CONSULTATION ON MEASURES TO INCREASE TRANSPARENCY IN THE LABOUR MARKET

ACAS RESPONSE

1. Acas welcomes the opportunity to respond to the government’s consultation on transparency in the labour market.

2. Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. Acas has considerable practical experience of the dynamics of the workplace and of the issues experienced by both individuals and employers in the wide range of working arrangements in the modern labour market. In 2016/17, Acas handled almost 900,000 calls from individuals and employers to its national helpline and dealt with over 500,000 queries online. It provided conciliation in 744 collective disputes, received 92,000 notifications to its early conciliation service, and its network of locally-based advisers trained nearly 37,000 individuals on a wide range of workplace-related topics.

3. This response draws on insights from Acas’ practical experience and policy research. In particular, it draws on evidence and analysis previously set out in Acas’ submission to the Taylor Review.

4. Acas does not seek to offer an opinion on those issues beyond its practical experience and research, therefore not all themes and questions within the scope of the consultation are addressed in this response.

Written Statements

5. Acas welcomes the Government’s acceptance of Matthew Taylor’s recommendation that the right to a written statement should be extended to workers (or ‘dependent contractors’ as Taylor calls them) as well as employees.

6. We know from both our experience and our research that there is significant lack of awareness amongst many individuals and those they work for of their respective rights and obligations. This is particularly so in those instances where individuals are working under atypical, intermittent or as-required arrangements. A lack of clarity around employment status exacerbates the difficulties for both individuals and those they work for in understanding what their rights and obligations are.

1http://www.acas.org.uk/media/pdf/h/s/Acas-submission-to-the-Taylor-Review.pdf
The confusion over what employment rights an individual might be entitled to can take many forms. For instance, Acas commonly encounters uncertainty among individuals and organisations about rights to notice of termination and redundancy pay, as well as confusion over whether there is a right to be consulted or to be given a minimum period of notice of changes to working hours or other terms and conditions of service. We have also seen agency workers confused about deductions from pay when paid via an umbrella company.

Bringing greater transparency to the employment relationship can therefore only be beneficial and, in Acas' view, extending the right to a written statement for all workers would be one measure that could greatly help in this regard. Clear and accessible guidance also has an important role to play in helping both individuals and employers understand their rights and obligations.

Question 9 - To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?

Acas feels that the right should be extended. As we have said, lack of transparency prevents individuals from fully understanding the nature of the employment relationship with the organization they work for and it therefore makes sense to provide a written statement to all categories of workers from the time they start work. An obligation to provide a written statement at the start of all employment relationships should also help encourage all employers to become fully aware of their basic employment obligations. As noted above, in Acas' view this measure should therefore be supported by a continuing focus on making available clear and accessible guidance on different working arrangements and applicable rights and responsibilities to individuals and employers.

Question 10 - The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?

Yes.

Question 11 - Do you agree that the following additional items should be included on a principal written statement?

- How long a temporary job is expected to last, or the end date of a fixed-term contract.
- How much notice the employer and worker are required to give to terminate the agreement.
- Sick leave and pay entitlement.
- The duration and conditions of any probationary period.
- Training requirements and entitlement.
- Remuneration beyond pay eg, vouchers, lunch, uniform allowance.
- Other types of paid leave eg, maternity, paternity and bereavement leave.

11. Acas believes that all of these items should be included in the principal written statement with the exception of the duration and conditions of any probationary period. We recognise it may not be practical for the statement to reference all specific training requirements and entitlements but feel it may be helpful to include the organisation’s general approach to required training.

Question 12 - To what extent do you agree that the principal written statement should be provided on (or before) the individual’s start date?

Question 13 - To what extent do you agree that other parts of the written statement should be provided within two months of their start date?

12. Acas feels that the principal written statement should be provided on or before the individual’s start date and that other parts of the statement should be provided within two months, or earlier if that is possible. In Acas’ view, it would be good practice to provide all the information required, in both the principal statement and the additional information, at one time and in one single document wherever possible.

Employment tribunal process and Acas guidance (paras 22 – 26 of consultation document)

13. Acas currently offers a range of guidance about both written statements and contracts of employment on its website. There is a page offering basic information about written statements which has been viewed over 27,500 times in the past year and also a page on contracts of employment which has been viewed nearly 176,000 time in the last year. We also provide a template of a written statement which has been downloaded over 42,500 times during the past year.
14. Acas places high importance on the continuous improvement of its information and guidance services, and welcomes further feedback derived from the current Government consultation in relation to guidance on written statements. Acas will use all such feedback to consider any potential improvements both to the content of its guidance and how best to make it accessible and easy to use.

**Continuous service**

**Question 24** - We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be - 2 weeks/3 weeks/one month/six weeks/other?

**Question 25** - Do you believe the existing exemptions to the break in continuous service rules are sufficient?

15. Acas has no systematic evidence on the implications of the current continuous service rules for either individuals or organisations. However, we are aware, from feedback from the Acas helpline, that the one week rule around a break in continuity of service can present difficulties for those in atypical contracts in qualifying for certain employment rights that depend on length of service. Acas would be very happy to work with the Government as it looks to update its guidance on continuous service.

**Holiday pay**

16. As the Taylor Review outlines, entitlement to holiday pay is an issue that both individuals and organisations can find difficult to understand. It is an area that requires comprehensive and accessible information and guidance. Acas provides a range of web based guidance on holidays in general and holiday pay in particular which is widely viewed and used. In the last year our page on calculating holiday pay was viewed over 211,000 times whilst our main holiday guidance page was accessed nearly 261,000 times. In addition to this, Acas' booklet guidance on holidays and holiday pay has been downloaded over 70,000 times in the past twelve months.

17. Acas agrees with the government's position, as stated in the consultation document, that while Acas and GOV.UK both provide detailed guidance on their website about holiday pay, given ongoing low awareness in this area it is important to explore different forms of messaging. Acas is currently engaged in developing a new digital advisory service and the issues of holidays and holiday pay will be among the first areas of advice to be updated to deliver a better service to employers, employees and their representatives.
18. Acas would be happy to work with the government on developing new guidance to support whatever decisions the government reaches on the length of the holiday pay reference period.

ICE regulations

Question 41 - How might the ICE regulations be improved?

Question 45 - Are there other ways that the government can support businesses on employee/worker engagement?

Question 47 - What steps could be taken to ensure workers' views are heard by employers and taken into account?

19. Good communications and effective worker involvement lie at the very heart of Acas’ approach to promoting good employment relations and form the core of all its operational activities. Over the years we have built up a considerable knowledge of what works when it comes to developing effective workplace information and consultation and we know that, as no two workplaces have identical features, so no single static model of information and consultation will apply. The consultation document has identified research, including that commissioned jointly by BIS and Acas (Hall et al 2013) which identifies the limited impact of the ICE regulations on the introduction of consultative arrangements (though for some impacts in medium sized organisations, see Adam et al Acas research paper 04/14). And a number of commentators have identified the thresholds as among the weaknesses of the regulation (for instance summarised in Hall et al 2015).

20. Research has also identified the difficulties associated with sustaining arrangements. Research commissioned by Acas (Adam et al, Acas research paper 01/16) supports this challenge. Using the panel data from the 2011 WERS in comparison with the 2004 survey, it found the ‘survival’ rate was higher the bigger the workplace and in the public sector; and below average among private services almost certainly reflecting the different sizes of workplaces in these sectors. JCCs were significantly more likely to survive in places where trade unions were recognised (76 per cent). Sophistication of HRM, using IiP accreditation as a proxy, was associated with higher survival rates (65 per cent).

21. Exploring factors that can therefore impact on the sustainability of arrangements is vital. Acas has identified a number of core principles which we believe are prerequisites for the effective functioning of information and

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consultation arrangements. These principles are set out below and the government may wish to take them into account when considering what changes in might make to the ICE regulations:

a) Training in a range of skills - for example, joint working methods, behaviours and protocols for effective meetings, communication and presentation skills, and interpreting financial and performance data - is central in ensuring the effective operation of both information and consultation arrangements, from which benefits will accrue to the organisation. Both managers and employee representatives have training needs, and often joint training will provide particular benefits in breaking down barriers.

b) The subjects addressed in the process of informing and consulting must be central to the needs of the organisation and meaningful and relevant to the needs of employees. They include legal obligations, business strategy or organisational goals, and everyday developments that have implications for change at organisational, establishment and employee (terms and conditions) levels.

c) Information needs to be clear, timely and provided on a regular basis. When providing information on significant issues, management should allow the opportunity for feedback and response to questions. The benefits of providing extensive information should be balanced against the dangers of overburdening employees with too much information.

d) Whilst consultative arrangements should be tailored to organisational needs, and will therefore vary in their nature, a degree of "formality" is necessary so that participants are clear about their roles and responsibilities. Temporary or permanent arrangements may be appropriate, depending on the issues to be addressed. The benefit of permanent arrangements are persuasive, as they allow time for all parties to build trust and mutual respect, and develop expertise. Permanent arrangements also provide a vehicle for dealing with issues as and when they arise, including all aspects of statutory consultation.

e) The need for regular reviews and a willingness to modify arrangements are crucial to ensuring the sustainability of arrangements. This involves appraising the strengths and weaknesses of arrangements and modifying them to ensure that they, and decision-making processes within them, remain effective and relevant to the workforce as a whole.

22. In Acas' view, while legislation can be helpful in developing effective forms of communication and consultation, they are most likely to develop where there is demonstrable, sustained commitment to genuine information-sharing and consultation from both employers and employees. "Genuine"
consultation implies a commitment to joint working, two-way communication and jointly exploring options. Managers must be committed to consulting early in the decision-making process, listening to contributions and explaining final decisions.

23. With this in mind the government may wish to consider whether a wider publicity campaign to promote the benefits of information and consultation might be appropriate. One option would be to coordinate this with the first of the annual reports the government will be making on ‘good work’ of which employee voice forms an important part.

24. There is a wide range of research and other evidence highlighting the benefits that good information and consultation can bring for both individuals and organisations. Acas would be happy to work with the government on any promotional campaign aimed at raising awareness of these benefits and of the practical support available to employers and representatives in setting up and/or developing information and consultation arrangements.

Acas
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