



Department
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Innovation & Skills

Implementing Employee Owner Status

Government Response to
Consultation

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GOVERNMENT RESPONSE TO THE CONSULTATION ON IMPLEMENTING EMPLOYEE OWNER STATUS

Executive Summary

1. On 8 October the Chancellor announced the creation of a new employment status – employee owner – to provide both individuals and companies an additional choice about their employment relationship rights and responsibilities. The new status will have all the rights associated with employees except for certain unfair dismissal rights, rights to statutory redundancy pay, certain statutory rights to request flexible working or the statutory right to request training. In addition, an employee owner will be required to give their employer 16 weeks' notice of their intention to return from maternity or adoption leave, which is 8 weeks earlier than other employees. In return individuals with this status will be given shares in the company of between £2,000 and £50,000 that will be exempt from capital gains tax (CGT).
2. The Government sought views on the practicalities of implementing employee owner status. We received 209 completed responses during the consultation period, from a wide variety of organisations. Each response has been carefully considered, and summarised in this Response.
3. Whilst a very small number of responses welcomed the scheme and suggested they would be interested in taking it up, a number of specific issues were raised through the consultation. These relate to concerns about the potential impact on individuals and how the shares would work. There was a strong concern that individuals were losing important employment protections and that they might be coerced to take on employee owner status. There was also a concern that employee owner status could be misused by businesses, and that the tax advantages could be abused.
4. There was a particular concern that the new status would be complex and costly to operate, with uncertainty around valuation and income tax implications for individuals. These were viewed as likely to deter take-up. The Government is considering options to reduce income tax and National Insurance contribution liabilities that arise when employee owners receive their shares. Those who thought there would be some take-up suggested that it would be limited to micro-businesses and some growing companies.
5. The Government acknowledges the concerns for individuals and has already stated that the new status is voluntary. In response to issues highlighted in the consultation, the Government intends to provide further clarity, consistency, and flexibility – both through guidance for individuals and businesses and through the

legislation which underpins the new status. On Clause 23 of the Growth and Infrastructure Bill, the Government has introduced amendments to clarify the nature of the shares awarded, remove specific risks of liability on the employee owner, and ensure that shares are issued free of charge to them. Other changes include:

- a. Enabling the Secretary of State to increase the minimum share value of £2,000;
 - b. Removing the upper threshold of £50,000 – to allow businesses to offer more shares under the scheme, but not raising the £50,000 exemption from CGT;
 - c. Changing the notice period for return from additional paternity leave to 16 weeks so it is consistent with change in the notice period for return from maternity and adoption leave;
 - d. Allowing non UK-registered companies to benefit from the status; and
 - e. Allowing shares to be issued by both the employing company and its parent company to ensure the scheme is sufficiently flexible to encourage widespread appeal.
6. The Government will provide employment status guidance for use by businesses. The advice will cover the three employment statuses: employee owner, employee and worker. With appropriate guidance, employers will be better informed and better equipped to determine the right status for their company and how to implement it.
 7. In addition, we have reflected on the employee owner name, and consider it should be changed to better describe the status, and intend to re-name it *employee shareholder*. We will bring forward a further amendment in the Growth and Infrastructure Bill to make this change.
 8. This new employment status is a novel way for companies to arrange their workforce, and builds on the already flexible labour market enjoyed in the UK today. Principally intended for fast-growing companies, the status will be available to companies of any size that want to benefit from the additional flexibilities offered.

1. Introduction

- 1.1 The Government has committed to introduce a new employment status in which employee owners have different employment rights compared to other employees but will be given shares in the company they work for. Importantly, any gains on those shares will be exempt from capital gains tax (CGT) up to a defined threshold.
- 1.2 The characteristics of the new employee owner status on which we consulted are: an employee owner would be given shares of between £2,000 and £50,000 that will be CGT exempt. The employee owner would have different rights compared to an employee. Employee owners will not have:
 - Unfair dismissal rights (except for reasons that are automatically unfair or that relate to discrimination);
 - The right to statutory redundancy pay; and
 - Certain rights to request flexible working and time to train.
- 1.3 In addition, employee owners would have to give 16 weeks' notice of the intention to return early from maternity or adoption leave (compared to 8 weeks' notice for employees).
- 1.4 The UK's employment laws provide minimum levels of protection for workers, and allow businesses and individuals to agree terms that go above and beyond our minimum protections. We would expect that companies using the new status would continue to negotiate contractual terms over and above the statutory minimum as is currently the case.
- 1.5 The Government believes that fast-growing companies who want to benefit from the flexibilities and for their employees to benefit from tax incentives offered will be its principal users.
- 1.6 The Government has consulted on implementing the employee owner status. The consultation was designed to help both to inform the legislative provision being taken forward through the Growth and Infrastructure Bill, and to establish other areas of clarification and information which business and individuals will need to benefit from this status.
- 1.7 The consultation took place between 18 October and 8 November. Awareness of the consultation was raised through online channels, including Twitter and LinkedIn which we estimate reached a potential 97,000 social media accounts, and the sentiment of comments made through those portals have been considered as part of the consultation.
- 1.8 The Government received 209 formal responses through the consultation's online survey and individual submissions. The respondents represented a wide range of interested parties, including businesses and individuals and their representatives, legal bodies, accountants and finance professionals, academics, and charities and special

interest groups. In addition, Government officials have met a selection of these to discuss the issues raised in this consultation.

1.9 This document is the summary of the consultation responses received and Government's formal response to the consultation.

2. Employment Status

- 2.1 As outlined in the consultation, UK employment law enables individuals to choose between different employment statuses. These are ‘worker’ and ‘employee’ – both of which are defined in the Employment Rights Act 1996. Self-employed is not defined in statute, although it exists as an additional option. All businesses are able to choose the mix of individuals employed on these different bases according to the circumstances of the business. Government believes this provides businesses with flexibility, and sought to establish through the consultation document how to help businesses get the most out of the different types of employment status currently available. The Government also wished to establish whether there are any barriers to using existing employment statuses, and the possible options for removing or reducing these.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 1: How can the government help businesses get most out of the flexibility offered and the different types of employment status?

Responses to this question went beyond considering the current types of employment status, and can be separated into four broad themes: greater clarity needed in the current system; improvement of existing guidance on employment; greater clarity on tax status of employee owners; concern over loss of employment rights.

- 1) A desire for more clarity and simplicity in the current system
 - Employers cited the following areas of the current system as complex: Agency workers, Statutory Sick Pay rules, HMRC rules on self-employment, tax breaks for employee shares and Save as You Earn schemes.
 - There is a sense among business associations and employers that employment statuses are too complex and numerous in the current system.
 - Employers and employers’ associations suggested providing clearer communication of what the statuses mean and their implications.
 - Some businesses saw the Employment Rights Act 1996 (especially surrounding employment statuses) as outdated and overly complex.
 - Some respondents concluded that any new employment status would be likely to confuse matters for employers - particularly small and first-time employers.
- 2) Improvement of existing guidance so that it is accessible for all types of employers - especially small businesses and start-ups
 - Among most respondents who answered this question, there was a feeling that strong guidance must accompany the introduction of the new employment status if it is to work - particularly for small employers.
 - There was widespread concern that employers would need professional advice in order to fully understand the new employment status - and this was a common theme among employer associations.
 - Trade associations and employers agreed that without a large amount of accompanying guidance, small businesses without HR functions would be unable to take advantage of the flexibility offered.
 - To tackle this, suggestions included the creation of sample contracts and a glossary

of terms.

3) Increased clarity on the tax status of the 'employee owner' category

- A common question asked by employers was whether employee owners would be subject to PAYE and NIC contributions when they acquire the shares (as is currently the case). Legal representatives cited this, as well as share valuation, as an area that would be likely to confuse employers.
- To tackle this, some respondents suggested that a simple valuation model that is easy to understand would be more attractive to employers.

4) Common among responses was a feeling that employment rights should not be changed at all

- Most employee representatives were cautious of conflating employee ownership with 'rights for shares' on ethical grounds.

Question 2: Do businesses feel able to use all three employment statuses? If not, what restricts the use of different statuses?

Many respondents, particularly smaller businesses, were unclear as to what three employment statuses were being asked about. Of those who understood, the following trends were clear:

1) Internal friction and/or management challenges

- There was a common concern, especially among legal representatives and employee representatives, that changing employment rights in an organisation would have an adverse affect on job security, and therefore on employee loyalty.
- Simultaneously running two different contracts within the same workforce was a key area of uncertainty and cited by employee representatives as a source of possible disharmony within the workplace.

2) Employers already find it difficult to understand *current* employment statuses

- Legal representative respondents identified a common confusion about 'self-employed' among employers, as well as others including agency workers.
- There was also widespread confusion among employers about contractors and IR35 tax rules when applied to different employment statuses.
- The perception that employment law is always changing was a source of frustration for many respondents.

3) Fear of prosecution/falling foul of regulation

- There was fear expressed by some employers that their arrangements would not comply with employment regulations due to misunderstanding of complex rules.
- One respondent cited their fear of being taken to a tribunal as a deterrent to introducing the new employment status.

2) Cautiousness offering shares

- Employers expressed a degree of caution about offering shares to employees, for a number of reasons including relinquishing control in the business, and the potential difficulty in getting shares back from the employee owner on departure.

- Suggestions to tackle this insecurity included adding the ability to get back shares quickly and cheaply after an employment relationship has ended. One large employer cited this as a pre-requisite for introducing the new employment status into their business.
- 5) Further restrictions
- The £2,000-50,000 value range on shares was seen as a restriction for larger firms wanting a higher range.
 - The upfront income tax and NIC liability on giving shares, as well as the prospect of selling shares at a loss was also a deterrent for both companies and individuals.

Government Response

- 2.2 The Government recognises that there is currently some uncertainty amongst employers about the differences between the existing employment statuses of worker and employee. As a result, employers may not be maximising the flexibility that the current employment status system provides them. By adding a new employment status to the mix, there is a risk that employers find they cannot use it or see its benefits without the Government first clarifying the existing legal statuses.
- 2.3 The Government will therefore reorganise employment status guidance so employers have a simple guide to the types of statuses available to them and what it means for their businesses.

3. How the new employment status will work in practice

- 3.1 In the consultation document, we set out that employers that choose to operate employee owner status will be able to offer existing employees or new jobholders fully paid-up shares (with between £2,000 and £50,000 that would be exempt from CGT), and that all types of shares will be eligible for use under this arrangement. We sought views on whether there should be any restrictions attached to the shares or types of shares, whether there should be conditions on buy back, and whether there were any concerns around valuation. The Government wished to establish whether shares issued as part of employee owner status require treatment that is different to current share ownership schemes.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 3: What restrictions, if any, do you think should be attached to the issue of shares or types of shares?

The responses to this question were broadly split between those organisations supporting employee rights and those responsible for business issues.

Employee organisations felt strongly that there should be no restriction on shares issued, based on their understanding that the policy is to offer employees a say in the company and invest in the decision making process of the company. Any restrictions particularly removing voting rights and receipt of dividends were strongly resisted; they felt that the absolute minimum rights associated with this employee owner status must allow the employee owner to vote and receive dividends from that company.

The responses from business organisations felt that it should be left to the contract between the company and the employee to determine what rights should be attached to the shares.

Some responses (including some legal firms) explained that employees would simply be minority shareholders and therefore have very little meaningful control of the company; the majority shareholder would be able to marginalise the employee owner in a number of ways, for instance by issuing more shares with attached voting rights with the effect that the voting power of the employee owner is diluted.

Question 4: When an employer buys back forfeit shares, should this be at full market value or some other level (e.g. a fraction of market value) should some other level be allowed in certain circumstances?

Most responses from employee organisations objected to a company requiring shares to be forfeit. If compulsory forfeiture provisions were to be allowed, all employee organisations stated that buy back should not be below market value and were surprised that there was a suggestion that buy back could be at a lower rate.

Employee organisations argued that the employee would, in effect, be giving up employment rights for nothing. They also noted that in many cases buy back would be

triggered when a company was in trouble and needed to make employees redundant. In such cases the shares would have dropped in value and therefore the employee owner would only receive a fraction of the true cost of the shares or the value originally offered.

Business organisation on the whole felt that in cases where the employee left on 'good' terms the buy back should be at market price of the shares, however if the employee were dismissed then there should be some mechanism for buying back the shares at a reduced rate. Business organisations generally felt that details of forfeiture and buy back should be left to individual contracts.

Question 5: How should a company go about carrying out a valuation of the shares? What would the administrative and cost impact be for a company if an independent valuation was required?

Almost all responses noted that this was a complex issue for private companies who did not trade shares on a regulated market. Many explained that this issue was most likely to be the one which would make it extremely difficult for small companies and in particular start up companies to use the scheme. This was due to the complexity of agreeing a valuation for the shares and, if an independent valuation was required, the likely costs associated with the valuation. Some responses thought that there may be a role for HMRC to guarantee any independent valuations.

Almost none of the responses suggested the likely costs of a valuation. One said that in some cases it could be as low as £1,500 for a very simple company; however most simply stated that it would be expensive.

A number of responses thought that there was already a mechanism to undertake valuations as part of the yearly accounting requirement but acknowledged that valuations might be required at other times.

Some responses suggested that valuation could lead to additional costs associated with seeking legal advice if an employee owner felt that the valuation was incorrect and ultimately litigation in the worst cases, leading to costs for both the employee and the company.

Some responses did say that the company and employee owner should be left to agree the valuation as part of the contract.

Government Response

3.2 The Government has considered the responses in relation to types of shares, forfeiture provisions and valuation of shares. The Government does not intend to restrict the types of shares to be available as part of employee owner status, however the value of the shares must represent the shares 'restricted value', that is the share valuation must take into account any limits on the rights attaching to the shares.

- 3.3 The Government does propose to allow companies to issue shares from parent companies, since this will allow subsidiaries with little value in themselves to issue shares in a more valuable parent company.
- 3.4 In addition, the Government believes that sufficient mechanisms already exist for employers to sell shares to their employees and for employees to buy and sell them back to the company. On this basis, the Government believes that it is not appropriate to introduce further regulation as part of the employee owner status on how the shares element should operate. That would, in the Government's view, risk negatively impacting on existing employee share schemes, and reduce the flexibility employers and potential employee owners to negotiate arrangements.
- 3.5 The Government believes that, by making ownership of at least £2,000 worth of shares part of the qualifying criteria of the new employment status, companies using the new status will need to be able to satisfy themselves that they have indeed issued shares that have a real value of £2,000. This is important, because if it were found in an employment tribunal that the employee owner did not receive at least £2,000 worth of shares, it would be open to a tribunal to find that the individual was not an employee owner (and could possibly be an employee).
- 3.6 The Government also believes that conditions of forfeiture should be left to contractual agreement between the employer and employee owner, particularly since any forfeiture provisions, or lack of the same, would affect the value of the shares and as outlined above the company will need to ensure the shares have a certain worth.
- 3.7 We also recognise that individuals, employers and their representatives have concerns and they commented on the need for clarity. It is therefore appropriate for Government to provide this additional clarity to enable the shares element of the employee owner status to function appropriately.
- 3.8 The Government will take action to address the issues raised on share valuation and forfeiture with the main focus on guidance for businesses and individuals. In addition, because this is a complex area, and the debate is ongoing, we will continue to explore options and rules and, if appropriate, bring forward changes.

4. Ensuring that individuals taking up employee owner status understand implications

- 4.1 The consultation sought views on whether individuals taking up employee owner status would need information or advice in order to be fully aware of the implications before accepting or rejecting an offer.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 6: The Government would welcome views on the level of advice and guidance that individuals and businesses might need to be fully aware of the implications of taking on employee owner status?

The respondents who addressed the question most frequently stated that there needed to be a high level (and substantial amount) of advice and guidance for both the employer and employee.

1) Type of guidance desired for *businesses*

Total responses on guidance for business: 30

- The below table shows the type of guidance desired by businesses. A majority of employers and business associations saw a strong need for multiple types of guidance, hence some respondents opted for more than one of the below.

Type of guidance desired	No. of respondents supporting need for this guidance
Legal advice	22
Finance advice	17
Tax law advice	13
Company law advice	6
Employment law	12

- Respondents supporting company law advice envisaged that the scheme would be likely to appeal to larger rather than smaller companies.
- Employee associations wanted guidance to ensure employers knew their obligations under the new arrangement.
- Legal representatives and employer associations were keen to see guidance including: summary of the articles of association; summary of the general tax position; financial guidance to support the share valuation.

2) Guidance desired for *individuals*

Total responses on guidance for individuals: 34

The majority of respondents who supported guidance for prospective employee owners and employees wanted a very detailed account of the contract they would be entering into - particularly the nature of the rights they would be 'selling'. This view is particularly prevalent among charities and employee representatives.

The below table shows the type of advice desired for individuals/employees. This only covers the 34 respondents who explicitly expressed what type of guidance should be given.

Type of guidance desired	No. of respondents supporting need for this guidance
Legal advice	18
Advice on rights being waived	12
Financial advice	4

Respondents supporting advice on the rights being waived emphasised the following areas:

- 1) Early return from maternity leave
- 2) Requesting flexible working

There was widespread concern that asking employees to pay for advice would make for an unlevel playing field. There was also a strong desire that the advice that individuals receive is independent, with 23 of the 34 respondents explicitly saying that advice **must** be independent.

Of those 23 respondents, 10 said that cost of this legal advice should be borne by the employer, and eight said Government ought to provide the advice, whilst the remaining five did not specify.

Government Response

- 4.2 The Government understands the concern that people may not fully recognise the consequences of the new employment status. We also want to ensure that companies have confidence that they can offer these types of contracts to people and that both parties understand the consequences so they enter into these contracts with the requisite knowledge.
- 4.3 The Government will provide clear guidance for individuals and companies to help them understand the tax and employment rights implications of the new employee owner status. We will explore the most appropriate routes through which to provide this guidance including, for example, using existing Government websites. This guidance will be available when the new status becomes law.

5. Unfair Dismissal

- 5.1 The Government wanted to know the impact of removing the possibility of bringing an unfair dismissal claim. We asked respondents to tell us how this element of the employee owner proposal might affect levels of recruitment, what benefits it would carry and whether these benefits differ for smaller businesses, and the prevalence of claims being taken to an employment tribunal.
- 5.2 We asked these questions to limit the possibility of unforeseen consequences of introducing the employee owner status which carries a limitation on an individual's right to bring an unfair dismissal claim.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 7: What impact will allowing individuals limited unfair dismissal protection and equity shares have on employers' appetite for recruiting?

Total responses to this Question: 158

	Online Survey	Submissions	Total	Percentage
Total	80	78	158	100%
Positive	10	7	17	11%
Negative	6	0	6	4%
No Impact	64	64	128	81%
Unsure	0	7	7	4%

The majority of relevant submissions felt that this proposal would be little used, as it would only benefit recruitment in limited circumstances. Of the 158 respondents who expressed a view on this question, around 80% believed it would have little or no impact on recruitment, while 11% believed it would lead to increased recruitment.

However, many respondents feared this increase would result from unscrupulous employers taking advantage of the employee owner proposal.

The majority of respondents felt there would not be an impact on recruitment because few businesses would offer the employee-owner option. The most frequently cited reasons were complexities around share valuation, and the existence of the two-year qualifying period. Additionally, respondents felt that the costs would outweigh the benefits of offering this status.

Other reasons related to workplace relations. If a workforce contains both employees and employee owners there might be a division between the two groups, and a kind of two tiered workforce could result. Some respondents thought this in turn could impact morale and productivity.

Respondents also felt this two-tiered perception could negatively impact recruitment for employers who use this status. If applicants view the status negatively, they may prefer to

apply to businesses which do not offer the employee owner status. Conversely, it was suggested that employers may not wish to cede ownership of their business to a new employee.

Many respondents expressed the view that fear of unfair dismissal claims is not an obstacle to hiring, citing the Government’s response to no fault dismissal, which showed that very few employers cited dismissal regulations as the main barrier to recruitment. Some cited the OECD survey, which showed the UK as the third most lightly regulated, with similar unemployment rates to the two less regulated countries. Other respondents felt that the employee owner status would give small businesses more confidence to take on new staff.

Others felt that since most employment tribunal claims could still be made under discrimination and automatically unfair reasons, there would be little appeal to employers, and this would reduce any positive impacts.

Some respondents believed the new proposal might whet employer appetite for recruitment in limited circumstances. In particular, some respondents mentioned it may appeal to small businesses, which are especially fearful of unfair dismissal claims and may have significant uncertainty around staffing needs. Some noted, however, that these same small businesses may be put off by the administrative burden and uncertainty around new developments. Conversely, some respondents were of the view that smaller employers may be reluctant to offer shares from a business into which the owner has personally invested so much and may also lack the capacity to implement different employment statuses. A few suggested the status might appeal to start ups, and companies in need of very flexible arrangements. A few respondents were of the view that the employee owner status may help businesses recruit higher calibre candidates, provided the share package is attractive, e.g. a company that is projected to grow.

Question 8: What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?

Total responses to this Question: 139

	Survey Monkey	Submissions	Total	Percentage
Total	76	63	139	100%
None	56	37	93	67%
Some	19	21	40	29%
Unsure	1	5	6	4%

While some respondents, mostly from the legal or business communities, cited a number of benefits, the majority of respondents either felt there would be no benefit to companies from introducing this status or that these would be outweighed by the costs. The most commonly identified benefit was increased flexibility. Of the 139 responses, 67% cited no benefits or that there would only be benefits for unscrupulous employers, while 29% identified benefits. It is worth noting, however, that almost all respondents who identified benefits added that there were also costs and risks involved.

A number of respondents pointed out that the employee owner status would appeal to certain categories of businesses. The flexibility of the employee owner status would make it easier for businesses to restructure and react quickly to changing circumstances. This was viewed as a particular benefit to start up companies and new businesses. One respondent likened the situation to Silicon Valley, where tech firms and staff take on risky ventures hoping it becomes the next Google or Facebook. Another respondent remarked that it could create a better talent pool for businesses, comprised of self-selecting individuals who had a desire to invest in the future of the company.

Other respondents commented that this status could encourage higher output from employees, depending on the situation. If employees have an increased stake in the business, they would be more highly motivated to perform. One respondent referenced a study which found that of all Fair Share Capitalism forms, share ownership schemes have the clearest positive association with productivity, when combined with profit-related pay or group payments-by-results schemes. In isolation, however, share ownership schemes were associated with lower productivity. If the scheme applied to all non-managerial employees there was more likely to be a positive impact on productivity, while offering the scheme only to management level had no discernable impact on productivity.

More broadly the benefits of the scheme as a whole are influenced by how it would be implemented. Respondents suggested that the details and potential issues with the status would need to be resolved to minimise costs. The degree of uptake would also influence the level of benefit as a whole. A number of respondents felt there was little benefit because only a limited number of businesses would use the status.

Respondents also raised a number of possible detrimental effects. A number of respondents felt that it may lead to bad practice amongst employers. It would also not benefit business as consumer confidence may be hurt because individuals are afraid to spend due to increased job insecurity.

Question 9: Do you think these benefits will be greater for larger, smaller or start-up businesses?

Total responses for this Question: 139

Of these 139 responses, 51 identified positive impacts for business. The positive responses came from a diverse range of organisations including membership bodies, law firms and construction companies. 16 of the responses said that small, start up and fast growing companies would be most likely to benefit from the scheme. One said the scheme would most likely to be of value and interest to smaller companies as it will be too complicated and unattractive for larger firms to operate on anything but a small scale. Another said the scheme would make it more attractive to companies to hire staff, particularly for small or SMEs and those currently not taking on staff for fear about repercussions of unfair dismissal claims.

23 responses suggested the scheme would be most attractive to large companies, and a number of respondents suggested that the costs associated with valuing shares would limit the benefits to larger companies.

Seven responses thought the scheme had the potential to benefit companies of all sizes, and four responses suggested the benefits would be limited to unscrupulous employers, regardless of size.

54 suggested the scheme would not benefit companies. These responses came from unions, charities, chartered bodies, legal firms and individuals. A number of responses suggested that the proposal would lead to an increased administrative burden, and one said that while reducing the regulatory obligations for SMEs would be appreciated, they thought the current proposal increase the burden on them. Two responses suggested the scheme would discourage potential employees and thus limit the available talent pool from which companies could recruit. One response suggested that, while the proposal was aimed at small businesses and fast growing companies, the proposed change to training rights which are only applicable to companies with over 250 employees showed lack of clarity in the proposal.

34 had mixed views, identifying both positive and negative impacts for businesses. The responses came from unions, legal firms, businesses and membership groups. In most cases, they identified potential benefits, but suggested these were undermined by negative impacts of the scheme. For example, one respondent explained that this would not be workable for start ups, and larger companies which have the capacity to deal with the legal, personnel and financial requirements of the scheme are better able to deal with a flexible workforce and would not see the benefit of the scheme.

Question 10: What impact, if any, do you think the employee owner status will have on employment tribunal claims, e.g. for discrimination?

Total responses to this Question: 124

	Online Survey	Submissions	Total	Percentage
Total	62	62	124	100%
More	28	41	69	56%
Less	8	7	15	12%
None	19	5	24	19%
Unsure	7	9	16	13%

A slight majority of respondents felt that implementation of the employee owner status increased the risk of discrimination and automatically unfair dismissal claims being brought. That is, if individuals are no longer able to bring unfair dismissal claims, they would seek to bring discrimination or automatically unfair dismissal claims, such as whistle blowing. There were respondents, however, who felt that the number of claims would not increase.

Some respondents pointed out that there is no evidence that more claims would result if an individual were unable to bring an unfair dismissal claim. One respondent remarked that any such claims would be weak if brought speculatively in lieu of an unfair dismissal claim. While even weak claims carry an administrative and financial cost, a few respondents pointed out that introduction of tribunal fees and the sift stage proposed by

the Underhill Review may reduce the risk of spurious claims being brought. One respondent cited a statistic that unfair dismissal claims as a sole claim make up less than 10% of all claims, which suggests that “the wider picture is clearly one where the majority of claimants do not in any event rely on unfair dismissal as the foundation of their claim.”

A number of those who thought claims would increase also felt that the lack of uptake of this proposal would have a limiting factor. Others, including a number of unions, business respondents, and members of the legal community, cited the government response on no fault dismissal, which pointed out the majority of submissions felt there would be an increase in tribunal claims. A handful of respondents felt that there would be more discrimination claims brought by employees because of the extension of the unfair dismissal qualifying period. A minority of respondents suggested that discrimination claims could be brought over how an employer chooses to offer the employee owner status, and that the change in the right to request flexible working request on return from flexible parental leave could have a discriminatory impact, particularly on women.

One respondent mentioned a possibility of a dampening effect: employee owners may feel disincentivised to bring such claims for fear of jeopardising their share valuation. The existence of this fear would depend on how the shares are valued, and whether an independent party were involved. To avoid this problem, the respondent suggested employees be given the ability to dispose of the shares on the open market (where the employer is a listed entity).

A few respondents, including legal bodies, suggested other kinds of potential claims that could be brought over share value or by incensed employee owners. There would be litigation over the rights of employee owners, and the value, transferability or saleability of shares. Another respondent considered the possibility of disputes over whether the circumstances of forfeiture trigger the requirement to pay "reasonable value" for the shares. Others commented that good and bad leaver provisions usually determine rights on the forfeiture of shares, so there could be disputes over those.

Government Response

- 5.3 Respondents on the whole did not think there would be much impact on recruitment, in large part because respondents felt that few companies would use this status.
- 5.4 Many respondents did think that discrimination or automatically unfair dismissal claims may increase. The Government will monitor the impact of the new status on discrimination and other types of tribunal claim. As set out previously, the Government will ensure that appropriate guidance on what employee owner status means is available to individuals and companies.

6. Statutory Redundancy Pay

- 6.1 The Government wants to ensure that removing statutory redundancy pay has the intended result of encouraging employers to consider using the employee owner status while adequately compensating individuals through shares for the exclusion of this right. The consultation sought to determine the potential issues or unintended consequences in relation to this element of the status.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 11: What will be the impact on businesses of having no statutory redundancy pay? How might negative effects be mitigated?

Total responses to this Question: 98

	Survey Monkey	Submissions	Total	Percentage
Total	63	35	98	100
No impact	21	18	39	40%
Positive impact	11	7	18	18%
Negative impact	28	7	35	36%
Don't know	3	3	6	6%

Most respondents felt there would be no impact or a negative impact on businesses from having no statutory redundancy pay obligations. The respondents who felt take-up would be limited similarly felt there would be little impact on the business community as a whole. They commented that since the right to statutory redundancy pay does not come into effect until after two years, it would not be important to employers, particularly as the status would largely be offered to new employees. Respondents felt that not having statutory redundancy pay was not enough of an incentive to take up the status, particularly when balanced with the costs of running a share scheme. This is because statutory redundancy payments are linked to length of employment, and payments – particularly for employees who have not worked for the company for a significant period of time – are relatively small.

A few respondents pointed out that removal of the right to statutory redundancy pay might be more of an incentive to smaller businesses because they would not incur the cost of the payment, and it would be more evenly balanced with the costs of running a share scheme. Respondents also commented that as smaller businesses arguably ran a greater risk of having to make individual redundancies, having the option of employee owner status might mean they would be willing to take on staff on this basis. This potential outcome, however, depends upon the cost of implementing the scheme and share valuation.

One organisation remarked that the short term cost of redundancy had frequently put off employers from making redundancies. This respondent posited that such an alternative may leave employers choosing between getting rid of their employee owners at a low immediate financial cost, or making redundancies among their existing employees, at a

greater short term cost. The waiver might therefore theoretically help employers by offering them more flexibility.

A possible negative effect put forward is that levels of recruitment would be hurt because individuals would avoid applying to employers who offer employee owner status and therefore no statutory redundancy pay. Conversely, one respondent suggested that employee owners may work harder to avoid a redundancy situation, to keep shares from losing value and to avoid the risk of being made redundant.

A number of respondents brought up a disadvantage to employees. If a company is at the point of making redundancies, it is likely that the shares would be worth very little or nothing at all. There is also potential for abuse. One respondent hypothesised that an unscrupulous employer could pressure employees into signing an employee owner contract when the business is failing. Others commented that employee owner status could be misused in a collective redundancy scenario.

Several respondents expressed confusion as to how employee owner status would interact with the collective redundancy process. They commented that even if there is no statutory redundancy payment, there are other aspects of the collective redundancy process to be considered. For example, whether the employee owner is involved in the consultation and considering alternative employment options. If so, there is an administrative cost to the employer. If not, the selection for redundancy process might be administered improperly, as a business may select employee owners who cannot challenge on unfair dismissal or redundancy payment grounds. This then could lead to additional claims being brought, such as claims that selection for redundancy arose as a result of activity that would have been classed as automatically unfair in a dismissal situation.

Government Response

- 6.2 In response to the issues raised in relation to statutory redundancy pay, the Government acknowledges that the exclusion of statutory redundancy pay may be a greater incentive for smaller companies than larger ones, for the reasons identified through the consultation.
- 6.3 The Government will take into consideration the impact of the cost of the shares element of employee owner status, particularly for smaller businesses, when setting out guidance on this area.

7. Maternity Leave Notice Period

7.1 As the Government stated in the consultation document, the planning for maternity periods is often cited as a concern for employers and the Government is committed to supporting employers manage these situations more effectively. The Government stated its intention to increase the current 8 weeks' notice period for an early return from maternity or adoption leave to 16 weeks for those with employee owner status.

7.2 The consultation sought to establish the impact of this increase on employers.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 12: What impact will this change to maternity notice have on employers?

Total responses to this Question: 181

A minority of respondents believed that there would be little or no change to employers. Of the majority who cited possible impacts, responses focused primarily on the disadvantages for employers being less able to hire women. Other concerns centred mainly on the legal uncertainties that would face employers adopting the employee owner status.

1) Women in the labour market

- On a wider level, 36 respondents believed that this would have a negative effect on employer-employee relations generally.
- Of those who addressed the question of maternity notice directly, 40 respondents indicated that employers offering employee owner contracts would not be able to attract and retain female talent in the same way as competitors who offered additional employee benefits.
- Some respondents widened this criticism to say that there would be consequences to the UK economy as a whole. 14 respondents believed that talented women would drop out of the workforce altogether- resulting in wider repercussions for the economy.

2) Employers' legal uncertainty

- A secondary trend among responses was a fear that reduced employment rights and perceived discrimination would result in a higher number of claims being brought against employers. There was a perception that changes to maternity status were incompatible with EU law.
- Some respondents went on to say that this fear would increase the workload and costs for employers who adopt the contract.
- 30 respondents believed that longer notice periods give greater certainty to employers.

3) Omissions of paternity leave/additional paternity leave/flexible parental leave

- Some respondents identified that the consultation did not include additional paternity leave within the scope of the additional notice period.
- Some respondents believed that changes should be for all employees/should encompass additional paternity leave and flexible parental leave.

Question 13: What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

Total responses to this Question: 107

53 respondents said employers would be glad to have employees back early, and would therefore allow them to return early, whilst 6 respondents said that employers would refuse.

Underlying these responses was uncertainty surrounding the possibility of discrimination claims and the potential harm to employee/employer relations (see question 12) that might come with a change to the notice period.

Other responses said that discussion with the employee (11 respondents) and the interim arrangements with the employee (37 respondents) would determine an employer's stance on whether an employee could return early.

Question 14: How will these changes impact on a company's payroll provisions?

Total number of responses to this Question: 51

Responses to this question were relatively evenly split. 21 respondents who answered the question believed that the changes will cause employers more work and confusion with their payroll provision. 30 respondents believed that the changes would make payroll management easier, or would have no impact at all.

Of those respondents who believed that the changes would make payroll management more confusing, the following areas were cited:

- 1) Annual returns required for employee shareholders will become more burdensome.
- 2) Dividend and equity payments would become more complicated.
- 3) Difference in statuses across one company would confuse payroll systems/require more complex software.

Of those respondents who believed that the changes would make payroll management less confusing, the following reasons were cited:

- 1) Employers would not have to deal with as many redundancy payments.
- 2) The increased cost of payroll is offset by increased productivity and less agency/temp staff.

Of those respondents who believed changes would have little/no impact, the following reasons were cited:

Payroll is mostly outsourced anyway, so this will have little impact on employers directly.

Question 15: What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

Total number of responses to this Question: 127

Themes:

1. Women will take a longer period of leave or give uncertain notice – **39 comments**
 2. Parents will have to make a decision before they are ready/ will place extra pressure on parents – **23 comments**
 3. Don't want this policy to happen/ don't think that the policy will work/ no evidence for the policy – **19 comments**
 4. No effect/ will benefit businesses – **33 comments**
 5. Refusing to allow a woman to return from maternity leave could be discriminatory – **8 comments**
 6. Women won't return from maternity leave – **5 comments**
- The major concerns raised by respondents in relation to this question were:
 - The longer notice on return from maternity or adoption leave could cause parents to take a longer period of leave than they would otherwise wish to; and this could force employees to make decisions regarding the length of their leave before they are ready.
 - That the policy won't work, because women won't be able to plan that far in advance.
 - However 33 respondents stated that the extended notice period would have no effect or benefit business, because they will be able to plan better.

Government Response

Impact on employers

- 7.3 On 13 November the Deputy Prime Minister set out the Government's plans to reform the current system of maternity, paternity and adoption leave and pay to ensure the law better supports families juggling work and family life, and the businesses that employ them. The changes will allow fathers to play a greater role in raising their child; help mothers to return to work at a time that is right for them; and create more flexible workplaces to boost the economy. Employee owners will have access to the new flexible parental leave system alongside other employees. We intend to introduce the new system of flexible parental leave from 2015.
- 7.4 The Government believes that incentives within the employee owner status around share ownership and CGT relief will outweigh an employee's concern that they will need to give longer notice when returning from maternity leave (which was a view shared by many respondents).
- 7.5 We recognise that employers could inadvertently act in a discriminatory way if they apply the notice period inconsistently and refuse some employees' requests to return

early where the employee is not able to give the full notice period, but grant others. We will include information on this aspect in the guidance to employers on employee owner status.

- 7.6 The Government also agrees that additional paternity leave should be included within the scope of the proposals and subject to the same notice periods as maternity leave. We will amend Clause 23 of the Growth and Infrastructure Bill to make this change.

Employees returning early without giving 16 weeks' notice

- 7.7 The responses have confirmed our understanding that uncertainty when parents return early from maternity or adoption leave can be a problem for companies' planning. The responses have also shown that many employers welcome individuals returning early from maternity or adoption leave. The Government believes creating more certainty for companies by this new status is the right action, but we recognise that the way this works best is for both the individual and the employer to agree arrangements between themselves.
- 7.8 We are therefore not proposing any changes to the policy on which we consulted. However, the Government will take account of this extended notice period in the guidance, and help companies and individuals so that they can come to mutually beneficial arrangements.

Impact of increased notice period on payroll provisions

- 7.9 The Government acknowledges that payroll provisions could be impacted by the introduction of this element of employee owner status. The Government is seeking to ensure that there are no adverse impacts on the administration of payroll, and payroll systems, for employers. The Government will therefore work closely with payroll providers to ensure that they are able to accommodate the new employee owner status within their payroll provision, and reflect this in guidance on employee owner status as a whole so that employers are informed and aware of any changes.

Effect on length of maternity/adoption leave

- 7.10 The Government recognises that the extended notice period could mean that some employee owners return later from maternity or adoption leave. We will provide guidance to employers and employees on how to discuss the length of leave effectively when planning the maternity leave, to enable both the employee owner and their employer to make informed decisions about the leave.
- 7.11 We are confident that employers will often be willing to enable an employee owner to return to work before the end of their notice period if this can be accommodated by the business, as stated in response to question 12 of the consultation.

8. The Right to Request Flexible Working

- 8.1 The Government stated its intention to clarify the arrangements for the right to request flexible working when parents return from EU derived parental leave. This is currently set at 13 weeks of unpaid leave available to parents on a per parent, per child basis that can be used up until the child's fifth birthday. In the UK we have restricted this leave to be taken in a minimum of weekly blocks, with a maximum of 4 weeks per year. The new EU Parental Leave Directive (2010/18/EU), which needs to be implemented by March 2013, requires that EU unpaid parental leave be extended to 18 weeks and parents returning from this leave should have the right to request flexible working.
- 8.2 The leave is separate and additional to the maternity, paternity, adoption periods and the recently announced flexible parental leave period that is available to parents during the first year of a child's life, or the first year after adoption.
- 8.3 In order to ensure that the UK complies with this Directive we need to ensure that employee owners have sufficient time to make a request for flexible working when they return from parental leave. Through the consultation, we sought to establish whether the period of 4 weeks is the right time period for an employee owner to make a formal request for flexible working on return from parental leave.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 16: Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

Total number of responses to this Question: 109

- Yes: **42 (39%)**
 - No: **67 (61%)**
- A number of respondents (25%) stated that the right to request flexible working applied to employee owners in the same way as other employees. Respondents stated:
 - The proposal contradicts the Modern Workplaces proposal to extend the right to request flexible working to all employees (13%);
 - Employers of employee owners will be at greater risk of discrimination claims if they do not consider requests to work flexibly properly, regardless of whether the individual has the right to request flexible working or not;
 - Women will be disproportionately affected by not having the right to request flexible working (7%).
 - A number of respondents stated that a limitation of 4 weeks to make a request when returning from parental leave was not long enough for a parent to know what flexible working pattern they needed.

Government response

- 8.4 On 13 November the Deputy Prime Minister set out the Government's plans to extend the right to request flexible working to all employees. As set out in this response, employee owners will not have the right to request flexible working unless they are returning from parental leave. However all employers will benefit from the removal of the current burdensome statutory procedure that employers must follow when considering a request, which will be replaced with a duty on employers to consider requests in a reasonable manner. We will publish a statutory code of practice to support employers and define what "reasonable" means in this context. We intend to introduce this change from 2014.
- 8.5 The Government acknowledges the concerns raised that 4 weeks would not be sufficient time for a parent to know what flexible working arrangement they needed to manage their childcare arrangements.
- 8.6 At the time of publishing this Government Response, a decision on whether to restrict the time period for making a request for flexible working has not yet been made. The Government is carefully considering the interaction of this aspect of employee owner status with the requirements of the EU Parental Leave Directive, and will announce a decision before the end of the calendar year.

9. The Right to Request Time to Train

9.1 The right to request time to train is a statutory right available to employees who work in large businesses (those with 250 or more employees) after they have worked there for 26 continuous weeks. This right is excluded from the individual rights held by an employee owner. In the consultation document, we sought to establish what impact this proposal would have on the ability of employee owners to access support for training.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 17: What impact do you think this proposal would have on the ability of employee owners to access training?

Type	Number of Responses	Would impact negatively		Would have little impact		Neither	
		No	%	No	%	No	%
Submission	41	24	59	17	41	0	0
Survey Monkey	60	30	50	15	25	15	25
Total	101	54	53	32	32	15	15

The majority of respondents (53%) were against the proposal to remove access to the right to request time to train, arguing that this would impact negatively on an individual's ability to access training. However, a significant number of respondents (30%) felt that this would have little impact given that the right was currently only used infrequently by employees. It was also noted by a number of respondents that large firms tend to have good training systems.

Other respondents noted that this proposal would remove the need for a formal process from training conversations which would be beneficial for employers. It would also remove a further burden on employers as it takes away the potential threat of an employment tribunal for not following the detailed process set out in the regulations.

Government Response

9.2 The Government recognises that training in the workplace is important, and acknowledges the concerns raised in the consultation. There is currently no reason to suggest that removal of the Right to Request Time to Train, currently only applicable to employees of large organisations, would result in employees being unable to access training, or their ability to request it if needed. Larger employers tend to have established appraisal and development processes, and, on that basis, we do not believe this proposal will adversely effect future employee owners. However, the Government will consider any future examples of negative impacts on training created by the adoption of employee owner status.

10. Company Law Implications

10.1 The Companies Act 2006 already sets out requirements relating to issuing, transferring and buying shares. The consultation sought views on whether the introduction of the employee owner status would require any changes to the Companies Act 2006.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 18: Do you have any comments on the government's intention not to amend Company Law to implement the employee owner status?

Compared to most of the other questions there have been very few responses to this question and most people felt that company law would not need to be amended, particularly as the Nuttall Review is proposing wider changes which will impact on employee ownership.

Government Response

10.2 The Government has reviewed the responses and does not intend to make any changes to the Companies Act beyond those proposed by the Nuttall Review.

11. Taxation issues

11.1 The Government intends to legislate and consult on the taxation aspects of this proposal as part of the Finance Bill. The questions in the consultation on implementing employee owner status were designed to inform that process.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 19: The Government welcomes views on particular safeguards that would need to be applied in order to minimise opportunities for abuse.

Of the 276 people who submitted responses to Survey Monkey, 77 people responded to the question asking for views on particular safeguards needed to minimise opportunities for abuse. Of these, 21 suggested abandoning the proposal to mitigate the risk of abuse. 4 people suggested placing restrictions on the valuation of shares - either by requiring independent valuation; clarifying the method of valuation; or policing the valuation process. Two people suggested disallowing management from being employee owners, to avoid them taking advantage of CGT exemptions. A couple of the answers referred to examples of potential abuse but did not suggest mitigating safeguards. One respondent misunderstood the question and provided suggestions for mitigating the risk of abuse of the employee.

In addition, a number of the written responses highlighted potential manipulative or abusive behaviours that could take place in certain circumstances. Some respondents referred to behaviours that might arise within particular relationships between employers/employees. These included artificially controlling the value of the shares, or use of the scheme purely to benefit from capital gains exemption.

Question 20: The Government welcomes views on whether the existing tax rules which apply to share-for share exchanges (such as might happen when a company is taken over) and schemes of reconstruction should apply where shares issued in return for taking up the new status are involved.

Often when a company is taken over by another, existing shareholders are given shares in the acquiring company in exchange for their existing shareholding.

Of the 276 people who submitted responses to Survey Monkey, 50 people responded to the question. 28 responses contained no substantial comment - either making points that were not relevant to the question, or stating 'no comment'. Five answered that existing tax rules should apply, and one questioned how existing tax rules wouldn't apply - unless a new, less valuable, share class was created. There was support from two respondents for protecting the value of the shares in the event of any transfer. There was support from three respondents for the shares to be tax exempt. Some responses noted that share-for-share exchange could be open to potentially abusive speculation.

Written responses expressed a range of views on the appropriateness of the current legislation on share-for-share exchanges given that after any takeover or exchange there are a number of potential outcomes. For example, the employee could continue to work for

the same company (but hold shares in another company), be made redundant, have their employment contract transferred to the acquiring (or another) company and may return to full employment rights. However, the majority of respondents stated that the CGT exemption should always apply for share-for-share exchanges.

Government Response

- 11.2 The Government will introduce a number of safeguards as part of the CGT exemption, including connected persons rules.
- 11.3 Under current law, the CGT exemption would not automatically pass to any new shares acquired in a share-for-share takeover. To prevent any early gains becoming taxable when a new holding is sold, the Government will ensure that gains accrued up to the time of disposal will remain free from CGT. However, for simplicity and certainty, as well as to reduce potential abusive behaviour, the Government has decided that the CGT exemption should not apply to gains attributable to periods after the share exchange. This means that any subsequent gains accruing on disposals of the new shares would be subject to CGT.
- 11.4 Draft legislation on the CGT exemption will be published for consultation on 11 December.
- 11.5 The Government is considering options to reduce income tax and NICs liabilities that arise when employee owners receive their shares.

12. General Issues

- 12.1 The Government sought to establish through the consultation the likely other impacts of implementing employee owner status. These include the impact on businesses' ability to hire people and let them go, and the likely take-up by both individuals and businesses.
- 12.2 The Government also sought to understand through the consultation process whether there were any unforeseen consequences on individuals, business and the wider labour market.

SUMMARY OF RESPONSES TO THE CONSULTATION

Q21. What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

Total responses to this Question: 84

The highest proportion of respondents (45) who addressed the question stated that there would be a negligible effect on labour market flexibility. Most other respondents stated that there would be a negative effect (21). Those who predicted a negligible effect, cited limited take-up (especially among small employers) as the main reason. Of those who predicted a negative effect, most agreed that recruiting staff would be made more difficult.

1) Limited impact

- Responses indicated that few employers (particularly SMEs) would take-up the new status, thereby limiting its effect on labour market flexibility.
- A number of respondents said that ethical employers were unlikely to take up employee owner status.
- Some respondents predicted that even if employers did take up the new status, it would be unlikely to inform their decision about hiring staff. Some respondents went on to say that employers hire according to the amount of work that needs to be done, rather than on the level of rights they offer their new employees.
- Some respondents said that the existing two year dismissal period will mean that any effects on labour market flexibility will be negligible for the short-term.

2) Reduced flexibility

- Of those who argued that labour market flexibility would be negatively affected, most believed that this would be on 'hiring', rather than 'firing'. The removal of rights, some respondents commented, would limit employers' ability to find high quality, qualified staff.
- Respondents of all types expressed concern that women would be excluded from the labour market as a result of a change to the maternity leave notice period/flexible working rights.
- One respondent expressed concern that increased flexibility in the area of 'letting people go' was superfluous in the case of healthy employer/employee relationships.
- Of those who argued that flexibility might be negatively affected in terms of an

employer's ability to dismiss staff, the cost of valuing and buying back shares and the stronger possibility of employer/employee disputes were cited as deterrents.

Q22. Would you be likely to take up the new status? What would the impact of the status be on your business?

Total responses to this Question: 184

Of the responses to this question, three respondents said they would take up the new status. Two of these were individuals, and one a person representing a small business. One respondent said the likely impact of employee owner status on their business would be to build upon the strong communications already in place. Another said they thought that having a stake in a company's success would encourage harder work and greater flexibility from its workforce.

87 submissions said the question was either not applicable to them, or they did not give a view either way, but made some general comments on the status. Many of these respondents said they were organisations who do not have shares to issue and therefore the question was not applicable to them.

Nine gave mixed responses. One said the idea of employee owner was good, but that the proposed *'implementation is so restrictive as to remove the benefit for anyone except an unscrupulous employer seeking to bend the rules to exploit his workforce'*. Other respondents suggested that, while there was merit in the status, there were concerns over the valuation of shares when an employee left and on the administrative impact of operating up to three different employment statuses at any one time.

85 responded negatively to the question. Some cited the additional administrative burden of operating an extra employment status, particularly in small businesses which lack a dedicated HR function. Concerns were also raised about the lack of clarity regarding the valuation of shares when employees join and leave the company. One response stated the new status would be inconsistent with its proposition to its employees and recruits.

Question 23: What are your views on the take-up of this policy by a) companies b) individuals?

Total responses to this Question: 146

	Survey Monkey	Submissions	Total	Percentage
Total	81	65	146	100%
Negative	44	37	83	57%
Positive	3	2	5	3%
Neutral	7	0	7	5%
Mixed	26	25	51	35%

Of the 146 people responding to this question, the large majority (92%) were either negative or mixed.

The negative responses were either dismissive of employee owner status overall or thought there would be no or very limited take-up by businesses or individuals. The reasons for this varied, from those that cited the complexity and risks for employers and tax implications for individuals to those that pointed to a risk that start-up companies would not want to relinquish control by offering employee owner status. A number of respondents thought that “significant upfront costs for companies with little real benefit” would limit take-up.

Of those that provided mixed views about take-up, a few thought that there might be some take-up but this would be most attractive to certain types of employees – either “young, single, low mortgages, high risk-takers” or those that lacked awareness about the implications for them. Others felt that employee owner status would be most attractive to “high risk, potentially high return start-ups”, or only be offered to senior employees in listed companies, start-ups and private equity investor companies.

Some respondents felt that for there to be more take-up, some of the issues around share valuation and tax would need to be resolved.

Even those that thought there could be some take-up qualified their comments by adding that some companies would make use of existing employee ownership schemes but without employee owner status. Others expressed concern that those businesses taking up employee owner status would do so to exploit or mistreat individuals – e.g. “less scrupulous employers will seek to exploit the policy as a means of avoiding employment rights obligations and treating their staff fairly”.

The positive responses to this question mainly welcomed the status as an additional option for employers and small businesses, to help them grow rather than commenting on the potential level of take-up.

Government Response

12.3 The Government has clearly stated in Parliament that accepting the new status should be voluntary for existing employees. We recognise that there may be some circumstances where existing employees feel that they have no choice but to accept this new status – we want to reduce the likelihood of this happening.

12.4 In line with our approach to guidance for people and companies, we would like to ensure that existing employees have access to clear information about the new employment status so they can work out if it is right for them. The Government will ensure that there is clear guidance about the new status when it is made available to companies and individuals to use.

12.5 The Government wants to help unemployed people move into work as quickly as possible and JSA claimants are normally required to accept reasonable offers of

work. If they do not, there can be a sanction if the jobseeker does not have good reason - and what constitutes good reason is considered on a case by case basis.

- 12.6 A concern was raised during the consultation that jobseekers would be adversely affected by this new status. The existing rules and decision making process on eligibility would apply, and the case by case approach may be the best way forward for this new status, but we will consider further as the law is finalised.

13. Equality Impact Assessment

13.1 We provided an initial assessment of the equality impacts associated with the new employee owner status, and through the consultation process we sought to identify gaps or wider issues to be considered.

SUMMARY OF RESPONSES TO THE CONSULTATION

Question 24. What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

Responses to this question followed a number of themes relating to equality and wider issues. These are summarised below.

Equality issues

A number of responses suggested that women are likely to be disproportionately impacted upon by the policy:

- Some of the consultation responses voiced concerns that the policy may introduce direct discrimination due to changes to maternity and family friendly rights. As maternity rights can only relate to women, some respondents believed that changes to maternity leave in the proposal are discriminatory.
- Some respondents said that more women than men use flexible working and therefore they will be disproportionately affected by the proposal.
- In addition, a number of responses suggested that women would find it difficult to plan arrangements to return to work 16 weeks in advance as they will need to finalise childcare and flexible working. This could lead to more women resigning their jobs during maternity leave.
- There were comments suggesting that the Equality Impact Assessment should consider the implications for part time workers in more detail. The focus of a number of these comments was based on the fact that more women than men work part time and therefore there may be a disproportionate impact on them of the employee owner proposal.

Some consultation responses also suggested that other protected groups may also be disproportionately impacted upon:

- Some respondents suggested that the need for flexible working increases with age and that older people are more likely to need flexible working and therefore may suffer greater impacts as a result of this policy.
- A number of responses mentioned that those without English as their first language may find this policy difficult to comprehend and may be vulnerable as a result. These responses said that this could have implications on equality for individuals of different races.

There were respondents that suggested that there may be further instances of discrimination as an indirect effect of the proposals. Some examples provided in the consultation responses were:

- Those that tend to spend less time in jobs will be less likely to enjoy the increase in value of the shares.
- Individuals that find it harder to get employed otherwise may have less choice in taking up this status. The characteristics of these individuals may coincide with certain protected groups.
- The policy may discriminate against those that are less likely to seek appropriate advice before taking up the status or those that are less likely to be able to understand it in the first place. If these conditions were more prevalent in certain protected groups, there could be a case of indirect discrimination.

Wider issues

The impact on part time workers:

- Some answers suggested that the analysis in the initial Equality Impact Assessment did not sufficiently consider the implications on part time workers.

Government Response

Employers cannot unlawfully discriminate against employees or employee owners:

13.2 As mentioned in the previously published Equality Impact Assessment¹, there may be instances in which employers employing people as employee owners may feel as if they have a greater incentive to discriminate. For example, if individuals from a particular protected group are more likely to request time to train, an employer may be more likely to offer these individuals employee owner status rather than employee status. If the status was offered on the basis of an individual being a member of this protected group, this would be discrimination. However, this discrimination is an indirect effect of the implementation of the employee owner status.

13.3 It is important to note that employers undertaking unlawful discrimination would be in breach of the employment provisions in the Equality Act 2010 which offers protection for individuals in protected groups².

13.4 It is also important to note that there may be varying numbers of individuals from different protected groups that may be impacted by this policy. Although this may mean that different protected groups may be impacted more or less, or in different ways, this does not necessarily mean that they are discriminated against as a result of the policy.

¹ <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/e/12-1228-equality-impact-implementing-employee-owner-status>

² Employee owners will have a contract of employment. An employee owner is an employee with regard to employment rights other than those listed in the legislation as not forming part of this status.

Gender and maternity:

- 13.5 Employee owners returning from maternity leave early will have to give 16 weeks' notice, compared to 8 weeks' notice for employees returning from maternity leave early. In this case the woman is not giving up a right – she will still be entitled to maternity leave and pay in the same way as any other female employee – she is merely agreeing to a procedural change in the exercise of that right.
- 13.6 Although this element of the policy applies only to women, a similar provision applies to the return from adoption leave, which is gender neutral, and it would be odd to have different notice periods applying to maternity leave and adoption leave. Based on HMRC estimates³, around 4,750 people claimed Statutory Adoption pay in 2011/12. This is an indication of the number of people that took adoption leave and consists of both men and women. It is not possible to assert what proportion of these people returned from adoption leave early and furthermore, it is not possible to say how many of each gender took adoption leave in 2011/12.
- 13.7 These elements of the policy as consulted upon may impact on female employee owners more than male employee owners (although see below our changes to additional paternity leave). However, we do not consider that the impacts will be disproportionate. Furthermore, as mentioned above, a woman is only being asked to agree to a procedural change in the exercise of the maternity leave right.
- 13.8 No element of paternity leave was included in the initial proposal that we consulted on. We agree that additional paternity leave should be included within the scope of the proposals and subject to the same notice periods as an early return from maternity leave and adoption leave. We will amend Clause 23 of the Growth and Infrastructure Bill to make this change. HMRC estimates suggest that just over 2,000 male employees claimed Additional Statutory Paternity Pay in 2011/12.

Gender and flexible working:

- 13.9 According to BIS's 4th Work Life Balance Survey, 28% of female employees had made a request to change regular working arrangements in the past 2 years compared to 17% of male employees. Approximately the same proportion of these requests were accepted in the case of both genders.
- 13.10 It is important to note that the right to request flexible working which would not be held by an employee owner is a right to request and not a right to have flexible working. The legislation provides that an employee is entitled to have that request considered in accordance with a set procedure; it is open to an employer to refuse that request on any one of a number of permissible grounds. The fact that an employee owner does not have this right does not prevent them from requesting a flexible working arrangement; it merely means that their employer is not required to consider the request in accordance with the statutory procedure. All requests for flexible working, whether statutory or non-statutory should be dealt with in a non-discriminatory manner by employers.

³ Based on a scan of 2% of employer NI returns and scaled up.

Gender and part-time working as a form of flexible working:

13.11 The table below shows that there were more women than men working part time and more men than women working full time in the three months to September 2012.

	Total people working full-time, three months to September (thousands)	Total people working part-time, three months to September (thousands)
All persons	21,456	8,120
Men	13,740	2,137
Women	7,717	5,982

* includes self-employed

Source: ONS Labour Market Statistics

13.12 According to BIS's 4th Work Life Balance Survey⁴, 40% of employees whose employer offered part-time working arrangements utilised part-time working as a flexible working arrangement in the previous year. Split by gender, where part-time working was available, women were more likely to use it (50% of women compared to 27% of men). Furthermore, 59% of women with dependent children had used part-time working, compared with 16% of men with dependent children in the previous year.

13.13 From the published data, it is not possible to identify what proportion of the individuals using part-time work as a form of flexible working requested this form of flexible working using a statutory right to request flexible working. Therefore, it is not possible to determine with certainty whether the fact that an employee owner will not have the statutory right to request flexible working will disproportionately affect the numbers of women or men working part-time as a means of flexible working.

13.14 Part-time working is only one form of flexible working. Flexible working can include home working, adjustments to start and finish times, flexitime and shift swapping. Our research shows that part time working is used by women, but men are more likely to use flexible working in a full time role to enhance their work life balance.

13.15 We cannot assert whether the fact that employee owners will not have the statutory right to request flexible working will have a disproportionate impact on either gender.

⁴ <http://www.bis.gov.uk/assets/BISCore/employment-matters/docs/F/12-p151-fourth-work-life-balance-employee-survey.pdf>

Furthermore, the fact that little is known about the potential characteristics of future employee owners increases this uncertainty. However, an employee owner would still be able to request flexible working – they just do not have the right to have that request considered in accordance with the statutory procedure. As noted above, all requests whether statutory or non-statutory have to be dealt with in a non-discriminatory manner.

Flexible working and age:

13.16 The proportion of people that made requests to change their regular working arrangements in the past 2 years varies slightly across ages from 18% for 50-59 year olds to 26% for 25-39 year olds. When examining take-up of various forms of working, there are variations across ages depending on the type of flexible working. For instance, take-up of part-time working in the last year was more prominent in people aged 16-24 and 60+, whereas take-up of flexitime working or regularly working from home tends to increase with age⁵.

13.17 Although this data may suggest that certain forms of flexible working are more prominent with certain age groups, it is not possible to assert which of these individuals had the right to request flexible working and which did not. Furthermore, we have no evidence that impacts on specific age groups will be disproportionate.

Protected groups that may be less likely to seek appropriate advice or have more difficulty understanding the full implications of the employee owner status:

13.18 So that people can make informed choices of whether to accept a job on the basis of becoming an employee owner, we will develop clear guidance for people that helps them work out the employment law and tax consequences of this new status.

Part time workers:

13.19 Part-time work is a labour market flexibility available for both employees and employers. It will be possible for there to be part-time employee owners if employers choose that they would like to use this flexibility. Furthermore if a full-time employee owner wishes to become a part-time employee owner, they could enter private negotiations with their employer to do so. Although an employee owner would not have the statutory right to request flexible working, an employer may choose to give them the right to work flexibly via their contract of employment.

13.20 Part time workers are not one of the protected groups defined under the public sector equality duty. However, part-time workers do have a right not to be unfavourably treated compared to full-time workers doing the same type of job unless that difference can be objectively justified. The relevant legislation is the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000. Therefore an employer dealing with a part-time employee owner would have to treat them in the same way as a full-time employee owner unless he can provide objective reasons for the difference.

⁵ The Fourth Work Life Balance Survey, BIS, 2012 – Annex C

13.21 There could be examples where, at the margins, an employer may not wish to employ several part-time employee owners if the company does not have large amounts of share capital to distribute. However, all companies are different and it will always be for individual companies to decide what form of employment is best for them.

14. Next Steps - Summary of actions and process for implementation

- 14.1 The new employment status offers a novel way of engaging staff so they have a stake in the company and can share the opportunities and risks that come with this ownership. The Government will reward this risk and opportunity sharing by removing capital gains tax from any gains made from up to £50,000 worth of shares related to the new employment status.
- 14.2 This consultation received many responses from individuals, employee representatives and businesses. Following the consultation the Government recognises that there is some uncertainty amongst employers on the differences between the existing employment statuses of worker and employee. This means that employers may not be maximising the flexibility offered to them in the current employment status system. By adding a new employment status to the mix we also recognise that, without clarification, there is a risk employers find they cannot realise the benefits of the new employment status or existing statuses. Other potential impacts and benefits are set out in the Impact Assessment which is being considered by the Regulatory Policy Committee.
- 14.3 The Government will address this uncertainty by reorganising employment status guidance so businesses have a simple guide to the types of status available to them and what it means for their businesses. The Government will also ensure that businesses understand the new employment status and provide clear guides to businesses wishing to issue shares for the first time.
- 14.4 The consultation responses highlighted anxiety from people about being forced into the new employment status and levels of uncertainty about what the new employment status actually means. It is important to remember that all employment relationships are an agreement between two parties. We recognise that this new employment status is different to the existing statuses primarily because of the associated share ownership.
- 14.5 In order to allow people to make informed choices about whether to accept an employee owner contract, we will develop clear guidance for people that helps them work out the employment law and tax consequences of these contracts.
- 14.6 During the consultation, it became clear that Clause 23 of the Growth and Infrastructure Bill that implements the new employment status needs some improving. The Government intends to amend Clause 23 at the earliest opportunity in the following ways:
- **Explicitly state that the shares should be fully paid up and be issued free of charge to the employee owner:** The current draft of Clause 23 would allow companies to issue shares that are not fully paid up. If an employee owner is given shares that are not fully paid up, they could be left with a financial liability if the company becomes insolvent. The employee owner should give no payment or consideration for the shares other than by entering into the agreement.

- **Enable an increase in the minimum value of the shares (currently £2,000):** Over time inflation will erode the value of the lower limit. The Government intends to create a power for the BIS Secretary of State to increase, but not decrease, the minimum value of the shares that must be offered to the employee owner. This change will be made as the economic circumstances or other factors require.
- **Remove the share range upper limit (£50,000):** As currently drafted, Clause 23 (1)(b) specifies that a person must be issued with shares worth between £2,000 to £50,000. However, a person issued with £50,001 shares would not qualify. It is not the policy intention for employment law purposes to exclude a person with more than £50,000 from the new employment status. The £50,000 cap relates only to the CGT exemption.
- **Allow non-UK registered companies to use the employee owner status:** Currently Clause 23 (6) restricts the use of the status to UK registered companies. It is the policy intention to allow EU and overseas companies to use the new status.
- **Change additional paternity leave notice period to be in line with maternity and adoption leave:** The amendment will make the additional paternity leave notice period for those fathers returning early return in line with maternity and adoption leave for employee owners.
- **Allow shares to issues in both the employing company and its parent:** We want to allow employee owners to be able to receive shares in parent companies rather than just in the immediate employing company. However, we will not allow qualifying shares to be issued in a subsidiary company, thereby restricting scope for abuse.

14.7 In addition, we have reflected on the employee owner name, and consider it should be changed to better describe the status, and intend to re-name it *employee shareholder*. We will bring forward a further amendment in the Growth and Infrastructure Bill to make this change.

14.8 The Government accepts that there may be a need or requests for further changes to this Clause as the Growth and Infrastructure Bill progresses through Parliament. The Government will consider these as they arise.

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