

BIS | Department for Business
Innovation & Skills

Flexible, effective, fair :
promoting economic growth
through a strong and efficient
labour market

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Introduction

1. The Government believes that the UK economy should be supported by a framework of laws that ensures that the labour market is both strong and efficient. By strong and efficient, we mean that we want a labour market that is:
 - **flexible**, encouraging the creation of jobs by making it easy to get people into work and to stay in work;
 - **effective**, enabling employers to manage their staff productively, and;
 - **fair**, with employers competing on a level playing field and workers provided with a strong foundation of employment protections.
2. This paper is being published at the launch of Red Tape Challenge spotlight on employment related regulations. It sets out the principles that are guiding our approach to the labour market framework and a number of thematic questions: we welcome your comments on these. The paper also sets out what we are already doing in the on-going Employment Law Review to improve the labour market framework -- and areas where we believe there is more to be done.

The Red Tape Challenge Spotlight

The Red Tape Challenge (RTC) aims to reduce the overall burden of regulation by reducing the “stock” of regulations that are already in place. The Government is seeking public input through a dedicated website: www.redtapechallenge.cabinetoffice.gov.uk

Hundreds of existing regulations have been published on the website, including over 160 regulations that relate to employers and to employment. You can comment on these at any point during for the two year Red Tape Challenge but we will be focussing – or putting a ‘spotlight’ - on employment related regulations for a three-week period starting on 3 October

www.redtapechallenge.cabinetoffice.gov.uk/employment-law/

The current state of the UK labour market

3. The UK is internationally recognised as a ‘successful employment performer’, achieving a steady rise in employment, despite cyclical peaks and troughs, since the significant reforms introduced in the 1980s (2006 OECD Jobs Study Review). During the recent recession employment fell much less than many had expected given the fall in GDP (OECD Employment Outlook 2010). The private sector has created 264,000 jobs in the past year, outweighing the reduction in public sector employment (ONS Labour market statistics data table EMP02, September 2011 release).

Chart: UK Employment by year

(Millions of jobs at mid-year, Source: ONS Labour Market Statistics)



4. A key driver of the strong performance of the UK labour market is our light-touch system of employment regulation. The labour market, like other markets, needs a framework of rules but the UK framework is less onerous than most. According to the Organisation for Economic Cooperation and Development (OECD), the UK has one of the most lightly regulated labour markets amongst developed countries, with only the US and Canada having lighter overall regulation (OECD Indicators of Employment Protection 2008). Our system of employment regulation is an important element of the UK's comparative advantage.

"The UK Labour market is already one of the least regulated and most flexible in the developed world" Chartered Institute of Personnel and Development [The Economic Rights and Wrongs of Employment Regulation](#) May 2011

"Our highly flexible labour markets provide a real comparative advantage over European competitors" CBI [Making the UK the best place to invest](#) April 2011

Principles for reform of the labour market framework

5. But although the UK labour market performs well in relative terms, there is more than we can do to encourage firms to take on staff. We have already set out an ambitious programme of reforms as part of the Employment Law Review that forms part of the Coalition Agreement (more details below). But the Red Tape Challenge offers an opportunity for employers and employees to feed in views directly to the Government on new priorities for reform.

6. The Government's approach to reform in this area is underpinned by a vision for the labour market in which both employers and workers are informed and empowered, able to negotiate their relationship within a framework of fundamental protections, with minimal intervention by the Government. We believe that the best outcomes arise when employers are able to sit down and discuss issues direct with their staff, where process supports that conversation rather than stifling it.

Question 1: How can we create the space for employers and their staff to manage their relationship effectively?

7. Employers and employees need to be sure of their rights and responsibilities. They both need to know what they need to do and where to go for help if needed. But survey evidence suggests smaller employers in particular can be put off from taking on employees by a perception of excessive employment regulation (BCC The Workforce Survey 2011) We want to reduce the fear factor for employers from employing staff, giving them the confidence to take on new employees and manage them effectively and fairly.

Question 2: What more can Government do to reduce the fear factor in employing staff, particularly the first member of staff that a business takes on?

8. We recognise that most employers want to do right by their staff: they know that if they treat their staff fairly and with respect, they will benefit from a motivated and engaged workforce. Workers will also benefit from a streamlined framework that makes their rights and responsibilities clear and gives them greater flexibility to negotiate an employment relationship to meets their needs. Workers will be able to assert their fundamental employment protections, supported by their union if they are a member.
9. Although we wish to minimise government intervention in the labour market, we recognise that there is a balance of protection to be struck. A core of fundamental employment protections is needed: to safeguard employees from unscrupulous businesses and to ensure that good employers are competing on a level playing field, not undercut by unscrupulous competitors. This set of fundamental protections should be limited to the minimum necessary; it should also be simple, straightforward and easy to understand.

Question 3: What rights should be included in the set of fundamental employment protections?

10. We recognise that regulation can sometimes get in the way of the very outcomes that we are seeking to achieve, particularly if the processes that are involved are overly burdensome. We are looking again at minimising the processes and record keeping requirements around a range of issues, and we would welcome views on what more can we do.

Question 4: Where do the processes required by the rules hinder the outcome that they are seeking to achieve?

The Employment Law Review: progress to date

11. Following our commitment in the Coalition Agreement, we launched a fundamental review of employment law in May 2010. The Employment Law Review will last for the lifetime of the current Parliament. It is looking across Government at all the laws and regulations that impact the functioning of the labour market, examining each stage of the employment life cycle.

The Employment Law Review themes

Taking someone on– making it as easy as possible for businesses to recruit their first, and subsequent, members of staff

Managing Staff – getting the Government out of the relationship between employer and staff by removing inflexible processes and requirements and allowing grown-up conversations between employers and their staff

Making change easier-- allowing change to happen in a way that is flexible and economically efficient, whilst remaining fair for individuals

12. Our objectives for the Employment Law Review:

- Look again at what each policy is seeking to achieve to ensure that the requirements and burdens are necessary and appropriate for the outcome we want;
- Look at whether there are other ways besides regulation to achieve the same end that allow employers and staff to decide for themselves how to respond;
- Where the current rules need to be kept, simplify to make them easier to understand and follow;
- Make sure the right information and guidance is available, so that employers and staff are making informed decisions, not reacting to a misperceived sense of risk;
- Look at how we have implemented EU directives, seeking opportunities to consolidate and challenging where UK regulation has gone beyond what was required by Europe;
- Seek opportunities to rationalise existing legislation and support the development of modern workplaces.

13. Businesses have told us time and again that they feel they have no rights – the pendulum has swung too far in favour of employees. That is why in January we launched the Employer’s Charter – to tackle myths and misconceptions and to make clear what managers can already do. www.bis.gov.uk/assets/biscore/employment-matters/docs/e/employerscharter

14. We know that frequent changes to the rules help to fuel a perception of a labyrinth of employment regulation. So one of our early priorities has been to look carefully at the pipeline of new legislation that was due to come on-stream, and whether in the current

economic climate, a proposed change met our test of encouraging or at least not impeding business growth. That is why the 2011 Budget announced that the Government would:

- repeal the planned extension of the right to request flexible working to parents of 17 year olds;
- not extend the right to request time to train to firms with fewer than 250 staff.

15. We have also introduced a moratorium on new legislation – setting out the presumption that start ups and businesses with fewer than ten employees should be exempt from new domestic regulation for three years, as of 1st April 2011.

16. We believe that measures such as the Charter and the moratorium will help increase the confidence of fledgling firms to grow and take on new staff. Other early progress on the Employment Law Review includes:

- The business community have consistently told Government that their biggest headache is the employment tribunal system. The Resolving Workplace Disputes consultation proposed measures to make the employment tribunal process more user-friendly and efficient for those cases that need to be decided by a tribunal. We will be responding to the consultation shortly, setting out how we intend to move forward.
- It is the role of Government to enforce, or provide the means for individuals to enforce, fundamental employment protections against the minority of employers that seek to gain unfair advantage by mistreating their staff. But we also recognise the benefits to parties, both financially and emotionally, of being able to resolve problems before they become full-blown disputes and the Resolving Workplace Disputes consultation also looked at a range of options to encourage the parties to resolve issues between themselves. For example, we are looking at ways in which we can encourage greater use of mediation - to resolve both workplace and employment disputes. We will identify ways to address the barriers to mediation identified by respondents to the consultation. But, where mediation has failed, we are looking at whether early conciliation through Acas might provide a faster and better way to resolve matters rather than the employment tribunal process.
- We have removed the Default Retirement Age, doing away with the outdated notion that anyone who reaches the age of 65 has nothing to contribute economically.
- BIS and DWP have commissioned an independent review of the system for managing sickness absence, by Dame Carol Black and David Frost, to be published this autumn. As part of that review, the Government wants to offer good support for those who genuinely cannot work, and ensure that businesses are equipped and motivated to play their part in helping individuals with health problems to stay in the labour market.

17. Yet there is still much more to do. At the beginning of the summer, we announced our medium-term plans for the Employment Law Review.

- We have asked the Low Pay Commission to consider what changes could be made to the National Minimum Wage rules to make them simpler and easier to administer.

- We intend to examine the rules that govern outsourcing, Transfer of Undertakings (Protection of Employment) often referred to as TUPE, and the consultation periods on collective redundancy.
- We want to identify ways to reduce the burden of paperwork, for example through our proposals to make the right to request flexible working a lighter-touch process.
- We are looking again at the discrimination awards following employment tribunals and have announced our intention to consult on the issue later this year.

Enforcement: ensuring a level playing field for workers and employers

18. As well as getting the rules right, it is important to ensure that the system of enforcement of the rules is effective and cost-effective. As part of the Employment Law Review, we launched a review into government enforcement of workplace rights in December 2010.
19. Whilst this paper is largely concerned with eliminating unnecessary burdens on business, the Government is clear that employers who are determined to operate outside of the law should not be allowed to undercut their legitimate competitors by exploiting their workers. It is essential that the most vulnerable workers, those most likely to be exploited by unscrupulous employers, are effectively protected.
20. The UK has a hybrid system for enforcing employment rights, based on an accessible system of employment tribunals for the majority of rights alongside government enforcement for some rights. The rights currently directly enforced by Government include the National Minimum Wage, the Agricultural Minimum Wage, employment agency and employment business standards, gangmaster licensing and the 48-hour working week.
21. The government enforcement landscape has grown up over time, with regulation of employment agencies introduced in 1973, working time limits in 1998, the National Minimum Wage in 1999 and gangmaster licensing in 2004. This has led to an enforcement framework that reflects historical accident rather than a set of principles based on a clear view about the role of government enforcement in the labour market. Why, for example, should claims under the Agency Worker Regulations be pursued through the employment tribunal system when Employment Agency Regulations are enforced by Government?

Question 5: What criteria should determine which rights are directly enforced by Government and which by the individual?

22. Whilst there is more for the review to consider, we have identified that:
- there is significant fragmentation within the enforcement landscape, as a consequence of the underpinning regulations; and
 - there is no common rationale for determining those rights that are government-enforced and those that are enforced by the individual.
23. We believe that government enforcement should focus on protecting the most vulnerable workers who are unable to assert their own rights for themselves, while leaving those who are better able to look after themselves to seek redress through the employment tribunal system.

24. Whilst all the enforcement bodies have embraced the Hampton agenda and enforce on the basis of risk, there is no single overarching compliance strategy for government enforcement of workplace rights. The different enforcement bodies have a range of powers and penalties at their disposal, including naming and shaming, civil penalties, criminal prosecution, license revocation and prohibition. These varying powers are also a consequence of differences in the underpinning regulations.
25. Whilst all the enforcement bodies have made significant efficiency savings, there is some duplication of activity between them. When carrying out enforcement inspections they often look at the same evidence (e.g. contracts/statements of particulars, pay and worktime records) and ask the same questions of employers or agencies, but there remain some legal barriers that prevent enforcement bodies from co-operating with each other, and with other regulatory bodies (such as local authority enforcement).
26. The creation of the Pay and Workrights Helpline has done much to align the work of the different agencies and the impact of the fragmentation of the enforcement activity has not significantly impacted the experience of those workers seeking redress through the helpline. However, those furthest from the labour market often do not trust government bodies to act of their behalf, often as a consequence of cultural and historical experiences in other countries, or for fear of personal consequences (as a result of irregular work status in the UK or fear of being sacked for complaining, for instance).
27. Unions and community groups have a track record of reaching the most vulnerable in ways that Government often cannot. We want to learn lessons from their experience. We have already been looking at how those furthest from the labour market can be effectively supported and protected. This is based on experience of the Union Modernisation Fund projects and work by the Citizen Advice Bureau, as well as enforcement outreach work funded by the Migration Impact Fund in recent years.
28. To improve our system of enforcement, we believe that we should:
- Evaluate the effectiveness of the different powers and penalties available to enforcement bodies as part of the review of the underpinning regulations.
 - Consider different organisational structures, reflecting any changes in the underpinning regulations, to see if a different configuration could give a greater profile and impact to enforcement activity.

How you can feed into this work

This paper is being published as part of the Red Tape Challenge, the next phase in the review of employment regulation. We want to hear your views on how we can ensure that the UK labour market is flexible, effective and fair, supporting growth across the UK economy. The Red Tape Challenge focuses on the specific regulations, but it would be helpful to consider the questions raised in this paper when framing your responses to the Red Tape

Challenge. In addition, we would welcome any more general points that you would like to raise in relation to the questions in the paper or any of the issues raised.

Question 1: How can we create the space for employers and their staff to manage their relationship effectively?

Question 2: What more can Government do to reduce the fear factor in employing staff, particularly the first member of staff that a business takes on?

Question 3: What rights should be included in the set of fundamental employment protections?

Question 4: Where do the processes required by the rules hinder the outcome that they are seeking to achieve?

Question 5: What criteria should determine which rights are directly enforced by Government and which by the individual?

You can respond to these questions, and comment on specific regulations on the RTC website: www.redtapechallenge.cabinetoffice.gov.uk/employment-law/

Alternatively, you can write to us direct at:
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3 Abbey 1, 1 Victoria Street
London SW1H 0ET

Or email: redtapechallenge@bis.gsi.gov.uk

You can comment on at any point during for the two year Red Tape Challenge, but it would be most helpful to receive your comments during the spotlight on employment related regulations, which ends on 19 October 2011.

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