Consultation on measures to increase transparency recommendations from the Taylor Review
Unite the Union response to the Department for Business, Energy & Industrial Strategy

To: increasingtransparency.consultation@beis.gov.uk due by 23 May 2018

Introduction

This submission is made by Unite, the UK's largest trade union with over 1.4 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Section A – Written Statements

The Review of Modern Working Practices recommended:
The government should build on and improve clarity, certainty and understanding of all working people by extending the right to a written statement to 'dependent contractors' as well as employees.

In the consultation document government: *"accepted this recommendation in the Government Response to the review. We recognise its merits and through this consultation we want to explore how best to implement this change."*

Questions 1 to 8 are addressed to employers and individuals, save to say that Unite, as an employer of around 1000 employees and by the nature of representing 1.4 million members we have considerable experience that is reflected in the answers below. Unite will move on to question 9.

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?

Agree strongly. Indeed Unite argues for all such workers to have the same rights as employees with one definition of those who work.

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?

a) The business's name

Yes. The organisation or individual responsible for payment of earnings and with all the other responsibilities associated with providing work should be clearly identified. Problems identifying an employer have been identified and commented on many times, including by the courts. The most recent decision by the Employment Appeal Tribunal (EAT) on this issue was published on 18 May 2018 in Dynasystems for Trade and General Consulting Ltd and Others v Moseley[1]. In that case the former President of the EAT said: "It may at first sight seem surprising that parties who enter into a contract may be unsure as to the identity of the other party to that contract...However, in the world of work, as it has become in the 21st century, corporate structures are often labyrinthine."

b) The employee's name, job title or a description of work and start date

Yes. It really should go without saying that the individual required to work should be identified along with the work to be undertaken, at least as far as the job title is concerned, and the start date should be specified. The latter is important for numerous purposes, including 'continuous service' and employment rights.

c) If a previous job counts towards a period of continuous employment, the date that period started

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1 https://assets.publishing.service.gov.uk/media/5afc64eb40f0b622d18b2f5b/Dynasystems_for_Trade_and_General_Consulting_Ltd_and_Others_v_Mr_M_Moseley_UKEAT_0091_17_BA.pdf

Yes. See answer to 10 b) above.

d) How much, and how often, an employee will get paid

Yes. Even though such details will probably change over time, such important elements of the arrangements for work should be set out at the outset.

e) Hours of work (and whether employees will have to work Sundays, nights or overtime)

Yes. Even though such details might change over time, such important elements of the arrangements for work should be set out at the outset.

f) Holiday entitlement (and if that includes public holidays)

Yes. See answer to 10 e) above.

g) Where an employee will be working and whether they might have to relocate

Yes. The issues of "clarity, certainty and understanding" identified in the Taylor report would be undermined if such details are not included.

h) If an employee works in different places, where these will be and what the employer's address is

Yes. See answer to 10 g) above.

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

a) How long a temporary job is expected to last, or the end date of a fixed-term

Agree strongly. Issues of "clarity, certainty and understanding" identified in the Taylor report

would be enhanced if such details are included.

b) How much notice the employer and the worker are required to give to terminate the agreement?

Agree strongly. Issues of "clarity, certainty and understanding" identified in the Taylor report would be enhanced if such details are included. All workers should be entitled to notice.

c) Sick leave and pay entitlement?

Agree strongly. Issues of "clarity, certainty and understanding" identified in the Taylor report would be enhanced if such details are included.

d) The duration and conditions of any probationary period?

Agree strongly. Issues of "clarity, certainty and understanding" identified in the Taylor report would be enhanced if such details are included.

e) Training requirements and entitlement?

Agree strongly. Issues of "clarity, certainty and understanding" identified in the Taylor report would be enhanced if such details are included.

f) Remuneration beyond pay e.g. vouchers, lunch, uniform allowance

Agree strongly. Issues of "clarity, certainty and understanding" identified in the Taylor report would be enhanced if such details are included.

g) Other types of paid leave e.g. maternity, paternity and bereavement leave?

Agree strongly. Issues of "clarity, certainty and understanding" identified in the Taylor report would be enhanced if such details are included.

If you disagree that any of the above additional items should be included on a principal written statement, please provide reasons.

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

Agree strongly. The employer will know what they are requiring of the individual at least to the extent of being able to satisfy the requirements for providing the improved written statement before work commences and should provide such a statement by day one of work at the latest. It is preferable, if individuals can see the statement before starting work, so they may better understand what they are getting into.

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?

Disagree. The details should be provided much earlier and preferably before work commences. See also answer to question 12 above.

Question 14: Have you ever worked for an organisation that has not provided you with a written statement of employment particulars within 2 months of starting your job?

In workplaces where Unite organises normally written statements are provided timeously, but we are aware of instances where they are not. For example, in response to a recent survey of Unite officers for these consultation, one officer reported: *"I have had cases whereby a worker, on requesting a copy of an SOP - has been told that they are not suitable and paid off.*
This is one of the difficulties when you cannot claim unfair dismissal until you have 2 years service - it makes workers reluctant to assert their statutory rights. What is the point of creating a statutory right to written terms if workers are excluded from claiming unfair dismissal for asserting those very same rights.
It is almost impossible to prove that the reason for the dismissal was due to them asserting their rights as employers don't state that as a reason. They will merely state that there has been a downturn in work or that the individual is not suitable."

Question 15: If you answered yes to question 14, did you:

a) Consider lodging a complaint with an employment tribunal (even if you did not end up doing it)?

Unite has been involved in the enforcement of rights to a written statement before employment tribunals (ETs), as an adjunct to another claim.

See also answer to question 14 above and the example of the cases where it is not possible to pursue the right.

b) Pursue compensation?

See answer to question 15 b) above. Unite has also recovered compensation for members.

Question 16: If you answered yes to question 15b, were you successful in securing compensation for failing to receive a written statement within 2 months of starting your job?

Yes. In spite of the shocking statistics in relation to employers failing to pay compensation awarded by ETs, Unite generally recovers compensation awarded in the cases it pursues. At present 35% of Employment Tribunal awards are unpaid by employers[2]. Pursuing relatively small sums awarded in compensation, for example, for failure to provide a written statement, can be particularly problematic and viewed by many as throwing good money and time after bad.

Question 17: If we introduced a standalone right for individuals to bring a claim for compensation where an employer has failed to provide a written statement, what impact do you think this would have? Please consider the impact on:

a) Individuals

b) Employers

c) The Tribunal Service

2https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf "With over half of claimants giving this as the reason believed that the company they had worked for was now trading again under a different name or at a different location."

On behalf of our members, we can say that the union would pursue multiple claims where they arise to their benefit. In this context individuals would be less fearful.

Question 18: Which of the following best describes your awareness of the Acas guidance on written statements?

Unite and its officers are familiar with the existence and form of the right and Acas guidance.

Question 19: If you have some knowledge of the Acas guidance on written statements, how helpful did you find it?

It is helpful particularly to employers and unrepresented employees who may not be familiar with the issue.

Section B: Continuous Service

The Review of Modern Working Practices recommended:
'The government should extend from one week to one month, the consideration of the relevant break in service for the calculation of the qualifying period for continuous service and clarify the situations where cessations of work could be justified.'

The consultation document responds that government: *'recognise[s] the rationale behind this recommendation in a labour market where more people work atypically, and agree that the break in service period for continuous service should be extended beyond one week. However, we do not yet have a firm position on the length that the period should be extended to.'*

Question 20: What do you think are the implications for business of the current rules on continuous service?

Unite does not consider that extending the period to a month is sufficient. It will not stop bad businesses from exploiting its existence to deprive workers of their rights.

Unite believes the all employment rights should be day one rights.

It should be the case that if a person works for an employer in a calendar month and at some point in the following month, then both should count for the purposes of continuous service.

Question 21: If you are employed, or represent employees, what are the implications for you or those your represent of the current rules on continuous service?

Please see answer to question 22 below.

Question 22: Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period?

Yes. The following represent some examples from Unite officers asked the question in a survey for these consultations:

"There would appear to be a heightened awareness of employers in respect of fixed term contract employees and their right to seek a declaration of permanency of employment following four years, as such contracts are not being renewed to prevent the four year trigger."

"Workers at working under the agency contract receive mirror image T&C's to core employees. However if they want to transfer into by terms of the agreement, they lose all service related benefit."

"I have come across a case last year when a well known voluntary organization sacked three staff members, one of whom was five weeks away from her two years service with the organisation. The other two were treated with little dignity and respect and their services dispensed with within two years by a bullying manager of a women's aid organization who was not prepared to listen to anyone."

"It is commonplace in the voluntary sector in Scotland for organisations to take employment advice from cut throat companies who they pay substantial amounts of money to. These legal advisers are not aware of the .org policies and procedures negotiated with the union and their advice frequently contradicts what is in place and causes more difficulties and a prolonged dispute to resolve."

Yet another officer, when asked about umbrella companies and agency workers says:
"The prevailing insecurity of employment means that workers are afraid to raise issues, to rock the boat etc; however the same can be said for employees with less than two years service as we see increasingly members being dismissed for no reason, but have an insecure contract or less than two years service, so limited or no industrial or legal recourse/challenge."

Question 23: Do the current rules on continuous service cause any issues in your sector?

Yes. See examples in answer to question 22 above. The issues arise across all sectors, where Unite has members, referred to in paragraph 1 of the introductory remarks above.

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?

In order to protect working people the best, a longer period is clearly better. One month as proposed is too short. Six months would be better.

Question 25: Do you believe the existing exemptions to the break in continuous service rules are sufficient? If no, do you have views on additional circumstances that should be added?

No. Additional elements should include that:

- It should be the case that if a person works for an employer in a calendar month and at some point in the following month, then both should count for the purposes of continuous service.
- Periods of statutory leave, including holiday and any form of parental leave, will count towards a worker's continuous service.
- Where a worker has a gap in work of more than a month, their continuous service will not be broken and the clock will not return to zero. Instead it will pause and restart whenever they do future for the same employer.

Question 26: We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance.

Additional information should be inserted to discourage cynical exploitation of the current position and to reflect changes, for example, as referred to in answer to question 25 above.

Section C: Holiday Pay

The Review of Modern Working Practices recommended:
'The government should do more to promote awareness of holiday pay entitlements, increasing the pay reference period to 52 weeks to take account of seasonal variations and give dependent contractors the opportunity to receive rolled-up holiday pay.'

The consultation document responds: *"There are three elements to this recommendation which we will discuss individually:*

The first element focuses on ***increasing awareness of holiday pay entitlements****, which we accept."*

"The second element of this recommendation focuses on ***extending the holiday pay reference period for workers without normal working hours from the current 12 weeks to 52 weeks****, so to better reflect the seasonal nature of much casual and zero hours work. We also accept this recommendation."*

"The third recommendation made in the review was that workers should have greater choice in the way they receive holiday pay. The government agrees with the review's concerns that some workers may not be receiving the holiday pay to which they are entitled. However, because rolled-up holiday pay has been found to be unlawful (see below) we will not be pursuing this recommendation directly. Instead we want to explore what alternative action could be taken to address these issues."

Question 27: Do you agree that government should take action to change the length of the holiday pay reference period?

Yes, but only if working people are given the choice between 12 and 52 weeks. Further, the employer should explain the effect of the options. If there is no choice of reference period, some workers will still lose out and what amounts to the policy objective will not be met. Those undertaking seasonal work or work at peak times could well lose out otherwise.

Even better would be for government to encourage employers and unions to negotiate reference periods through collective agreements. In this way the interests of workers would be better protected alongside the interests of the business and government would better satisfy its obligations under international law (see below).

Question 28: If you answered yes to Q27, should government:

a) increase the reference period from the current 12 weeks to the 52 weeks recommended in the review?

No. Working people should be able to choose. See answer to question 27 above.

b) Set a 52 week default position but allow employees and workers to agree a shorter reference period?

No. See answer to question 27 above.

c) Set a different reference period

No. See answer to question 27 above.

Question 29: What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?

For example:

a) Are they receiving and taking annual leave?

b) Are they receiving holiday pay but not taking annual leave?

c) Do you know of any other arrangements that are used? Please explain your answer.

The following are some of the responses to a survey of Unite officers for these consultations:

"Often the workers on agency contracts receive rolled up holiday pay and do not take any holidays while they are working on a construction site."

"Young people in the hospitality sector on zero hour contracts regularly have no choice about when to take their holidays and are short changed on holiday pay. In a recent TUPE situation with bar workers the new owner did not honour the holidays owing and tried to get away with not paying the minimum wage."

"In the health sector within numerous hospital trusts, where there are private contractors (examples include S and alongside low pay often there is a lack of sickness and holiday pay with people fearful of losing their role/contract."

"Workers on Zero Hours contracts frequently complaint of harassment, no right to holidays and no real option to raise a complaint for fear of the employer never offering work again."

"I have had a case (which was resolved to the benefit of our members and led to a recognition agreement with the company) where the workers were paid a sum of money every 3 months - noted on their pay slips as "Holiday Pay" irrespective of whether they were about to go on holiday or not.
If the worker then chose to go on holiday - the expectation was that they would have retained this money in their account and used it as an when they were on leave. Invariably, these workers did not take any annual leave (as they would have lost the opportunity to earn normal wages during the period of leave).
The practice has ceased since we raised complaints and threatened Tribunal action - however, I think that these types of situations will still be going on elsewhere."

"We had a case at the ite in Birmingham where a member was employed by an agency but when he arrives on site he is asked to wear a bib and take instructions from a supervisor. The member doesn't get holiday pay. He is frightened to raise the matter as he has signed a contract where he is a driver and the agency will pay him a fixed hourly rate to drive goods on behalf of His fear is he will be served with notice if he raises an issue as the contract allows notice for services to be terminated."

"I was alerted to a similar problem re a Social Worker who thought she was employed by the agency who sent her to work for a local authority. She was told by the agency to contact a payroll company to process her pay. The member was shocked when she received her payslip with an admin fee deducted and the employers' costs taken off. She was not made aware her status was self-

employed. We have taken it up with the Council who were not aware this type of contract was being used to supply labour. She has no sickness pay or holidays and the member wanted us to be discreet for fear of losing any job opportunities in the future."

Question 30: How might atypical workers be offered more choice in how they receive their holiday pay? Please provide examples including how worker's entitlement to annual leave could be safeguarded so they are not deterred from taking leave.

"Choice" leads to exploitation, as the examples referred to in paragraph 29. There should be one mechanism for atypical workers to receive holiday entitlement and pay, subject to an alternative that has been agreed under a collective agreement with a trade union.

The HMRC National Minimum Wage team should be given responsibility for enforcing holiday pay, alongside the employment tribunals. The HMRC must be properly resourced to do this.

Section D – Right to Request

The Review of Modern Working Practices recommended:
'The government should introduce a right to request a direct contract of employment for agency workers who have been placed with the same hirer for 12 months and an obligation on the hirer to consider the request in a reasonable manner'.

'The government should act to create a right to request a contract that guarantees hours for those on zero hours contracts who have been in post for 12 months which better reflects the hours worked.'

The consultation document responds: *"We are considering these two recommendations in the wider context that all workers should have more choice, where possible, in how and when they work including having a right to request a more predictable and stable contract."*

Question 31: Do you agree that we should introduce a Right to Request a more stable contract?

Yes, and there should be a right of appeal, if the request is rejected. However, Unite argues for

deemed employment status and a new definition of employment status, which we will address further in our response to the BEIS, Treasury and HMRC consultation into Employment Status.

Question 32: Should any group of workers be excluded from this right?

No. Those classified as workers are often the most vulnerable and more in need of such a right.

Question 33: Do you think this will help resolve the issues the review recommendations sought to address?

Yes, it will help, but it will not resolve the issues for all.

Question 34: Should employers take account of the individual's working pattern in considering a request? Please explain your reasons.

Yes. Inevitably work pattern will be one of the factors that employers would take into account in relation to reasonable consideration of such a request.

Question 35: Should there be a qualifying period of continuous service before individuals are eligible for this right? Please explain your reasons.

No. Such a qualifying period is unnecessary in practice.

Question 36: What is an appropriate length of time the employer should be given to respond to the request? 1 month/2 months/3 months/more than 3 months.

Employers do not need longer than one month. Individuals deserve a prompt positive response to requests.

Question 37: Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time? Please explain your reason for this and include a suggestion of what an appropriate limit might be and why.

Individuals should be able to submit a further request after one month, if their request has been rejected.

Question 38: When considering requests, should Small and Medium Enterprises (SMEs) be included? If yes, do you think they should have any dispensations applied e.g. longer to respond?

Yes. There is no good reason to exclude SMEs and they would not need longer to respond to the requests.

Section E: Information and Consultation of Employees Regulations (2004) (ICE)

The Review of Modern Working Practices recommended:
'The government should examine the effectiveness of the Information and Consultation Regulations in improving employee engagement in the workplace in particular it should extend the Regulation to include employees and workers and reduce the implementation from 10% to 2% of the workforce making the request.'

The consultation document responds: *'We welcome the rationale behind this recommendation, and are interested in exploring this further.'*

Unite's initial comments

Unite has used ICE to improve dissemination of information and consultation, where appropriate, if full recognition is not available. However, the problems that arise under the current system are substantial and are often used to prevent effective use of ICE.

Question 39 – Are there formal provisions in your workplace for informing and consulting employees about changes that may affect their work?

Yes, in a number of workplaces.

If yes, were these provisions:

- **Requested by employees**

- **Initiated voluntarily by the employer/manager**

Normally they are requested by the employees and often resisted by the employer. However, it has also happened that after Unite began collecting signatures to trigger the process, the formal provisions were initiated by the employer.

Question 40 (for employees only) – Have you ever requested Information and Consultation of Employees provisions in your workplace?

If no, please describe why you have not made a request for ICE provisions. Please select all that apply:

- **My workplace has less than 50 employees and so does not qualify for ICE regulations**
- **There were not enough employees wanting to make a request to meet the required 10% threshold**
- **It was too complicated/difficult to make the request**
- **I was not aware of the ICE regulations**
- **I don't believe that the ICE regulations would make a difference to my working conditions**
- **Other – please explain**

If you answered yes, did this lead to positive outcomes for you at work?

Yes, in a number of workplaces.

All of the above bullet points reflect problems that affect the lack of use of ICE in workplaces, where they could be used. In addition there is a management culture in the UK against providing information and consulting with the workforce.

Question 41 - How might the ICE regulations be improved?

The following issues with ICE regulations need to be resolved -

1) Currently the regulations can only be applied at an undertaking level. Regulation 3(3) refers to the regulations applying to 'the employer.' This is a major issue as many undertakings, while

registered in a fragmented manner, do not reflect the actually decision-making process or the structure of the organisation. See *Coombs & Holder v GE Aviation Systems limited IC/43/ (2012)* (attached). It would far more effective if the regulations allowed the employees to either apply the regulations to an undertaking or groups of undertakings as is the case in the Transnational Information and Consultation of Employees (TICE) regulations 1999 (as amended). The employers' ability to choose employee constituencies (even against their wishes) needs to be removed.

2) While the threshold for triggering the process should certainly be reduced, this is not the main reason as to the lack of usage of the ICE Regs. The main reason is the complicated process required to get the 10% number, which is currently done (in most cases) via a petition. As in the TICE regulation there should also be the possibility of an employee representative (defined as a Trade Union representative) being entitled to submit a single request on the employee's behalf i.e. an "employee representative" that represent at least 10% of the employees.

3) Regulation 14, requires the employer, once a valid request has been submitted, to make arrangements for the election or appointment of negotiating representatives. There is no specification or formula to determine how many negotiating representatives should be appointed. This is a unilateral decision by the employer, which is often abused. It would be far more pragmatic to adopt the same formula as is laid down for the election or appointment of information and consultation representatives under the standard provisions (Regulation 19(3)).

4) In addition the election process as prescribed in regulation 14 is totally in adequate. Unfortunately there is no requirement to conduct a ballot by independent ballot supervisor, which often means that a member of the HR team will control and conduct the ballot. This process not only lacks transparency it is open to total abuse by the employer. Again it would be far more pragmatic adopt the same process as is laid down for the election or appointment of information and consultation representatives under the standard provisions (Schedule 2 – Requirements for Ballot held under regulation 19).

5) The Regulations provide for default information and consultation provisions to apply in the event that no agreement can be reached. Unfortunately the Standard Provisions (Regulation 20) are non-prescriptive and lack detail, which means they are unilaterally determined by the employer. i.e. number of meetings, resources, training, experts, select committee etc. Under the TICE regulations

the default information provisions are referred to the 'Subsidiary Requirements'. Under these provisions the process for information and consultation is defined in such a way that they are viewed as being more beneficial to the employees more than the employer. This is extremely important because it strengthens the negotiating position of the negotiating representatives during the negotiations, as they can use the threat of going to the default arrangements as leverage to extract greater concessions in any agreement.

6) One area where the regulations are deficient is the support that negotiating representatives get during the negotiating process from experts of their choice. Companies frequently use extremely expensive lawyers to provide advice and guidance to management during negotiations often aimed at weakening agreements and the obligations to inform and consult. Unfortunately negotiating representatives do not receive the same support. It is acknowledged under the EWC Directive what an important role trade unions play in providing support during negotiations. Recital (27) of Directive 2009/38/EC: *'Recognition must be given to the role that recognised trade union organisations can play in negotiating and renegotiating the constitute agreements of European Works Councils, providing support to employees representatives who express a need for such support.'* The ability for negotiating representatives to use experts to assist them during the negotiations would significantly improve the content and operation of information and consultation agreements.

7) Currently under the regulations the only rights negotiating representatives or information and consultation representatives have are the right to time off to carry out their duties and the right not to suffer detriment or be discriminated against. These are basic rights and should be significantly improved for example the right to training, the right to have facilities, the right to have resources, the right to communicate etc. Giving employee representatives strengthened rights would allow them not only to carry out their duties more effectively, but would also allow them greater opportunity to hold companies to account.

8) Trade unions need a defined role under the regulations, in triggering requests for an agreement, negotiating I&C agreements and assisting members to do so and supporting employee representatives once in office in terms of independent expertise and providing training. This should be facilitated under the law regardless of whether the union is recognised by the employer for collective bargaining purposes.

9) The ability to agree a negotiated agreement below the standard provisions (default arrangement) needs to be removed and employers should be prevented from relying on "pre-existing agreements" to thwart ICE.

10) There needs to be a right for unions to access the workplace and for unions, ICE reps and employees to communicate at the workplace, via company email systems or the employers standard methods of communications.

11) The penalties for failure to consult need to be increased (currently the maximum fine is only £75,000) and compensation payments made to affected workers as opposed to the treasury keeping the sum.

12) The opportunity should be taken now to make law to allow for trade union representatives or other genuine worker representatives on the boards of companies.

These points are based on Unite's experience and often based on tactics that employers use to seek to defeat ICE.

Question 42 - Should the ICE regulations be extended to include workers in addition to employees? Please explain the reasons for your answer.

Yes. Please see above in answer to question 41. With the increased use of agency workers, zero hour contracts and other forms of atypical work, including individuals who are classed as workers is vital if the ICE Regulations are to be used a meaningful vehicle of employee voice. This is subject to there being a new definition of employment status, which would cover employees, workers and others.

Due to the fact that often agency workers may be spread across multiple sites and hirers, a further measure of improvement is required. EU Directive 2002/14/EC allows for the choice between a threshold of 50 workers in a single undertaking or 20 workers in a single establishment. This choice should be available in ICE.

The need for change has already been highlighted by the CAC case of IWGB v Cofely Workplace[3].

Question 43 – Should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%? Please explain your answer.

Yes. The involvement of the workforce is much more successful in Germany, assisting not only the workforce, but also businesses and the State. In Germany only 5 workers need to request the establishment of a works council and there is no evidence to suggest that this very low number requirement is in anyway detrimental to the interests of the majority of the workforce nor is there any evidence of employees in any significant number opposing the establishment of a works council once a request has been triggered.

While the threshold for triggering the process should certainly be reduced, this is not the main reason as to the lack of usage of the ICE Regs. The main reason is the complicated process required to get the 10% number, which is currently done (in most cases) via a petition. As in the TICE regulation there should also be the possibility of an employee representative (defined as a Trade Union representative) being entitled to submit a single request on the employee's behalf i.e. an "employee representative" that represent at least 10% of the employees.

In large multisite organisations it is next to impossible for employees to organise making a request and collecting the required signatures, as access to the rest of the workforce is required to achieve this.

Question 44 – Is it necessary for the percentage threshold for implementing ICE to equate to a minimum of 15 employees? Please explain your answer.

No. Please see the answer to Question 43 above. There is no evidence that trigger percentages provide any meaningful measurement or threshold for measuring employee support. Their only function within the 13 years the ICE regulations have applied to the UK has been to prevent the vast majority of employees from acquiring the right to be informed and consulted.

Question 45 - Are there other ways that the government can support businesses on

[3] https://www.gov.uk/government/publications/cac-outcome-iwgb-cofely-workplace-limited

employee/worker engagement?

Please see answer to question 46 below.

Question 46 - How might government build on the expertise of stakeholders such as Investors in People, Acas and Trade Unions to ensure employees and workers engage with information about their work?

Trade unions and their members should be provided with a defined role and set of legal rights in relation to the ICE regulations (including access to employees) and any agreements established under this legislation regardless of whether a trade union is recognised for collective bargaining or not. Furthermore where trade unions are recognised for collective bargaining, the union should be empowered to conduct I&C and enter into legally enforceable I&C agreements or addendums to existing collective agreements.

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

Unions have an important and substantial role in enforcing employment rights, including ICE. The government must do more to encourage this role – this is something government is obliged to do in order to comply with its legal obligations to promote trade unions and collective bargaining, for example, under the UN's ILO conventions 87 & 98[4]. The introduction of sector bargaining should be a priority, right down to involvement with enforcement agencies, including reinstating union representatives on the governing body of GLAA.

Question 48 - Are there other ways that the government can support businesses on employee/worker engagement?

Please refer to the answers to questions above.

[4] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232 & http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243

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