliation and Arbitration Service (ACAS), HM Courts & Tribunal Service (HMCTS) and a BEIS-commissioned survey of workers.

## **b) Trends in working hours since the introduction of the WTR**

### *Background*

26. The Department for Business Innovation & Skills (BIS)<sup>7</sup> published a review of the Working Time Regulations in 2014. In terms of overall trends in working hours and the impact of the regulations, the review noted the following key trends:
- a) Since 1998, there was a decline in the incidence of long hours working in the UK and a general trend towards shorter working hours. It is possible that this is, at least in part, due to the introduction of the 48-hour maximum working week despite the existence of the opt-out.
  - b) The review's data analysis suggests that one of the main channels of impact is on the composition of employment. It appears that the decrease in long hours working was at least partly offset by increased employment of workers doing shorter working weeks.
27. As noted in the review, it is very challenging to draw definitive conclusions on the impact of the WTR on working hours. The decline in working hours can be observed over a longer time span and across many countries (including non-EU countries who were not affected by the Working Time Directive). Since the 1990s, the concept of 'working hours' has also evolved significantly due to the take-up of flexible working practices and technological developments, giving workers more control over how and when they work.
28. We have extended and refined some of the descriptive analysis in the 2014 BIS review to incorporate data from recent years<sup>8</sup>. As per the review, the Labour Force Survey (LFS) is our best available source of evidence for working hours. Our analysis is intended to show trends in working hours while the existing record keeping obligations in the WTR have been in place.
29. We have broadly mirrored the basic methodology in the 2014 BIS review. Similar to the review, we have presented data for employees aged 18 years and over. However, we make a minor departure and only presented *usual* hours worked (rather than actual hours worked during the survey reference week) to reflect a stable and sustained level of working hours for each worker. Due to data availability, this means that we only analyse workers' main jobs. We expect this to have a limited impact on the overall figures, as only a small share of the whole employee population (2%) have second employee jobs. Nonetheless, we acknowledge this as a limitation in our analysis. We also use April – June quarters for each year (rather than October – December) to remain consistent with the other analysis presented in this Impact Assessment where variables are only available for those quarters.
30. We also consider what some of the more granular trends in the LFS might show in terms of current non-compliance with rest periods and limits on working time. The 2019 CJEU judgment held that records must be kept in relation to the right to a minimum daily rest period of 11 consecutive hours in each 24-hour period; the right to a minimum uninterrupted period of rest of 24 hours in each 7-day period; and the right to a maximum weekly working time of 48 hours per week. We also consider that the impacts of the judgment could possibly extend to the specific daily and weekly limits on working time for young workers and night workers.
31. This analysis should be viewed as indicative only and we are unable to draw firm conclusions. The LFS does not ask specific questions on compliance with the WTR. In practice, we do not expect that every worker included in our estimates is not receiving the rights they are entitled to. For

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<sup>7</sup> On 14 July 2016, BEIS was formed during a machinery of government change, merging The Department for Business Innovation & Skills (BIS) and Department of Energy and Climate Change (DECC).

<sup>8</sup> The LFS analysis is provisional and does not impact our monetised estimates.

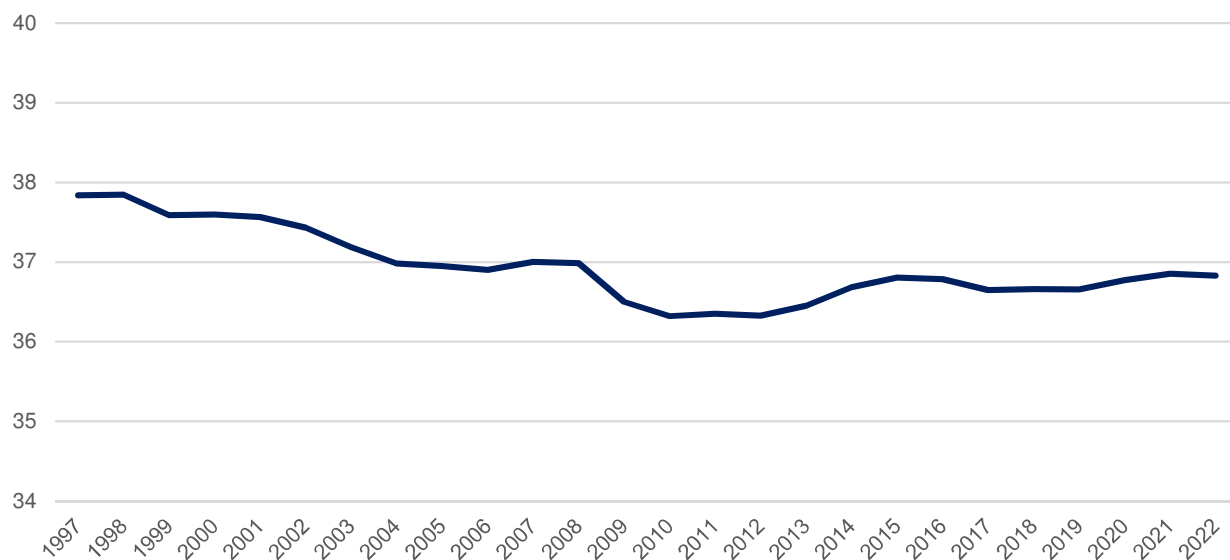
example, workers that are exempt from the regulations due to, for example, their sector of activity or type of job, are not excluded from our figures. To substantiate our assessment of the scale of potential non-compliance, we triangulate the LFS data with evidence from the BEIS Public Attitudes Tracker, ACAS, HMCTS and a BEIS-commissioned survey of workers.

32. More generally, it is important to consider that rest periods and limits on working hours are rights that workers enjoy rather than direct obligations on employers. While all employers should ensure their staff's working hours remain compliant with the rights to which they are entitled, a worker is able to choose not to benefit from these rights. In this Impact Assessment, we refer to both exceeding limits on rest periods and weekly working time as non-compliance. To the extent that records are a necessary tool to hold employers accountable, the proposed reform – removing the CJEU judgement from GB law – could lead to a foregone reduction in non-compliance with the fundamental rights in the WTR in relation to rest periods and limits on working time.

### Data analysis of working hours (LFS)

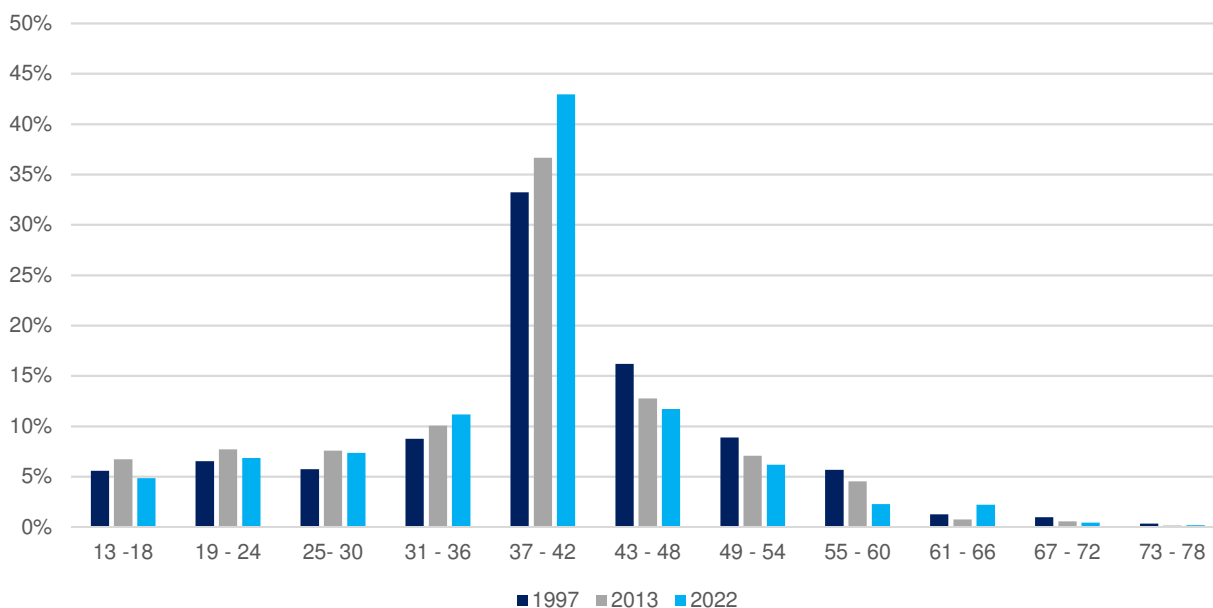
33. As shown in Figure 1, the mean usual hours worked for workers remains below the level observed when the Working Time Regulations were introduced. The mean usual hours worked for workers increased slightly between 2014 and 2022.

**Figure 1:** Mean usual hours worked for employees in main job (aged 18+ years old), 1997 to 2022



34. Figure 2 provides a more in-depth assessment of how the shape of the distribution of hours worked has changed over time. We observe that the share of employees working between 37 and 42 hours per week has increased since 1997, indicating further concentration in the centre of the distribution. The share of employees working between 37 and 42 hours per week was 43% in 2022 (compared to 33% in 1997). The share of employees working part-time (defined as fewer than 30 hours per week) is broadly comparable. Meanwhile, the upper tail of the distribution has become smaller over time. This remains broadly consistent with the interpretation in the 2014 BIS review. One notable difference is that the share of employees that work part-time is lower in 2022 (23%) compared to 2013 (26%).

**Figure 2:** Distribution of usual hours worked for employees in main job (18+ years old), 1997, 2013 and 2022



35. We then consider what some of the more granular trends in the LFS might show in terms of current non-compliance with rest periods and limits on working time. However, as noted previously, this should be viewed as indicative only and we are unable to draw firm conclusions. The LFS does not ask specific questions on compliance with the WTR and there is some inevitable simplification to map the content of the regulations onto LFS data. In practice, we do not expect that every worker included in our estimates is not receiving the rights they are entitled to. For example, workers that are exempt from the regulations due to, for example, their sector of activity or type of job, are not excluded from our figures.
36. For this analysis, we incorporate the exemptions from relevant restrictions for workers where the ‘duration of working time is not measured and/or predetermined or can be determined by the worker themselves’, particularly in the case of ‘managing executives or other persons with autonomous decision-taking powers’. Whilst there is no definitive source of evidence for these workers, the ‘Managers, Directors and Senior Officials’ occupational group provides a rough proxy for those likely to fall into this group (hereafter, called ‘autonomous workers’).

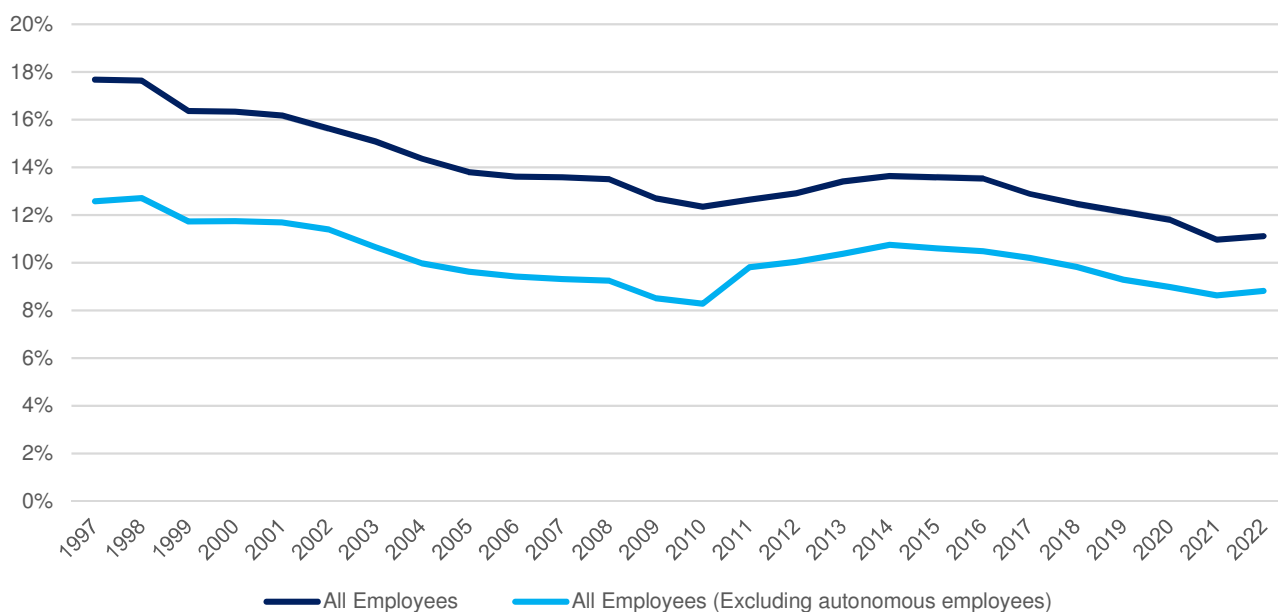
Right to maximum of 48 hours per week, unless opted out

37. As shown in Figure 3, the proportion of adult employees who usually work more than 48 hours a week steadily fell from 1997 to 2010 (18% to 12%) before remaining relatively constant over the following decade (11% in 2022). The trend over time is broadly similar when excluding autonomous workers. When excluding autonomous workers, the share of adult employees who usually work more than 48 hours a week was around 8% in 2022.
38. Workers can opt-out of the 48-hour weekly limit. Using survey responses from 2017 CIPD research<sup>9</sup>, our illustrative analysis suggests that 16%-26% of employees may have opted out (see Annex A for more detail on the calculations). This is higher than our estimate of the share of workers who usually work more than 48 hours a week. This is consistent with wider evidence that some businesses ask staff to sign an opt-agreement on an ‘in case’ basis<sup>10</sup>.

<sup>9</sup> <https://beta.cipduat.co.uk/knowledge/fundamentals/emp-law/about/employment-regulations-report#gref>

<sup>10</sup> Department for Business Enterprise & Regulatory Reform, Employment Law Admin Burdens Survey 2008 Final Report, December 2008; 2011 Workplace Employment Relations Study

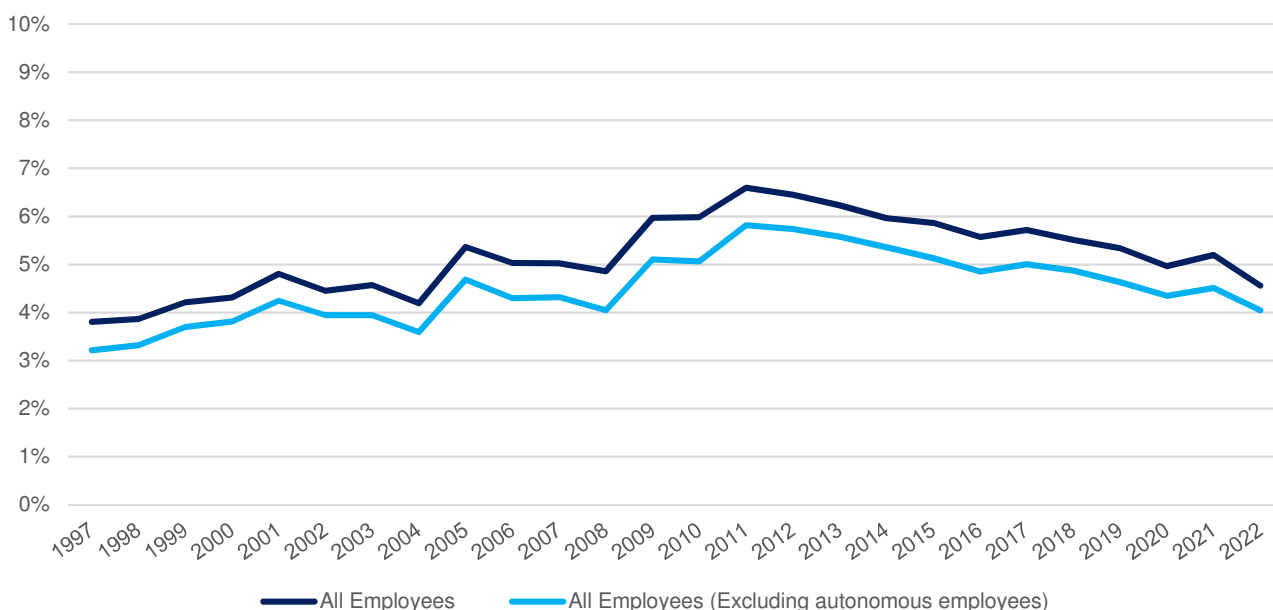
**Figure 3:** Percentage of employees who usually work more than 48 hours a week in their main job (aged 18+ years old), 1997 to 2022



Right to weekly rest period of 24 hours

- 39. Figure 4 shows the number of employees working on all seven days of the week in the LFS. This is an approximation for those who appear not to be receiving a 24-hour rest break in a 7-day period. Employees working 7 days per week continue to represent a small share (5%) of the employee population. The figure is slightly lower when excluding autonomous workers.
- 40. These figures are subject to the general limitations stated previously. In addition, it remains possible for workers to work seven days per week and still receive a 24-hour rest break in each 7-day period (for instance, in the case of a shift worker clocking off at 5pm one day and beginning the start of the next shift after 5pm the next day).

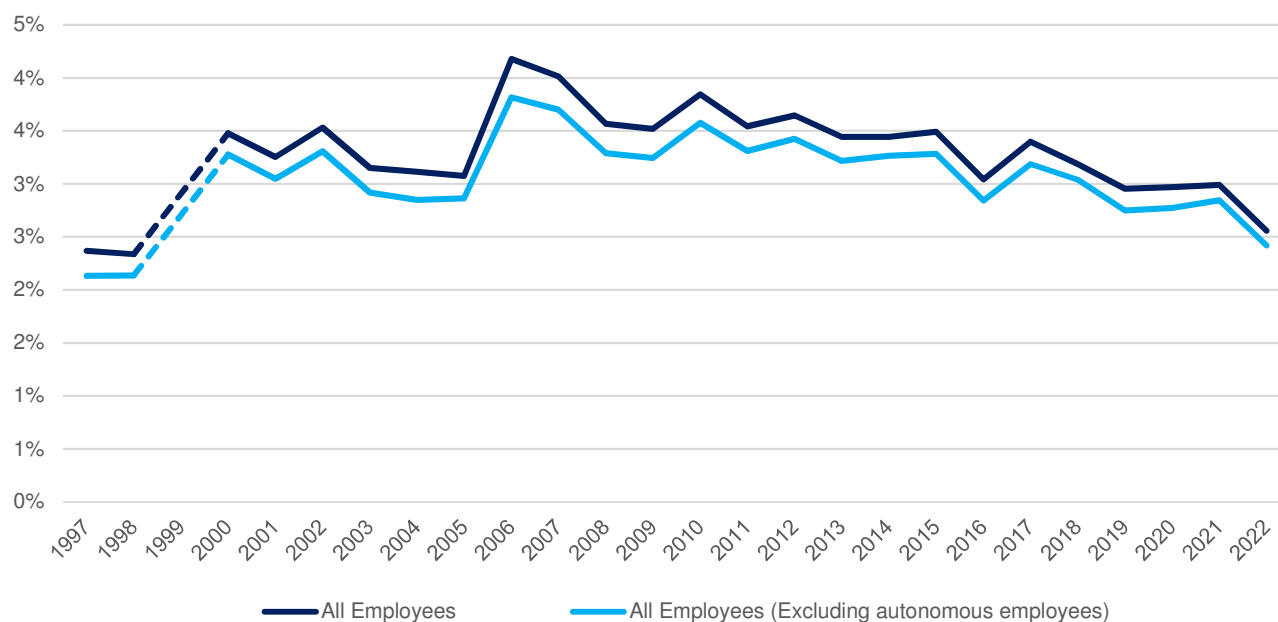
**Figure 4:** Share of employees usually working seven days per week in main job (aged 18+ years old), 1997 to 2022



### Right to daily rest of 11 hours

41. Figure 5 shows the share of employees that work during the day, the evening and at night<sup>11</sup>. This is an approximation for the share of workers who may not be receiving 11-hour rest break in a 24-hour period<sup>12</sup>. Since the mid-2000s<sup>13</sup>, we observe an overall downward trend in the share of employees who may not be receiving their rest break entitlement. As shown in Figure 7, a small share (3%) of the employee population were working the three time periods outlined in 2022. These figures are subject to the general limitations stated previously. In addition, the combination of time periods in the LFS data may not occur on the same days of the week.

**Figure 5:** Share of employees usually working during the day, the evening and at night (aged 18+ years old), 1997 to 2022<sup>14</sup>



### Right to maximum of 8 hours per day for night workers

42. Based on the LFS, we estimate that there are 1.1m workers who usually work during the night<sup>15</sup>. Figure 6 shows the proportion of those workers who usually work more than 8 hours a day<sup>16</sup>. The proportion of night workers working over 8 hours a day fell from over 50% to around 40% between 1997 and 2012 before rising back to around 50% in 2022. The figures for the group excluding autonomous workers are only slightly lower. This represents a small proportion of the total employee population (around 2%).

<sup>11</sup> The LFS provides the following guidance for full-time workers: the day period is defined most commonly as 6am – 2pm; the evening period as 3pm – 12am; and the night period as 11pm to 6am, and usually continuing after midnight.

<sup>12</sup> An alternative approach is to look at the number of employees who usually work over 78 hours per week, as per the 2014 BIS Review. The approach taken in this Impact Assessment is expected to be more cautious.

<sup>13</sup> It is possible that the increase in the share of employees working the three time periods outlined between 1998 and 2000 is due to a methodological change in the LFS variables and the way the questions were asked. For 1997 and 1998 we used the LFS variables DAY, EVEN and NIGHT and from 2000 onwards we used USUWRK (1-3).

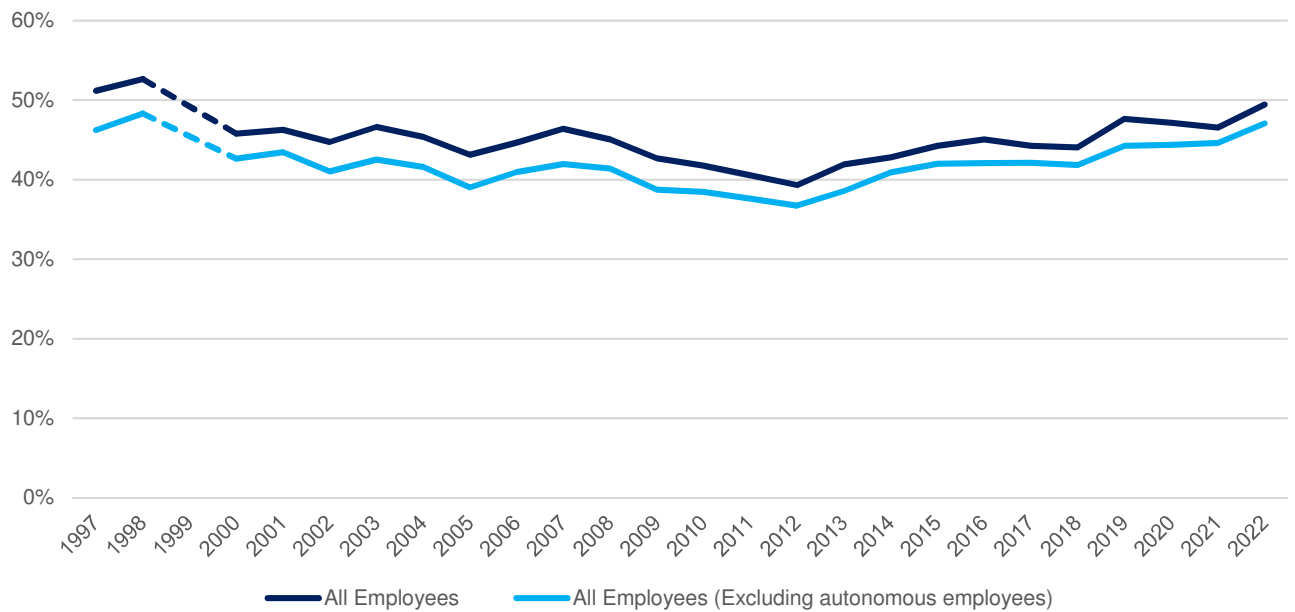
<sup>14</sup> 1999 has been excluded from time series due to missing values.

<sup>15</sup> We use the LFS variables USUWRK3 and SHFTYP to determine whether respondents are night workers or not. USUWRK3 derives whether respondents say they usually work at night or if they have said they work a shift pattern that involves night work. We exclude those report that they do shift work 'sometimes in the day and sometimes at night'.

<sup>16</sup> We used a constructed variable to obtain this group. Using the LFS variables TTUSHR, which is the number of hours a respondent usually works a week (including overtime) and DAYSPZ, which is the number of different days a worker usually works a week. We divided TTUSHR by DAYSPZ to estimate a worker's usual daily hours. An alternative is to look at night employees usually working over 48 hours per week, assuming workers only do 6 shifts a week to receive the minimum 24 hours rest every week. The approach taken in this Impact Assessment is expected to be more cautious. The figures in the 2014 BIS Review are also expressed as a share of employees (rather than just night employees).

43. In addition to the general limitations stated previously, it is also likely that our approach identifies more night workers than would be captured under the definitions of night work and night time in the regulations. The WTR defines a night worker as ‘a worker who, as a normal course, works at least three hours of his daily working time during night-time’. The regulations state that night time means a period of at least 7 hours that must include the period between midnight and 5am. By contrast, the LFS defines a night shift as referring most commonly to 6pm to 6am, and usually continuing after midnight, for full-time workers. For non-shift workers, the LFS only asks whether a worker usually works during the night, but does not specify the number and timing of those hours.

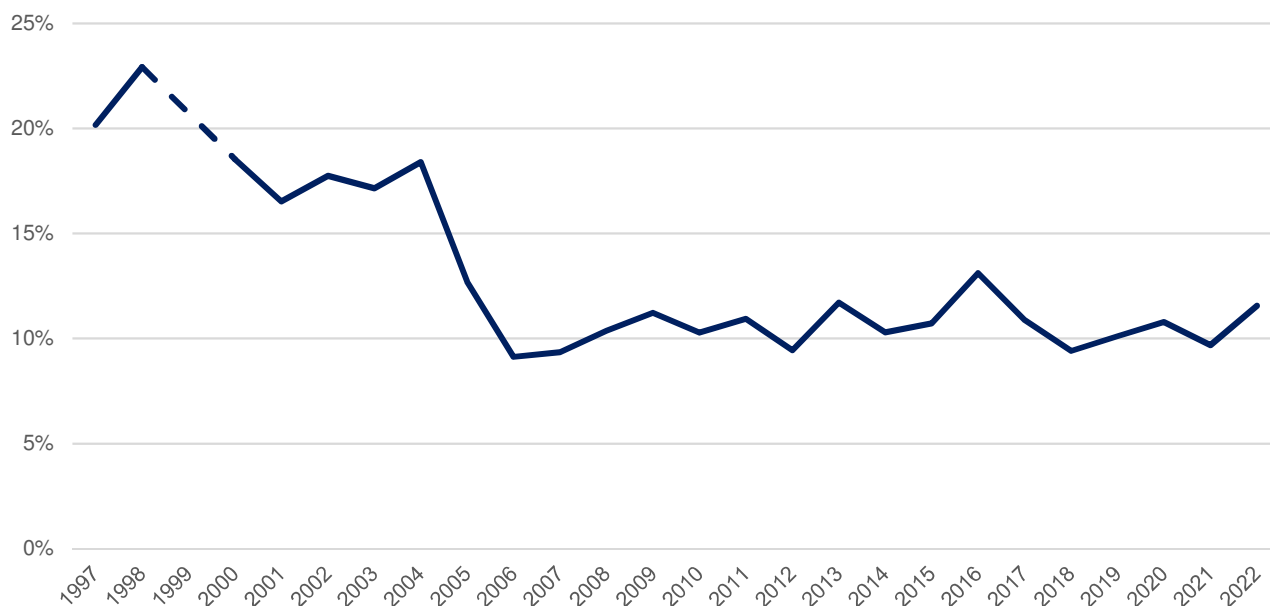
**Figure 6:** Proportion of night employees who work more than 8 hours a day (aged 18+ years old), 1997 to 2022



Right to maximum of 8 hours per day, 40 hours per week, and not to work at night time for young workers

44. Based on the LFS, we estimate that there are around 300,000 young workers aged 16 or 17 years old. Figure 7 shows the share of young workers who usually work at night, usually work over 8 hours a day or usually work more than 40 hours per week. The share of young workers who appear to be non-compliant with at least one of the provisions for young workers decreased sharply between 1997 and 2006. The proportion then remained relatively stable up to 2022 at around 10%. These figures are subject to the general limitations stated previously. This represents a small proportion of the total employee population (less than 1%).

**Figure 7:** Proportion of young employees who work at night, over 8 hours a day or over 40 hours a week (aged 16-17 years old), 1997 to 2022<sup>17</sup>



45. Overall, it is challenging to reach firm conclusions on the level of non-compliance with rest periods and limits on working time based on LFS data. Based on the analysis presented, a relatively small share of the total employee population may be experiencing some degree of non-compliance with their rights to rest periods and limits on working time.

*Other sources of evidence of potential non-compliance*

46. As an alternative source of evidence, the BEIS Public Attitudes Tracker (PAT) survey measures public awareness, attitudes and behaviours related to BEIS policies, including on workers’ rights. The Autumn 2022 survey wave<sup>18</sup> is based on a representative sample of 4,161 adults aged 16 or over in the UK. Data collection ran from mid-September to mid-October 2022. People who had been employees in the last two years were presented with a list of possible problems with employment rights at work. Around 9% indicated a problem related to their working pattern (e.g. having to work evenings, weekends), 8% indicated that they had a problem taking rest breaks at work in the last two years, and 7% indicated a problem with the total number of hours they are required to work. The published report does not provide more specific information on the nature of the issue or the extent to which the response options overlap. It is therefore difficult to reach firm conclusions based on this data.

47. To further improve the evidence base on the experience of workers with regards to their rest breaks, BEIS commissioned a survey of around 10,000 employees<sup>19</sup>. The fieldwork was undertaken by YouGov between 11<sup>th</sup> April and 9<sup>th</sup> May 2022 and the figures were weighted to be representative of all UK employees. The survey used quota sampling methods. The figures from the survey that are used in this Impact Assessment are calculated on bases of at least 50 respondents (bases of fewer than 50 respondents are considered statistically unreliable by YouGov). Similar to the YouGov business survey, we have adjusted the survey data to account for ‘Don’t Know’ responses.

<sup>17</sup> 1999 has been excluded from time series due to missing values.

<sup>18</sup> <https://www.gov.uk/government/statistics/beis-public-attitudes-tracker-autumn-2022>

<sup>19</sup> The YouGov employee survey also included some questions on whether employees record their daily working hours, the time taken, the type of record keeping system used, and whether the Line Manager / HR reviews and formally signs off the records. We have used these findings to cross-check the YouGov business survey in the ‘Direct costs and benefits’ section. We have incorporated the survey data into monetised impacts to reflect an overall cautious approach (in addition to other considerations, such as survey design and robustness).

48. The YouGov employee survey aimed to identify workers who may fall under the exemption for 'autonomous workers' through a question on workers' influence over their working hours and when they work. The responses indicating 'a lot' were interpreted as a proxy for this derogation.
49. Around 8% of respondents to the YouGov employee survey indicated that they feel pressure from their employer not to take their rest breaks 'always' or 'most of the time'. The figure is 6% when excluding those who are identified as 'autonomous workers'. Respondents were also asked whether they usually get a continuous rest period of at least 24 hours per week or 48 hours per fortnight; and 11 hours in each 24-hour period. Around 9% of respondents indicated that they do not usually receive at least one of these rest breaks. The figure is 7% when excluding those who are identified as 'autonomous workers'.
50. ACAS collects data on the number of Early Conciliation<sup>20</sup> notifications that contained the Working Time Regulations (excluding annual leave elements of the legislation) as a jurisdiction<sup>21</sup> – these numbers have been low in recent years (see Table 7). Calls to the ACAS Helpline occur across the dispute resolution journey, from initial information requests where callers require information about an issue / topic to the stage where a caller is involved in a dispute which has progressed to an Employment Tribunal<sup>22</sup>. The number of calls to the ACAS Helpline where the Working Time Regulations (excluding annual leave elements of the legislation) are flagged<sup>23</sup> is also relatively low when compared to the overall size of the worker population that are entitled to these rights.

**Table 7: Number of Early Conciliation notifications and ACAS Helpline calls which contained the Working Time Regulations (excluding annual leave elements of the legislation) as a jurisdiction**

<b>Operational Year</b>	<b>Number of Early Conciliation notifications</b>	<b>Number of calls to ACAS Helpline</b>
2016-17	519	14,267
2017-18	550	9,554
2018-19	511	8,247
2019-20	497	8,535
2020-21	315	4,982
2021-22 <sup>24</sup>	231	4,735

51. HMCTS shows that there are only a small number of complaints received per year in Employment Tribunals alleging 'Failure to limit weekly or night working time, or to ensure rest breaks' – on average, these complaints number in the low-to-mid hundreds annually<sup>25</sup>. We are unable to disaggregate this data further. These figures represent a very small share of the total number of complaints received under the Working Time Directive jurisdiction<sup>26</sup>.

<sup>20</sup> Early conciliation is when ACAS talks to both employee and employer about a dispute to help reach an agreement without having to go to an employment tribunal.

<sup>21</sup> These disputes may have been single jurisdiction disputes in which WTR was the sole jurisdiction or multi-jurisdiction disputes in which WTR was one of several jurisdictions and may or may not have been the main issue within the dispute.

<sup>22</sup> Acas records the type of call and where that customer might be on the dispute resolution journey. Information Request is indicative of callers requiring information about an issue/topic. Informal Action is indicative of callers at the stage they may just be communicating informally with their Employer or Employees about an issue/topic. Formal Action is indicative of callers being in a formal process such as Grievance or Disciplinary processes. Enforcement Complaint is indicative of callers being involved with or being eligible for involvement with an Enforcement Agency e.g. HSE. Employment Tribunal is indicative of a caller being involved in a dispute which has progressed to the Employment Tribunal.

<sup>23</sup> Topics are flagged to denote they were discussed on the call. This may have been the main topic of discussion or one of several.

<sup>24</sup> Figures relate to period April to Nov 2021 inclusive.

<sup>25</sup> Non-disclosed Employment Tribunal data from Her Majesty's Courts & Tribunal Service, Ministry of Justice, via COIT reports. Average annual number of jurisdictional complaints for 'Failure to limit weekly or night working time, or to ensure rest breaks' in breach of Working Time Regulations (January 2016 – December 2020).

<sup>26</sup> Ministry of Justice, [Tribunal Statistics Quarterly: April to June 2020](#) Annex C. Average annual jurisdictional complaints (January 2016 – December 2019).



### **c) Pre-consultation stakeholder engagement on the 2019 CJEU judgment**

52. We conducted informal pre-consultation stakeholder engagement to test our initial approach to analysing the potential impacts of the 2019 CJEU judgment on businesses and workers.
53. Stakeholders indicated that existing awareness of the 2019 CJEU judgment is likely to be limited (except perhaps to very large businesses) and that even those who are aware of the judgment are unlikely to have yet made any behavioural changes as a direct result.
54. Stakeholders noted that there may be a number of cases of non-compliance that are not counted in ACAS and HMCTS data, where workers are either unaware of their rights or unwilling or unaware of how to enforce them. We have included analysis of the Labour Force Survey (i.e. looking at working hours rather than enforcement) to take a more cautious approach to estimating potential non-compliance.
55. Stakeholders shared the view that requiring all employers to record daily working hours would involve a disproportionate investment in an area of limited benefit (akin to using 'a sledgehammer to crack a nut'). This is particularly the case as there already exist robust mechanisms for enforcing workers' rights<sup>27</sup> and it is also already possible for employers or workers to keep records if they believe it would be useful as evidence in a dispute over rest breaks and working hours. Stakeholders recognised the challenges involved in finding the best way to support workers that are over-worked and noted that they advise workers to record their working hours when these issues arise. It is already possible for employers or workers to keep records over and above pre-existing requirements if they believe it would be useful as evidence in a dispute over rest breaks and working hours.
56. Stakeholders indicated that the additional administrative burden associated with the 2019 CJEU judgment could act as an incentive for employers to shift towards a business model where a greater share of their workforce are treated as self-employed. In some cases, the reality of the working relationship between the employer and the individual may not have changed, raising a risk that individuals do not receive the rights to which they are entitled. For disputes around the interpretation of employment law, which can be complex and finely balanced, employment Tribunals have the power to determine the final result, taking into consideration all of the detail of each individual case to ensure any judgment is the conclusion of a fair and transparent process.
57. Stakeholders indicated that additional record keeping requirements associated with the 2019 CJEU judgment would not be conducive to flexible working, alongside the broader risk that excessive control and oversight could undermine the trust between workers and employers. At a time where flexibility is being encouraged, and employees and employers alike are enjoying the benefits of new, hybrid ways of working, the 2019 CJEU judgment would be a step in the opposite direction. Employers would have an incentive to push back towards a structured '9:00 to 5:00' day and standard office-working model as it would be easier to record time that way.

### **d) Overall assessment**

58. Based on the findings from the YouGov business survey, we expect that the 2019 CJEU judgment could lead to a significant administrative burden on businesses. Based on a triangulation of evidence from the LFS, BEIS Public Attitudes Tracker, ACAS, HMCTS and a BEIS-commissioned survey of workers, the population of workers who might benefit from mandatory recording of daily working hours is likely to represent a small share of the total worker population. Therefore, we expect that the 2019 CJEU judgment would lead to a disproportionate administrative burden on business that could displace productive business activities and, in turn, have a negative impact on economic growth, investment and job creation.

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<sup>27</sup> The Health and Safety Executive, other state enforcement bodies, and local authorities directly enforce maximum working hours and record keeping requirements. The Government is not proposing changes to existing remedies.

## Policy objective

59. Having left the European Union, the Government has been taking the opportunity to review record keeping requirements under the Working Time Regulations, assessing whether the rules that currently apply work in the best interests of businesses and workers and deliver on the Government's objective of creating the conditions for growth.
60. This policy contributes to this ambition by clarifying that employers do not, in general, have to keep a record of daily working hours of their workers over and above pre-existing record keeping requirements. In turn, this will provide businesses greater certainty over their record keeping obligations and ensure that they do not experience a significant administrative burden that is disproportionate to the economic benefits. Overall, the policy objectives are to:
- Provide legal clarity on the record keeping requirements in the Working Time Regulations;
  - Reduce the administrative burden of the Working Time Regulations;
  - Create the conditions for growth, investment and job creation;
  - Ensure record keeping requirements set out in employment law are proportionate, supported by a robust evidence base, and provide space for choice for workers and employers;
  - Promote good relations between workers and their employers.
  - Encourage take-up of flexible working that can benefit both workers and employers.

## Description of options considered

61. The consultation sought stakeholder views on two options (including a 'Do Nothing' option) which are considered within this impact assessment. The consultation ran from 12th May to 7th July as part of the Retained EU Employment Law Reforms<sup>28</sup> consultation. The Government's response to the consultation is published here: <https://www.gov.uk/government/consultations/retained-eu-employment-law-reforms>.
62. The Government's preferred option is Option 1: legislate to remove the effect of the 2019 CJEU judgment. We assess Option 1 against the counterfactual of a 'Do Nothing' scenario.
- **Option 0: Do Nothing.** We have assumed that this option would be a continuation of the current status quo, i.e. no change in the current experience of businesses and workers. This would involve taking no further action. In practice, this means continued uncertainty as to whether the UK courts are bound by this judgment, and legal uncertainty for employers about their record keeping obligations.
  - **Option 1: The Government would legislate to remove the effect of the 2019 CJEU judgment.** The 2019 CJEU judgment ruled that employers must have an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured. This case held that records must be kept in relation to the right to a minimum daily rest period of 11 consecutive hours in each 24-hour period; the right to a minimum uninterrupted period of rest of 24 hours in each seven-day period; and the limit on the maximum weekly working time. The Government would legislate the 2019 CJEU judgment is not relevant to the record-keeping obligations of employers and will make it clear that businesses do not have to keep a record of daily working hours of their workers for the purposes of the WTR if they are able to demonstrate compliance without doing so. An employer will still be obligated to adhere to current requirements to keep records which are adequate to show whether the employer has complied with the WTR and may create, maintain and keep these records in such manner and format as the employer reasonably thinks fit. Under this option, the significant potential future cost to business under Option 0 would be removed with certainty.
63. The Government has considered revising the existing guidance with the aim of clarifying the law following the judgement. The judgement is yet to be tested in domestic courts. However, we

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<sup>28</sup> Retained EU employment law reforms - GOV.UK ([www.gov.uk](https://www.gov.uk))

recognise that if a case were to be brought, domestic courts may determine that UK law means that all working hours need to be recorded for almost all workers. Therefore, stating in guidance that the case does not apply in the UK would not change the legal position and current uncertainty. To achieve this, and the stated policy objectives, it is therefore necessary to legislate to remove the effect of the judgement.

64. The policy options are applied to all businesses, regardless of size e.g. SMEs are not exempt. Any exemptions could create different statutory requirements for workers, depending on the size of employer, which could have possible negative unintended consequences for SMEs e.g. unwillingness to grow. A key part of the proposed reforms is to provide administrative simplicity to reduce burden for all businesses.

## Direct costs and benefits (Option 1)

65. In this section, we outline our assessment of the potential future costs related to the 2019 CJEU judgment under Option 0, i.e. costs avoided under Option 1. These impacts are direct as they are unavoidable additional requirements as and when a domestic court case finds that the 2019 CJEU judgement applies to all employers. We have modelled the direct future costs under Option 0 under two categories: one-off transition costs and ongoing (annual) costs associated with ensuring compliance with the 2019 CJEU judgment.

- One-off transition costs under Option 0, i.e. costs avoided under Option 1.
  - **Familiarisation** – the initial cost for the relevant employee(s) in a business to understand the judgment, and to consider the implications on the business.
  - **Implementation** – the cost of setting up new record keeping systems or upgrading/extending existing systems to ensure compliance with the judgment.
- Ongoing costs under Option 0, i.e. costs avoided under Option 1.
  - **Workers submitting working time information** – the cost of the unproductive time spent by workers recording and submitting their daily working hours.
  - **Reviewing records** – the cost of time spent by businesses reviewing workers' records of working hours, verifying they are accurate and compliant, and if needed following up with workers where they are not.
  - **Maintaining systems for recording hours (non-quantified)** – there may be a periodic ongoing cost of maintaining systems used for recording hours (e.g. upgrading automated payroll systems to the latest technology).

66. We expect that the familiarisation cost associated with the Government's decision to remove the effect of the 2019 CJEU judgment will be negligible. This is because this decision would not place any new requirements on businesses, and we do not expect businesses to have changed their record keeping practices in response to the current uncertainty on the 2019 CJEU judgment.

67. Under the counterfactual, businesses remain uncertain over a period of time of their record keeping obligations. This uncertainty itself may have an ongoing impact on businesses. However, we expect this impact to be limited (and we do not monetise it). Likewise, any cost previously incurred due to seeking legal advice would be considered a sunk cost. As stated previously, we do not expect that businesses have pre-emptively changed their record keeping processes in response to the uncertainty. This is supported by a rationality argument, a comparison of survey evidence between 2019 and 2021, and pre-consultation engagement with stakeholders.

68. The following sections outline the costs to business as and when a court case finds that the 2019 CJEU judgment applies to all employers in Great Britain. These are 'avoided costs' (i.e. benefits) under Option 1. We have not monetised the benefits associated with the 2019 CJEU judgment. These are the 'foregone benefits' (i.e. costs) under Option 1. This is because the benefits are highly uncertain and considered as indirect. This is discussed qualitatively in more detail in the 'Wider Impacts' section.

69. We have attempted to provide a robust assessment of the possible impacts of Option 1, drawing on the best available evidence. We commissioned two surveys (one of workers and one of

businesses) to fill evidence gaps and inform key assumptions and tested our methodology during a pre-consultation stakeholder engagement and through the consultation process itself. We also conducted detailed sensitivity analysis which shows that, even under a range of assumptions, the impact on business is still significant. Nonetheless, there is still a high degree of uncertainty, particularly around how businesses would implement the 2019 CJEU judgment in practice, were they required to do so.

### One-off cost under Option 0 (i.e. cost avoided under Option 1): Familiarisation

70. Businesses would incur a one-off cost associated with familiarising with the 2019 CJEU judgment. We assume this familiarisation would consist of the relevant employee(s) in the business reading and understanding the judgment and any accompanying guidance, considering the implications on the business, and, if necessary, consulting with other relevant employees (e.g. line managers). The cost of setting up or upgrading the record keeping systems is considered separately as an implementation cost.
71. To derive the number of businesses that could be impacted by the costs associated with the 2019 CJEU judgment, we have applied the responses to the YouGov business survey (see Table 1) to BEIS estimates of the total number of businesses in Great Britain with 1 or more employees, derived from the Business Population Estimate (BPE)<sup>29</sup>. The results are shown in Table 8.

Table 8: Number of businesses impacted, by business size and current record keeping behaviour (rounded to nearest 100)

Business Size	Number of businesses in Great Britain	Estimated number of businesses currently formally recording working hours of...			
		None of their workforce	Some (1 – 50%) of their workforce	Most of their workforce (51 – 99%)	All of their workforce
Micro and small (1-49)	1,421,200	635,300	141,900	211,700	423,300
Medium (50-249)	40,300	12,600	5,400	8,500	13,900
Large (250-499)	4,900	600	1,500	1,600	1,100
Large (500+)	5,400	800	900	1,800	1,900
All	1,471,800	649,300	149,700	223,600	449,200

72. We expect that all 1.5 million businesses in GB<sup>30</sup> would have to undertake some degree of familiarisation. We expect that businesses already recording the working hours of their entire workforce would still need to understand the judgment and check whether their processes are compliant.
73. Table 9 outlines the baseline assumptions for the individual(s) responsible for familiarisation and the range of time taken. This is a similar approach to other previous Impact Assessments. We expect that larger firms would have to understand the implications of the 2019 CJEU judgement across a wider (and potentially more diverse, in terms of working patterns and existing record keeping practices) workforce. Whilst the 2019 CJEU judgment is similar to the existing record keeping requirements in the WTR, insofar as the records related to working hours, we consider it a step-change in terms of the practical steps required by businesses.
74. To inform the range of time taken for familiarisation, we have made use of the responses to a question in the YouGov business survey on the time taken to familiarise (e.g. understand what the requirements and basic processes are) with the current statutory flexible working policy. The survey

<sup>29</sup> BEIS analysis of Business Population Estimates 2022, <https://www.gov.uk/government/statistics/business-population-estimates-2022>

<sup>30</sup> This figure refers to businesses with 1 or more employees.

found that 18% of employers estimated it takes up to 10 mins, 30% take between 10-30 minutes, 31% take 30-60 mins and 22% take more than 1 hour<sup>31</sup>.

75. The assumption of 30 mins to familiarise with a change to significant changes employment legislation has been commonly used in previous Impact Assessments (e.g. the National Living Wage in 2016). Based on the responses to the YouGov business survey, it could take some businesses up to 10 mins to familiarise themselves with the current statutory flexible working policy. We have used this 10 mins as the lower bound proxy time for businesses to familiarise themselves with the 2019 CJEU judgment: for example, this could apply to businesses that already have extensive systems in-place to record the working hours of their workforce and/or have already familiarised themselves with the 2019 CJEU judgment since it was made in 2019. This matches the approach taken in the National Minimum Wage Impact Assessment<sup>32</sup> for familiarisation with a minor change which would have straightforward implications for businesses. We have used 120 mins as an upper bound for the businesses most impacted by the judgment: for example, this could apply to businesses that do not have any systems in-place and need to consider in greater detail the implications for the business and potentially seek external counsel.
76. Provisional 2022 ASHE data<sup>33</sup> gives the mean hourly pay of a Corporate Manager / Director as £30.31<sup>34</sup>, HR Manager / Director as £27.33<sup>35</sup>, and HR Administrative Assistant as £12.91<sup>36</sup>. We uplift these hourly costs by 17.9% to cover non-wage labour costs, such as employer-paid pension and National Insurance contributions<sup>37</sup>.

**Table 9: Individual(s) for familiarisation, time taken and average hourly wage (including uplift for non-wage labour costs)**

<b>Business Size</b>	<b>Person responsible for familiarisation</b>	<b>Time taken per person</b>	<b>Average hourly wage (including uplift)</b>
Small and micro	1x Corporate Manager / Director	10 – 120 mins	£35.75
Medium and large	1x HR Manager / Director	10 – 120 mins	£32.24
	3x HR Administrative Assistants		£15.23

77. We expect that the time needed to familiarise with the judgment would be lower for businesses who already record working time, as they would already have considered the types of record keeping practices that are suitable for their organisation. We therefore applied the range of estimates of the time taken for familiarisation (see the ranges in Table 9) to the categories of businesses according to their current record keeping behaviour – see Table 10.

**Table 10: Time taken to familiarise by current record keeping behaviour**

<b>Business Size</b>	<b>Time taken to familiarise for businesses currently formally recording working hours of...</b>			
	<b>None of their workforce</b>	<b>Some (1 – 50%) of their workforce</b>	<b>Most (51 – 99%) of their workforce</b>	<b>All of their workforce</b>
All business sizes	120 minutes	60 minutes	30 minutes	10 minutes

<sup>31</sup> Figures re-weighted to exclude 'Don't know' responses to survey questions. This is consistent with all other figures presented in this impact assessment.

<sup>32</sup> Amendment to the National Minimum Wage regulations 2021 Impact Assessment

<sup>33</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

<sup>34</sup> SOC Code: 11

<sup>35</sup> SOC Code: 1136

<sup>36</sup> SOC Code: 4136

<sup>37</sup> BEIS analysis of Index of Labour Costs per Hour, 2019Q4 – 2020Q3

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhour/ich/julytoseptember2020>



The one-off familiarisation costs are calculated according to the following formula:

$$\text{Familiarisation cost} = N_B \times T_F \times W_F$$

Where:

$N_B$  is the number of businesses in Great Britain.

$T_F$  is the time taken for the relevant employee(s) to familiarise with the legislation in hours (assumed to be between 0.17 hours (i.e. 10 mins) and 2 hours (i.e. 120 minutes), depending on the extent to which businesses currently formally record the working hours of their staff) expressed in hours.

$W_F$  is the average hourly wage rate for the relevant employee(s) responsible for familiarisation with the legislation (assumed to be 1 Corporate Manager / Director in small and micro businesses, and 1 HR Manager / Director and 3 HR Administrative Assistants in medium and large businesses).

78. Overall, we estimate that the familiarisation cost if the 2019 CJEU judgment were to apply in GB is £60.3m. These are considered as direct costs under Option 0 (i.e. 'costs avoided' under Option 1).

### **One-off costs under option 0 (i.e. cost avoided under Option 1): Implementation Setting up / upgrading record keeping systems**

79. If the 2019 CJEU judgment were applied in GB, businesses would incur an initial one-off cost of setting up new record keeping systems, or upgrading / extending existing systems. The exact nature of these systems would vary from business to business and would likely be specific to the size and type of business, the industry and nature of work, and the employment model used in the business (for example, the balance of working in an office or remotely, the take-up flexible working, the use of technology-based ways-of-working and, more generally, the predictability of hours worked). In this analysis, we use several baseline estimates for average unit costs, and apply additional evidence-based assumptions to these, to attempt to account for some of this variation.

80. The YouGov business survey found that the one-off cost is expected to be higher for larger businesses (see Table 3). This interpretation is supported by a stakeholder who have told us that smaller businesses typically avoid setting up brand new and costly systems where possible, and instead are likely to adapt existing HR and payroll systems to serve the required purpose as best as possible. The YouGov business survey also found that the one-off cost is expected to be higher in cases where businesses need to set up an entirely new record keeping system (rather than upgrading an existing system).

81. Table 10 outlines our estimates of the one-off implementation cost by business size and current business record keeping behaviour. These estimates have been informed by the findings from the YouGov business survey and alternative estimates used in other Impact Assessments (e.g. 2019 One-Sided Flexibility Consultation-Stage Impact Assessment<sup>38</sup>). As outlined previously, we assume that businesses that formally record the working hours of all of their workforce already align with the requirements of the 2019 CJEU judgment and, therefore, do not face additional implementation costs.

82. The YouGov business survey results in Table 3 indicate that most small and micro businesses<sup>39</sup> estimate the one-off implementation cost under £400 (both for setting up new systems and upgrading existing systems). We then derived indicative specific figures within this range based on alternative sources.

83. The specific figures are intended to anchor the calculations in this section and account for variation according to current business record keeping behaviour (and, as a proxy, other aspects of the

<sup>38</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/822675/One-Sided\\_Flexibility\\_Consultation\\_Stage\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822675/One-Sided_Flexibility_Consultation_Stage_Impact_Assessment.pdf)

<sup>39</sup> 56% of small and micro businesses estimate the cost of implementing a new system to be under £400, while 80% of small and micro businesses estimated that upgrading existing systems would cost under £400.

business profile). In practice, we expect that the applicability of the estimates will vary business-by-business.

- a) The estimate of £145 is based on a 2019 Impact Assessment where a policy required additional information to be recorded via an IT system (specifically, the number of hours that hourly-paid employees are being paid). The evidence-gathering process found that businesses with a paid payroll software would incur a cost of £130 to use a system with functionality to record additional information. This cost can be interpreted as a minor change to existing software. This has been updated to 2022 prices, generating an estimate of £145<sup>40</sup>. We apply this estimate to small and micro businesses that already formally record the working hours of at least some of their workforce.
- b) The estimate of £368 is based on the 2008 Employment Law Admin Burden survey<sup>41</sup>. The survey found that the unit cost for employers to maintain records of working time was £275. This has been updated to 2022 prices, generating an estimate of £368. We recognise that this figure is based on *maintaining* records of working time, rather than *implementing* working hour recording systems, however this assumption is consistent with previous Impact Assessments (e.g. One-Sided Flexibility Consultation). We apply this estimate to small and micro businesses that do not formally record the working hours of any of their workforce.

**Table 11: Estimated one-off cost of setting up new record keeping system or extending existing system to whole workforce, by business size**

Business Size	One-off implementation cost for businesses currently formally recording working hours of...		
	None of their workforce	Some or most (1 – 99%) of their workforce	All of their workforce
Micro and small (1-49)	£368	£145	-
Medium and Large (50+)	£1,000	£800	-

84. During the pre-consultation stakeholder engagement, stakeholders noted that estimating specific unit costs would be difficult without knowing the exact nature of systems being implemented. We presented the estimates above (in 2019 prices) as an initial assessment and both stakeholders noted that they seemed intuitively sensible. Since then, we have updated the range to incorporate evidence from the YouGov surveys. The YouGov business survey results in Table 3 indicate that 50% of medium and large businesses estimate the one-off implementation cost of over £1,000 for setting up new systems. The most common estimate of the cost of upgrading existing systems for medium and large businesses was between £600 and £1,000. We make a simplifying assumption by applying the mid-point of £600 to £1,000 to businesses that formally record the working hours of at least some (but not all) of their workforce, as the YouGov business survey does not provide data on a narrower range. We applied an estimate of £1,000 for businesses that do not formally record the working hours of any of their workforce. This is a cautious estimate as some of the free-text responses to the survey indicated that the cost for a large organisation could be significantly higher (into the £10,000s and higher). Similar to the estimates for small and micro businesses, in practice, we expect that the applicability of the estimates will vary business-by-business.

<sup>40</sup> Updated using GDP deflators: <https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-march-2023-spring-budget>

<sup>41</sup> Department for Business Enterprise & Regulatory Reform, Employment Law Admin Burdens Survey 2008 Final Report, December 2008.



85. The one-off implementation costs are calculated according to the following formula:

$$\text{Implementation cost} = N_B \times S$$

Where:

**N<sub>B</sub>** is the number of businesses in Great Britain.

**S** is the unit cost of setting up or upgrading record keeping systems (assumed to be between £145 and £1,000, depending on business size and the extent to which businesses currently formally record the working hours of their staff).

86. Overall, we estimate the one-off implementation cost to be £391.0m. These are considered as direct costs under Option 0 (i.e. 'costs avoided' under Option 1).
87. These estimates are likely to be an under-estimate of the direct implementation costs in Option 0 (i.e. under-estimate the benefits under Option 1) as we have not monetised the time taken for businesses to cascade the information through the organisation (potentially multiple branches / locations) and for Line Managers and workers to understand the processes that they must follow.
88. We expect that this cost would be small for many firms, especially larger employers where information can be cascaded to many workers at once (e.g. via internal intranet sites). As we do not have strong evidence on how this information would be cascaded, especially in smaller businesses where the cost per worker may be greater, we have decided to take a conservative approach by assuming it is a negligible impact. This was supported during our engagement with stakeholders. Monetising the cost of information dissemination would increase the costs (or benefits under Option 1) without sufficient evidence to underpin it.

### **Ongoing costs under option 0 (i.e. cost avoided under Option 1): Workers Submitting Working Time Information**

89. Workers who do not already record and submit their daily working hours to their employers will need to spend time at work doing this. We assume that workers will be paid for this time at a rate equivalent to their usual pay. This approach (using a time-cost to approximate the cost to business) is well-established and has also been used, for example, when estimating familiarisation costs in this Impact Assessment. However, when considering a time cost that applies across a large share of an employer's workforce (as opposed to a small group of workers, such as an employer's HR team), it may be more likely that the workers make use of unpaid overtime. In these cases, relative to the status quo, workers are spending overall more time per week on work-related activities and their employer is unable to use this time on productive activities (and the output foregone is approximated with the time cost).
90. To estimate the number of workers who do not already formally record their daily working hours (and would therefore now be required to do so) we used the responses to the YouGov business survey (see Table 6) and applied these to BEIS estimates of the total number of employees by business size (where businesses have 1 or more employees) derived from the Business Population Estimate (BPE).
- a) First, we estimated the total number of workers that would fall into each cell in Table 8. To do so, we used data on the total number of employees by business size (from the BPE) and distribute these employees according to the share of businesses that fall into each column of Table 8. This calculation involves a simplifying assumption that, within each business size group (micro and small, medium and large) there is a uniform distribution of businesses within each category.
- b) Second, we used the mid-point for each category in Table 8 (for example, 75% in the 51-99% category) and assumed that the remaining workers do not currently formally submit records of their daily working hours to their employer. We then applied the share of workers that do not currently submit records of their daily working hours to their employer to the estimated number of workers in each cell. When summed across each category, we obtained an estimate of the

number of affected workers by the size of their employer. We used the extreme ends of the ranges (51% and 99% in our example) in our sensitivity analysis.

- c) Third, some of these workers will fall under a derogation on the regulations on rest breaks where the duration of their working time is not measured or predetermined or can be determined by the workers themselves. This group can be roughly approximated by using the ‘Managers, Directors and Senior Officials’ occupation. The LFS indicates that around 9.7% of all employees are classified in this occupational group. However, there is no definite measure of the number of workers that fall under the derogation. We expect that a number of workers in this occupational group have some, but not full, autonomy over their working hours. Workers that fall under the derogation may also be less likely than a typical worker to have their daily working hours formally recorded under the status quo. We have incorporated this uncertainty through sensitivity analysis and, overall, taken a cautious approach:
- We applied the share of workers that are ‘Managers, Directors and Senior Officials’ of 9.7% to generate our high estimate;
  - We applied the share of workers that are ‘Managers, Directors and Senior Officials’ or in ‘Professional Occupations’ of 36.9% to generate our low estimate;
  - As a central estimate, we used the mid-point between the two figures (23.3%). This is similar to the share of respondents in the YouGov employee survey that indicated they have a lot of influence over the number of hours they work and when they complete these hours (19%) and the share of respondents in a CIPD Working Lives Survey that indicate that they have ‘a lot’ of autonomy over the time they finish the working day (26%)<sup>42</sup>.

Table 12: Estimated number of employees that would need to start formally recording their daily working hours, by business size (rounded to nearest 1,000 and %)

Business Size	Total employee population (from BPE)	Number of employees impacted		
		Low	Central	High
Micro and small (1-49)	8,353,000	3,193,000	3,578,000	3,964,000
Medium (50-249)	3,998,000	1,116,000	1,421,000	1,675,000
Large (250-499)	1,697,000	375,000	575,000	776,000
Large (500+)	14,998,000	2,707,000	4,084,000	5,461,000
Total	29,037,000	7,441,000	9,658,000	11,876,000
Total (% of employee population)	-	26%	33%	41%

91. The figures in Table 12 appear conservative when compared to the findings from the YouGov employee survey. Around 62% of respondents to the YouGov employee survey indicated that they do not record their daily working hours ‘all the time’. We have not used the findings from the YouGov employee survey on the number of employees recording their working hours for our monetised estimates (including sensitivity analysis) to adopt an overall cautious approach. However, we have used this data in our equalities assessment (see Annex B) where we have assumed that an employee is currently recording their working hours in a way that aligns with the 2019 CJEU judgment if they do not record their daily working hours ‘all the time’ and their Line Manager / HR reviews and formally signs off those records. The consultation also suggested that the results in Table 12 are credible as 70% of workers or worker representatives answered that their employer keeps daily working hours records.

92. To obtain estimates of the time it takes for workers who would need to formally start recording their daily working hours do to so per week, we then applied the responses to the YouGov business survey on the time taken to record working hours per week (see Table 4) to the number of workers impacted in Table 12. Due to the relatively small number of responses to the 16+ mins per week range, we have made the cautious assumption of incorporating those responses into the 9 to 15

<sup>42</sup> <https://www.cipd.co.uk/knowledge/work/trends/goodwork#gref>

mins range. During pre-consultation stakeholder engagement, stakeholders agreed that modelling a range for the time taken by employees to record working hours was sensible given the above limitations. We presented a range of between 2 and 10 minutes as an initial assessment and stakeholders agreed that it seemed intuitively sensible, but acknowledged that these are 'ballpark estimates' and that there are likely to be extreme cases where unique circumstances affect the time taken to record working hours. Since then, we have updated the range to incorporate evidence from the YouGov surveys.

93. When evaluating our methodology, we have considered that there will be naturally be a wide degree of variation in the time taken to record working hours. For example, this could depend on:
  - a) The type of employment contract (for example, full-time versus part-time, salaried versus paid by the hour);
  - b) The predictability of hours worked (for example, whether work is done in one or several locations, or the sector in which the business operates);
  - c) The specific type of record keeping process in place within the organisation: some systems, such as the automatic recording time based on when a worker swipes a pass to enter the office which is automatically verified in a central database, could conceivably eliminate the time required by workers to record their working time. Some, such as confirming that pre-defined working hours are correct each week via an online portal, might save the worker the majority of the legwork but still require some small amount of engagement each week. And others, such as manually inputting daily working hours into a spreadsheet, would be more time-intensive.
94. To address these points, we note that we are interpreting the YouGov business responses as reflecting a 'typical' or 'average' worker in the organisation responding to the survey. Therefore, the estimates provided by organisations should, at least to some extent, already incorporate variation in working patterns across their organisation. The question was also only asked to organisations that formally recorded the working hours of at least some of their workforce and, therefore, had gone through a process of deciding which type of record keeping system (in particular, the degree of automation) best suits their business needs.
95. While this survey approach has some benefits in terms of robustness of the survey responses (in particular, we avoided questions that are hypothetical and so could lead to unreliable responses) it also means that, in our modelling, we assume that the take-up of automation when extending the coverage of detailed record keeping to the whole workforce will be the same as the current take-up. It is possible that the businesses with a stronger cost-benefit case for record keeping systems (particularly when they involve high initial set-up costs) are also those that have already set up record keeping systems. In turn, this would mean that businesses that need to set up new systems, or substantially extend existing ones, may be more likely to adopt less sophisticated systems that, in turn, require more time from the workers to record their working hours.
96. At the same time, we note that some workers who are not formally recording their working hours under the status quo are doing so on an informal or occasional basis and, therefore, would not incur the entire time cost associated with a formal arrangement. The survey findings indicate that this group represents a relatively small share of workers (around 9%). This generates further uncertainty on the additional time taken to formally record working hours. Given the uncertainty, we have used the extreme ends of the ranges (e.g. 0 and 4 mins for the 0 – 4 mins range) in Table 11 to generate low and high estimates. We used the mid-point of the ranges (e.g. 2 mins for the 0 – 4 mins range) as our central estimate.
97. In the YouGov employee survey, around 59% of respondents who record daily working hours 'all the time' and where their Line Manager / HR review and formally sign off their records indicated that it takes them less than 4 minutes per week to record their working hours, while 17% said that it takes them between 5 and 8 minutes and 24% said more than 9 minutes or more. These findings indicate a distribution that is skewed towards smaller durations when compared to the figures in Table 4. Some variation across surveys is to be expected given differences in survey design (e.g. differences in question wording). Again, given the uncertainty, we have used the share of employees that would fall into each range from the YouGov employee survey as our low estimate

and the figures from the YouGov business survey as our high estimate, whilst using the mid-point as our central estimate.

98. In the next step of our analysis, we assume that the employees impacted are paid the average hourly wage in GB (£18.74) and uplift this figure by 17.9% to account for non-wage labour costs, such as employer-paid pension and National Insurance contributions<sup>43</sup>. This gives an estimate of £22.10. We consider this to be a sensible assumption given the large share of workers that are impacted (i.e. would need to start formally recording their working hours). In addition, this may be a cautious approach (in terms of the benefits under the preferred option) as low-paid workers are likely to already have their working hours recorded (for example, to ensure compliance with the NMW / NLW).
99. Finally, we multiplied the estimates by 46.4 weeks to obtain an estimate on an annual basis, accounting for statutory holiday entitlement of 5.6 weeks<sup>44</sup> during which workers would not be recording their working hours. There are a number of arguments on either side of this assumption, with the overall direction challenging to determine. On the one hand, this assumption implicitly assumes that all workers are full-time (part-time workers would be entitled to fewer calendar days of annual leave as their 'work week' consists of fewer workdays) and that take-up of annual leave entitlements is 100% (whereas evidence indicates this is not the case<sup>45</sup>). On the other hand, this assumption does not directly incorporate other reasons that workers may be off work and not recording their working hours (e.g. maternity, paternity, adoption and shared parental leave, or sick days).
100. The ongoing costs of working submitting working time information are calculated according to the following formula:

$$\text{Cost of workers submitting working time information} = N_E \times T_S \times W_S \times 46.4$$

Where:

**N<sub>E</sub>** is the number of employees in Great Britain who are not currently formally recording their working hours.

**T<sub>S</sub>** is the time taken for workers to submit working time information in hours per week (assumed to be between 0 and 0.25 hours (i.e. 15 minutes) per week, with the distribution of employees along this range informed by the YouGov business and employee survey).

**W<sub>S</sub>** is the mean hourly average wage of employees who submit working time information (assumed to be the mean hourly wage of all employees)

101. To illustrate the sensitivity of the overall cost figures to some of the key assumptions we have made, Table 13 shows the effect on the ongoing cost of switching an assumption to its high or low value, whilst holding all other assumptions constant at their central value. Table 13 shows that costs are particularly sensitive to the time taken by workers to record their working hours. This is dependent on factors such as the take-up of automated record keeping systems and the extent to which workers are informally or occasionally recording their working hours. As the low and high estimates for each assumption reflect extreme variation in the assumption (i.e. we expect that there is plausible variation within this range, but do not have sufficiently robust evidence to narrow the range further) we do not combine the low / high estimates across multiple assumptions.

**Table 13: Sensitivity Analysis – Ongoing Cost (workers formally submitting working time information)**  
(rounded to nearest £100,000)

<b>Assumption</b>	<i>Low</i>	<i>Central</i>	<i>High</i>
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<sup>43</sup> BEIS analysis of Index of Labour Costs per Hour, 2019Q4 – 2020Q3

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhour/ich/julytoseptember2020>

<sup>44</sup> <https://www.gov.uk/holiday-entitlement-rights>

<sup>45</sup> In the 2020 Employee Rights Survey, a substantial minority (26%) of employees reported that they did not take all the leave that they were entitled to in the previous holiday year. Among those employees, around a quarter were neither compensated financially nor allowed to carry the unused holiday over.

Share of workers that do not already formally record their daily working hours	£720.6m	£942.5m	£1,164.4m
Share of workers that are exempt	£775.5m	£942.5m	£1,109.5m
Time taken per week for workers to formally record daily working hours (i.e. keeping share of workers within each band constant)	£582.1m	£942.5m	£1,303.0m
Share of workers that fall into each band of time taken per week to formally record daily working hours	£841.9m	£942.5m	£1,043.1m

102. Overall, our central estimate is that the cost associated with workers recording their working hours is £942.5m per year. Our sensitivity analysis shows that the cost could be between £582.1m and £1,303.0m based on extreme assumptions. These are considered as direct costs under Option 0 (i.e. 'costs avoided' under Option 1).

### **Ongoing costs under option 0 (i.e. cost avoided under Option 1): Reviewing working time records ('verification')**

103. Although interpretation of the 2019 CJEU judgment might vary, we assume that the requirement for employers to keep a 'reliable' record of daily working hours<sup>46</sup> means that employers would be required to undertake some regular reviewing of records to verify that they are comprehensive (i.e. all workers are recording all of their working hours), accurate, and compliant.

104. Given the practical implications of collecting detailed records of working hours for all workers (particularly where there is variation in the 'start' and 'stop' times in hours worked) and the available information on the scope and intention of the 2019 CJEU judgment, we consider it appropriate as a central assumption to assume that all employers would have to carry out some degree of verification of records. We also note the standard assumption in Impact Assessments of full compliance by businesses. During the pre-consultation stakeholder engagement, the question was posed whether the majority of businesses would consider this review / verification step as required to be compliant with the judgment and stakeholders broadly agreed with this assumption, whilst noting that many businesses (particularly small and micro businesses) may choose to do the 'minimum' and not incur this particular cost.

105. The YouGov business survey did not ask questions to businesses specifically about the time required to verify records, and we are not aware of any previous Impact Assessments nor alternative sources of evidence that would be directly relevant. The costs to businesses due to the time required to verify records are sensitive to several assumptions, including:

- a) How much time businesses feel should be spent verifying records (this will depend on how employers respond to the trade-off between the cost of verifying records and the risk of potential rest break-related disputes);
- b) Which and how many employees in the business would be responsible for verifying records;
- c) The extent to which businesses already verify the working hours of workers;
- d) The system for verifying records and, in particular, the extent to which this is automated.

106. In contrast to the approach taken in the previous sub-section, where the sensitivity analysis was driven by extreme lower and upper bounds, our evidence base is generally less specific and targeted for this sub-section and, therefore, we are less able to establish these extreme bounds. Therefore, we have taken a slightly different approach to our sensitivity analysis and combined a series of cautious assumptions for our central estimate, with one factor (the time saved due to automation) driving our low and high estimates. Implicitly, this also addresses the point made by

<sup>46</sup> The CJEU judgment ruled: Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured.

stakeholders that many businesses, in practice, may choose not to review the working time records of their workforce.

107. As a starting point, we consider the findings from the YouGov business survey which asked about processing time for flexible working requests. There are some similarities between the process of verifying working time records and processing a flexible working request, insofar as both processes incorporate a degree of standardisation alongside individual-specific considerations. In addition, both processes involve a decision from the individual responsible for reviewing (i.e. whether to accept a flexible working request for one, and whether to sign off the working time records for the other).

108. The most common response to the YouGov question asking businesses to estimate the time required to process a flexible working request was 0 – 30 minutes (38%), followed by 30 mins – 1 hour (24%), 2 hours – 3 hours (24%) and 4+ hours (14%)<sup>47</sup>. We have used these estimates as indicative of the likely range of time required to review working time records (see Table 14). We assume that small and micro businesses require less time than medium and large businesses as, for a given percentage of the workforce, they would have fewer records to review. Recognising the limitations of our evidence base, we have also made the following cautious assumptions:

- We exclude businesses that responded 4+ hours and consider a range of 0 – 120 mins for businesses to review the working time records of their workforce;
- We apply the estimates of 15 or 30 mins to businesses that have some record keeping systems in place, as we assume that these employers already carry out some verification of working time records;
- We assume that the estimates also include the time required to follow up with workers if there are gaps or inconsistencies in the records;
- We assume that the verification process occurs fairly irregularly (monthly) when compared to the recording of daily working hours by workers (weekly);
- We maintain the assumption that businesses that formally record the working hours of their workforce, as per the YouGov business survey, are compliant with the verification / review aspect of the 2019 CJEU judgment.
- We assume that estimates represent the time required to review the records of all workers in the organisation where working hours are not already formally recorded (i.e. the time required would be lower for businesses that already formally record the working hours of a higher share of their workforce).

Table 14: Additional time taken to review working time records per month, by current record keeping behaviour

Business Size	Additional time taken to review working time records for businesses currently formally recording the working hours of...			
	None of their workforce	Some (1 – 50%) of their workforce	Most (51 – 99%) of their workforce	All of their workforce
Micro and small	60 minutes	30 minutes	15 minutes	-
Medium and large	120 minutes	60 minutes	30 minutes	-

109. Stakeholders have indicated that the time required for employers to review working time records will depend on the extent to which the system is automated. We expect that the responses to the YouGov question on flexible working requests would reflect the degree of automation in the working time record keeping systems only insofar as the take-up of automation in part of the workforce management process (i.e. flexible working requests) is a predictor of the take-up in another (i.e.

<sup>47</sup> Consistent with our analysis of the YouGov business survey questions on working time records, we have re-weighted the figures to account for Don't Know responses.

working time records). Continuing our cautious approach, we assume that there is no link between the two.

110. Therefore, we assume that the estimates in Table 14 reflect a fully manual process and, in turn, adjust the estimates to reflect (a) take-up of partially and fully automated systems (see Table 2) and (b) the corresponding time saved (see Table 5). The responses on the time saved by partially and fully automated systems have been mapped onto a range of 0% to 50% (central estimate: 25%) for a partially automated system and 25% to 75% (central estimate: 50%) for a fully automated system, applied to all businesses. The lower and upper bounds of the ranges drive our sensitivity analysis in this sub-section. Table 14 shows our adjusted assumptions on the time taken to review working time records, accounting for evidence that this process may involve some degree of automation.

111. In the YouGov employee survey, around 30% of respondents who record daily working hours 'all the time' and where their Line Manager / HR review and formally sign off their records indicated that they use a fully automated system. The figures for partially automated and manual systems were 33% and 37%, respectively. When compared to the figures in Table 4, these figures indicate higher take-up of manual systems. While we would expect some variation across surveys, these figures suggest that using the YouGov business survey data represents an overall cautious approach.

**Table 15: Adjusted additional time taken to review working time records per month, by current record keeping behaviour**

Business Size	Additional time taken to review working time records for businesses currently formally recording the working hours of...			
	None of their workforce	Some (1-50%) of their workforce	Most (51-99%) of their workforce	All of their workforce
Micro and small	45 – 58 minutes (central: 51 minutes)	22 – 29 minutes (central: 26 minutes)	11 – 14 minutes (central: 13 minutes)	-
Medium and large	62 –110 minutes (central: 86 minutes)	31 – 55 minutes (central: 43 minutes)	15 – 28 minutes (central: 21 minutes)	-

112. Our assumption on the employee(s) responsible for reviewing the working time records is the same as the approach taken for the familiarisation costs. Therefore, in small and micro businesses, we assume it would be a Corporate Manager / Director reviewing the records each month, while in medium and large businesses, where there would be a dedicated HR function, it would be a HR Manager / Director and three HR Administrative Assistants. This is a cautious assumption as we expect that the review and signing off of time sheets may be undertaken by the worker's Line Manager as they will better observe the working pattern of the worker (i.e. there would be a higher number of instances where records are being reviewed).

**Table 16: Person responsible for reviewing / verification of records and average hourly wage (including uplift for non-wage labour costs)**

Business Size	Person responsible for reviewing / review of records	Average hourly wage (including uplift)
Small and micro	1x Corporate Manager / Director	£35.75
Medium and large	1x HR Manager Director	£32.24
	3x HR Administrative Assistants	£15.23

113. The ongoing costs of employers reviewing and verifying working time records are calculated according to the following formula:

$$\text{Cost of employers reviewing working time records} = N_B \times T_V \times W_V \times 12$$

Where:

$N_B$  is the number of businesses in Great Britain.

$T_V$  is the time taken for employers to verify working time records in hours per month, adjusted for automation (assumed to be between 0.18 hours (i.e. 11 minutes) and 1.83 hours (i.e. 110 minutes) depending on business size, the time saving due to automation, and the extent to which businesses already formally record the working hours of their staff).

$W_V$  is the mean hourly average wage of employee(s) responsible for verifying working time records (assumed to be 1 Corporate Manager / Director in small and micro businesses, and 1 HR Manager / Director and 3 HR Administrative Assistants in medium and large businesses).

114. Overall, we estimate that the ongoing cost associated with employers reviewing the records of working time is between £252.4m and £349.6m per year (with a central estimate of £306,081,000). These are considered as direct costs under Option 0 (i.e. 'costs avoided' under Option 1). As outlined previously, these estimates are highly uncertain and we have implemented an overall cautious appraisal approach to avoid over-estimating the benefits under Option 1.

### **Ongoing costs under option 0 (i.e. cost avoided under Option 1): Maintaining record keeping systems (not quantified)**

115. If all GB employers were to comply with the 2019 CJEU judgment, we expect there might be a periodic ongoing cost associated with maintaining or updating the systems employers use to record daily working hours of their employees. This might particularly be the case for automated systems, where the system or software might need to be updated every few years to keep pace with technological change. We have not attempted to quantify this cost as it would not occur with any regularity or predictability, and is dependent on uncertain business decisions and the type of system implemented. Not monetising this cost under option 0, represents a cautious approach in estimating the benefits of the policy change in Option 1.

### **Total costs to business under option 0 (i.e. cost avoided under Option 1)**

116. As the policy is open-ended, we used the default time horizon of 10 years from the year that legislation commences to assess costs and benefits, as suggested by HM Treasury's Green Book. Where figures are discounted, we have used the standard discount rate of 3.5% per year, as per HM Treasury's Green Book. The total one-off cost avoided under Option 1 would be £451.3m. These figures are in 2022 prices and not discounted. This consists of the following:

- Familiarisation: £60.3m
- Implementation: £391.0m

117. The total annual ongoing cost avoided under Option 1 would be between £834.6m and £1,652.6m (central: £1,248.6m). These figures are in 2022 prices and not discounted. This consists of the following:

- Workers submitting working time information: between £582.1m and £1,303.0m (central: £942.5m)
- Reviewing records: between £252.4m and £349.6m (central £306.1m)

118. An unusual aspect of Option 1 is that it removes a *risk* that businesses would need to comply with the 2019 CJEU judgment. The exact timing of the risk materialising in the counterfactual is unknown. HMCTS data shows that, on average, the number of complaints



received per year in Employment Tribunals alleging ‘Failure to limit weekly or night working time, or to ensure rest breaks’ is in the low-to-mid hundreds annually. To the best of our knowledge, the 2019 CJEU judgment has not been tested with respect to an employment tribunal case to-date. If and when this occurs, there is a reasonable likelihood that domestic courts determine that all working hours need to be recorded for almost all workers. Therefore, it appears likely that the 2019 CJEU judgment would be enforced across the employee population through the employment tribunal system at some point over a 10-year period, but the exact timing is unknown. Once the court case occurs in the counterfactual, we assume the 2019 CJEU judgment becomes known and implemented across all of the business population.

119. We expect that the legislation will commence in 2023. If the risk described above were to materialise in 2023 in the counterfactual, the Net Present Value (NPV) of the policy proposal would be between £7,634.9m and £14,676.2m (central: £11,199.0m). These figures are expressed in 2022 prices and 2023 present value.

120. For the purposes of the cover sheets of this Impact Assessment, and given the uncertainty around the timing of a domestic court case in the counterfactual, we take a cautious approach and construct a dummy counterfactual whereby the court case occurs mid-way through the appraisal period in the counterfactual, i.e. after five years. The results of this are shown in Table 17.

Table 17: One-off and ongoing costs avoided, business NPV and EANDCB in dummy counterfactual – Option 1 (rounded to nearest £100,000)						
	One off cost avoided <sup>48</sup>	Ongoing cost avoided <sup>49</sup>			Business NPV (2022 prices, 2023 present value)	EANDCB (2022 prices, 2023 present value)
		Low	Best	High	Best	Best
Option 1	£451.3m	£834.6m	£1,248.6m	£1,652.6m	£5,292.8m	- £614.9m

121. It is challenging to reliably forecast the level and type of record keeping that would be in place in five years’ time in the counterfactual. There are many factors that drive business decisions on whether and how to record the working hours of their staff including, but not limited to, the legislative framework. We note that our survey evidence indicates that take-up of record keeping did not change significantly overall between 2019 and 2021, and that businesses have a profit incentive to wait until the uncertainty around the judgment has been resolved one way or another before implementing costly changes. Therefore, in the dummy counterfactual, we continue to use the same baseline in term of record keeping practices to estimate the additional ‘costs avoided’, i.e. the benefits under Option 1.

122. If the relevant domestic court case were to occur further in the future in the counterfactual, the impacts of Option 1, in present value terms, would be smaller for two reasons:

- i. Discounting<sup>50</sup> (i.e. the later the risk materialises the smaller the impacts are in present value terms)
- ii. The number of years remaining in the appraisal period (i.e. assuming a fixed appraisal period from 2023 to 2023 means that the later the risk materialises the less years of impact are ‘counted’).

123. For example, if the risk materialised in 2030, the NPV of the policy proposal over the appraisal period ending in 2033 would be between £2,256.8m and £4,121.2m (central: £3,200.5m). These figures are expressed in 2022 prices and 2023 present value. The opposite would be true if the domestic court case were to occur sooner in the future in the counterfactual, increasing the

<sup>48</sup> These figures are not discounted.

<sup>49</sup> These figures are not discounted.

<sup>50</sup> The 3.5% discount rate used in HM Treasury’s Green Book is the rate at which society values the present compared to the future. This comprises of two components (1) the time preference for value now rather than later and (2) the wealth effect where future consumption will be higher relative to current consumption and is expected to have a lower utility.

impact of Option 1. For example, for example, if the risk materialised in 2025, the NPV of the policy proposal would be between £5,964.0m and £11,396.9m (central: £8,714.0m), expressed in 2022 prices and 2023 present value.

124. It should be noted that the considerations on present value and length of appraisal period are primarily important for business impact accounting purposes and the RPC's validation of the EANDCB, and only arise due to uncertainty about when a domestic court case would be brought in the UK.

125. On a simpler basis, we can say that from the point at which the risk was to materialise, implementing Option 1 saves businesses a one-off cost of around £450m and an ongoing annual cost saving of £1.2bn (with a range of £830m to £1.7bn).

## Impact on small and micro businesses (SaMBA)

126. The proposed policy will affect employers of all sizes, including small and micro businesses. We do not intend to exempt small or micro businesses from the policy. The 'Do Nothing' scenario leaves small and micro businesses uncertain on whether to comply with the 2019 CJEU judgment and, given the complexity of the judgment and its practical implications, what exactly they might be required to comply with and how. Legislating to remove the effect of the 2019 CJEU judgment provide certainty and guidance. If the 2019 CJEU judgment were to be applied in Great Britain (which is a risk under the 'Do Nothing' scenario) then all employers would face the costly burden of having to record the working hours of their workforce.

127. Despite having relatively fewer workers per business, small and micro businesses would find compliance relatively more burdensome than medium and large businesses for several reasons:

- a) As the results of the YouGov business survey show, small and micro businesses are less likely to already formally record the working hours of their workforce. 45% of small and micro businesses, on average, do not record the working hours of any of their workforce, compared with just 18%, on average, among medium and large businesses. This in turn interacts with and impacts on every cost that businesses will face, since small and micro businesses will a) start from a place of lower understanding and capacity to record working hours, and b) have to start additionally recording the working hours of a larger proportion of their workforce.
- b) Evidence suggests that small and micro businesses are less likely to implement more sophisticated automated systems.<sup>51</sup> This is in part because they would find it harder to justify, and to finance, the initial capital investment of setting up costly automated systems (this is in contrast to the cost-benefit trade-off for larger firms with scale economies where the initial outlay could be spread across a larger number of employees).

128. Similarly, we do not intend to exempt medium to large (up to 499 employees) businesses from the policy. According to the YouGov business survey, 22% of these businesses do not formally record the working hours of any of their workforce. Whereas 56% of these businesses already record working hours of at least 50% of their workforce. Complying with the 2019 CJEU judgment would place a financial burden on medium to large businesses, particularly medium size businesses who do not already have systems in place. Exempting these businesses from the policy could disincentivise them from expanding to avoid recording working time, which would have consequences for expanding their workforce and reaching potential economic growth.

129. In the 'Direct costs and benefits' section we have presented, where possible, figures disaggregated by business size. As our analysis shows, and stakeholders have supported during our pre-consultation stakeholder engagement, the burden of complying with the 2019 CJEU

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<sup>51</sup> This is supported by:

- findings of a survey by CEP and the Confederation of British Industry (CBI) on technology adoption in response to the Covid-19 crisis, which found that adoption of digital technologies and management practices was more likely for larger businesses (CEP-CBI, [The business response to Covid-19 one year on](#), November 2021);
- a 2018 study by the Enterprise Research Centre into Micro businesses, which found that around a quarter of GB micro-businesses currently make no use of digital technologies at all, while a further quarter use only one (ERC, [Micro-business Britain](#), June 2018);
- stakeholders with whom BEIS consulted during the development of this IA.

judgment would fall disproportionately on small and micro businesses. Table 18 shows that monetised one-off transition cost and ongoing cost by business size if the 2019 CJEU judgment were implemented. These are the ‘costs avoided’ (i.e. benefits) under Option 1. According to the Business Population Estimates, micro and small businesses employ 29% of employees in Great Britain. However, our analysis shows that they incur 51% of the monetised cost burden if the 2019 CJEU judgment were to be implemented. In turn, this means that small and micro businesses disproportionately benefit from Option 1.

**Table 18: One-off and ongoing cost avoided, NPV and EANDCB, by business size – Option 1**  
(rounded to nearest £100,000)

Business Size	One off cost avoided <sup>52</sup>	Ongoing cost avoided <sup>53</sup>	Business NPV (2022 prices, 2023 present value)	EANDCB (2022 prices, 2023 present value)
		<i>Best</i>	<i>Best</i>	<i>Best</i>
Micro and small (1-49)	£404.5m	£604.1m	£2,717.4m	- £315.7m
Medium (50-249)	£37.7m	£161.7m	£668.0m	- £77.6m
Large (250-499)	£4.3m	£63.9m	£254.9m	- £29.6m
Large (500+)	£4.8m	£419.0m	£1,652.6m	- £192.0m
All businesses	£451.3m	£1,248.6m	£5,292.8m	- £614.9m

## Wider Impacts

130. We have assessed on a qualitative basis the potential indirect impacts associated with the 2019 CJEU judgment. These are considered indirect as they are second round costs or benefits which occur as a result of a number of additional steps in the logic chain between regulation and impact. We have not monetised these indirect impacts as we do not have robust evidence that they would occur. In cases where the indirect impacts are benefits resulting from the 2019 CJEU judgment, they constitute the ‘benefits forsaken’ (i.e. the costs) under Option 1. We judge the benefits of removing the effects of the 2019 CJEU judgement will outweigh these benefits forsaken.

### Health and wellbeing

131. The 2019 CJEU judgment intends to reduce instances of workers not receiving their rights to rest breaks and limits on working time. As a result, there would be an expected benefit to some workers who were previously being exploited, but as a result of the judgment are now better protected. This would only be in cases in which the existing enforcement route was not successful in resolving a genuine breach in WTR on the basis of insufficient evidence of the worker’s working hours (which would be resolved in the worker’s favour by greater record keeping). The economic literature indicates that workers can benefit from improved health and wellbeing due to regular rest breaks at work. In turn, this can lead to higher productivity and associated benefits to employers<sup>54</sup>.

132. These are possible ‘benefits forsaken’ under Option 1. However, the scale of this benefit ‘foregone’ is expected to be relatively low (in particular, when compared to the scale of the costs). This is because, as discussed in the ‘Rationale for intervention’ section:

- a) Based on a triangulation of evidence from the Labour Force Survey (LFS), BEIS Public Attitudes Tracker, ACAS, HMCTS and a BEIS-commissioned survey of workers, existing non-compliance with Working Time Regulations related to rest breaks in GB appears to be low.

<sup>52</sup> These figures are not discounted.

<sup>53</sup> These figures are not discounted.

<sup>54</sup> For example, see recent reviews of the evidence at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6843288/> and [https://www.researchgate.net/publication/361913348\\_Role\\_of\\_work\\_breaks\\_in\\_well-being\\_and\\_performance\\_A\\_systematic\\_review\\_and\\_future\\_research\\_agenda](https://www.researchgate.net/publication/361913348_Role_of_work_breaks_in_well-being_and_performance_A_systematic_review_and_future_research_agenda)

- b) It is also already possible for employers or workers to keep records if they believe it would be useful as evidence in a dispute over rest breaks and working hours.

#### *Legal costs due to Early Conciliation and Employment Tribunal cases*

133. A requirement on all businesses to maintain records of the daily working hours would improve the evidence base for resolving disputes in relation to rest breaks. In theory, this would mean legal proceedings, such as Employment Tribunals, are easier to resolve – resulting in shorter cases at a reduced cost to all parties (claimants, employers, and the Exchequer).
134. The presence of these records could also reduce the number of complaints that have little basis and would otherwise be dismissed relatively quickly, and reduce the number of complaints progressing from the relatively cheaper Early Conciliation phase to the relatively more expensive Employment Tribunal phase (i.e., will allow more cases to be settled without the need for a tribunal). All of this would, again, reduce the cost to claimants, employers, and the Exchequer.
135. These are possible ‘benefits forsaken’ under Option 1. However, employers are already free to introduce record keeping, regardless of the 2019 CJEU judgment, if they deemed it worthwhile for avoiding these legal costs. Workers are also able to keep records of their working hours if they wish to do so.

#### *Level playing field for businesses*

136. Our evidence review and stakeholder engagement indicates that only a small minority of employers are exploiting their workers by not permitting them their entitled rest breaks. These unscrupulous employers can gain a competitive advantage by making workers work longer hours for the same pay where the vast majority of ‘good employers’ do not. If the 2019 CJEU judgment were to reduce incidences of this, it would be targeting those employers that ‘cut corners’ with employment standards and, in so doing, would level the playing field for all businesses.
137. These are possible ‘benefits forsaken’ under Option 1. However, the scale of impact of the 2019 CJEU judgment on compliance with rest break requirements is expected to be low. In cases where employers are currently exploiting their workers, it may be unlikely that their behaviour would change as a result of the introduction of further record keeping requirements. In such situations, workers are already able to keep records if they believe they are being exploited and to seek enforcement of their rights.

#### *Sectoral impact*

Paragraph 16 of the IA highlights the sectors with a low and high likelihood of formally record employee working hours. The additional requirements for all employers to keep records of working hours for all employees would affect those sectors, such as finance, where record keeping is seemingly lower. However, it should be noted that removing the risk of increased working hours record keeping (i.e. Option 1) mean businesses will continue to operate as usual, and therefore will not change the competitiveness between firms within each sector or between firms of different sizes.

#### *Innovation*

138. Under Option 0, firms may decide to invest in more efficient automated systems to recording working time to meet new record keeping requirements, especially those who use manual processes. Therefore, this innovation could mitigate the increase in record keeping costs. However, this investment and the resulting savings would likely not outweigh the new burdens on businesses. Furthermore, since this behavioural response is highly uncertain and would not affect the EANDCB (since automated record keeping would not be mandated but a permissive choice by businesses) we do not attempt to quantify this in our counterfactual.

#### *Employer-worker relationship*

139. Stakeholders have suggested that businesses (in particular micro and small businesses) introducing a requirement on all workers to record their daily working hours would risk undermining the fundamental trust in the employer-worker relationship. Workers might, understandably, feel that

they are under surveillance, while employers and workers alike might resent the ‘unnecessary’ additional burden and structured approach to working / breaks that this would impose. The result could be a damaged employer-worker relationship, and a subsequent loss in the associated ‘goodwill’ and flexibility that usually goes both ways. The value of this to both businesses and workers is intangible and hard to quantify, but stakeholders suggest it is significant. The preferred policy option would avoid this potential unintended consequence, as the recording of workers’ daily working time would remain a choice for businesses and their workers, rather than a legal requirement.

### *Take-up of flexible working*

140. The record keeping requirements of the 2019 CJEU judgment would likely discourage employers and workers from championing flexible working. The more flexible the patterns and ways of working that a worker engages in, the harder it would be to accurately and reliably record their daily working hours (for example, attempting to record a worker responding to emails on their phone late in the evening). Hence, employers would have an incentive to push back towards a structured ‘9:00 to 5:00’ day and standard office-working model as it would be easier to record time that way.
141. Survey evidence shows that flexible working has a number of benefits for both workers and employers. For example, 9 in 10 employees surveyed for HSBC consider flexible working to be a key motivator to their productivity at work – more than financial incentives (77%)<sup>55</sup>. Around half of the employers surveyed for the Post-Implementation Review of the 2014 Flexible Working Regulations reported positive effects of flexible working on reducing absenteeism<sup>56</sup>. Whilst in the 2020 Employee Rights Survey, over half of employees (55%) working flexibly said that a positive consequence of these arrangements was a better work-life balance.

### *Incentives to move to a self-employment model*

142. The additional administrative burden could act as an incentive for employers to shift towards a business model where a greater share of their workforce are treated as self-employed. In some cases, the reality of the working relationship between the employer and the individual may not have changed, raising a risk that individuals do not receive the rights to which they are entitled to. Even where individuals are correctly classified, this would lead to a higher share of the workforce in an employment status where there are fewer protections. Some of these individuals may reluctantly work as self-employed and prefer to be treated as workers if this was an available option. There may be a knock-on effect on the Exchequer as the self-employed are generally taxed less than employees<sup>57</sup>. The preferred option would avoid these effects from occurring.

### *Compliance*

143. We acknowledge that removing the effect of the 2019 CJEU judgment carries a degree of risk. To the extent that records are a necessary tool to hold employers accountable, the proposed reform could lead to ‘foregone’ reduction in non-compliance with the limits on working time and entitlements to rest breaks in the WTR. However, as noted in paragraph 66, the population of workers who might benefit from mandatory recording of daily working hours is likely to represent a small share of the total worker population. Therefore, this is small and not commensurate to the additional burdens that would be placed on businesses by the 2019 CJEU judgement.
144. In addition, stakeholders have questioned whether Option 1 creates a risk that employers do not need to keep records for the purpose of the Working Time Regulations and other legislation with record keeping requirements such as National Minimum Wage legislation and any record keeping required by HMRC. However, Option 1 will have no impact on any other record keeping requirements, and therefore, they will remain unchanged. As laid out in the consultation response the Government is clear that adequate record keeping needs to be maintained for the purposes of

<sup>55</sup> <https://www.business.hsbc.uk/-/media/library/business-uk/pdfs/productivity-report-2017.pdf>

<sup>56</sup> [https://www.legislation.gov.uk/ukxi/2014/1398/pdfs/ukxi0d\\_20141398\\_en.pdf](https://www.legislation.gov.uk/ukxi/2014/1398/pdfs/ukxi0d_20141398_en.pdf)

<sup>57</sup> The tax system has two employment statuses: employee and self-employed. An individual’s employment status for tax typically determines whether they are paid subject to deduction of tax (i.e. under Pay As You Earn) or must submit a self-assessment tax return. It also determines what classification of National Insurance contributions (NICs) will be due (Class 1 for employees and Class 2/4 for the self-employed) and whether their engager will be liable to pay Class 1 secondary NICs.

the Working Time Regulations and employers must continue to adhere to any other such record keeping requirements placed on employers.

## Evidence, Assumptions and Risks

145. The main risk of our analysis relates to our evidence base. Table 19 summarises the key assumptions made in our analysis. The confidence assessment highlights the level of certainty in the assumption and how that assumption has been used in the analysis. A red or amber rating identifies where there are gaps in the current evidence base. A green rating demonstrates where the evidence is relatively strong. The consultation includes questions to help build our evidence base (see Annex C). The impact assessment highlights the risk of the assumptions to the NPV range we have estimated. A red or amber rating is provided if an assumption risks the outputs falling outside the sensitivity ranges. A green rating if a change to an assumption is has a zero to low risk to the NPV falling outside the sensitivity range. Most green-rated assumptions are already tested in the sensitivity analysis.

Assumption	Confidence	Impact	Comments
Steps that businesses must follow to align with the 2019 CJEU judgment	Amber	Amber	DBT legal and policy assessment based on the content of the judgment. The judgement found that Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured. The judgment provides businesses with a degree of flexibility to implement a system that best suits them. There is no definitive assessment of which systems would (and would not) be compliant.
Existing non-compliance with the limits on working time	Green-Amber	Green	DBT triangulation of evidence from LFS, Public Attitudes Tracker, ACAS and HMCTS. Each data source has specific limitations. The existing non-compliance is estimated to be somewhat low.
Record keeping practices over future 10-year appraisal period	Amber	Green	Limited available evidence. Assume current level of record keeping is maintained over time based on YouGov survey.
Date at which British courts would find that the 2019 CJEU judgment applies to all businesses	Amber-Red	Green	DBT legal and policy assessment. This is inherently uncertain and, in theory, could occur at any point across the 10-year appraisal period. The appraisal period would still remain over 10 years.
Number of workers exempt from the limits on working time	Amber	Green	DBT analysis of the Labour Force Survey. Limited interpretation of exception is applied. There is no comprehensive evidence on the number of workers in-scope of exemptions. Detailed sensitivity analysis used
Number of businesses that incur familiarisation costs	Green-Amber	Green	DBT analysis of Business Population Estimates using YouGov survey. Detailed sensitivity analysis used
Time taken for businesses to	Green - Amber	Green	Based on previous Impact Assessments related to labour market policy and DBT assessment of complexity of the regulatory changes.

Table 19: Key assumptions

Assumption	Confidence	Impact	Comments
familiarise with new legislation			
Employee(s) responsible for familiarisation	Green-Amber	Green	Based on previous Impact Assessments related to labour market policy and DBT assessment of complexity of the regulatory changes.
Pay of employee(s) responsible for familiarisation	Green	Green	DBT analysis of ASHE 2022 (provisional data).
Uplift to pay to account for non-wage labour costs	Green	Green	DBT analysis of ONS Index of Labour Costs per Hour. Latest available data is slightly out-dated.
Number of workers who are not currently recording working hours in line with the 2019 CJEU judgment	Green-Amber	Green	DBT analysis of BEIS-commissioned survey data. Amber confidence is driven by uncertainty on steps that businesses must follow to align with the 2019 CJEU judgment. Detailed sensitivity analysis used.
One off cost of implementing a new IT system to record working hours	Amber	Green	DBT analysis of BEIS-commissioned survey data. Amber confidence is driven by uncertainty on steps that businesses must follow to align with the 2019 CJEU judgment. Detailed sensitivity analysis used.
Time taken per week for workers to record working hours	Amber	Green	DBT analysis of BEIS-commissioned survey data. Amber confidence is driven by uncertainty on steps that businesses must follow to align with the 2019 CJEU judgment. Detailed sensitivity analysis used.
Time taken per month for businesses to review working time records	Amber	Green	DBT analysis of BEIS-commissioned survey data. Amber confidence is driven by uncertainty on steps that businesses must follow to align with the 2019 CJEU judgment. Detailed sensitivity analysis used.

## Equalities assessment

146. Under the Equality Act 2010, the Department for Business and Trade, as a public authority, is legally obligated to have due regard to equality issues when making policy decisions – the Public Sector Equality Duty – and in doing so:
- a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - b) Advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - c) Foster good relations between different groups.
147. The protected characteristics consist of nine groups: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
148. Based on our analysis, we conclude that there are no direct impacts of Option 1 on groups who share a protected characteristic. The 2019 CJEU judgment could lead to both benefits (higher wellbeing due to more rest breaks, and lower dispute costs) and costs (lower take-up of flexible working, shift to a self-employment model and damage to employer-worker relationship) for these groups. It is plausible that some protected groups may be disproportionately represented between

those with minimal and high records of working hours, and therefore would be disproportionately affected by the judgement. However, we are unable to identify which specific groups would be affected based on the available evidence. A full Equalities Assessment can be found in Annex B.

## **Environmental impacts**

149. Consideration has been given to the Environmental Principles Policy Statement and there is not thought to be any relevant impact as a result of this policy.

## **Monitoring and Evaluation**

150. The policy change covered in this Impact Assessment is to remove the current uncertainty related to the 2019 CJEU judgment. As the judgment will not be implemented in practice in the UK, and the policy intention is to prevent the additional costs burdens from materialising, it is not possible to monitor the impact. As such, undertaking an economic evaluation of the policy would not be meaningful and we do not plan to produce a Post-Implementation Review for this policy.
151. Nevertheless, the Government will continue to monitor the use and impact of employment rights and employers' compliance, including on the Working Time Regulations, in order to inform evidence-based policymaking.
152. For example, once the policy is implemented, the Health and Safety Executive will update guidance around recording working hours for employees and we will maintain contact with them to ensure the policy is meeting its objectives. In addition, we will monitor the range of evidence presented in this Impact Assessment (e.g. HMCTS, ACAS and LFS data on potential non-compliance with rest break entitlements and limits on working time). Where appropriate, we will engage further with stakeholders to understand whether the policy proposal has any unintended consequences and will also consider the case for commissioning further survey data where specific issues arise.



## Annex A: Analysis of the number of workers who have opted out of the 48 hour weekly limit

- Workers are able to opt out of the 48-hour weekly limit in the Working Time Regulations. The latest available evidence on take-up of the opt out comes from 2017 CIPD research<sup>58</sup>. Table A1 shows the figures presented on page 37 of the CIPD report, having adjusted the figures to account for Don't Know responses.

Table A1: Share of employers that report that staff have opted out of the 48-hour weekly limit, by business size (derived from 2017 CIPD Research)

Business size	Share of business' staff that have opted out					
	None	Less than 10%	11-25%	26-50%	51-75%	76-100%
Small (2-49)	77%	3%	0%	3%	1%	15%
Medium (50 - 249)	37%	9%	10%	8%	8%	29%
Large (250+)	32%	24%	17%	13%	5%	10%
All	48%	15%	10%	10%	4%	14%

- We also make use of data from the Business Population Estimates on the number of employees employed by business size band in Great Britain. This data is shown in Table A2. We assume that the CIPD data for small employers (2-49 employees) can be applied to a slightly wider business size band that includes small employers with only 1 employee.

Table A2: Number of employees by business size band (derived from 2022 Business Population Estimates) (rounded to nearest 1,000)

Business size	Number of employees
Small (1-49)	8,353,000
Medium (50-249)	3,988,000
Large (250+)	16,696,000
All	29,037,000

- Table A3 sets out our central estimates of the number of employees who may have opted out of the 48-hour weekly limit by business size band and in total.
- As we are using business survey data rather than employee survey data, we need to make some simplifying assumptions to generate an estimate for the number of employees who have opted out of the 48-hour weekly limit. This means that the analysis should be interpreted as illustrative only.
- Our key simplifying assumption is that, within each business size band, the proportion of employees who have opted out applies in the same way to every business within that band. For example, in the band for small businesses, we assume that 77% of businesses have no staff that have opted out, whether the employer employs 1 employee, 49 employees, or anywhere in between. A comparison of the columns in Table A1 (i.e. comparison between small, medium and large businesses) suggests that this assumption might not hold.
- To mitigate the potential error introduced by this assumption, we have only used the figures by business size band in Table A1 (i.e. small, medium and large businesses) rather than the total figures across all businesses. To calculate total figures, we then sum across all business size bands.

<sup>58</sup> <https://beta.cipduat.co.uk/knowledge/fundamentals/emp-law/about/employment-regulations-report#gref>

7. To illustrate how we have calculated the figures in Table A3:

- We estimated that there are around 8.4m employees employed by small businesses.
- Around 3% of small businesses indicated that less than 10% (but more than 0%) of their workforce had opted-out of the 48-hour weekly limit.
- To estimate the number of workers who are employed in those businesses, we multiplied 8.4m by 3% to give around 272,000 employees.
- To estimate the number of workers who are employed in those businesses and have opted out, we multiplied 272,000 by the mid-point of the range of 1-10% (i.e. 6%) to give around 15,000 employees.

**Table A3: Central estimates of the number of employees that have opted out of the 48-hour weekly limit, by employer size (rounded to nearest 1,000)**

Business size	Share of business' staff that have opted out						
	None	Less than 10%	11-25%	26-50%	51-75%	76-100%	Total
Small (1-49)	6,447,000	272,000	0	272,000	91,000	1,271,000	8,353,000
Medium (50-249)	1,464,000	353,000	404,000	303,000	303,000	1,161,000	3,988,000
Large (250+)	5,300,000	3,975,000	2,915,000	2,120,000	795,000	1,590,000	16,696,000
Total	13,211,000	4,601,000	3,319,000	2,695,000	1,189,000	4,022,000	29,037,000

8. Given the illustrative nature of the estimates in Table A3 and reliance on a number of simplifying assumptions, we have also conducted sensitivity analysis to illustrate possible variation in the estimates. Our sensitivity analysis is based on the ranges for each response option in the 2017 CIPD research presented in Table A1. In the example above, the low estimate uses the bottom of the range of 1-10% (i.e. 1%) and the high estimate uses the top of the range (i.e. 10%).

9. Table A4 shows our low, central and high estimates for the total number of employees who may have opted out of the 48-hour weekly limit. As mentioned previously, these are illustrative estimates that are subject to some simplifying assumptions.

**Table A4: Estimates of the number of employees that have opted out of the 48 hour weekly limit (rounded to nearest 1,000 or %)**

	Low	Central	High
Number of employees	4,574,000	6,063,000	7,551,000
Share of all employees	16%	21%	26%

## Annex B: Equalities Assessment

### Background

1. This Equalities Assessment considers the impacts of the following proposed options related to the Working Time Regulations:
  - a) Removing the effect of the 2019 CJEU judgment.
  - b) Removing some of the pre-existing record keeping requirements.
2. Under the Equality Act 2010, the Department for Business and Trade, as a public authority, is legally obligated to have due regard to equality issues when making policy decisions – the Public Sector Equality Duty – and in doing so:
  - a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - b) Advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - c) Foster good relations between different groups.
3. The protected characteristics consist of nine groups: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

### *Which protected groups could be disproportionately affected by the proposed options?*

4. The policy option under consideration does not amend the fundamental rights that workers are entitled to. Importantly, the impacts on workers will depend on extent to which businesses are a necessary tool to hold employers accountable. The impacts will also depend on how businesses respond to the policy option in practice. Therefore, impacts on workers are considered as indirect (second round costs or benefits which occur as a result of a number of additional steps in the logic chain between regulation and impact). Table B1 summarises the groups of workers who may experience indirect costs or benefits due the proposed options.

Table B1: Workers who may experience indirect impacts due to Option 1	
Indirect costs	Workers who do not record their working hours and do not receive their full rights to rest breaks in the counterfactual. Insofar as records are a necessary tool to hold employers accountable, these workers could benefit from higher rest breaks (with associated wellbeing benefits and reduction in the cost of disputes) if the 2019 CJEU judgment were implemented. These benefits are 'foregone' under the proposed option.
Indirect benefits	Workers who do not formally record their working hours in the counterfactual. If the 2019 CJEU judgment were implemented, these workers could experience a range of costs including damage to worker-employer relationship, lower take-up of flexible working and employer shifts to a self-employment model. These costs are 'avoided' under the proposed option.

5. Some groups may be disproportionately represented within these categories of workers. Therefore, some groups might incur disproportionate indirect impacts due to the proposed option. The multiple potential channels of impact, and qualitative nature of the assessment, means that any particular group may experience both indirect costs and benefits and it is not possible to draw definitive conclusions. For example, we can consider a worker who is currently not receiving their full rest break entitlements and does not record their working hours.

6. If the 2019 CJEU judgment were implemented, the worker's working hours would start to be recorded. This worker could experience both benefits (higher wellbeing due to more rest breaks, and lower dispute costs) and costs (lower take-up of flexible working, shift to a self-employment model and damage to employer-worker relationship). The overall net impact on the worker is unclear.
7. Tables B2 and B3 summarise our best available evidence on the equalities considerations for workers potentially impacted by the proposed options. There are a number of significant limitations to the interpretation of this data. For example, as explored in more detail in the Impact Assessment, the analysis of the LFS does not necessarily mean that a worker is not receiving a rest break that they are entitled to (e.g. those usually working more than 48 hours per week may have opted out and, more generally, there are a number of exemptions and flexibilities in the regulations). Therefore, the data should be interpreted as indicative only.
8. Tables B2 and B3 draw on available data from the LFS (age, disability, race, religion or belief, and sex) and BEIS-commissioned YouGov survey of employees (age, race, religion, sex, disability, sexual orientation). We do not report figures that are based on a small number of respondents for disclosure reasons. Each source provides a partial picture only and, as mentioned previously, the impacts on different groups with protected characteristics remains highly uncertain.

**Table B2: Equalities analysis (LFS) (rounded to nearest 0.1%)**

		<b>Employees who usually work more than 48 hours per week</b>	<b>Employees who usually work 7 days per week</b>	<b>Night employees who usually work more than 8 hours per day</b>	<b>All employees</b>
<b>Sex</b>	Male	68.9%	52.4%	65.8%	50.7%
	Female	31.1%	47.6%	34.2%	49.3%
<b>Disability</b>	Equality Act Disabled	12.6%	19.4%	16.0%	15.9%
	Not Equality Act Disabled	87.4%	80.6%	84.0%	84.1%
<b>Ethnicity</b>	White	85.5%	82.6%	76.8%	85.3%
	Ethnic minority group	14.5%	17.4%	23.2%	14.7%
<b>Religion</b>	No religion	48.0%	47.3%	43.0%	49.3%
	Religion	52.0%	52.7%	57.0%	50.7%
<b>Age</b>	18 to 34	28.9%	39.5%	30.3%	35.8%
	35 to 49	39.4%	27.7%	39.6%	33.7%
	50+	31.6%	32.8%	30.1%	30.5%

*Note: Ethnicity, religion and age groups have been aggregated to address issues around small (<20) number of respondents. The observed differences between the employee population (final column) and the sub-groups (columns 3 to 5) may not be statistically significant. Figures may not add up to 100% due to rounding.*

Table B3: Equalities analysis (BEIS-commissioned YouGov survey of employees) (rounded to nearest 0.1%)

		Employees who report not receiving at least one of their rest break entitlements	Employees who report that they feel pressure from their employer not to take their rest breaks 'always' or 'most of the time'	Employees who do not currently record their working hours in a way that is assumed to align with the 2019 CJEU judgment	All employees
<b>Age band</b>	18 to 34	16.2%	23.1%	18.3%	18.7%
	35 to 44	27.8%	28.6%	23.9%	22.9%
	45 to 54	26.4%	23.8%	26.0%	25.9%
	55 and above	29.6%	24.5%	31.7%	32.6%
<b>Ethnicity</b>	White	83.8%	87.5%	90.6%	90.7%
	Ethnic minority	11.5%	9.8%	6.4%	6.2%
	Prefer not to say	4.7%	2.7%	3.0%	3.0%
<b>Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?</b>	Yes, limited a lot	6.2%	11.0%	2.7%	3.3%
	Yes, limited a little	16.6%	20.1%	12.2%	13.6%
	No	77.3%	68.9%	85.1%	83.0%
<b>Gender at birth</b>	Male	55.6%	51.1%	52.3%	51.6%
	Female	42.9%	46.7%	46.8%	47.5%
	Prefer not to say	1.6%	2.2%	0.9%	0.9%
<b>Do you regard yourself as belonging to any particular religion?</b>	Yes	36.6%	38.1%	30.4%	30.8%
	No	60.2%	56.0%	66.7%	66.1%
	Don't know / Prefer not to say	3.3%	5.9%	2.8%	3.0%
<b>Which of the following best describes your sexuality?</b>	Heterosexual	83.6%	81.1%	86.5%	86.3%
	Gay or lesbian	7.5%	6.8%	5.5%	5.4%
	Bisexual	3.7%	5.1%	3.6%	3.8%
	Other / Prefer not to say	5.2%	7.1%	4.4%	4.5%

Note: Ethnicity, religion and age groups have been aggregated to address issues around small (<20) number of respondents. The 'Don't know', 'other' and 'prefer not to say' responses to questions have been combined to address issues of small (< 20) number of respondents. The observed differences between the employee population (final column) and the sub-groups (columns 3 to 5) may not be statistically significant. Figures may not add up to 100% due to rounding.

## *Conclusion*

9. Overall, the Equalities Assessment concludes that there are no direct impacts on groups who share a protected characteristic. There are a number of channels through which the policy options could potentially have an indirect effect on groups that shared a protected characteristic; however, we are unable to identify the overall effects on specific groups based on the available evidence.