



Department for
Business, Energy
& Industrial Strategy

TAYLOR REVIEW

OVERVIEW OF RESPONSES TO CONSULTATIONS ON:

- **MEASURES TO INCREASE
TRANSPARENCY IN THE UK LABOUR
MARKET**
- **AGENCY WORKERS
RECOMMENDATIONS**
- **ENFORCEMENT OF EMPLOYMENT
RIGHTS RECOMMENDATIONS**

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Introduction

In November 2016 the Prime Minister commissioned Matthew Taylor, Chief Executive of the RSA (Royal Society for the encouragement of Arts, Manufactures and Commerce) to carry out an independent review of modern employment practices in the UK. The review explored issues such as employment status, transparency between employers and workers, protections for agency workers and enforcement of employment rights.

The review looked at six themes: security pay and rights; progression and training; the balance of rights and responsibilities between individuals and businesses; representation; opportunities for underrepresented groups and new business models such as employment platforms. The Review ('Good work: the Taylor review of modern working practices') was published in July 2017 and made more than 50 recommendations. It set out an ambition that all work in the UK economy should be fair and decent with realistic scope for development and fulfilment.

In February 2018 the Government responded to the review and committed to taking forward most of the recommendations. The Government also launched a series of consultations to help inform the approach to implementing the review.

Over 250 responses were received across the consultations on:

- Measures to increase transparency in the UK labour market;
- Agency workers recommendations; and
- Enforcement of employment rights recommendations.

This document provides an analysis and summary of those responses which will inform Government action in these areas.

The Government also launched a consultation on employment status issues in February 2018. Over 150 responses to that consultation have been received. The Government is currently considering the issues raised in the consultation and working up detailed proposals on how to address Matthew Taylor's recommendations on employment status. The Government will continue to consider these responses, which will help inform detailed policy proposals. A summary of the responses to the consultation will be published in due course.

The Government has now published its Good Work Plan, which sets out the Government's vision for the future of the UK labour market and the next steps we will take to enhance the UK labour market and ensure further successes in a changing world. The Good Work Plan has been informed by the views provided by the consultations outlined above.

Consultation on measures to increase transparency in the UK labour market

Written Statements - Extending the right to a written statement to workers and making it a day 1 right

The consultation asked whether extending the right to a written statement from day one for all workers, not just employees, would improve clarity and understanding and would be beneficial to both parties.

Most respondents to the consultation agreed strongly that the right to a written statement should be extended to all workers including to those with less than one month's service. A minority of respondents were concerned about balancing the administrative burdens of having to deliver a statement within a short timescale.

The responses indicated that a number of employers already provide a written statement to their permanent staff. However, a number of respondents highlighted that non-permanent staff were usually agency workers and received terms of engagement rather than a written statement.

The majority of individuals who responded to the consultation did not specify whether they received a written statement. However, those that did receive one received it before they started the job or on the first day of paid work and reported that their terms and conditions were fairly easy to understand.

Written Statements - Extending the content in the principal statement of a written statement

The Government wants to ensure that the mandatory content of the written statement is as useful as possible for both employers and workers in clarifying the employment relationship. The consultation explored whether any additional content should be added, either on day one or within two months of starting work. The consultation asked whether the following additional information would be useful to include in the principal statement:

- The duration and conditions of any probationary period
- Training requirement and entitlement – any mandatory training that would need to be completed by the worker or employee as well as any further training entitlement
- All remuneration (not just pay) - contributions in cash or kind e.g. vouchers and lunch
- Other types of paid leave e.g. maternity leave and paternity leave – whether the worker is eligible and where to find more details on the employer's policy

Most respondents agreed with all the proposed changes to the contents of the principal statement and the additional contents. The exception was the inclusion of training requirements and entitlements in the principal statement – as respondents considered that it would be difficult to highlight on day 1 what further training would be required.

Written Statements - Enforcement/ Promoting Acas Guidance

The review recommended that ‘the government should also consider introducing a standalone right for individuals to bring a claim for compensation if an employer has failed to provide a written statement...’ and that ‘the government should do more; working with Acas and others to ensure information is accessible’.

Most respondents said that they were aware of the current online Acas guidance and found it helpful but agreed that more could be done to raise awareness.

Feedback was that a standalone right could be beneficial in empowering individuals to assert their rights. However, the extent of this benefit would rely on how well publicised the right is, and how strongly individuals feel about the issue. However, other comments pointed out the dangers of damaging the employment relationship so early on if it was easier for individuals to make claims rather than trying to resolve issues.

Continuous Service

In the consultation the Government sought views on the implication of the current rules on continuous service, and asked respondents what they thought about extending the period counted as a break in continuous service beyond one week. The consultation provided several potential options for an alternative time frame. The most popular responses were two weeks and Matthew Taylor’s suggestion of one month. However, many respondents also suggested an alternative time frame that was none of the potential options presented. Amongst those respondents that suggested an alternative time frame, the most popular suggestion was to have an accrual system, where continuous service is not broken by breaks in service, rather it is paused.

Holiday Pay

The consultation sought stakeholder views about the extension of the holiday pay reference period from 12 to 52 weeks. The consultation identified broad support for addressing issues relating to the current 12-week reference period, and for the extension to 52 weeks. The intention to smooth out seasonality in holiday pay.

There was some appetite for changes to offer flexibility between 12 and 52 weeks, such as allowing workers’ representatives to negotiate reference periods with employers between these parameters. In terms of alternative options for how atypical workers’ holiday pay is calculated, the consultation provided evidence and suggestions for developing holiday pay guidance and seeking to raise public awareness around holiday pay but did not result in any feasible, lawful options to develop new holiday pay schemes for atypical workers.

Right to Request a more predictable and stable contract

The consultation asked respondents whether they agreed with the creation of a right to request a more stable and predictable contract. The vast majority of respondents said that they did.

While respondents were broadly positive about the right to request, a number of respondents felt it would not help resolve the issues that Government set out to resolve. Some felt that a statutory procedure should be put in place rather than a right to request.

The consultation also asked questions about how this request would work in practice. These included; whether an employer would consider the individual's working pattern, whether there should be a qualification period, how long should employers have to respond and how many requests should be made. Most responses suggested the employer should consider the current working pattern, and that there should be a qualification period. The most frequently suggested time frames for a qualification period were 26 weeks or 12 months. The most frequently suggested time frame for considering a response was 1 month, closely followed by 3 months. 3 months is the current amount of time employers have to consider a request for flexible working, this includes time for an appeal of the decision and the employer to seek legal advice. Finally, respondents also expressed a preference for a cap on the number of requests that could be made, with the most popular suggestion being 1 request per year.

Information and Consultation of Employees Regulations 2004 (ICE)

The government consulted on the effectiveness of the Information and Consultation Regulations in improving employee engagement in the workplace and on whether it should extend the regulations to include employees and workers and reduce the threshold for implementation from 10% to 2% of the workforce making the request. Respondents to the consultation provided little quantitative data on the take up and impact of the ICE regulations, although there was broad consensus that employer/employee engagement is helpful and that the spirit of the regulations was positive.

Many respondents were largely in favour of the regulations being amended along the lines Mathew Taylor recommended, but some suggested more modest changes and were sceptical about the impact ICE could have. Respondents also expressed a view that more would need to be done to promote ICE in order to encourage take up.

Consultation on agency workers recommendations

Improving transparency

The consultation sought views on improving the transparency of information for agency workers and on Matthew Taylor's specific recommendation around a key facts page.

The vast majority of respondents thought that a key facts page would help work seekers in making decisions. There was more significant variation in views on the facts that should be included. Several respondents suggested a longer list of information such as statutory sick pay entitlement, holiday pay entitlement, and the right to join a union should be included.

The consultation also asked about who should be responsible for issuing a key facts page, and when. Some respondents suggested that making the employment business clearly responsible would help ensure they comply with their broader responsibilities towards the work seeker. Others suggested the umbrella company (if used) should be responsible. There was some disagreement as to the employment businesses' responsibility to ensure a worker has understood the key facts page, with some suggesting this would be important and others suggesting that it would be too burdensome.

Intermediaries and umbrella companies

The consultation sought evidence and views on the use of umbrella / intermediary companies and whether the Employment Agency Standards Inspectorate's (EAS's) remit should be extended to cover the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer.

There was widespread support for expanding the Employment Agency Standards Inspectorate's (EAS's) remit to cover umbrella companies, on the same basis as employment businesses are regulated. Many responses argued that EAS's resources should be significantly increased to manage this expanded remit.

Pay between assignments contracts

The consultation asked about the use of, and experience of, pay between assignments (PBA) contracts. The consultation also provided views on the use of the Swedish Derogation, which is a derogation to the equal pay aspect of the Agency Worker Regulations (AWR) 2010.

There was substantial variation in views on whether the use of the Swedish Derogation should be repealed and the AWR enforced by EAS. Overall, most respondents disagreed that Swedish Derogation contracts were effective at supporting workers when not working. While some responses saw the logic in EAS enforcing all rights that agency workers have, others thought it was inappropriate for EAS to enforce the AWR. They pointed to the limited evidence of abuse of AWR and highlighted that requiring EAS to investigate and take enforcement action against any company that uses agency workers (rather than just recruitment businesses) would be an unreasonable expansion of EAS's remit and enforcement powers.

Consultation on enforcement of employment rights recommendations

State-led enforcement

The consultation sought to gather further information about the extent of non-compliance with rights and entitlements, including holiday pay and Statutory Sick Pay. Most respondents believed that this problem was focused in low-paid, low-skilled sectors (including catering, hospitality and retail) but also included higher skilled industries with increased casualisation or transience (construction, higher education, hair and beauty). Responses also identified workers in atypical or insecure work or those in low paid or low skilled work as particularly at risk. Respondents identified that the two most significant barriers to individuals receiving these payments were a lack of awareness of entitlement among both employers and workers as well as fear of reprisals among workers.

Respondents broadly supported state enforcement of holiday pay, which they felt would help create a level playing field in business and ensure that non-compliant businesses would not have a competitive advantage by avoiding their statutory financial obligations. Respondents also advocated the need for better information and guidance for employers and workers, as well as a publicity campaign around workers' rights.

There was also clear support in the responses for some form of state enforcement of holiday pay for the most vulnerable workers. This would not only help to ensure individuals receive their entitlement but could also act as a deterrent for businesses who take an unfair financial advantage by avoiding their full holiday pay obligations.

Enforcement of awards - Simpler enforcement process

The consultation sought views on whether there is a need to simplify the process for enforcement of employment tribunals. There was near unanimous agreement from respondents that there is a need to simplify the enforcement processes. Comments suggested that the government should consider what proactive enforcement processes could be introduced to reduce the number of unpaid awards.

The potential for a completely digital enforcement system was met with strong concern by respondents, particularly for vulnerable users. While it was recognised that online systems can assist in improving the efficiency and effectiveness of the process, respondents felt it was important that any moves towards digitisation did not disadvantage particular individuals or groups.

A common theme raised was the need for better provision of information about the different avenues and options involved in the enforcement process. Around a quarter of respondents expressed the view that the enforcement process could be made simpler by giving employment tribunals their own powers of enforcement, and around the same proportion indicated support for automatic triggering of enforcement proceedings. Other suggestions from consultees on improvements that could be made included introducing phased payments or payment plans and reducing the time limit for bringing an appeal against an employment tribunal award.

Enforcement of awards - establishing a naming scheme

The consultation sought views on how Government should implement a naming and shaming scheme for those employers who do not pay employment tribunal awards within a reasonable time.

When asked whether it is most appropriate to name an employer for non-payment, respondents showed a slight preference for the naming being triggered after a penalty notice is issued, but many also felt that a warning letter was a potential trigger. Some respondents also suggested that the naming scheme should be automatically triggered by any unpaid employment tribunal awards. Respondents generally believed that employers who make a genuine mistake should not be named and an allowance should be made for this possibility. Once the decision to name an employer has been made, most respondents felt that employers should not be given an additional opportunity to make a representation (effectively an appeal).

Additional awards and penalties

The consultation sought views on the use of additional and financial penalties, including aggravated breach penalties. Most responses suggested that there should be better guidance, either in statutory or non-statutory form, to raise awareness of the existing penalty scheme. Some respondents also expressed confusion over how the penalties are calculated, highlighting the need for better guidance. A smaller number of consultees suggested that government should take no further action in this area as the aggravated breach penalty should only be used in exceptional circumstances.

Respondents strongly supported the notion that judges should be the ones responsible for deciding what constituted an aggravated breach, as opposed to government or other parties. In terms of the categories that should constitute aggravated breaches, common suggestions included repeat offences for any jurisdiction and wilful or deliberate disregard of employment law, rights and protections. Other suggestions included non-payment of employment tribunal awards and factors relating to victimisation and harassment of those exerting their rights.

Respondents generally recognised that it could be complicated to clearly identify a first and second offence that would lead to the additional penalties associated with repeat offenders. Respondents suggested that a second offence based on 'broadly comparable facts' should trigger the additional financial penalties. To help all parties identify prior breaches, consultees were strongly supportive of a centralised record of employment tribunal claims which all parties would have responsibility for checking.

In terms of the appropriate sanction for repeated breach, over half of the respondents supported an uplift in compensation for the complainant, rather than the increased penalty going to the state. Other consultees suggested that the state receiving the penalty was fairer as a second claimant would not gain more than the first, limiting any incentive for claimants to 'piggyback' on other claims.

Alternative suggestions to tackle repeated and aggravated breach included: criminal sanctions, personal liability for directors, exclusion from public sector procurement and wider recommendation powers for tribunals. There was also support for clearer guidance and the use of existing tribunal powers to tackle rogue employers.