

Responses to Consultation on Collective Redundancies
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| 89 | None |
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1. Your name:

ACW Technology Ltd - Chris Woods

2. What organisation do you represent (if any)?

ACW Technology Ltd

3. E-mail address:

csw@acw.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Allpay Legal - Justine Norman, Head of Legal Services

2. What organisation do you represent (if any)?

allpay Legal

3. E-mail address:

justine.norman@allpay.net

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Redundancy is usually necessary as a result of some sort of financial trouble that the employer is incurring. 90 days is a very long time to endure, during which time employee engagement is

Line2 - obviously adversely affected, resulting in an overly long, difficult and un-productive period for businesses, and an unsettling time for its workforce. 30 days is a very short period of time

Line3 - 45 days is about right in our opinion

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - We consider the definition of "undertaking" is too narrow and will obviously be read in conjunction with TUPE.

Line2 - Giving employer's as much flexibility as possibly whilst ensuring transparency and fairness to the workforce is key.

Line3 - The word "establishment" needs clear definition to take into account multi-site companies, group companies etc.

Line4 - would suggest legal definitions need to be backed up with legislative amendments

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Not sure

12. Please provide comments to support your answer.

Line1 - The Government should address and be aware of why employers hire

on FTC's in the first place. Usually because the job in question is for a finite period of time.

Line2 - If that job is no longer required then fixed term contract holders should not be excluded from redundancy procedures.

Line3 - Sometimes FTC's are also needed to allow for ultimate flexibility.

Line4 - Again employer's should not be prevented from keeping their workforce flexible and fluid to take into account the peaks and troughs of work flow

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - Statute needs to be expanded and clarified to cut down on litigation which tests the theory behind the Code of Practice

Line2 - As above, clear statute, clarity with examples as to what constitutes consultation, clarity as to what deviations from the Code will be permitted and in what circumstances

Line3 - , bearing in mind each employer has their own reason and own circumstances connected with any re-structuring exercise.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Training and awareness campaigns. Use of social media is good as professionals in law and in business are talking about this and assisting each other with awareness and clarification.

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

Line1 - We have not been directly involved but we advise businesses who are.

Line2 - Our experience is that employers will avoid if at all possible falling within the collective redundancy bracket because simply of the 90 consultation process

Line3 - and the detrimental effect this has on a business.

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - As above. However from experience we are aware that redundancy is

a massively disruptive process. Everyday business is disrupted and this flows from the management time required, down time during

Line2 - consultation etc, drop in morale/engagement, which results in a drop in productivity, natural wastage earlier than needed. Sometimes it is important to tell those who are at risk that they are not at

Line3 - risk sooner rather than later to avoid a drop in engagement, and natural wastage but there are times when employer's are simply unable to say out loud what is often quite obvious. As stated above the

Line4 - 90 day consultation process equates to 90 days of poor productivity which can create a vicious circle. In my experience, if employers are able to avoid falling into this bracket, by spacing out

Line5 - redundancy exercises across very long periods of time, they will do even if that means operating inefficiently in the meantime. The plus side of course means that employees often remain in employment

REPRO DTP

From: Justine Norman [justine.norman@allpay.net]
Sent: 17 September 2012 13:26
To: Collective Redundancies
Subject: FAO Carl Davies

Dear Carl,

I have read with interest, your consultation paper on changes to the collective redundancy rules. Out of pure interest in this topic I have submitted my response below and hope this is helpful to your process.

Answers submitted by:

Name: Justine Norman, Head of Legal Services

Organisation (if applicable): allpay Legal

Address: Whitestone Business Park, Whitestone, Hereford HR1 3SE

Responding on behalf of:

We are a business to business service provider.

Whilst we employ 230 people. Our Legal Services part of the business comprises a small team.

We provide employment law services to business only. We have a well established client base of mainly large businesses.

Question 1

Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Question 1.

Yes.

Comments: None

Question 2

Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

45 days.

Comments: Redundancy is usually necessary as a result of some sort of financial trouble that the employer is incurring. 90 days is a very long time to endure, during which time employee engagement is obviously adversely affected, resulting in an overly long, difficult and un-productive period for businesses, and an unsettling time for its workforce. 30 days is a very short period of time. 45 days is about right in our opinion.

Question 3

Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'? Please provide comments to support your answer.

Yes

Comments:

We consider the definition of "undertaking" is too narrow and will obviously be read in conjunction with TUPE. Giving

employer's as much flexibility as possibly whilst ensuring transparency and fairness to the workforce is key. The word "establishment" needs clear definition to take into account multi-site companies, group companies etc.

Question 4

Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure.

Comments: would suggest legal definitions need to be backed up with legislative amendments

Question 5

Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

Not sure

Comments: The Government should address and be aware of why employers hire on FTC's in the first place. Usually because the job in question is for a finite period of time. If that job is no longer required then fixed term contract holders should not be excluded from redundancy procedures. Sometimes FTC's are also needed to allow for ultimate flexibility. Again employer's should not be prevented from keeping their workforce flexible and fluid to take into account the peaks and troughs of work flow.

Question 6

Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

Comments: Statute needs to be expanded and clarified to cut down on litigation which tests the theory behind the Code of Practice.

Question 7

What changes are needed to the existing Government guidance?

Answer: As above, clear statute, clarity with examples as to what constitutes consultation, clarity as to what deviations from the Code will be permitted and in what circumstances, bearing in mind each employer has their own reason and own circumstances connected with any re-structuring exercise.

Question 8

How can we ensure the Code of Practice helps deliver the necessary culture change?

Answer: Question 9

Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Comments: Training and awareness campaigns. Use of social media is good as professionals in law and in business are talking about this and assisting each other with awareness and clarification.

Question 10

Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

Not sure

Comments:

Question 11

If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Answer: We have not been directly involved but we advise businesses who are. Our experience is that employers will avoid if at all possible falling within the collective redundancy bracket because simply of the 90 consultation process and the detrimental effect this has on a business.

Question 12

If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Answer:

As above. However from experience we are aware that redundancy is a massively disruptive process. Everyday business is disrupted and this flows from the management time required, down time during consultation etc, drop in morale/engagement, which results in a drop in productivity, natural wastage earlier than needed. Sometimes it is important to tell those who are at risk that they are not at risk sooner rather than later to avoid a drop in engagement, and natural wastage but there are times when employer's are simply unable to say out loud what is often quite obvious. As stated above the 90 day consultation process equates to 90 days of poor productivity which can create a vicious circle. In my experience, if employers are able to avoid falling into this bracket, by spacing out redundancy exercises across very long periods of time, they will do even if that means operating inefficiently in the meantime. The plus side of course means that employees often remain in employment longer than they otherwise would.

Justine Norman
Legal Director/Head of Legal Services

DD: 01432 852 542
M: 07921 688 401



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1. Your name:

Amphenol Ltd - Samantha Osborne

2. What organisation do you represent (if any)?

Amphenol Ltd

3. E-mail address:

Samanthaosborne@amphenol.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Shorter consultation (with an extension if required) would be better for staff in uncertainty

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - A definition could be provided for the UK, however this may conflict with european interpretation

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - legislation already covers FTC being treated less favourably.

Line2 - The code needs to address the issue where a pool for redundancy selection contains both permanent and fixed term contracts

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - clarification on what happens after consultation process

Line2 - for those selected for redundancy (used to have 3 step

Line3 - procedure - meeting letter appeal this was removed

Line4 - but no guidance issued on what should replace it

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - training for both employers and union representatives

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

AstraZeneca UK Limited - Senior Counsel, Rebekah Martin

2. What organisation do you represent (if any)?

AstraZeneca UK Limited

3. E-mail address:

Rebekah.Martin@astrazeneca.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - A framework applying a single, shorter, minimum period would allow greater flexibility for businesses to control the appropriate pace of consultation and redundancy implementation, tailoring this to

Line2 - their specific circumstances, and the scope and nature of the consultation required. It would not preclude agreement with representatives to work to longer timescales.

Line3 - Multiple thresholds distract from the fundamental underlying principle: the statutory timeframe is designed to reflect a minimum period of consultation.

Line4 - It is open to employers to work to longer timescales if it is considered appropriate or if it is agreed with employee representatives.

Line5 - In our experience, there is not necessarily any correlation between the number of proposed redundancies and the length of time it takes to conclude consultation.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - It very much depends on the drafting of the definition. Examples are helpful and the Code of Practice should offer a suitable format to provide these. A geographical approach to identifying an

Line2 - establishment does not sit easily with AstraZeneca's structure, as it is run according to different business divisions across multiple locations. Difficulties arise when different business divisions

Line3 - propose redundancies across overlapping sites.

Line4 - Disparate geographic sites can be aggregated as a result of the organisation and operation of the business, but it would also be helpful to clarify:

Line5 - • when this is likely to be the case; and • that one site can be split into more than one establishment

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - This issue can be dealt with adequately in clear and concise guidance. We also agree that a reduced statutory minimum period will reduce

Line2 - the risk that the expiry of fixed term contracts will be inadvertently "caught" where those expiries are not apt for collective consultation.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - It would be helpful for the Code of Practice to focus on: a) how the consultation should be conducted in practice; and b) how and when to recognise that consultation is complete.

Line2 - In particular, recognising that it is possible (and sometimes necessary) to close some consultation topics and move on to the next topic - in a phased approach

Line3 - - rather than consulting on everything throughout the entire consultation exercise.

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Martin, Rebekah [Rebekah.Martin@astrazeneca.com]
Sent: 19 September 2012 18:31
To: Collective Redundancies
Subject: Response to the consultation
Attachments: 12-808rf-collective-redundancies-consultation-form[1] AZ response.doc

Dear Mr Davies

I attach a response to the consultation on changes to the collective redundancy rules on behalf of AstraZeneca.

I look forward to receiving your acknowledgment in due course.


Yours sincerely

Rebekah Martin

Senior Counsel, Employment

AstraZeneca UK Limited

Corporate, Legal Department
1F52, Legal & IP, Mereside, Alderley Park, Macclesfield, Cheshire SK10 4TG
Tel: +44 (0)1625 233839 Fax:+44 (0)1625 585618 Mobile: +44 (0)7785 451 055
rebekah.martin@astrazeneca.com

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Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Rebekah Martin, Senior Counsel

Organisation (if applicable): AstraZeneca UK Limited

Address: 1F52, Mereside, Alderley Park, Macclesfield SK10 4TG

Telephone: 1625233839

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

A framework applying a single, shorter, minimum period would allow greater flexibility for businesses to control the appropriate pace of consultation and redundancy implementation, tailoring this to their specific circumstances, and the scope and nature of the consultation required. It would not preclude agreement with representatives to work to longer timescales.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Multiple thresholds distract from the fundamental underlying principle: the statutory timeframe is designed to reflect a minimum period of consultation. It is open to employers to work to longer timescales if it is considered appropriate or if it is agreed with employee representatives.

In our experience, there is not necessarily any correlation between the number of proposed redundancies and the length of time it takes to conclude consultation.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Please see the response to question 4 below.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

It very much depends on the drafting of the definition. Examples are helpful and the Code of Practice should offer a suitable format to provide these. A geographical approach to identifying an establishment does not sit easily with AstraZeneca's structure, as it is run according to different business divisions across multiple locations. Difficulties arise when different business divisions propose redundancies across overlapping sites.

Disparate geographic sites can be aggregated as a result of the organisation and operation of the business, but it would also be helpful to clarify:

- when this is likely to be the case; and
- that one site can be split into more than one establishment

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

This issue can be dealt with adequately in clear and concise guidance. We also agree that a reduced statutory minimum period will reduce the risk that the expiry of fixed term contracts will be inadvertently "caught" where those expiries are not apt for collective consultation.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Question 7: What changes are needed to the existing Government guidance?

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

It would be helpful for the Code of Practice to focus on:

- a) how the consultation should be conducted in practice; and
- b) how and when to recognise that consultation is complete.

In particular, recognising that it is possible (and sometimes necessary) to close some consultation topics and move on to the next topic - in a phased approach - rather than consulting on everything throughout the entire consultation exercise.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

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Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

URN 12/808

1. Your name:

Biznus – Payroll Ltd - Hayley Whitten

2. What organisation do you represent (if any)?

Biznus Payroll Ltd

3. E-mail address:

hayley@biznuspayroll.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Micro business (up to 9 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

British Retail Consortium - Michelle Irving

2. What organisation do you represent (if any)?

British Retail Consortium

3. E-mail address:

michelle.irving@brc.org.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option:

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Michelle Irving [michelle.irving@brc.org.uk]
Sent: 19 September 2012 14:15
To: Collective Redundancies
Subject: BRC response
Attachments: Collective Redundancy Consultation - BRC response.doc

Please find attached the BRC's response to the consultation on collective redundancies.

Kind regards,
Michelle

Michelle Irving
Employment, Risk and Safety Policy Adviser
British Retail Consortium
020 7854 8952

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COLLECTIVE REDUNDANCIES: CONSULTATION ON CHANGES TO THE RULES

BRC RESPONSE

OVERVIEW

The British Retail Consortium (BRC) welcomes the opportunity to respond to the consultation on changes to the rules on collective redundancies. The BRC is very supportive of the Government's proposal to reduce the minimum time period before redundancies of 100 or more employees can take effect. We believe this we create a more flexible approach but will not prejudice fair or effective consultation.

ABOUT THE BRC

The BRC represents the whole range of retailers, from the large multiples and department stores through to independents, selling a wide selection of products through centre of town, out of town, rural and virtual stores. Membership includes the major multiples, a range of small and medium sized retailers plus various sector-specific and small business trade associations.

FULL RESPONSE

Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

The BRC is pleased that the Government has proposed changes to collective redundancy consultation rules which aim to reduce complexity, improve the quality of consultation and ensure it is fit for purpose for both employers and employees. This is one of the areas of employment law that our members have felt could be improved and simplified. We welcome the proposals to reduce the 90 day minimum period for large redundancies and to provide greater clarity to the process through a Code of Practice and improved guidance.

Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

The BRC believes that the minimum period before redundancies of 100 or more employees can take effect should be reduced to 30 days. We believe that having one time period for all collective redundancy consultations would be clearer for everyone involved, making the process of consultation easier and reducing the uncertainty caused by a longer period. We do not believe this change would prejudice fair or effective consultation.

Having a 30-day minimum period would not prevent employers from using a longer period where necessary to ensure a proper and thorough consultation, but it would allow for flexibility to adjust the time needed to the specific circumstances in each case. The BRC therefore also welcomes the

Government's plan to use guidance to reinforce the importance of meaningful consultation and highlight that the new time period will only be a minimum.

Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'? Please provide comments to support your answer. Will defining 'establishment' in a Code of Practice give sufficient clarity?

The BRC is satisfied that defining the concept of 'establishment' in a Code of Practice rather than through legislation will be sufficient, retaining the necessary flexibility while providing greater certainty for employers so they can be confident in their interpretation of what constitutes an 'establishment' in their business. Government guidance can be used to further support this, including using guiding examples to help employers with their interpretation.

Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

As retailers, our members need to have the flexibility of using fixed term workers to meet operational needs, particularly at peak trading times. BRC members have highlighted concern however around the interaction of fixed term contracts with collective redundancy law. Current collective consultation laws have a detrimental impact on the extent to which retailers can rely on fixed term workers due to a business not wanting to be in a position whereby it would be required to collectively consult every time a group of fixed term contracts were due to expire.

The BRC continues to believe therefore that the expiry of fixed term contracts should be excluded from the scope of collective consultation legislation. We believe that position would be compatible with the relevant EU Directive.

Have we got the balance right between what is for statute and what is contained in government guidance and a Code of Practice?

Generally the BRC supports the balance which is being proposed although we remain concerned about the issue of fixed-term workers as highlighted above.

What changes are needed to the existing government guidance?

We believe government guidance should be used to provide further clarity on certain aspects of the collective redundancy consultation rules which have been highlighted by our members as causing confusion or concerns about risk of breach. The BRC therefore welcomes the proposal to improve the current guidance and the comprehensive list of topics the Code of Practice will cover. The BRC would be happy to be involved in its development.

How can we ensure the Code of Practice helps deliver the necessary culture change?

BRC members already make an active effort to promote good working relationships within their organisations and always seek to undertake meaningful collective consultation when such a situation arises. This can be further supported by ensuring the Code of Practice and improved guidance is promoted effectively to both employers and employees. Trade associations, such as the BRC, can help achieve this.

Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

The Code of Practice and the improved guidance need to be clearly structured, accessible and effectively disseminated. It is also important that further clarification and advice is easily available if there are any remaining uncertainties regarding the consultation rules and their implementation, and that all relevant parties are aware of how and where they can access further support.

Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

The BRC believes the impacts of the proposed policies have been correctly identified.

If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

BRC members with experience of collective redundancy consultation have told us that the process can have an impact on various aspects of their business. This can include a negative impact on employee morale and day-to-day job performance due to the uncertainty caused by the consultation period and a negative impact on the ability of the business to plan and run its operation effectively during this time, as well as salary and other employment related costs.

BRC, September 2012

1. Your name:

BSA - The Business Services Association - Sarah Fetherston-Dilke

2. What organisation do you represent (if any)?

BSA - The Business Services Association

3. E-mail address:

sarah.fd@bsa-org.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Sarah Fetherston-Dilke [sarah.fd@bsa-org.com]
Sent: 19 September 2012 14:48
To: Collective Redundancies
Cc: Sarah Fetherston-Dilke; Gemma Norman
Subject: BSA RESPONSE - COLLECTIVE REDUNDANCIES CONSULTATION
Attachments: BSA RESPONSE - COLLECTIVE REDUNDANCIES CONSULTATION.pdf

Dear Mr Davies,

Please find attached the Business Services Association's response to BIS' consultation on collective redundancies.

I have also posted a copy.

Best wishes,

Sarah

Sarah Fetherston-Dilke
Public Affairs and Research Officer
BSA - The Business Services Association
130 Fleet Street
London EC4A 2BH

T: +44 (0)20 7822 7421
M: +44 (0)7900 975 473
W: www.bsa-org.com

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Carl Davies,
Labour Market Directorate,
Department for Business, Innovation and Skills,
3rd Floor, Abbey 2,
1 Victoria Street,
London.
SW1H 0ET

19th September, 2012

Dear *Mr. Davies,*

I am writing on behalf of BSA members in response to the consultation launched by the Department of Business, Innovation and Skills on changes to the rules of collective redundancies.

The BSA - The Business Services Association - is a policy and research organisation that brings together all those who are interested in delivering efficient, flexible and cost-effective services across the private and public sectors. We demonstrate how important the industry is to the UK economy and explain how it drives innovation, choice and diversity and, in so doing, increases productivity and pushes up standards.

BSA members are involved across a wide range of private and public service provision. A list of members has been included as an appendix. In all, research carried out by Oxford Economics shows the industry as a whole directly employs 10% of the workforce - some 3.1 million people - and has a turnover equivalent to 8% of economy-wide output.

The BSA welcomes the opportunity to submit views on the issue. Our response raises the following points:

- Shortening the redundancy consultancy timescale to a period of 30 days would allow for greater flexibility for businesses and benefit both employees and employers.
- Simplification of the system - by ensuring the timescale is consistent across all collective redundancies - will reduce the administrative and cost burden on businesses.

Reducing the 90-day minimum consultation period for large redundancies

The 90-day minimum consultation period benefits neither employer nor employee. Existing rules mean that employees are retained solely in order to comply with regulation; this can de-motivate the individuals involved, and create uncertainty, whilst limiting the flexibility of the employer to reach alternative and more acceptable outcomes. The 90 day period also places significant additional costs on business that could be better utilised in other alternative approaches.

The experience of BSA members demonstrates that employees and employers would often prefer to move more quickly. Employees have informed our member companies that the elongated consultation period 'prolongs the agony' of not reaching the final outcome.

There are other models available. For example, all parties could be able to consult and reach agreement as to the length of any consultation period internally, subject to a set maximum.

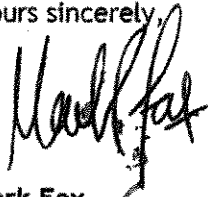
BSA - The Business Services Association
2nd Floor, 130 Fleet Street, London, EC4A 2BH
T: 020 7822 7420 W: www.bsa-org.com

Issuing a new, non-statutory Code of Practice and improving guidance

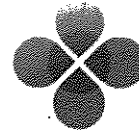
In principle, we welcome the introduction of improved guidance with an accompanying, non-statutory Code of Practice. Clarification and simplification of the regime, especially in relation to definitions, will be helpful to employers. We strongly support the aim of BIS to work with employers to ensure that the Code of Practice captures the right information. Any Code of Practice must not result in the creation of new regulations, as this important review makes clear.

Any new Code of Practice must be balanced in as much as it is aimed at all parties. Historically, Codes of Practice have been aimed at employers. We strongly support the Government's effort to clarify the process and ensure that it is fair in meeting the needs of employees and employers alike. This will help to reduce uncertainty which affects the confidence of investors, suppliers, customers, lenders and, importantly, employees.

Yours sincerely,



Mark Fox
Chief Executive
BSA - The Business Services Association



Appendix - List of BSA Members

Full Members:

Amey
ARAMARK
Babcock Infrastructure Services
Balfour Beatty Workplace
Berendsen
Capita
Carillion
ClearSprings
Compass Group
Elior UK
Enterprise
ETDE
G4S
Interserve
ISS UK
John Laing
Kier Services Ltd
Maximus Employment & Training UK
MITIE Group
Morrison Facilities Services Ltd
OCS Group UK Ltd
Pinnacle PSG
Prospects Services Ltd
Rentokil Initial
Serco
Sodexo
TerraQuest

Associate Members:

Barclays Commercial
Bevan Brittan
Deloitte
ECI
ERSA - Employment Related Services Association
Expert Patients Programme Community Interest Company
Grant Thornton
Harvey Nash
KPMG
Metzger
Navigant Consulting
Nicholas Moore
PA Consulting
Pinsent Masons
PricewaterhouseCoopers UK
Reynolds Porter Chamberlain LLP
Royal Bank of Scotland
Serco Institute
Trowers & Hamlins
WH Ireland

1. Your name:

Car Shops Ltd - Nikki Finn

2. What organisation do you represent (if any)?

Car Shops Ltd

3. E-mail address:

nikki.finn@carshop.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - The timeframe is still a minimum so longer consultations are possible.

Line2 - Uncertainty for 30 days is sufficient time with regards morale and productivity.

Line3 - Uncertainty for 30 days is sufficient time with regards admin burden for the employer.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - The meaning of establishment has some legal tests but no real definition.

Line2 - The ET EAT and ECJ have differing rules so it can be confusing.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Not sure

12. Please provide comments to support your answer.

Line1 - I am not sufficiently knowledgeable to provide an answer

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - I am not sufficiently knowledgeable to provide an answer

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - I am not sufficiently knowledgeable to provide an answer

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

Line1 - I am not sufficiently knowledgeable to provide an answer

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - 36 days

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - Lower productivity from staff

Line2 - Poor morale

Line3 - Poor morale for remaining staff after redundancies

1. Your name:

CBI - Pippa Morgan

2. What organisation do you represent (if any)?

CBI

3. E-mail address:

Pippa.Morgan@cbi.org.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Cinesite Ltd - Anna Privett

2. What organisation do you represent (if any)?

Cinesite Ltd

3. E-mail address:

anna@cinesite.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

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No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

CIPD - Genevieve Bach

2. What organisation do you represent (if any)?

CIPD

3. E-mail address:

G.Bach@cipd.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

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No Response

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No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Genevieve Bach [G.Bach@cipd.co.uk]
Sent: 19 September 2012 15:23
To: Collective Redundancies
Cc: Mike Emmott
Subject: CIPD response to collective redundancies consultation
Attachments: CIPD response to BIS on collective redundancy changes to the rules.pdf; Sept 2012 Collective Consultation-Comments collated from Manchester Branch members (2).doc

Dear Carl

Please find attached the Chartered Institute of Personnel and Development (CIPD)'s response to the Department's consultation on collective redundancies – as well as some feedback from one of our regional branches in Manchester.

Please let me know if there is anything you need from me.

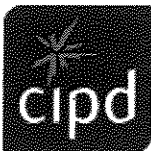
Kind regards

Genevieve Bach

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 Transform your organisation with expert HR advice
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[6-8 Nov - find out more](#)

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Collective redundancy: Consultation on changes to the rules

Submission to the Department for Business, Innovation and Skills

Chartered Institute of Personnel and Development (CIPD)

September 2012

Background

1. The CIPD is the leading independent voice on workplace performance and skills. Our primary purpose is to improve the standard of people management and development across the economy and help our individual members do a better job for themselves and their organisations.
 2. Public policy at the CIPD exists to inform and shape debate, government policy and legislation in order to enable higher performance at work and better pathways into work for those seeking employment. Our views are informed by evidence from 135,000 members responsible for the recruitment, management and development of a large proportion of the UK workforce.
 3. Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level. We draw on our extensive research and the expertise and experience of our members on the front-line to highlight and promote new and best practice and produce practical guidance for the benefit of employers, employees and policy makers.
-

General comments

4. In the Department's previous consultation on collective redundancy consultation periods, **we supported the proposal of a minimum consultation time period of 30 days in relation to all redundancies affecting 20 or more employees.** We supported this in the interests of maintaining flexibility and employers' ability to manage redundancies in a way that was appropriate to their organisation.
5. In responding to this consultation, we sought feedback from our members across the regions, who have practical experience of dealing with collective redundancies in an organisational context. We have incorporated their feedback, as appropriate, below.

We now turn to address specific questions in the consultation document. We have limited our responses to areas where our evidence base is strongest.

Question 2: 30 days or 45 days: Which of the two proposed options should replace the 90-day minimum period?

6. As previously indicated, we believe that the minimum period of consultation for 100+ redundancies should be reduced to 30 days. This should enhance flexibility in responding to business circumstances while maintaining reasonable statutory protection for employees. **A reduction to 45 days for 100+ redundancies would continue the complexity of different thresholds, with the associated manoeuvring of dates and numbers by employers.**
7. The consultation paper makes clear the aim to reduce employee uncertainty, which is at its peak when issues of employee selection remain to be addressed. Whilst the current 90 days does not preclude selection processes from being carried out before the expiry of the 90 days, it can postpone the onset of the process and raise potential issues of whether there has been genuine consultation.
8. However, some members continue to think that minimal change is needed to existing legislation:
 - **Changing the statutory period would have negligible impact as part of an economic growth strategy.** Smaller companies (SMEs and even some a little larger than the definition) might need a shorter period though, as their cash flow may need urgent attention lest there should be sudden administration or bankruptcy: perhaps this should be demonstrable and then a shorter period could be triggered?
 - I think there is scope for an agreement to shorten consultation process when reductions are to be made only on a voluntary basis and to allow volunteers in mixed processes to go before the overall consultation process is completed if they so wish.
 - **The one situation where it is preferable to shorten the time limit is when there are a large number of voluntary redundancies.** In this situation, both parties would benefit from a speedier process. I have always found a unionised environment to be beneficial to the consultation process. Managers are more likely in this instance to seek HR support and to follow best practice. My previous employer always offered support to those at risk by giving time off

with permission to seek alternative employment, and in many cases workshops on writing CVs etc.

- One member with experience of working in a large public sector organisation found the 90 day period was fully utilised when it was necessary to close 5 residential homes including moving the residents to other homes, and moving/losing staff to coincide with the requisite staffing levels in the proposed times. In reality this took the best part of 12 months. However this kind of situation is likely to occur infrequently, and raises issues not directly connected with the employment relationship.

How long does it takes to reach an agreement through collective redundancy consultation?

9. The amount of time needed for consultation will depend on various factors, such as the need to elect representatives (if applicable); the make-up of the affected workforce (types of job, working patterns, etc.) and the consequences for representation; the number of unions involved; the availability of representatives for meetings (particularly if full-time officials are involved); the extent to which matters such as selection criteria and redundancy pay (in excess of statutory) need to be discussed; and the scope for reducing the numbers of people to be made redundant.
10. The timescale also depends on whether there is genuine consultation by the employer on the rationale for the redundancies or whether, in effect, it is a *fait accompli*. Consultation may not in practice take place 'in good time', when the employer is 'proposing' the redundancies, but only when plans have been completed.
11. **Experience in the public sector is that it usually takes the current 90 days and sometimes more.** This is likely to reflect the fact that this is currently the required statutory period and public sector unions will seek to make full use of it. Where consultation has been concluded in less than 90 days, unions may regard the 90 day period as legitimising "an addition to severance pay".

What factors push consultation to extend beyond the statutory requirement?

12. It is unusual for consultation to take longer than 90 days. The problem for employers is that consultation may be effectively concluded well before this date. Although employees can be given notice after consultation is completed, and before the expiry of the 90-day period, the dismissals cannot take effect earlier. And employees who have the option of taking pay in lieu of notice would prefer to do so rather than 'work' their notice in the knowledge that they are probably not required.
13. However, the consultation process can be prolonged where there is an understanding that everything will be done to avoid compulsory redundancy and redeployment or voluntary severance is being sought.
14. Other member comments on this issue include:
- **3 months is a long time if a decision can be made sooner.** It really drags it out for affected employees, and can stop the business progressing.
 - **Time wasting by employee representatives can prolong the process,** as can organising individual consultation if large numbers of people are involved, and difficulties with the selection process or hearing appeals.
 - Line-managers should develop sensible selection procedures.

In what circumstances does consultation come to an end sooner?

15. This can occur:

- if compulsory redundancies have been avoided
- when there is rapid agreement on the main terms of redundancy - ie package, numbers and skills to be reduced
- when staff see the need is obvious
- if everyone is in agreement that no further consultation is required.

Is there ever a scope for agreeing a 'timetable' with trade union representatives?

16. Members suggest it is good practice to agree a timetable with trade unions and that this is key to achieving the objectives of all concerned. It is common to agree on a timetable with representatives, subject to consultation proceeding smoothly. Representatives are often realistic enough, especially if a site closure is involved, to

know that they cannot prevent the redundancies. So their aims are focused on ameliorating the consequences, perhaps by negotiating enhancements to redundancy payments or by maximising the opportunities for voluntary redundancy.

Does union consultation take a longer or shorter time than non-union consultation, and what happens if no agreement is reached with union or other representatives?

17. **Formal union consultation involving full-time officials may take longer than non-union consultation**, partly owing to diary commitments and partly because union officials will push harder for concessions from the company. But union consultation is usually more structured and the representatives are often better able to cope with the process than non-union reps who have been elected solely for the purposes of the consultation exercise.
18. From limited practical experience of non-union consultation which ran alongside union consultation, one member commented that this took a shorter time.
19. If no agreement is reached by the end of the statutory period, provided that a genuine attempt has been made, the employer may conclude that consultation has run its course and move on with implementing the redundancies. However this may risk a complaint to an employment tribunal for failure to consult adequately, or even the threat of industrial action.

Do employees seek alternative employment early on in the consultation process or do they hold out for redundancy pay before looking for a new job?

20. The more marketable employees tend to start looking early for alternative employment, which may mean the employer losing the best people. Some may seek employment but also hold out for redundancy pay.
21. During the consultation process employees will typically seek to keep all options open. So they may seek alternative employment while still hoping to retain their jobs. Whether they 'jump ship' will depend on factors such as the amount of redundancy pay they may forfeit; the perceived ease of finding another job if they hang on for a redundancy payment; etc. Employers may offer retention bonuses in circumstances where it is necessary to keep some or all of the employees working

for an extended period after announcing and consulting on redundancies (for example, if production is to be transferred to another site).

Comments collated from Manchester Branch members: Collective redundancies: Consultation on changes to the rules

The CIPD will be responding and would appreciate help from members (whether individually or collectively from the branch) on the likely impact of the proposed policies (para 5.4 of the consultation paper). We are especially interested in member views and experiences of:

- 1. Exactly how long it takes to reach an agreement through collective redundancy consultation: What factors push consultation to extend *beyond* the statutory requirement? In what circumstances does consultation come to an end *sooner*?**

From HR Director – international eco technology company with 750 employees

So dependent upon circumstances – the particular union, the particular union representatives, the employee relations culture, the existing levels of trust, the economic situation of the company – how urgent is the cost cutting, the availability of jobs in the area – are there lots of employees who would like to 'take the money and run'. Good employee relations, experienced union representatives and high trust with a clear economic need will speed the process.

From HR Adviser providing telephone advice for multiple cases in organisations of all sizes

In my experience the factors that tend to impact are the sheer logistics of getting everyone together i.e. TU or employee reps and how they disseminate the information to the affected staff. The main issue here is where employees are on leave i.e. sick leave, maternity leave, annual leave. Those on sick/maternity also have to be treated cautiously so this can also extend the process, especially if they try to delay consultation as an employer may be seen as unreasonable should they try to enforce the consultation. Employers have to almost bend over backwards to accommodate their needs, for example, several opportunities to attend consultation, mutually convenient locations, options of written submissions. This can be extremely time consuming. In terms of ending consultation sooner, obviously I wouldn't advise a lesser period than the statutory requirement. However, on cases where there are less than 20 potential redundancies and only a meaningful consultation is required, I find this can be concluded fairly swiftly when the employer has planned clearly, has a strong business rationale and it is a genuine redundancy so the employees tend to be more accepting of the situation.

View of Senior HR Business Partner in an leading plc

On the 90 day consultation issue:

- a) It's worth questioning whether the full period is necessary, and whether the aim of allowing employees and their representatives to discuss the Company's proposals, question them, and make alternative proposals could not be met in a shorter period;
- b) A 90-day period causes significant disruption to business. Companies in real financial difficulty might go under because of the time taken to consult.
- c) The consultation period is also a very difficult and uncertain time for employees. A shorter period would end the uncertainty earlier and give them more clarity for the future.
- d) The definition of "establishment" has caused endless legal and employee relations issues, as the recent Woolworth's case shows.
- e) Organisations should not be able to get away without collective consultation where there are multiple "establishments" with less than 20 employees. Equally, employees and their

representatives should not win significant damages - well in excess of redundancy pay in some cases - for purely technical breaches of complex legislation.

- f) Any definition of "establishment" should be based on principles of reasonableness and common sense. On that basis, the "establishment" in the Woolworth's case would be "all of Woolworth's"
- g) It may also help if the role of the representative had some practical ACAS guidance to affirm the responsibility of the role of the rep in meaningful and constructive two way consultation with the employer, rather than an adversarial role than can sometimes arise and can lead to jeopardising the concept of a "view to reaching agreement".

2. Is there ever a scope for agreeing a 'timetable' with trade union representatives? Does union consultation take a longer or shorter time than non-union consultation, and what happens if no agreement is reached with union or other representatives?

From an NHS HR Manager

My experience is by discussing the consultation proposals with trade unions in advance of the wider staff group, they can input at an early stage and can then play a fuller and more helpful part in the full consultation. I have not found that this has caused delay to proceedings

From HR Director – international eco technology company with 750 employees

As consultation is with a view to reaching agreement including about measures to avoid redundancies I would be nervous about trying to get a union to agree a consultation timetable – it seems like taking their ultimate agreement for granted. Union representatives (reasonable? experienced?) can be useful for consultation in these circumstances – sometimes one off elected representatives are too nervous to agree anything. If numbers are small though probably quicker without a union in my own experience. If no agreement guess you have to force it through – can't remember personally actually being in this situation with a recognised union – always got there in the end.

From HR Adviser providing telephone advice for multiple cases in organisations of all sizes

I agree a timetable should be in place and as above, careful planning is key to a successful process so I always think key dates timelines work i.e dates by which the employee must challenge selection criteria, apply for alternative roles etc. however, you always need to be mindful of individual circumstances. Non-union consultation is always easier as in my experience, TU reps (not to generalise) may impose their own views rather than act in the best interests of the employees.

Example of a case from an HR Consultant advising a Senior HR Team in a public sector organisation.

The organisation had a Managing Change Policy which required them to consult with staff side representatives in any redundancy situation, not just in cases triggering the legal requirement to do so. In this case we were looking at a staff group of 80 with 12 possible redundancies across two sites in one establishment. Friendly trust based discussions took place with staff side before any group consultation meetings with employees. Consultation timescales were agreed in discussion with staff side to take account of a desire 'not to prolong the period of uncertainty' while giving time for staff to think about the issues, ask questions and receive responses, and provide suggestions which may impact on the final structure and HR process of change. Practical issues such as holiday periods

impacting on communication and dates of notification for a regional schemes of voluntary redundancy, were taken into account. In the end a period of 3.5 weeks over a four week period was decided upon, with weekly briefings on each site. The tight timescales meant that management was under pressure to get things done e.g. responding to queries and meeting to consider suggestions and union views etc but the use of an external consultant helped to make this possible.

Towards the end a regional union official became involved as one of his local reps had not been involved as a result of miscommunication between reps. It was clear that the regional rep needed to show some authority and sent a formal letter asking for an extension. Speedy face to face discussions between senior management and staff side kept things on track but this shows how things can go wrong, with a full time staff side official concerned about their power base.

- 3. How employees behave during the consultation process – do they seek alternative employment early on in the process or do they hold out for redundancy pay before looking for a new job? How is this affected by local unemployment rates – do employees in areas with high local unemployment want to leave early to pick up available vacancies, or later so as to benefit for staying longer on the payroll, and how do employers seek to manage such impacts?**

From NHS HR Manager

Generally employees hold out. In the NHS every attempt is made to redeploy staff within the organisation in the first instance. Generally staff do engage with this process when they are informed that the posts being offered to them are reasonable alternatives to redundancy.

From HR Director – international eco technology company with 750 employees

Employees who can find jobs want to accelerate the process and are frustrated at any delay! Obviously this can bring them in to conflict with colleagues and union representatives. In my experience we have focused on the agreement with the union representatives – a few disgruntled individuals with jobs wanting their money has been seen as of less importance – they get sympathy and not much else until some agreement is progressed with the union. I have found myself in a situation in manufacturing with large numbers on big sites where we have agreed a voluntary approach and had too many volunteers – so we have had to agree a selection process and had many disgruntled people threatening to sue us for “unfair non-dismissal”!

From HR Adviser providing telephone advice for multiple cases in organisations of all sizes

I think the majority of employees will hold out for their redundancy and rarely leave early. In my experience, some employees (again, apologies for the generalisation) are too lazy to look for alternative work until it is forced upon them. I believe effective outplacement support could assist and employers who are willing to be flexible about redundancy payments and incentive packages would combat this.

Example of a case from an HR Consultant advising a Senior HR Team in a public sector organisation.

In one redundancy consultation meeting an individual asked about their situation if they decided to set up in business which is an interesting point to consider in an economy with lower job vacancies and an agenda to promote enterprise. The organisation has a precedent of being willing to discuss earlier notice without loss of redundancy pay if staff get a job elsewhere, but how did this apply to setting up in business? To be entitled to leave early without loss of payment we indicated that they would need to show that they had registered as self employed. They obviously did not want to be offered suitable alternative employment and lose their redundancy payment if going ahead with a new business. In reality the available vacancies were very few in this organisation and the individual was able to tell us openly that were not really ready to set up so they decided to stay on and use the time to research their business idea, with support of their manager.

In terms of staff jumping ship, it is interesting to note the impact of uncertainty on staff not directly impacted by redundancies but working in an area where there is a lot of change. There was one area in the structure where there were no redundancies but the future was uncertain in view of a possible merger with another organisation in future. Management did not discuss this issue but it was an elephant in the room. The team was change fatigued and in the absence of clear future plans for their area, the manager and several of their staff went and found jobs elsewhere, even though their area was not directly affected by redundancies.

In another case, a displaced fixed term staff member was not eligible for a redundancy payment but did have redeployment rights during their notice period. They resigned saying they only wanted to work in the particular discipline in which their role was redundant.

Staff career agendas and attitude to uncertainty can clearly have an impact on their decisions when restructures and redundancies take place.

View of Lecturer in HR who is undertaking a relevant Phd: A Case Study of Employment Relationships in a Redundancy Context.

It is difficult to generalise about EE's behaviour during the consultation process. However, I would suggest that employees do not suddenly change their behaviour drastically overnight. Therefore, if they have demonstrated behaviours associated with commitment and engagement prior to the consultation process I would argue that it is possible (though not necessarily easy) to sustain these positive employment relationships through the consultation process.

In my research, the case study organisation adopted a very robust approach to consultation with both collective consultation and 3 individual consultation meetings held over a one month period. I observed consultation meetings at each of the three stages and noted the uncertainty expressed by employees and the quest for answers which were not always possible during this process. The case study organisation in question sought to address this uncertainty by providing clarity where possible and honesty where uncertainty was unavoidable. Employees appeared to understand and accept this but ultimately wanted to know the financial implications of redundancy for them and their likely exit date. Once they had this clarity, they were able to plan and after this point, behaviours tended to settle down.

In my case study organisation, each employee was given a date when their role stopped and then at least three months in outplacement for job searching before leaving on their exit date. Those who left the organisation before their job stop date were not eligible for severance - they were treated as voluntary leavers because they left before their roles were redundant. This limited the numbers of

employees who left before the organisation wanted them to leave although there was some flexibility with this in extenuating circumstances. Some employees did leave just after the announcement of redundancy and those I spoke to were concerned about the career implications of redundancy.

My research spans 2008-2010 and so labour market concerns became more noticeable with employees whose exit dates were in 2010. These employees would have willingly stayed longer, were very concerned about their future employment prospects due to the economic climate and frequently bemoaned a lack of vacancies compared with 12 months previously. They also recognised that they became less particular about the subsequent roles they would apply for - having a job seemed more important than trying to find a comparable role.

In the case of this organisation, the redundant workers expressed very positive views about how the redundancy process was managed. The consultation process did not particularly feature - it was expected that this would be legally compliant and it was, but this was not cited as a key factor in their positive perceptions of the process. This suggests to me a need to view the consultation process in context as a feature of the redundancy process which is important but may benefit from being integrated with the whole redundancy process.

1. Your name:

Phil Griffiths

2. What organisation do you represent (if any)?

Connect

3. E-mail address:

phil@theconnectprogramme.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Micro business (up to 9 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

EEF - Tim Thomas

2. What organisation do you represent (if any)?

EEF

3. E-mail address:

tthomas@eef.org.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No

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No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Tim Thomas [TThomas@eef.org.uk]
Sent: 18 September 2012 08:27
To: Collective Redundancies
Cc: Verity O'Keefe; Mark Swift
Subject: EEF response
Attachments: COL RED FINAL 180912.docx; COL RED Consultation overview FINAL.docx

Dear Sirs,

I have attached EEF's response to this consultation and would be grateful if you would confirm receipt.

Kind regards

Tim Thomas, Solicitor
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EEF, the manufacturers' organisation
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transform
awards 2011

Gold award: Best Rebrand by Sector - Manufacturing
Bronze award: Best Implementation of a Rebrand



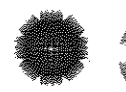
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083



Approved
Centre



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081

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Question 1

Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes but with some reservations.

Comments:

EEF agrees with the general approach of providing a straightforward legislative framework which supports good working relationships between employers and workers. We would add that the legislative framework must also provide flexibility in the interests of all parties. Below, we have highlighted some of the current difficulties caused by an over-rigid process which fails to work in the interests of either side, for example where it is in the interests of the employee to conclude the consultation process before the statutory time limit has expired.

Government intervention should take place only where it will not restrict the ability of the parties to reach agreement themselves.

EEF would wish to see some of the issues which are proposed to be dealt with in the non-statutory code dealt with with more certainty and more robustness. Relegating some of the more difficult issues to the code will not improve the quality of consultation or provide greater clarity. EEF is therefore willing to participate in the development of the guidance and with the provision of case studies. The status of the code of practice is unclear, but given its description as non-statutory, this suggests that the code will provide guidance but little additional certainty for employers that by following it, they will not face legal claims. Guidance is already provided, for example by Acas, and care should be taken to ensure that any guidance produced by Government does not complicate, confuse or contradict what Acas already provides.

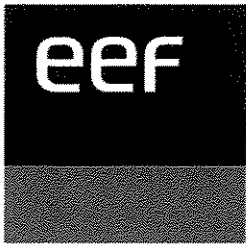
Question 2

Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

EEF favours a reduction in the 90-day minimum period to 30 days. In discussions with our members, we found no support for reducing the minimum consultation period to 45 days, with all believing that 30 days was sufficient and appropriate.

Comments:

It is important to bear in mind that if the period is reduced to 30 days, this would be the minimum, and that consultation could continue beyond this point. Reducing the current period to 30 days will



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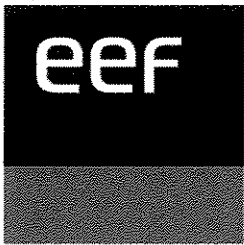
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mitigate (but not extinguish) the negative impact of many of the current difficulties which the 90 period causes. It is important to bear in mind that a statutory consultation period leaves a range of other matters, such as individual consultation, to be concluded. This inevitably means that the total period for consultation is longer than the minimum required. A reduction to 45 days would not in our view mitigate the negative impact sufficiently for employers. We have set out below the common difficulties which a reduction to 30 days would assist with and why we believe that 30 days is an appropriate period.

- In France where 250 redundancies or more are proposed, the minimum requirement is that two meetings take place at least 28 days apart. This supports the argument and confirms the experience of EEF members that even large-scale redundancies can be consulted upon within 30 days.
- For consultations currently taking 30 days, EEF members find that in most cases all issues are quickly dealt with, for example where there is no selection, or where it is clear that there is a policy about severance packages. The statutory consultation period should not be regarded as a fixed period by which employment can be extended but should be fixed with reference to the time which is generally required to meaningfully consult. We therefore support the view expressed in the consultation that a consultation period should not be regarded as a period during which an employee may seek alternative employment, which is the purpose of a notice period. During their notice period, the employer remains under a duty to look for alternative employment for employees.
- Employers and workers should be able to move forward once continuing with consultation becomes an empty exercise. The experience of EEF members is that this generally occurs after 30 days.
- We have not found any evidence in discussions with our members or whilst providing advice to them that the quality of consultation is better or outcomes improved where there is a 90 day consultation period. Quality and outcomes can be achieved within 30 days.
- We have above indicated that a reduction in the consultation period will mitigate some of the negative effects of the current law. Having one shorter period will have a knock on effect, as there will be fewer occasions when companies will have to grapple with complications in the law about the definition of an establishment, of the treatment of fixed term contracts and whether separate batches of redundancies should be counted together.
- Unfair dismissal law provides an additional safeguard following a consultation period, as it requires employers to keep a redundancy decision under review during notice periods.
- Where redundancies result from a site closure or the loss of a particular contract or series of contracts, the topics for discussion are usually very limited, primarily around the severance package. Even larger scale redundancies can then be concluded within 30 days.
- A longer consultation requirement at times works against companies trying to preserve employment and to the detriment of employees. Longer consultation periods mean larger

wage bills and greater overheads. Employers entering a collective consultation are frequently experiencing economic difficulties, which are exacerbated by delay and result in increased costs. Manufacturers in particular often have very short order books, in some cases as little as 4 weeks. The events of 2007, where some EEF members saw rapid and unexpected falls in their orders, necessitated immediate changes to preserve the business. Employers therefore need the flexibility to make redundancies quickly to preserve the remainder of the workforce. A shorter period would reduce costs and in some situations would enable employers to retain more employees. The shortest potential period consistent with European law is 30 days.

- In recent years, and again currently, many businesses are reacting to large fluctuations in their economic prospects and may be continually reviewing their performance and workforce requirements. EEF members have experience of repeated rounds of collective redundancies, in some cases lasting almost a year, where either local or off-shore decisions are made in response to fast moving economic circumstances. Some members have little option but to engage in a perpetual round of consultation where there is uncertainty in the business and the current inflexibility of the law prevents them from consulting for a period shorter than 90 days. This leads to a prolonged period of uncertainty for employers and workers alike. Greater flexibility is needed in such circumstances and a reduction to 45 days may still result in employers continuing with constant/repeated consultation.
- Reducing the size of their workforce quickly and early can result in a stronger business which preserves employment for the remainder. The Agency Workers Regulations have resulted in some businesses employing workers where previously they would have engaged agency staff. The abolition of the default retirement age has further eroded workforce visibility and flexibility of employers. This has created an additional need to implement redundancies quickly as businesses are now less able to reduce their headcounts speedily by reducing the numbers of agency workers engaged.
- 90 days is longer than is required given the speed of modern electronic communications. Employees and representatives can now be updated quickly, employers can often respond to questions without delay and employees can be informed of job vacancies instantly. This is one of the reasons why EEF members find that consultations can be properly concluded within 30 days.
- In order not to undermine collective consultation, individual consultation is usually delayed until towards the end or after the end of collective consultation. With a 45-day consultation period, employees would have to wait at least six weeks to have a discussion with management about the implications of the redundancy for them personally – this is too long a delay. Many individuals by this time will already be aware of the detail of the selection procedure and will have in their own minds assessed whether they are likely to be at risk of redundancy or not. A longer time period leads to uncertainty for all employees, including those who will remain with the business. Employees themselves start looking for jobs as soon as consultation begins, not when the notice period begins. A 30-day consultation period will help address this uncertainty.
- Some large companies may currently be tempted to adjust the impact of redundancies in order to fall within the 30-day minimum period (i.e. breaking up redundancies); whilst



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exceptional this may occur. Employers may have critical financial reasons to make redundancies and need to get straight into discussion and decisions. A 30-day period will obviate the need for such unnecessary behaviour.

- When a 90-day consultation period is in place, businesses often space out meetings, which is inefficient and unnecessary. It is far preferable for employers and workers to determine their positions in a shorter period wherever possible. Employers find themselves consulting for the sake of consulting.

Question 3

Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'? Please provide comments to support your answer.

No.

Comments:

There is little to be gained from the approach which is proposed in the consultation. If, as the consultation states, a definition is difficult to frame, then a code of practice will presumably come up against the same difficulties and fail to provide any additional certainty. What employers need is greater certainty.

A non-statutory code will have no legal standing and will provide little improvement on the current position. This is perhaps an occasion when Government should adopt a more robust stance in promulgating the relevant factors and providing fact-specific guidance in a statutory code of practice. We would also advocate the inclusion of case studies dealing with the more difficult and complex areas. Providing that employers took a reasoned approach this should prevent employers' decisions from being subsequently scrutinised and unpicked.

Question 4

Will defining 'establishment' in a Code of Practice give sufficient clarity?

No.

Comments:

In addition to having clear rules on what factors are relevant, employers should be able to decide what constitutes an establishment, provided it is reasonable for them to have come to that conclusion in the circumstances and even though another employer or the representatives might have come to a different conclusion. Employers should not fear that a balanced and reasonable view will be overturned, particularly given the threat of a protective award. Provided the view of the employer is within a reasonable range, then a Tribunal should not subsequently embark on a detailed analysis.

EEF advisers are often find it difficult to give definitive advice on what an establishment is, in particular given inconsistent decisions, both from domestic and European courts. This is made more difficult by *Athinaiki*. Cases are very fact sensitive and different courts come up with different responses. It is therefore difficult to see how a non-statutory code of practice will improve matters without simply restating the current position.

As lawyers cannot always advise with certainty in this area, it is inevitably difficult for employers to know what constitutes an establishment. This causes problems particularly where redundancies are proposed in different locations at different times within a 90-day period. Government could provide clarity, but in order to do so employers would need to be provided with certainty which non-statutory guidance is unlikely to provide.



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The complications of the definition of an establishment are exacerbated by the wide definition of redundancy, so that an employer would need to aggregate any fixed term workers (with more than 3 month contracts) whose contracts are not being renewed, any employees whose contracts are going to be terminated with an offer of reengagement to impose a new contractual term, as well as employees who are being made redundant in the 'traditional' sense. We have commented in greater detail on the treatment of fixed term workers below.

This uncertainty works against the interests of employees, where owing to the timing of decisions in different parts of an organisation, consultation periods may become lengthened and protracted when the future of the business and its employees may need a speedier decision. Reducing the consultation period from 90 to 30 days will mitigate this but the problem of successive, repeated consultations (with the attendant employer and employee uncertainty) will remain without a change in approach to the definition of establishment

Given the case law on 'establishment', there is often more than one possible interpretation of what amounts to an establishment and employers have to make a judgement on whether a tribunal would agree with their interpretation. They often take a more cautious approach than might be necessary, which can have a big impact on the cost, speed and efficiency of their proposal. The 'knock-on effect' is then felt by the employees of the company.

Given the above, we believe that Government should take a positive and robust approach, and clearly define in a statutory code of practice the factors an employer should take into account and give examples of how employers should apply them.

Question 5

Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

No

Comments:

Currently, employers might not know that they need to count the non-renewal of fixed term contracts of more than three months as redundancies or, where in the same establishment, a fixed-term contract has or is due to end in the same 90 day period. Clearly the uncertainty over what constitutes an "establishment" adds to this confusion.

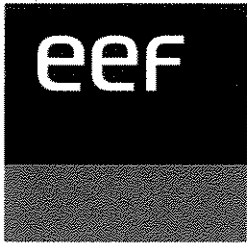
In addition, employees on fixed term contracts may be spread around a company. It can be difficult to get them to stand to be representatives and they may have a different perspective to other employees at risk of redundancy, which can make consultation with both groups difficult. By definition their period of service will be coming to an end and other employers may be unhappy to their inclusion.

As discussed, the complications of the definition of establishment are exacerbated by the wide definition of redundancy, so that an employer would need to aggregate any fixed term workers (with more than 3 month contracts) whose contracts are not being renewed, any employees whose contracts are going to be terminated with an offer of reengagement to impose a new contractual term, as well as employees who are being made redundant in the 'traditional' sense.

This leads to understandable mistakes, either in working out if trigger points have been reached or in identifying that collective consultation is required at all. In these circumstances, where there may have been a genuine oversight, we believe that the presumption should be against the making of a protective award.

Recently, an EEF member found that its order books could not support the number of workers employed, although it was possible that at some future point new work would remedy the situation. The company did not renew the contracts of 7 fixed term workers and laid off a number of others. Finding this insufficient, the company then needed to make 12 workers redundant. The difficulty in this situation is the unknown. If the level of work picked up, then the workers laid off would return. However, without any increase in orders, the workers laid off may elect to be made redundant. In these circumstances, the threshold of 20 redundancies within a 90-day period would be reached, engaging the TULRCA 1992. The difficulty the employer has is that he will not know if the Act is engaged at the time the fixed term workers leave his employment and the 12 workers are made redundant. He will only know if and when any of the workers who have laid off elect to be made redundant, by which time he will be unable to consult with the 19 former workers. This is clearly unsatisfactory, and needs to be resolved.

Given the complexity of the current position, there is a clear need to provide greater certainty for employers and workers and remove some of the unnecessary administration caused by the current regime. A non-statutory code will not resolve the situation described above. We therefore favour either legislation or a statutory code and would be willing to work with Government to produce this.



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Question 6

Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

Comments:

Employers are frequently more frustrated by uncertainty and constant rounds of change than by the burden of current legislation. Employers may not like legislative change, which can be burdensome and excessive, but it usually carries with it a high degree of certainty. Certainty provides a number of advantages, not least that employers are then able to more swiftly apply the law. This brings savings in terms of time and cost. Uncertainty increases the need for detailed professional advice at more regular intervals, and increases the time which employers need to spend on tasks which often do not ultimately contribute to the commercial performance of the business. Compliance is often simply a drag on a business, which Government should do all it can to reduce. Initiatives such as the Employment Law Review and the Red Tape Challenge are therefore welcomed. In the "Plan for Growth" published jointly by The Treasury and BIS in March 2011, Government acknowledged that it had not done enough to support businesses when introducing new regulations, and a non-statutory code will not address this failing.

Our response is therefore based on the premise that a non-statutory code will not significantly increase employer certainty, and that its status will be little more than guidance which is likely to be collected from information which is already available. This lack of status and the limited ability to rely on such a code will undermine it in the eyes of employers. We also doubt that such a document can remove the uncertainty which we have commented upon in this submission – the meaning of an "establishment", the treatment of fixed term contracts and certainty of knowing the point when consultation has ended and termination notices can be issued. The proposal in the consultation is therefore to provide guidance but not in reality clarity. Clarity could be provided either by legislation or by a statutory code providing employers with a safe space in which to operate. The difficult, thorny issues cannot adequately be addressed either by restating the current position or by summarising guidance which already exists.

We would in particular call upon Government to explore ways to reform the current rules on protective awards, which we have commented upon in detail at the end of our submission.

Question 7

What changes are needed to the existing Government guidance?

The need to provide greater employer certainty as to when consultation has finished:

Even where employers are of the view that consultation is genuinely exhausted, they are reluctant to take the chance given how large the liability can be if they are found to be incorrect in their belief. Representatives can bring one claim on behalf of all affected employees without the consent of those employees and with the potential knock on effect on the fairness of any dismissals. Employers therefore rarely take the position that consultation has finished without the agreement/co-operation of representatives. Indeed, it would be unusual for EEF's advisers to advise categorically that a tribunal would agree that an employer had acted lawfully if they did so. The disproportionate and punitive protective awards are such that employers would be unwise to draw a consultation to an end before the expiry of the statutory period.

Added to this, it is extremely unusual for representatives to reach final agreement or acknowledge that consultation has been exhausted before the end of the statutory minimum consultation period. There is little incentive for them to do this, since the effect on their constituents will almost always be the earlier issue of notices of termination of employment. Their constituents would therefore lose pay and benefits, and some may lose out on an increase in their notice period and redundancy payment where they are about to gain an extra year's service or pass a birthday. It can also be easy to extend a consultation discussion by continuing to ask different questions or raise different issues, leaving some for later in the process that could have been raised at the outset.

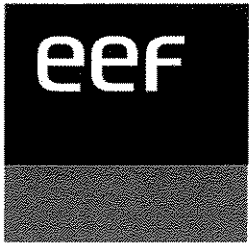
It is therefore very rare for an employer to be confident that redundancy notices can be issued before the consultation period has finished. In our consultations with member companies, we have not identified a single EEF member company that would issue a redundancy notice before the expiry of the consultation period. The issue of a notice during a consultation period is seen as evidence that an employer no longer intended meaningful discussions to take place and raises the prospect of a protective award.

This, however, works against the interests of some employees, who may have secured alternative employment and wish to leave with a redundancy payment. Greater guidance is therefore needed on when an employer may safely issue a redundancy notice and when a consultation can be considered to have ended.

We would add that in all but exceptional cases, the experience of EEF members is that the consultation process can be completed within 3 or 4 weeks and that meaningful discussion already takes place within this time frame.

Alternatives to redundancy:

Government may wish to promote alternatives to redundancy which some employers have successfully used to retain skilled workers and reduce the need for job losses. Short-time working, pay-freezes, reductions in benefits and changes to terms and conditions are all ways in which employers can reduce their costs and retain their workforce. EEF's 2011 report, *Flexibility in the Modern Manufacturing workplace* illustrates how EEF members have used flexible and innovative working arrangements to avoid job losses.



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Question 8

How can we ensure the Code of Practice helps deliver the necessary culture change?

Cultural change will require greater understanding of the position of the other party involved in a consultation and also greater flexibility in the framework. Any Code of Practice must give equal weight to the employer and the employee perspective. It is key that employees have realistic expectations and understand that their employer is permitted to make business-focussed decisions.

In discussions with our members, overwhelmingly the two issues which employees seek early clarity upon are when any redundancies will take effect and how much the individual will receive. The current structure is such that employers will not usually discuss this fearing that to do so will lead to accusations that consultation is not meaningful. Employees will sometimes find alternative employment during the consultation period, and then find that their employer is unwilling to terminate their employment during a consultation period leaving the employee losing out on their redundancy package. These are two examples where inflexibility leads to frustration on all sides.

The change needed is to empower employers and workers to discuss the matters which are important to them openly without fear of the subsequent repercussions of doing so. This will not be achieved as long as the current structure for protective awards remains in place as employers faced with the possibility of large, punitive financial awards will adopt a conservative approach sometimes to the frustration of their employees who want early certainty.

The cultural change sought will therefore require a number of elements. It includes certainty for employers to allow them to know when they can safely take pragmatic decisions. It requires transparency for employees allowing them to know at the start of the process how long it will last and what they will receive should they be made redundant. Finally, the quality of the consultation greatly depends on the quality of the representatives involved.

EEF members place great value on well-trained, experienced full time trade union officials. They can add value to the consultation process and a sense of realism and objectivity. EEF members have, however, been disappointed with what they see as the erosion in the quality and experience of trade union representatives in recent years. We believe that an improvement in the quality of trade union representation would positively impact upon the quality of redundancy consultations and permanent officials should be well trained and experienced as otherwise they might detract from the process. EEF members have experience of trade union officials being disengaged from the process, simply concentrating on the package on offer or failing to understand that the future employment security of their members requires a successful business, which may need to reduce its costs quickly. On other occasions, meetings have been delayed owing to the absence of the trade union official adding delay at a time when all sides need clarity.

We therefore see a role for a non-statutory code as a vehicle to promote effective practice, but this is not the appropriate way to attempt to clarify areas of legal uncertainty highlighted above, nor will it reduce the impact of potentially large protective awards.



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Question 9

Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes

Comments:

We have commented above on the need for employee representatives to be properly trained. We also see a role for Government to provide funding for training for elected representatives who may have little knowledge or experience of the redundancy process.

Question 10

Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

No

Comments:

There is also an acknowledged overlap between collective redundancy and TUPE. Whilst Government has indicated that it will consult on reform of TUPE later this year and published a call for evidence earlier this year, we believe that both areas should have been considered simultaneously and that to introduce changes to the collective redundancy arrangements in isolation/before TUPE has been fully considered will accelerate the need for TUPE to be reformed.

Overall, our observations above illustrate a certain lack of planning and inconsistency of current employment law reforms. The current proposal for a protected conversation will we believe prove to be unworkable for most employers and provide little additional certainty. However, the ability to have open conversations would be of value and potentially reduce the requirement to make redundancies at all. A protected conversation then, based on a more practical version of the current model being considered, would provide a better opportunity for a workplace discussion than a collective redundancy consultation. It would allow, for example, an employer to have a discussion with an employee about when proposed redundancies might take effect and how much they may be entitled. These are the kinds of questions which employees frequently asked and which many employers, fearful of the consequences, decline to answer at present.

Question 11

If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

In the experience of EEF as an employer and adviser, it is unusual for the consultation period to exceed the statutory minimum periods. Almost without exception, EEF members find the 90-day consultation period longer than necessary to carry out meaningful consultation and that agreement is either reached or could have been reached within 30 days. Where this does not currently happen, this is usually for extraneous reasons.

In 90 day consultation period, representatives can extend a consultation discussion by continuing to ask different questions or raise different issues, leaving some for later in the process, which could have been raised at the outset. Given the very wide objective of the consultation arrangements, (to avoid/reduce/mitigate the consequences of redundancies), representatives can propose a wide variety of potential measures some of which may be impractical but which lengthen the process.

Even where employers are of the view that consultation is genuinely exhausted, they are reluctant to take the chance given how large the liability can be if they are found to be incorrect in their belief. It is therefore very rare for an employer to be confident that redundancy notices can be issued before the minimum consultation period has finished.

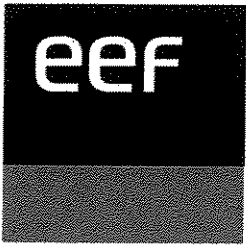
In all but exceptional cases, the experience of EEF members is that the consultation process can be completed within 3 or 4 weeks and that meaningful discussion already take place within this time frame.

Question 12

If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

EEF has as an employer has carried out a collective redundancy consultation and in our view, there are no advantages to employers to retaining a 90-day minimum consultation period which brings with it the following adverse consequences for a business,

- Employers making 100 redundancies in a 90-day period are inevitably facing hard times. The 90-day consultation period increases the pay bill dramatically, at the very time that they need to cut costs. This increased pay bill and other associated overheads can even result in the need for more redundancies in order to make the necessary cost savings. This is best mitigated by a reduction of the period to 30 days.
- Customer confidence (and therefore orders), the ability to get credit and competition from competitors can all be affected when redundancies are pending.
- The cost of a 90-day consultation period is compounded by the fact that, unless an employer can show that the consultation has been exhausted or agreement reached, the employer cannot give notice until the end of the 90-day period. In the manufacturing sector, it is fairly common for employees to have long service entitlements for more than the statutory notice. Once redundancies are proposed, employers may be liable for 6 months'



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salary/benefits plus a redundancy payment (which may include a contractual redundancy payment). The financial cost to a business which may already be struggling is therefore magnified.

- It may cost less for an employer to carry out no collective consultation at all than to carry out some consultation for a shorter period of time. Depending on the likely size of any awards which might be made against the employer for failing to comply with the consultation requirements, an employer may be faced with the situation where the costs incurred in complying with the consultation are greater than the awards which may be made against him. A reduction in the 90-day period to 30 days would address this.
- The 90-day period causes difficulties in retaining employees and keeping them motivated during the consultation period. EEF members experience a dip in productivity once consultation begins and can lose their most marketable, skilled and valuable employees before the end of the consultation period.
- The negative effects of a redundancy situation can last a long time after redundancies, sometimes known as 'survivor syndrome'. The longer the consultation period and period of uncertainty, the worse the impact upon the business, in part as it is not just those who are at risk of redundancy that must be consulted. Employees who are affected by "measures", for example by a change in job duties, must also be consulted. Working relationships often suffer and delays can be divisive for the workforce. One EEF member recalled how a company faced with making redundancies sought agreement from staff for short-time working. Those staff who had assessed that they were at risk of redundancy agreed, whereas those who had assessed that they were not at risk refused, worsening the position of the employer-company
- There are inevitably more meetings in a longer consultation period than a 30-day period, even though the issues covered are the same. Each meeting has a cost. For example, management needs to prepare and distribute material, arrange the meeting, spend time in the meeting, compile minutes, consider questions and prepare answers. Some companies also communicate what has been discussed with line managers and employees directly. The representatives also have to spend time preparing for the meeting, attending it, reporting back to constituents, gathering views and informing management of these views. Managers and representatives may need someone to cover their usual role whilst doing this. This all substantially increases the cost and burden to the business, potentially leading to a larger number of redundancies.
- One EEF member we spoke to recalled their experiences with collective redundancies. The company order books were falling and so decided to consult on redundancies, although they did not have a fixed number in mind. Skilled workers left during the consultation period, fearing for their jobs even though they would have been the ones the company would have retained. The company would have preferred to have sat down with those wanting to leave and looked at voluntary redundancy but uncertainty and fear took over as employees were left feeling on edge. This contributed to the ultimate failure of the company where the difficulties were temporary and orders likely to pick up. This is an example of where a protected conversation might have resulted in the business surviving.



Question 13: Any other comments:

The interaction of collective redundancy and TUPE

Where a business transfer takes place, redundancies may be required for many reasons. The transferee's business may be in a different location (and the transferring employees cannot be moved there under the terms of their contracts of employment) or there may be overstaffing (for example, a transferee already has employees to carry out some or all of the work that will transfer).

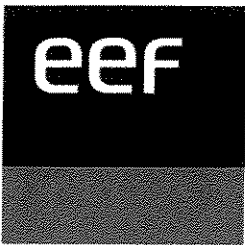
The interaction between TUPE and the collective redundancy consultation rules is unworkable. The transferor cannot affect these types of redundancies fairly under TUPE, since it cannot rely on the transferee's Economic, Technical or Organisational, (ETO) reason. Yet the transferee is not the employer until the date of the transfer and the transferor might not in any event allow the transferee access to the employees. The law is unclear as to whether any consultation pre-transfer by either the transferee or transferor can count as time towards a redundancy collective consultation as the business making the redundancies is not yet the employer.

Where there is a change of location on a transfer, the problem is particularly acute and the transferee in an impossible position. The incoming employer cannot keep the employees at the old location once the transfer has happened – the premises may be owned by the transferor or a lease might be in the name of the transferor. Any consultation after the transfer will be spurious since the change of location has already taken place. Reducing the consultation period and granting the transferee a right (but not a duty) to consult the transferor's employees before the date of transfer will mitigate the difficulties caused in these circumstances. A transferor might be required to permit the transferee access to its premises for this purpose and could be faced with sharing liability with the transferee if it chooses not to cooperate.

The current state of the law also causes practical and legal problems where, as a result of the transfer, the transferee does not have work for all the transferring employees. What does it do with the 'extra' employees on transfer during the consultation period? Does it send the transferring employees home but continue to pay them, bring them in or find a different job for them to do temporarily? Should the transferee pick some of its existing employees to send home? How does it choose who does the jobs that are there are to do? What does this mean for the effectiveness and genuineness of consultation? How do the transferring employees themselves feel, since they are left in limbo for a long period? These are all issues which illustrate the interconnection of collective redundancy and TUPE.

The transferor may be unwilling to allow time off to organise elections for representatives and it is unclear how the redundancy consultation fits with TUPE consultation. Not all transferring employees may be at risk of redundancy, so the consultations cannot necessarily be run together. The transferee may also have had to begin consultation with its own employees about TUPE and redundancies before the transfer, so there may be two sets of employees at different points and locations to be consulted. Continuity can also be lost post-transfer, since the representatives may need to change, if for instance the transferor recognises a union but the transferee does not.

The above illustrates the complexity of the two sets of regulations but also the need for both TUPE and collective redundancy to be considered together. The redundancy collective consultation legislation needs to be amended to remove the difficulties identified. We think the best way to do



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this is to remove the need to consult collectively on the redundancies completely when the redundancies need to happen soon after the transfer date, on the basis that employees will be consulted by virtue of the TUPE regulations. If that does not happen, then it should be made clear that a more streamlined consultation before the transfer run possibly in tandem with the transferee, is valid. If the transferor will not co-operate, then the transferee should not be liable for a breach of the redundancy collective consultation rules.

Protective awards:

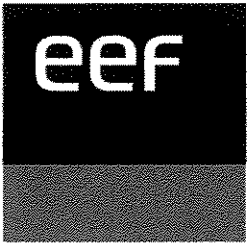
The concept and operation of protective awards has not been included in the consultation to any significant extent and requires separate consideration. It is a mechanism which is not required by directive 98/59/EC and in our response to the call for evidence earlier this year we highlighted the need for change. We repeat this again, as the benefit of any reduction in the 90-day period will be limited without reform of the protective award structure.

The directive referred to above requires member states to have judicial and/or administrative procedures for the enforcement of obligations available to worker's representatives and/or workers. This permits considerable flexibility, and potentially an administrative procedure alone available to workers to comply with the directive. This is one area where, in contrast to others, the UK has scope to alter its domestic law.

The punitive nature of the award in many cases leads to employers adopting a literal and conservative approach to the regulations owing to the disproportionate size of awards, the ease with which they may be brought (even if many employees do not feel aggrieved) and the strict approach taken by Tribunals. This leads on occasions to employees having to choose between accepting an offer of employment or waiting until their current employment is terminated by reason of redundancy and they have received their redundancy payment. The collective redundancy regulations do not assist employees in either securing future employment or in knowing whether and when their current employment will come to an end. The awards may be made in favour of an employee who has suffered no loss or detriment and who may even have personally benefitted from the consultation arrangements followed by the employer.

Redeployment cannot usually be discussed in the context of a collective redundancy consultation and is better dealt with individually. Personal circumstances are usually diverse, for example individual flexibility, experience or qualification. Employers, however, are often reluctant to discuss such matters on an individual basis fearing a potential protective award, leading to great frustration amongst individual employees who wish to discuss their own personal circumstances. Employees need certainty and will want to know when they are likely to be dismissed and how much they are likely to be paid. The regulations should be sufficiently flexible to allow employers and employees to agree variations to the consultation requirements which are final and binding where they are to the advantage of the employee and insulate the employer from any adverse consequences following this, including a protective award.

At times, the ability of a business to make immediate decisions can be the difference between the survival or failure of the enterprise. The current regime for protective awards places insufficient



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emphasis on the priority of securing the business and preserving employment. Employers facing such a situation should not be subject to protective awards. In future, settlement agreements may provide a solution in such circumstances, but are likely to prove ineffective without a corresponding ability to settle a potential future protective award.

Agreements with representatives:

Employers who agree the basis for redundancies with representatives should be permitted to rely on such agreements for a period of time. Where other redundancies fall to be considered after such agreements have been reached, the consultation periods should to be accordingly shorter. This will reduce the difficulty caused with successive consultations where outline agreement has already been reached.

1. Your name:

ECIA - Dave Crabtree

2. What organisation do you represent (if any)?

ECIA

3. E-mail address:

davidcrabtree@ecia.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Engineering Construction Industry Association (ECIA)

2. What organisation do you represent (if any)?

Engineering Construction Industry Association

3. E-mail address:

ecia@ecia.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: David Crabtree [DavidCrabtree@ecia.co.uk]
Sent: 18 September 2012 17:48
To: Collective Redundancies
Subject: ECIA Response to Collective Redundancy Consultation
Attachments: ECIA Redundancy Consultation Response Draft(1).docx

To Whom it may Concern

I am attaching the response on behalf of the Engineering Construction Industry Association, as I have been unable to put our complete response on either the survey monkey or web format, as our responses seemed to be too long.

Regards

Dave Crabtree
ECIA
Employee Relations Officer
E-mail:- davidcrabtree@ecia.co.uk
Sunderland - 0191 516 6450
London - 020 7654 1591
Mobile 07966199945

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ECIA draft response to Redundancy Consultation Paper

Q1. Yes. ECIA agrees with the Government's overall intended approach to revision of the rules on collective consultation. The Engineering Construction Industry does not lend itself to 90 day collective consultation due to the reasonably short and unpredictable duration of most commercial contracts being undertaken.

In most cases this means a HR1 Form has to be issued as soon as a contractor starts on a project as a safeguard, and often when the client has not completed the process of awarding all work packages. The duration of minimum consultation needs to be reduced to become more workable for all parties

A Contractor would be able to predict the necessity to issue of a HR1 Form far more accurately if in all cases the collective consultation period was a minimum of 30 days.

ECIA recommends that the proposed Code contains guidelines to assist businesses on what would normally constitute 'meaningful consultation'.

It would be far more practical for contractors to predict manpower requirements 30 days ahead.

Q2. We would wish to support the option for a 30 days consultation period for redundancies of 20 or more. The current collective redundancy process appears to be more closely aligned with businesses that operate employment of a long term nature. The duration of minimum consultation can currently be too long to be of genuine value to employer or employee and needs to become more meaningful for all parties and not just a test of technical compliance. In reality, consultation within Engineering Construction will often be meaningfully concluded (in all but name) well in advance of the official end of the consultation period and the employer and trade unions will find themselves 'going through the motions' for the rest of the minimum consultation period, which often leads to trade unions closely examining every decision made and employers looking to protect themselves against legal challenge. During the overlong 90 day consultation period contractors also experience the added costs of increased natural wastage and the need then for re-recruitment/induction. The industry's experience is that the current overlong of consultation also results in : the workforce being reluctant to work the required overtime; an increase in both sickness and absence levels; and an increased risk of on-site sabotage/vandalism.

Q3. The National Agreement for the Engineering Construction Industry (the Industry's collective agreement), already contains flexibilities that help the industry deal with some of the more complex aspects of redundancy.

We would prefer that the definition of 'establishment' is left as it currently stands and any guidance be provided by a non-statutory code of practice with a flexible approach, rather than any further specific definition in legislation. In any event, the courts will have regard to, and apply, case law as it evolves.

Q4. Yes, hopefully. We would prefer to have a chance to scrutinise and comment on a draft code of practice before it was issued to confirm that it would be practical for use within the Engineering Construction Industry.

Q5. It is our opinion that fixed term contracts should be excluded from redundancy legislation. We also consider that the redundancy / fixed term contract exclusions should be extended to include contracts of up to 6 months duration. Within the Engineering Construction industry there is often a requirement for plant shut-downs and turnarounds that have a limited duration.

We also consider that the exclusion from the collective consultation provisions provided by S282 of TULRA (Consolidation) Act 1992 should be extended to contracts of up to 6 months duration; due to the Engineering Construction Industry requirement to recruit temporary workers for plant shutdowns and turnarounds that may last 3 to 5 months, but not have a specific end date.

Q6. Yes

- Q7. We are of the opinion that the guidance is largely sufficient, but would prefer clarification for occasions when a redundancy situation occurs with minimal or indeed no notice from the Client (e.g. we have a lot of experience of the type of situation where a client announces the immediate closure of a site and the consultation period cannot be implemented (e.g. the recent problems at the Coryton refinery.) We also feel that some guidance on minimum criteria needed to deliver "meaningful consultation" would be helpful.**
- Q8. Unfortunately we think that the required culture change will not be delivered by a code of practice. In reality, this is only likely to occur once a company falls foul of the law and compensation is awarded at an E.T. The negative publicity that would follow this will act as a warning to others to put their houses in order.**
- Q9. Employer and employee representatives need training. Employers should also take advice from their recognised industry Employer's Association**
- Q10. We believe that reducing the 90 days consultation period to 30 days would have a positive effect on the engineering construction industry leading to lower absence and less vandalism and sabotage on site. The 90 day period is too long and causes unnecessary uncertainty for the workforce resulting in them concentrating their efforts on seeking the next job to go to, before concluding the current one. Reducing to 30 days would have a positive effect on the Engineering Construction Industry and still allow adequate time for meaningful collective consultation.**
- Q11. Within Engineering Construction the need for redundancies is usually very clear cut and obvious. In reality, the genuine collective consultation process could easily be concluded within a 30 day period. Also, where appropriate, we would like to see -specific provision for the parties to agree earlier cessation of collective consultation, during the proposed 30-day period, to enable more time for individual employee consultation.**
- Q12. In summary, the key effect on business is the difficulty in meeting the construction program. Contractors experience increased costs through: good people leaving well before the job has finished; increased sickness and absence levels; increased overtime (with its inherent inefficiencies); and on occasions increased site sabotage/vandalism.**

THE ECIA WOULD BE INTERESTED IN BEING INVOLVED IN THE PRODUCTION OF THE CODE OF PRACTICE, AND ARE WILLING TO BE CONTACTED FURTHER ABOUT THIS.

1. Your name:

Ernst & Young LLP - Helen Smithson

2. What organisation do you represent (if any)?

Ernst & Young LLP

3. E-mail address:

hsmithson@uk.ey.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - We wish to make it clear at the outset that we are responding to this consultation only from the perspective of insolvency office holders, taking formal insolvency appointments.

Line2 - The views expressed in this consultation do not necessarily reflect the views of Ernst & Young LLP when acting in other capacities.

Line3 - A 30-day period would cause less disruption to a business in distress. In insolvency or restructuring situations, a 30-day period is more feasible than any longer period,

Line4 - given the financial constraints that the business will be facing and the potential difficulties in obtaining funding for continued trading.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - We believe that there are too many factors to be taken into consideration and the issue is too nuanced for there to be a statutory definition of establishment.

Line3 - Provided that the Code of Practice consists of factors to be considered, rather than attempting a definition or taking a prescriptive

approach

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - We believe that this is an area where there is a need for absolute clarity which could not be achieved through a Code of Practice.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

Line1 - The guidance will need to be updated for the proposed Code of Practice.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - We suggest that there could be focus groups to help develop the Code of Practice, representing the various parties involved in the process.

Line2 - For example, employee and employers' representatives and representatives of insolvency practitioners.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Training for Employment Tribunals to better understand the issues faced in restructuring/insolvency situations.

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

Line1 - The Impact Assessment does not address the potential impact in monetary terms, so we cannot say whether all of the impacts have been

correctly identified.

Line2 - We suggest that there must be an impact on cost to businesses.

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: hsmithson@uk.ey.com
Sent: 19 September 2012 17:48
To: Collective Redundancies
Cc: sleinster@uk.ey.com; arowe@uk.ey.com; dparrish@uk.ey.com
Subject: Response to consultation on collective redundancy rules
Attachments: 12-808rf-collective-redundancies-consultation-form[1_EY].doc

Dear Sirs

Please find attached the response of Ernst & Young's restructuring practice to the consultation on collective redundancies.

If you have any questions or require any further information, please contact Helen Smithson at this office in the first instance.

Regards

Helen Smithson



Helen Smithson | Assistant Director | Restructuring

Ernst & Young LLP

1 More London Place, London SE1 2AF, United Kingdom

Direct: +44 (0)20 7951 9929 | hsmithson@uk.ey.com

Website: www.ey.com

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Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Helen Smithson

Organisation (if applicable): Ernst & Young LLP

Address: 1 More London Place, London, SE1 2AF

Telephone: 2079512000

Fax: 2079511345

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

We wish to make it clear at the outset that we are responding to this consultation only from the perspective of insolvency office holders, taking formal insolvency appointments.

The views expressed in this consultation do not necessarily reflect the views of Ernst & Young LLP when acting in other capacities.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

A 30-day period would cause less disruption to a business in distress. In insolvency or restructuring situations, a 30-day period is more feasible than any longer period, given the financial constraints that the business will be facing and the potential difficulties in obtaining funding for continued trading.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

We believe that there are too many factors to be taken into consideration and the issue is too nuanced for there to be a statutory definition of establishment.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Provided that the Code of Practice consists of factors to be considered, rather than attempting a definition or taking a prescriptive approach

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

We believe that this is an area where there is a need for absolute clarity which could not be achieved through a Code of Practice.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Please see our answer to question 5.

Question 7: What changes are needed to the existing Government guidance?

The guidance will need to be updated for the proposed Code of Practice.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

We suggest that there could be focus groups to help develop the Code of Practice, representing the various parties involved in the process. For example, employee and employers' representatives and representatives of insolvency practitioners.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Training for Employment Tribunals to better understand the issues faced in restructuring/insolvency situations.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

The Impact Assessment does not address the potential impact in monetary terms, so we cannot say whether all of the impacts have been correctly identified. We suggest that there must be an impact on cost to businesses.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Not applicable.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Not applicable.

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1 Victoria Street

London SW1H 0ET

Tel: 020 7215 5000

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URN 12/808

1. Your name:

European Employers Group - Philip Sack

2. What organisation do you represent (if any)?

European Employers Group

3. E-mail address:

philip.sack@europeanemployers.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Philip Sack [philip.sack@europeanemployers.com]
Sent: 19 September 2012 15:10
To: Collective Redundancies
Subject: European Employers Group response to consultation on collective redundancies
Attachments: Response to the BIS consultation document Collective Redundancies.docx

Dear Carl

Please find attached our response to the consultation document.

Regards,
Philip

Philip Sack
Director
European Employers Group
1 Farnham Road
Guildford GU2 4RG
United Kingdom

Tel: +44 (0) 1483 827996
Mob: +44 (0) 777 393 4755
philip.sack@europeanemployers.com
www.europeanemployers.com

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Response to the BIS consultation document *Collective Redundancies: consultation on changes to the rules*

European Employers Group provides a network for multinational employers with operations in Europe. It was established in 2011, and has member companies based in Europe, the US and Japan, who are drawn from a range of business sectors and have employees around the world. Members have a keen interest in developments with employment law, especially those originating from the EU.

We welcome this opportunity to comment in response to the consultation document on changes to the rules on collective redundancies issued by the Department for Business, Innovation & Skills (BIS).

Question 1 Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

We agree that the focus should be on shortening the 90-day period for larger scale redundancies, in order to make consultation more effective in the interests of both employers and employees.

We also agree that there is a need for better guidance, and better awareness of the guidance. The consultation document refers to a Code of Practice and possibly two other sets of guidance. To keep things short and simple, and to help stakeholders identify the relevant guidance, we believe it should all be brought together in one document.

Question 2 Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

We support moving to a single minimum consultation period, irrespective of the number of redundancies, in other words, reducing the current 90-day period to 30 days. Our reasons are as follows:

- As we understand it, the 30 days would be a minimum period, and if more than 30 days is needed for adequate consultation, the employer would be required to continue consulting until the consultation has ended. This fact should provide reassurance to employees and their representatives about the adequacy of the consultation period. However, it does mean that the question of when consultation can be said to have finished assumes greater significance, and better guidance on this point will be needed – see below.
- The 100 employee threshold is essentially arbitrary – there is no good reason why 90 days is needed for 100 redundancies but only 30 days for one fewer redundancy;
- The existence of the 90-day period encourages artificial splitting up of redundancies in order to fall below the 100 redundancies threshold;

- The existence of the 90-day period can raise the vexed question of what is an “establishment” since the 90 day period apparently only applies where 100+ redundancies are made “at one establishment”. For a recent example of this, see the dispute involving Premier Foods at www.thisismoney.co.uk/money/news/article-2106859/Premier-Foods-accused-job-cuts-cheap-twisting-redundancy-rules.html
- No other EU member state has a 90 day consultation period for larger-scale redundancies. Irish law imposes a 30 day period irrespective of the number of redundancies. The laws in both the Czech and Slovak Republics also stipulate 30 days. Changing the law as proposed would therefore bring GB into line with these and other member states;

Reducing the minimum consultation period to 45 days would not eliminate these problems, and is unnecessary given the first bullet point above.

To achieve the Government’s stated aim in the consultation document – a minimum consultation period of 30 (or 45) days - the wording of the legislation will need to be changed such that consultation must begin at least 30 days before any notice of dismissal is issued (as the Irish legislation - the Protection of Employment Act 1977 - was changed in 2007 to reflect the *Junk* decision). At present the UK law states that consultation must begin at least 30/90 days “before the first of the dismissals takes effect”. The BIS guidance states that this means “when the employment contract is terminated” (see page 7), and this view was confirmed by the Appeal Court in its decision *Nolan vs. USA* at www.employmentcasesupdate.co.uk/site.aspx?i=ed6847 (see paragraph 27 of the decision). Consequently, unless the law is changed to state that consultation must begin at least 30 days before the first notice of dismissal is given, reducing the 90-day period to 30 or 45 days would apply that minimum period to the time between starting consultation and the termination of employment.

There is considerable confusion on this point amongst practitioners, and even amongst employment tribunals. Many lawyers advise their clients that the current 30/90 day period must be calculated back from the issuing of notices, rather than the termination of employment. Tolleys Employment Law Handbook also adopts this interpretation, as did the employment tribunal in the *Nolan vs. USA* case, which had to be corrected by the Appeal Court. There is a need for greater clarity on this point in the law, not just in guidance – aside from the fact that, as noted, the law will need to be changed to achieve the Government’s stated aim.

Question 3 Do you agree with the Government’s assessment of the risks of taking a legislative route on the issue of ‘establishment’? Please provide comments to support your answer.

Question 4 Will defining ‘establishment’ in a Code of Practice give sufficient clarity?

Yes we agree on the risks of taking a legislative route. Case law from the European Court suggests that it will take a flexible approach to defining the term “establishment” with the aim of bringing as many cases as possible within the ambit of the legislation – for multi-site companies this sometimes mean defining an establishment as the whole company (so that the requisite number of redundancies is reached), and sometimes as a single site (so as to avoid an exemption applying). Whilst this is not particularly helpful for employers, it does lead to the inevitable conclusion that the UK legislation should not attempt to define the term, but that this should be left to guidance. It will not be an easy task to produce guidance on this point though, and it will need to be kept under review, and amended if necessary, as the case law develops.

Question 5 Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

We believe the Government is holding to an overly cautious interpretation of the fixed-term work directive, and that the directive does not over-rule the explicit disapplication of the collective redundancy directive to the expiry of fixed-term contracts. Other Member States including Ireland, the Netherlands and Italy make use of the exemption in the Collective Redundancies Directive, and the UK should do so too. This is unfortunately another example of the excessively cautious approach to transposing EU directives taken by the UK, in contrast to other member states, and which causes significant costs and burdens to UK business. The decision of the EAT in *University of Stirling v University and College Union* has exacerbated the problem by adding uncertainty - some lawyers are advising their clients that they are now free to exclude fixed-term contracts from redundancy consultation, others advise that they should ignore the ruling, and still others advise that it may or may not be relevant to a particular situation depending on the circumstances. The Government can cut through all of this uncertainty by excluding fixed-term contracts, as explicitly permitted by the Collective Redundancies Directive.

Question 6 Have we got the balance right between what is for statute and what is contained in government guidance and a Code of Practice?

With the exception of the above points concerning the ending of consultation and the expiry of fixed-term contracts, yes.

Question 7 What changes are needed to the existing government guidance?

The key issues on which greater clarity is needed are:

- What is an "establishment", reflecting the evolving case law of the European Court
- When must consultation begin. There are two aspects to this:
 - (1) Whether consultation should be conducted on a strategic decision by a parent organisation that leads to redundancies at a subsidiary. Decisions of the European Court have created confusion in this matter. The UK Appeal Court found the *Akavan/Fujitsu Siemens* decision unclear, and has referred the case of *Nolan vs. USA* to the European Court to try to get clarity (see www.employmentcasesupdate.co.uk/site.aspx?i=ed6847). The Advocate-General's view is that consultation is only triggered once a strategic decision has been taken, and that that is what the European Court was saying in *Fujitsu Siemens* (see <http://curia.europa.eu/juris/document/document.jsf?docid=120741&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&cid=657254>). However, given that this view would be to the detriment of employees in the *Nolan* case, the European Court may find a creative way to impose an earlier trigger point.
 - (2) The fact that the start point should be calculated back from the planned date of issuing redundancy notices, so that the minimum consultation period is 30 days.

- How long must consultation last. This needs to explain that 30 days is a minimum period, and that consultation should last longer than this if necessary.
- When can consultation end, and what happens if there is disagreement between the employer and employee reps over whether consultation has ended. We would suggest that if the employer has provided the required information, held meetings with employee representatives at which it has discussed the planned redundancies, has consulted on the required issues, and has given a reasoned response to the views of employee representatives, it should be able to declare the consultation complete. This reflects the minimum requirements in related EU legislation such as on European Works Councils.
- It would also be helpful to have some guidance on the question of redundancy selection criteria (there is a lack of clarity over whether subjective criteria can be used, and what constitutes a subjective criterion) and on selection pools.

We hope you find these comments helpful. If you have any questions concerning them, please do not hesitate to contact us.

European Employers Group
1 Farnham Road
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info@europeanemployers.com
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19th September 2012

1. Your name:

Fitzpatrick Wilkes HR Consultancy - Pauline Wilkes

2. What organisation do you represent (if any)?

Fitzpatrick Wilkes HR Consultancy

3. E-mail address:

info@fitzpatrick-wilkes.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

HR Consultancy undertaking Redundancies etc.

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Removal of employee uncertainty

Line2 - Focus on getting proper job done to time

Line3 - Avoidance of delaying tactics

Line4 - Will necessitate good advance preparation

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Not sure

9. Please provide comments to support your answer.

Line1 - Legislative route will still result in "interpretation" as it always does

Line2 - Will give lawyers a field day in terms of costs

Line3 - Will not be able to take into account all the diverse business structures likely to be affected by it

Line4 - Less ability to look at the sensible and reasonable in the context of the redundancy scenario

Line5 - Potentially likely to put more people in the matrix of uncertainty

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - Many employees are not represented by Trade Unions and do not want to be

Line2 - Guidance and Code of Practice can be written in a way to suit a Staff Representative

Line3 - Guidance notes etc. can be simplistic, as well as more complex for a TU official if that is what is required

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Write it in the correct and appropriate terminology

Line2 - Sensibly differentiate it so that it is easily understandable by a non-unionised Staff Representative

Line3 - Make a "noddy" guide of questions and answers available

Line4 - Produce simple structured action plan for guidance

16. Are there other non-legislative approaches that could assist – e.g. training?

No

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - 6 months

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - My clients were drawn away from their core business

Line2 - Less opportunity for management to develop new business opportunities

Line3 - Those at risk bored as there was no/little work

Line4 - Shocking morale

1. Your name:

Food and Drink Federation - Agnieszka Zawiasa

2. What organisation do you represent (if any)?

Food and Drink Federation

3. E-mail address:

Agnieszka.Zawiasa@fdf.org.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Agnieszka Zawiasa [Agnieszka.Zawiasa@fdf.org.uk]
Sent: 19 September 2012 17:16
To: Davies Carl (RGFL)
Cc: Angela Coleshill; David Yeandle (david.yeandle@europeanemployers.com)
Subject: FDF's Response to the Government's Consultation Document
Attachments: FDF's Response to the Government's Consultation Document, "Collective Redundancies – Consultation on Changes to the Rules".pdf

Dear Carl,

Please find attached the Food and Drink Federation's response to the BIS Consultation on Changes to the Rules on Collective Redundancies.

If you have any questions on the attached response or would like to discuss it in more detail, please contact either Angela Coleshill at angela.coleshill@fdf.org.uk or David Yeandle at david.yeandle@europeanemployers.com.

Regards
Agnieszka

Agnieszka Zawiasa
 HR Executive, Employment, Skills and Corporate Services
Food and Drink Federation
 6 Catherine Street
 London, WC2B 5JJ
 T: +44 (0) 20 7420 7157
 E: Agnieszka.Zawiasa@fdf.org.uk
 W: www.fdf.org.uk

Taste Success – A Future in Food
 Watch our campaign videos: <http://www.tastesuccess.co.uk>
 Follow the campaign on Twitter: [@FDFTasteSuccess](https://twitter.com/FDFTasteSuccess)

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The Food and Drink Federation (FDF) is registered in England no. 210572. Registered office: 6 Catherine Street, London, WC2B 5JJ, UK.
Tel: +44 (0)20 7836 2460; Fax: +44 (0)20 7836 0580.

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FDF's Response to the Government's Consultation Document, "Collective Redundancies – Consultation on Changes to the Rules"

This response is made by the Food and Drink Federation, the trade association for food and drink manufacturing. Food and drink is the largest manufacturing sector in the UK (accounting for 16% of the total manufacturing sector) turning over £76.2bn per annum, creating GVA of £20.9bn and employing up to 400,000 people

FDF's response to the Government's consultation document, "Collective Redundancies – Consultation on Changes to the Rules" which is set out below is based on consultation with members of FDF's Employment and Skills Forum:-

1. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

FDF supports the Government's overall approach to the rules on collective redundancy consultation and, in particular, its three objectives for reform of:-

- Improving the quality of consultation
- Ensuring that employers can restructure effectively to respond to changing market conditions
and
- Balancing the interests of the employees made redundant with those who remain.

It also agrees with the Government that an effective collective redundancy regime must have the following three components:-

- A straightforward legislative framework
- A good relationship between employers and employees' representatives
and
- Mechanisms to allow appropriate government intervention.

2. Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's overall aims than the alternative option.

FDF members prefer the first option that is being proposed by the Government, namely a minimum 30 day consultation period for all collective redundancies of 20 or more redundancies.

As was stated in FDF's response to the Government's Call for Evidence on the collective redundancy rules, FDF feels that in most circumstances a 30 day period is long enough for employers to undertake effective and good quality collective consultation on proposed redundancies with trade union and/or employee representatives. Whilst it is acknowledged that a longer period may sometimes be needed for more complex redundancy consultation exercises, FDF considers that the Government is right to comment in the consultation document that the 30 day period is a minimum and not a maximum period for consultation

and that, where longer is required, it will be possible to continue consulting beyond the minimum period. We feel that it would therefore be helpful if the proposed revised guidance and new Code of Practice makes specific reference to this as it should help to reassure employees and their representatives about this proposed legislative change and remind all those involved that consultation should proceed beyond this minimum period where this is felt to be necessary.

FDF also feels that this first option is in line with the principles of better regulation as it will be easier for all those involved to understand their legislative responsibilities if there is a single timeframe for all collective consultations involving 20 and more employees rather than having slightly different timeframes for different sizes of redundancies.

3. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of "establishment"? Please provide comments to support your answer.

A number of FDF members have had some practical difficulties in the past defining which is the right "establishment" to use for the purpose of collective redundancy consultations due to, for example, their complex business/management structures. FDF therefore appreciates that the complexity of this issue as well as the constraints that have been created by some recent European case law makes it difficult and potentially risky for the Government to draw up a definition of "establishment" that would create any degree of uncertainty..

4. Will defining "establishment" in a Code of Practice give sufficient clarity?

FDF feels that it will be very important for the Government to assist all those involved in collective redundancy consultation exercises by ensuring that the proposed new Code of Practice addresses this issue in a way that is not too prescriptive and includes some practical examples from different sectors and different size of employers. FDF would therefore be happy to work with BIS Officials to try to ensure that this new Code of Practice provides its members with the right balance of clarity and flexibility on this important issue.

5. Is the Government right to address the fixed term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

Whilst the issue of fixed term contracts in the context of collective redundancy consultations is not a major issue for most of its members, FDF supports the Government's proposed approach of addressing this issue in the revised guidance and the proposed new Code of Practice rather than in legislation as it is recognised that the latter would probably be difficult to achieve. This will be another issue which will need to be covered in a practical and flexible manner in the revised guidance and the proposed new Code of Practice.

6. Have we got the balance right between what is for statute and what is contained in government guidance and a Code of Practice?

FDF considers that, subject to seeing the detail of this revised guidance and the proposed new Code of Practice, the Government is striking the right balance between making legislative changes and introducing guidance and a Code of Practice.

7. What changes are needed to the existing government guidance?

As was stated in FDF's response to the Call for Evidence, it will be helpful to have some practical guidance on a number of issues, some of which have been mentioned in the responses to the previous questions, although it will be also be important that this guidance is not too prescriptive and provides employers with some degree of flexibility.

FDF members feel that this guidance should also address the problem that they sometimes experience of persuading union representatives and non-union employee representatives to sit down together to undertake collective consultation on proposed redundancies affecting groups of both unionised and non-unionised employees. Having to undertake separate consultation exercises with union representatives and non-union employee representatives inevitably takes up additional management time and has the potential to create some confusion for employees at what is a difficult time for them as well as possibly result in some mixed messages being given.

It is FDF's experience that, today, employers generally want to adopt a more inclusive approach to collective redundancy consultation. It would therefore be helpful if the revised guidance made it very clear that this inclusive approach to consultation should be followed by union representatives and non-union representatives if this is the way in which an employer wants to undertake a collective redundancy consultation exercise.

8. How can we ensure that the Code of Practice helps deliver the necessary culture change?

It will be difficult to ensure that the Code of Practice delivers the necessary culture change to achieve the Government's stated objective of improving the quality of collective redundancy consultation as introducing and then embedding any culture change inevitably takes time and can be affected by external circumstances such as the economic environment. In addition to wide dissemination of this Code of Practice amongst employers and union/employee representatives, FDF considers that the Code of Practice should include some examples of the tangible benefits that employers and employees have gained from this improved quality of collective redundancy consultation.

It will also be very important that, in situations in which the Government is, or is perceived to be, the employer that is proposing to make redundancies, there is always strict adherence to all aspects of this Code of Practice.

9. Are there any other non-legislative approaches that could assist – e. g. training? If yes, please explain what other approaches you consider appropriate.

As stated in the response to Question 8 above, it will be important for the Government to be seen to be an exemplary employer in those situations where it is, or is perceived to be, the employer which is proposing to make redundancies.

There is also increasing now evidence that employers that have an engaged workforce are more likely to have good relationships with their employees and their representatives as well as the corporate culture that supports good quality consultation about a range of issues including collective redundancies. FDF feels that the Government should therefore continue to build on the work of increasing awareness about employee engagement that is now being led by David Macleod and Nita Clarke following their report to the previous Government, "Engaging for Success – Enhancing Performance through Employee Engagement."

10. Have we correctly identified the impacts of the proposed policy? If you have any evidence relating to possible impacts we would be happy to receive it.

The impacts of the proposed policy seem to have been correctly identified in the consultation document.

11. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

An FDF member has expressed the following views in response to this question:-

"The longest consultation I worked on was a 6 month plan to close a non-union site of 150 people and transfer the work to another UK site. The consultation from start to finish (including the election of reps) took the 90 days required, but could have been completed much more quickly if this was not a statutory time limit. As long as both sides approach the issue with an open attitude then agreement is reasonably quick to reach after the initial shock is overcome (in the example above additional outplacement support and outside advice on pension rights were added to the original management position as a result of the Reps being consulted). On the other hand in heavily unionised work places with the involvement of full time union officials the process to agreement has been much less open and more 'bargaining' in nature and therefore more difficult and timely to conclude, in one case I was involved in this extended the consultation for a small number of employees (less than 10) to about 60 days. "

12. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this period?

An FDF member has expressed the following views in response to this question:-

"The effect of redundancy consultation has always been negative on the morale of the remaining parts of the business throughout the period of consultation, this is despite any effort to 'ring fence' the areas affected. There is always a view from other teams or functions that it is the 'thin edge of the wedge' or the start of a more widespread action, such as site closure.

This is despite regular communication from management to make clear that it is limited and will not affect others.

Interestingly this has been much less significant in my current employer which is a SME than in previous companies which were larger multi-site national or multi-national businesses. I think this reflects the ability of the average employee to communicate directly with the MD/CEO and senior team and therefore to receive the message direct that it is tactical and limited.

In previous organisations (many of them American owned Multi-nationals) there was a perception that UK senior management were only enacting a plan from head office and therefore were not completely in the know themselves, this feeling held true even when to my personal knowledge the plan was UK developed and delivered without outside interference. It also followed through in large UK multi-site businesses with local management being perceived as only transmitting the message, and head office staff having to be involved to offer re-assurance that it was not part of a larger exercise."

18 September 2012

The UK Food and Drink Manufacturing Industry

The Food and Drink Federation (FDF) represents the food and drink manufacturing industry, the largest manufacturing sector in the UK, employing up to 400,000 people. The industry has an annual turnover of over £76.2bn accounting for 16% of the total manufacturing sector. Exports amount to almost £11bn of which 77% goes to EU members. The Industry buys two-thirds of all UK's agricultural produce.

The following Associations are members of the Food and Drink Federation:

| | |
|--------|--|
| ABIM | Association of Bakery Ingredient Manufacturers |
| ACFM | Association of Cereal Food Manufacturers |
| BCA | British Coffee Association |
| BOBMA | British Oats and Barley Millers Association |
| BSIA | British Starch Industry Association |
| BSNA | British Specialist Nutrition Association |
| CIMA | Cereal Ingredient Manufacturers' Association |
| EMMA | European Malt Product Manufacturers' Association |
| FA | Food Association |
| FOB | Federation of Bakers |
| FPA | Food Processors' Association |
| GPA | General Products Association |
| MSA | Margarine and Spreads Association |
| SB | Sugar Bureau |
| SMA | Salt Manufacturers' Association |
| SNACMA | Snack, Nut and Crisp Manufacturers' Association |
| SPA | Soya Protein Association |
| SSA | Seasoning and Spice Association |
| UKAMBY | UK Association of Manufacturers of Bakers' Yeast |
| UKHIA | UK Herbal Infusions Association |
| UKTC | UK Tea Council |

Within FDF there are the following sectoral organisations:

| | |
|------|--|
| BCCC | Biscuit, Cake, Chocolate and Confectionery Group |
| FF | Frozen Food Group |
| MG | Meat Group |
| ORG | Organic Group |
| SG | Seafood Group |
| VEG | Vegetarian (Meat-Free) Group |
| YOG | Yoghurt and Chilled Dessert Group |

1. Your name:

House Building Company - Sarah Bance

2. What organisation do you represent (if any)?

House Building Company - Construction

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - removes uncertainty

Line2 - allows greater business flexibility

Line3 - commercial advantages

Line4 - employees prefer this

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No

9. Please provide comments to support your answer.

Line1 - codes end up becoming the informal "law" anyway

Line2 - if you legislate it removes ambiguity

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - coes end up becoming the informal "law" anyway

Line2 - if you legislate it removes ambiguity

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

Line1 - legislate on establishment and fixed term contracts

Line2 - legislate more on the consultation process

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - take out ambiguity

16. Are there other non-legislative approaches that could assist – e.g. training?

No

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - within 14 days

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - huge financial impact as business slowed down

Line2 - increased stress for employees as process was too long

1. Your name:

HP / PCS - Michelle Crosby

2. What organisation do you represent (if any)?

HP / PCS

3. E-mail address:

michelle.crosby@hp.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Insolvency Lawyers' Association - Peter Cranston

2. What organisation do you represent (if any)?

Insolvency Lawyers' Association

3. E-mail address:

gensec@ilauk.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - The ILA's response is limited in scope as described in the rider

Line2 - A shorter period provides greater flexibility.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

Line1 - Specific guidance needs to be developed for insolvency redundancies (see the answer to question 1).

Line2 - The insolvency profession needs to be consulted about the proposed guidance insofar as it will apply to insolvency redundancies.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - A regime that is workable in insolvency redundancy scenarios is much more likely to be complied with than one which requires reconciling incompatible duties .

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Eversheds - Peter Cranston

2. What organisation do you represent (if any)?

Eversheds

3. E-mail address:

petercranston@eversheds.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Cranston, Peter [petercranston@eversheds.com]
Sent: 19 September 2012 17:29
To: Collective Redundancies
Subject: Collective Redundancy Consultation--ILA response
Attachments: ILA Collective Redundancies Consultation Response.doc; Text for ILA Collective Redundancies Consultation (3).doc

Dear Sirs

On behalf of the technical committee of the Insolvency Lawyer's Association, we enclose our response to the above consultation. It includes a rider to question 1. The response form did not permit it to be incorporated into the main body of the response

Yours faithfully

Peter Cranston
Council Member
Insolvency Lawyer's Association

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Mobile: +44 (0) 7771 511271
www.eversheds.com

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*****[www.eversheds.com]*****

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Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Peter Cranston

Organisation (if applicable): Insolvency Lawyers' Association

Address: gensec@ilauk.com

Telephone: 8454984870

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

See ILA rider [box will not permit text to be inserted]

The ILA's response is limited in scope as described in the rider

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

A shorter period provides greater flexibility.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Question 7: What changes are needed to the existing Government guidance?

Specific guidance needs to be developed for insolvency redundancies (see the answer to question 1). The insolvency profession needs to be consulted about the proposed guidance insofar as it will apply to insolvency redundancies.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

A regime that is workable in insolvency redundancy scenarios is much more likely to be complied with than one which requires reconciling incompatible duties .

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

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URN 12/808

1. Your name:

Institute of Directors - Philip Sack

2. What organisation do you represent (if any)?

Institute of Directors

3. E-mail address:

philip.sack@iod.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line5 - With the exception of the above points concerning the ending of consultation and the expiry of fixed-term contracts, yes.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Philip Sack [Philip.Sack@iod.com]
Sent: 19 September 2012 18:29
To: Collective Redundancies
Subject: IoD response to consultation on collective redundancies
Attachments: IoD response to consultation on collective redundancies Sep 2012.docx

Dear Carl
Please find attached the IoD response to the consultation.
Regards

Philip Sack
Senior Adviser, Employment Policy
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IoD response to consultation on changes to the rules on collective redundancies

IoD response to consultation on changes to the rules on collective redundancies

The Institute of Directors (IoD) welcomes this opportunity to comment in response to the consultation document *Collective Redundancies – consultation on changes to the rules* issued by the Department for Business, Innovation & Skills.

About the IoD

The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 45,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 80% of FTSE 100 companies and 60% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 72%, comprise directors of small and medium-sized enterprises, ranging from long-established businesses to start-up companies. IoD members' organisations are entrepreneurial and resolutely growth orientated. More than two-fifths export. They are at the forefront of flexible working practices and are fully committed to the skills agenda.

General comments

Policy relating to employment law is of the highest interest to the IoD and its members. Our surveys of members regularly show that excessive and burdensome employment regulations are one of their greatest concerns, and the area most in need of reform. Annual surveys of IoD members show that the regulatory burden is a top three issue for them (alongside tax and skills shortages) with employment regulation the area cited by the highest proportion of members (70%).

Response to specific questions in the consultation document

Question 1 Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

We agree that the focus should be on shortening the 90-day period for larger scale redundancies, though we think the law will also need to be changed to ensure that 30 days is indeed the minimum consultation period, not simply the minimum period between starting consultation and dismissals taking effect – see below.

We also agree that there is a need for better guidance (and better awareness of the guidance), but there should not be separate guidance as well as a Code of Practice, if that is what's planned. The consultation document is not clear on this paras 3.7 and 3.22-3.25 seems to indicate plans for 3 sets of guidance – improvements to the current guidance, a new Code of Practice, and improvements to the guidance on Government help available. It will not help anyone to have 3 sets of guidance – it will cause confusion and uncertainty, it will consume more time having to read it, there will inevitably be repetition. Ideally there should be just one document containing all the guidance, certainly in the case of the guidance explaining the consultation obligations.

Question 2 Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

We support moving to a single minimum consultation period, irrespective of the number of redundancies, in other words, reducing the current 90-day period to 30 days. Our reasons are as follows:

- The 100 employee threshold is essentially arbitrary – there is no good reason why 90 days is needed for 100 redundancies but only 30 days for one fewer redundancy;

- The existence of the 90-day period encourages artificial splitting up of redundancies in order to fall below the 100 redundancies threshold and thereby be subject to the 30 day obligation;
- The existence of the 90-day period can raise the vexed question of what is an “establishment” since the 90 day period apparently only applies where 100+ redundancies are made “at one establishment”. For a recent example of this, see the dispute involving Premier Foods at www.thisismoney.co.uk/money/news/article-2106859/Premier-Foods-accused-job-cuts-cheap-twisting-redundancy-rules.html
- No other EU member state has a 90 day consultation period for larger-scale redundancies. Irish law imposes a 30 day period irrespective of the number of redundancies. The laws in both the Czech and Slovak Republics also stipulate 30 days. Changing the law as proposed would therefore bring GB into line with these and other member states;
- If more than 30 days is needed for adequate consultation, as we understand it, the employer would be required to continue consulting until the consultation has ended, and could not issue dismissal notices until consultation has concluded (as a consequence of the European Court’s *Junk* decision). This counters any criticism that 30 days is too short for larger-scale redundancies, and should provide reassurance to employees and their representatives about the adequacy of the consultation period. However, it does mean that the question of when consultation can be said to have finished assumes greater significance, and better guidance on this point will be needed.

Reducing the minimum consultation period to 45 days would not eliminate these problems, and is unnecessary given the final bullet point above.

To achieve the Government’s stated aim in the consultation document – a minimum consultation period of 30 (or 45) days - the wording of the legislation will need to be changed such that consultation must begin at least 30 days before any notice of dismissal is issued. At present the law states that consultation must begin at least 30/90 days “before the first of the dismissals takes effect”. The BIS guidance states that this means “when the employment contract is terminated” (see page 7). This view was confirmed by the Appeal Court in the case of *Nolan vs. USA* at www.employmentcasesupdate.co.uk/site.aspx?i=ed6847 (see paragraph 27 of the decision). Consequently, unless the law is changed to state that consultation must begin at least 30 days before the first notice of dismissal is given, reducing the 90-day period to 30 or 45 days would apply that minimum period to the time between starting consultation and the termination of employment. The Irish legislation (the Protection of Employment Act 1977) was changed in this way in 2007 to reflect the *Junk* decision.

There is considerable confusion on this point amongst practitioners, and even amongst employment tribunals. Many lawyers advise their clients that the current 30/90 day period must be timed back from the issuing of notices, rather than the termination of employment. Tolleys Employment Law Handbook also adopts this interpretation, as did the employment tribunal in the *Nolan vs. USA* case, which had to be corrected by the Appeal Court. There is a need for greater clarity on this point in the law, not just in guidance – aside from the fact that, as noted, the law will need to be changed to achieve the Government’s stated aim.

Question 3 Do you agree with the Government’s assessment of the risks of taking a legislative route on the issue of ‘establishment’? Please provide comments to support your answer.

Question 4 Will defining ‘establishment’ in a Code of Practice give sufficient clarity?

Yes we agree on the risks of taking a legislative route.. Case law from the European Court suggests that it will take a flexible approach (one might almost say a contradictory one) to defining the term “establishment” with the aim of bringing as many cases as possible within the ambit of the legislation – for multi-site companies this sometimes mean defining an establishment as the whole company, and sometimes as a single site. Whilst this is not particularly helpful for employers, it does lead to the inevitable conclusion that the UK legislation should not attempt to define the term, but that this should be left to guidance. It will not be an easy task to produce guidance on this point though, and it will need to be kept under review, and amended if necessary, as the case law develops.

Question 5 Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

We think the Government should take the opportunity to bring common sense to this issue through changing the law to exclude the expiry of a fixed-term contract from the collective redundancies legislation. It is an absurd situation that the natural expiry of a fixed-term contract should be regarded as a redundancy for the purpose of the collective redundancy legislation. The consultation document describes several problems caused by including fixed-term contracts within redundancy consultation – the Government should take whatever action it can to ameliorate these problems. Article 1.2(a) of the Collective Redundancies Directive explicitly disappplies the directive to the natural expiry of fixed-term contracts. The Government has not made use of this exemption, apparently believing that to do so would run counter to the equal treatment obligation in the fixed-term work directive. But this represents an

excessively cautious interpretation of that directive. Its stated purpose is to improve the quality of fixed-term work, and to prevent abuse arising from the use of successive fixed-term contracts – the natural expiry of the contract is not relevant to the “quality” of the work, and the legislation could be crafted so that it does not exempt multiple successive contracts. . The directive states that fixed-term workers must not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract unless different treatment is justified on objective grounds – the very fact that the Collective Redundancy Directive is explicitly disapplied to the expiry of fixed-term contracts is an objective ground by itself. Differential treatment with regard to consultation can also be regarded as an objective ground where the reason for one worker’s dismissal is redundancy and the reason for another’s is the expiry of a fixed-term contract. Other Member States make use of the exemption in the Collective Redundancies Directive, including Ireland, the Netherlands and Italy, and the UK should do so too. This is unfortunately another example of the excessively cautious approach to transposing EU directives taken by the UK, in contrast to other member states, and which causes significant costs and burdens to UK business.

The decision of the EAT in *University of Stirling v University and College Union* has made an unsatisfactory situation even worse, by adding uncertainty. Until that decision employers and their legal advisers were at least clear that expiry of fixed-term contracts should be included in the calculation, even if they weren’t happy about it. That is no longer the case. Some lawyers are advising their clients that they are now free to exclude fixed-term contracts, and others that they should ignore the ruling, and others that it may or may not be relevant to a particular situation depending on the circumstances. The Government can cut through all of this uncertainty by excluding fixed-term contracts, as explicitly permitted by the Collective Redundancies Directive.

Question 6 Have we got the balance right between what is for statute and what is contained in government guidance and a Code of Practice?

With the exception of the above points concerning the ending of consultation and the expiry of fixed-term contracts, yes.

Question 7 What changes are needed to the existing government guidance?

The key issues on which greater clarity is needed are:

- What is an “establishment”, reflecting the evolving case law of the European Court
- When must consultation begin. There are two aspects to this:
 - (1) Whether consultation should be conducted on a strategic decision by a parent organisation that leads to redundancies at a subsidiary. Decisions of the European Court have created confusion in this matter. The UK Appeal Court found the *Akavan/Fujitsu Siemens* decision unclear, and has referred the case of *Nolan vs. USA* to the European Court to try to get clarity (see www.employmentcasesupdate.co.uk/site.aspx?i=ed6847). The Advocate-General’s view is that consultation is only triggered once a strategic decision has been taken, and that that is what the European Court was saying in *Fujitsu Siemens* (see <http://curia.europa.eu/juris/document/document.jsf?docid=120741&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&cid=657254>). However, given that this view would be to the detriment of employees in the *Nolan* case, the European Court may find a creative way to impose an earlier trigger point.
 - (2) The fact that the start point should be calculated back from the planned date of issuing redundancy notices, so that the minimum consultation period is 30 days.
- How long must consultation last. This needs to explain that 30 days is a minimum period, and that consultation should last longer than this if necessary.
- When can consultation end, and what happens if there is disagreement between the employer and employee reps over whether consultation has ended. We would suggest that if the employer has provided the required information, held meetings with employee representatives at which it has discussed the planned redundancies, has consulted on the required issues, and has given a reasoned response to the views of employee representatives, it should be able to declare the consultation complete. This reflects the minimum requirements in related EU legislation such as on European Works Councils.
- It would also be helpful to have some guidance on the question of redundancy selection criteria (there is a lack of clarity over whether subjective criteria can be used, and what constitutes a subjective criterion) and on selection pools.

Other points

The consultation document states that the Government does not intend to change the primacy given to recognised trade unions in the consultation period. The reason given is that employers who responded to the call for evidence value the contribution of experienced, well-trained employee reps, and preferred to consult with trade unions or established I&C forums⁷ where they exist. This reason for not changing the law is very puzzling and totally unconvincing. If the law were changed to give employers the option of consulting with recognised trade unions, or established I&C forums, or electing reps from scratch, those that "prefer to consult with trade unions or established I&C forums" could continue to do so, without forcing employers who do not prefer that route to do so. The problem with the law as it currently stands is that, if an employer recognises a trade union, it is forced to consult with it, even where the union is not adequately representative of the affected employees. This problem is exacerbated if the employer consults with both union and non-union reps – it can be difficult to persuade union representatives and non-union employee representatives to sit down together to undertake collective consultation on proposed redundancies affecting groups of both unionised and non-unionised employees. Having to undertake separate consultation exercises with union representatives and non-union reps inevitably involves additional management time and cost, and can create confusion for employees. There is a ready model for giving employers choice as to who they consult in the Information & Consultation of Employees Regulations, and the Pensions Consultation Regulations. The opportunity should be taken to modernise the Collective Redundancy law on this point, and to bring it into line with these more recent Regulations.

We hope you find these comments helpful. For further details please do not hesitate to contact me.

Regards,

Philip Sack
Senior Adviser, Employment Policy
Institute of Directors
Philip.sack@iod.com

1. Your name:

Lewis Silkin - Lisa Patmore

2. What organisation do you represent (if any)?

Lewis Silkin

3. E-mail address:

Lisa.Patmore@lewissilkin.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Not sure

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Not sure

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Claire O'Neill [Claire.O'Neill@lewissilkin.com] on behalf of Lisa Patmore [Lisa.Patmore@lewissilkin.com]
Sent: 19 September 2012 12:20
To: Collective Redundancies
Subject: Collective Redundancies - Consultation Response Form [SILK.aMmn]
Attachments: #3609331-v0.1-BIS Collective Redundancies Consultation Response Form.pdf

Please see attached response form and attached response sheet.

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<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
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Alternatively, you can email, post or fax this completed response form to

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collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
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3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Lisa Patmore

Organisation (if applicable): Lewis Silkin LLP

Address: 5 Chancery Lane, Cliffords Inn, London EC4A 1BL

Telephone: 2070748024

Fax: 020 7864 2770

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Some of the overall approach. See attached response sheet.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

See attached response sheet.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

See attached response sheet.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Possibly. See attached response sheet.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

See attached response sheet.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

See response to Questions 2 and 5.

Question 7: What changes are needed to the existing Government guidance?

See attached response sheet.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

See attached response sheet.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

See attached response sheet.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

See attached response sheet.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

See attached response sheet.

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URN 12/808

Lewis Silkin – attachment to response to Consultation on changes to Collective Redundancies rules

Question 1

We are assuming that, by this question, you mean the overall proposed rules on collective redundancy consultation rather than the rules that presently exist. In relation to the proposed rules, we agree that a reduced period of consultation, from 90 days, is more appropriate. See the comments below on the balance of the proposals.

Question 2

The minimum period of consultation, where there are 100 or more redundancies, should be 30 days. As there is little evidence to show that a longer minimum period of consultation improves the quality of the consultation, there is little to be gained by having a consultation period of 30 days for between 20 and 99 employees and 45 days for 100 or more. Having the consultation period at 30 days (for all redundancies over 20 employees) avoids confusion and achieves the government's desired aim of having simple rules. It would remain the case that the parties could consult for longer than the minimum 30 days where appropriate to their business. This satisfies the government's aim to ensure that consultation is conducted in a way that suits the employer's unique circumstances.

Having a simplified approach would allow employers to focus on the quality of the consultation rather than trying to navigate through confusing legislation. This would make it easier to restructure. Of equal importance is the fact that the employees, both those who are to be made redundant and those who are not, are provided with certainty at an earlier stage. Often, employees feel that they have been treated badly because they do not feel that the employer has been truthful with them about the likelihood of redundancies occurring (because the employer can't give any clear view for fear of looking like consultation is empty and meaningless). This damages morale and therefore productivity. This means that those who leave are likely to be unhappy about the process, and may be more inclined to bring unfair dismissal claims. It also means that the employees who are not made redundant may well be so unsettled that they leave to go to other jobs - either because they feared they would be selected for redundancy, or they believe that the employer has behaved badly by not being truthful about whether they would be selected for redundancy or not. This in turn means that the employer loses essential skills, and the consultation process will need to constantly change as further employees unexpectedly, and voluntarily, leave the business.

There should be a mechanism for the employer and the representatives to agree, at a point earlier than the 30/45 days, that consultation is complete. The prospect of being able to do this may make employers approach consultation in a more positive way from the outset e.g. offering a higher redundancy package sooner rather than later in the consultation process. This would allow the employer to move on with its plans and provide greater certainty for employees (providing them with the freedom, at an earlier stage, to pursue other opportunities). At the moment, consultation is often completed before the minimum consultation period yet the employers and representatives continue to meet and engage in superficial consultation.

The time for lodging the HR1 should also be reduced to 30 days (consistent with the Collective Redundancies Directive (Directive 98/59) (the "Directive")).

Question 3

The issue of what constitutes an 'establishment' is one of the major stumbling blocks, and sources of confusion, to employers when determining if they need to collectively consult. Clearly, it would be better for a clear definition to be set out in legislation but the constraints placed on the government in this respect are acknowledged.

Question 4

It would be beneficial for employers to know what is meant by 'establishment'. The concerns are, however: a) how helpful any guidance on this would be, on the basis that there are constraints on what the government can say because of EU case law; and b) whether any guidance could be adequately kept up to date, particularly if there are other cases that arise which render the guidance incorrect or misleading. What wouldn't help employers is having another source of information that causes further confusion about what is meant by this term.

Question 5

Whether fixed-term workers are included when determining if the collective consultation provisions are triggered should be covered by legislation. The Directive still allows for fixed-term workers to be excluded from the calculation and this is despite the fact that the laws restricting difference in treatment of fixed-term workers emanated from the EU. Where a fixed term worker's engagement is coming to an end as a result of the expiry of their fixed term, the ability to argue that, by not being counted towards the 20 employees, they are being treated less favourably (on the grounds of their fixed term status) has got to be limited. It is accepted that those fixed term workers who have become permanent employees, because they have been engaged for over 4 years, should be counted. Approaching matters in this way means that sectors such as the higher education sector are not engaged in a continuous cycle of collective consultation.

The case of *University of Stirling v University and College Union* [2012] IRLR 266 (EAT) means that, unless the situation on fixed term workers is clarified, more time will need to be spent analysing the reasons for termination of fixed term workers to determine whether they are to be taken into account or not. This is contrary to the simple approach that the government wishes to see in collective consultation legislation.

Question 6

See response to Question 2 and 5.

Question 7

Having a comprehensive guide to carrying out collective redundancies would certainly be attractive. However, to be worthwhile, any guidance would need to: a) be comprehensive so that it covers all of the essential elements of a collective redundancy process; and b) be kept up to date in light of case law and other legal developments.

It is important that, given uncertainties that exist in any event, any further guidance doesn't cause more confusion. Much will depend on the content but the fact that the current intention is for the guidance/code to be 'non-statutory' risks adding another layer of compliance for

businesses without providing the desired certainty. There is only so far the government can go in clearing up confusions given the fact that many aspects of the collective redundancy consultation regime are constrained by EU law. It should be considered whether having both guidance and a code of practice could cause further confusion in what is an already complicated area of law.

Any guidance (whether it is in a guidance document or code of practice) should:

- Explain what might fall within the “special circumstances” exception;
- Make it clear that notices of termination can be provided during the minimum consultation period (provided consultation is complete);
- Make it clear what steps need to have been taken before consultation can begin (i.e. what information has to be given – either pursuant to s188(4) or S193(6) of TULCRA);
- Provide examples of the types of situation where the government believes it may be necessary to consult for more than the 30/45 days. It is unclear, at the moment, where such circumstances might arise;
- In the absence of employee representatives’ agreement, provide guidance on where an employer can reasonably treat consultation as having ceased (whether during or after the 30/45 days);
- Identify what requirement is a ‘nice to have’ and what is a perceived ‘must do’ in order to comply with legal requirements;
- The difference between consulting with a view to reaching agreement and negotiation;
- Recognise that whilst it is always beneficial to have the most senior level of management involved in any consultation process, there also needs to be senior individuals available to hear any appeal against individual dismissals;
- When consultation should start (i.e. what does ‘in good time’ mean) and what consultation should be on (i.e. dealing with the issues around the case of *Akavan* [2009] IRLR 944 (ECJ)). Whilst it would be better for legislation to address these issues, we recognise that the government may feel unable to do this in light of EU law;
- Stress that the role of the representatives is to engage with the employer on the relevant issues rather than spending time trying to identify instances of non-compliance with TULCRA so as to try and argue that there is an entitlement to a protective award. In particular, where relations are strained between the employer and representatives (usually the union) more time can be spent arguing this point than focussing on the essential issues of avoiding redundancies etc; and
- Suggest that the employer contacts the government (i.e. Job Centre Plus or other bodies that will assist potentially redundant employees) as soon as possible and that doing so does not suggest that subsequent consultation with representatives is empty and meaningless.

Question 8

See Question 7 above.

Question 9

Training and/or guidance (for where the time scale for potential redundancies will not allow training) for employee representatives on how to get the most out of collective consultation may assist the parties in ensuring that the quality of consultation is improved, and focuses on the correct issues.

Question 10

Not sure.

Question 11

Lewis Silkin is a law firm and so this question is not relevant.

Question 12

Lewis Silkin is a law firm and so this question is not relevant

Other

Compromise Agreements

Claims for protective awards, for a failure to comply with obligations under s188 of TULRCA, cannot be compromised by a compromise agreement. There is no reason why such a claim should not be able to be compromised like all other claims. Allowing this would mean that, amongst other things, employers would not need to seek legal advice on how to structure payment of monies to try and avoid such a claim being brought. This would also mean that employees who are being paid monies would get any settlement monies sooner.

TUPE

At present, where there is a TUPE transfer followed by consequential redundancies, consultation on those redundancies cannot commence before the transfer has taken place. If it is accepted that longer periods of consultation are a barrier to employment flexibility, and an impediment to business success (being a barrier to competitiveness, flexibility and growth), then it must be right that the formal redundancy consultation should be able to be commenced prior to the transfer of the business and the transferee should be able to rely upon that period of consultation.

Agency workers

Section 188(4) (g) – (h) of TULRCA should restrict the information required in relation to agency workers to the establishment in respect of which the consultation is taking place. To provide the information presently required, in relation to the undertaking as a whole, is unnecessary and complicates matters.

1. Your name:

Marks and Spencer - Rachel Wilkinson

2. What organisation do you represent (if any)?

Marks and Spencer

3. E-mail address:

Rachel.Wilkinson@marks-and-spencer.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Having a 90 day consultation period does not influence our ability to effectively consult. We consult for as long as we need to for consultation to be meaningful. Our consultations never last 90 days.

Line2 - Indeed, we have often been in situations where employees are issued with notice of dismissal within the 90 days and, if they have a short notice period, we wait until 90 days for the dismissal to take

Line3 - effect. Moreover, the current system can be unsettling for employees. We welcome, therefore, the Government's proposal to shorten the consultation period.

Line4 - We would support one 30 day minimum period. Having one time period is clear for everyone involved and makes the process of consultation easier. A two tier system is unnecessary and confusing for

Line5 - employees. Whether there are 80 or 110 proposed redundancies, we would still consult for as long as we felt we needed to in order for the consultation to be meaningful.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - Our retail business is very complex with office locations, distribution centres and store sites. It would be difficult to follow a very specific description of an establishment.

Line2 - Using criteria, such as where the decision making power is, would not be helpful.

Line3 - We consider that the legislation should allow companies flexibility to determine what an establishment means for them.

Line4 - A standard legislative definition would be difficult to apply across large and complex organisations.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Not sure

12. Please provide comments to support your answer.

Line1 - Whilst contracts under three months are excluded for reasons of redundancy, which helps our peak trading operation, there are still a number of fixed term contracts that are longer than three months

Line2 - either during peak trading or across our office locations. Due to the number of fixed term workers we employ, there will often be times during the year when collective consultation could be triggered.

Line3 - A solution could be to exclude fixed term contracts from the regulations around collective consultation. This would need to be implemented via legislation, rather than a Code of Practice.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - Further clarification is needed on when the requirement to consult is triggered. The current requirement to consult as soon as there is a proposal to make redundancies often means we have to open

Line2 - consultation a long way in advance of when the redundancies will actually take affect. This can then be challenging operationally for a business and emotionally for employees.

Line3 - By example in 2010 we were required to consult on the introduction of a new IT system that might lead to redundancies even

Line4 - though the testing and trial of the new system means that it anticipated that no redundancies would be made until at least the end of 2012.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Guidance around what effective consultation looks and feels like would be helpful.

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

Line1 - For us as an employer we have a robust approach to collective redundancies and would not require any further training. However it could be beneficial for smaller companies.

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - We will always approach an exercise with a view to reaching an agreement but this is not always possible or required.

Line2 - We complete collective redundancy exercises in an average of 6-8 weeks from announcement to closure of collective consultation.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - In areas where we have triggered consultation in advance of redundancies this lengthy period of time is unsettling for employees and causes de-motivation.

REPRO DTP

From: Wilkinson, Rachel [Rachel.Wilkinson@marks-and-spencer.com]
Sent: 18 September 2012 17:33
To: Collective Redundancies
Subject: Marks and Spencer response
Attachments: 12-808rf-collective-redundancies-consultation-form1 v3.doc

Hello

Please find attached our response to this consultation.

Thanks

Rachel Wilkinson
Employee Relations Manager

☎ 07788 190609

☎ 02087 184960

Mailroom MS2.2

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Unless otherwise stated above:

Marks and Spencer plc

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Waterside House

35 North Wharf Road

London

W2 1NW

Registered No. 214436 in England and Wales.

Telephone (020) 7935 4422

Facsimile (020) 7487 2670

www.marksandspencer.com

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Collective Redundancies: Consultation on changes to the rules : Response form

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<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Rachel Wilkinson

Organisation (if applicable): Marks and Spencer

Address: 5 Merchant Square, London W1 1AS

Telephone: 2087184960

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Having a 90 day consultation period does not influence our ability to effectively consult. We consult for as long as we need to for consultation to be meaningful. Our consultations never last 90 days. Indeed, we have often been in situations where employees are issued with notice of dismissal within the 90 days and, if they have a short notice period, we wait until 90 days for the dismissal to take effect.

Moreover, the current system can be unsettling for employees. We welcome, therefore, the Government's proposal to shorten the consultation period.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

We would support one 30 day minimum period. Having one time period is clear for everyone involved and makes the process of consultation easier.

A two tier system is unnecessary and confusing for employees. Whether there are 80 or 110 proposed redundancies, we would still consult for as long as we felt we needed to in order for the consultation to be meaningful.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Our retail business is very complex with office locations, distribution centres and store sites. It would be difficult to follow a very specific description of an establishment. Using criteria, such as where the decision making power is, would not be helpful.

We consider that the legislation should allow companies flexibility to determine what an establishment means for them. A standard legislative definition would be difficult to apply across large and complex organisations.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

See reasons above

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Whilst contracts under three months are excluded for reasons of redundancy, which helps our peak trading operation, there are still a number of fixed term contracts that are longer than three months either during peak trading or across our office locations. Due to the number of fixed term workers we employ, there will often be times during the year when collective consultation could be triggered.

A solution could be to exclude fixed term contracts from the regulations around collective consultation. This would need to be implemented via legislation, rather than a Code of Practice.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

As set out above, a fixed term contract exclusion could be considered to be a welcome legislative addition.

Question 7: What changes are needed to the existing Government guidance?

Further clarification is needed on when the requirement to consult is triggered. The current requirement to consult as soon as there is a proposal to make redundancies often means we have to open consultation a long way in advance of when the redundancies will actually take affect. This can then be challenging operationally for a business and emotionally for employees.

By example in 2010 we were required to consult on the introduction of a new IT system that might lead to redundancies even though the testing and trial of the new system means that it anticipated that no redundancies would be made until at least the end of 2012.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Guidance around what effective consultation looks and feels like would be helpful.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

For us as an employer we have a robust approach to collective redundancies and would not require any further training. However it could be beneficial for smaller companies.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

We will always approach an exercise with a view to reaching an agreement but this is not always possible or required. We complete collective redundancy exercises in an average of 6-8 weeks from announcement to closure of collective consultation.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

In areas where we have triggered consultation in advance of redundancies this lengthy period of time is unsettling for employees and causes de-motivation.

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URN 12/808

1. Your name:

Nationwide Building Society - Gemma Williams

2. What organisation do you represent (if any)?

Nationwide Building Society

3. E-mail address:

gemma.williams@nationwide.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - This is a minimum - proper consultation will take as long as it takes. Employers can consult for longer.

Line2 - Where there is a site or business closure, there may often be little to reach agreement on. Employees will still have a cause of action where there is no proper consultation.

Line3 - Employees will benefit from greater certainty & gives them the ability to search for new employment.

Line4 - Advances in IT have increased the speed with which consultation can take place.

Line5 - For employers, a shorter consultation period will reduce employment costs (esp if critical) and disruption.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - If the constraints of European law make it difficult and risky to define 'establishment' in legislation then it will need to be defined in a Code or Practice instead.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - If the Government are unable to construct a suitable legislative exemption for fixed term appointees then that it will have to be included in

guidance.

Line2 - We have had issues where we have had to extend fixed term contracts (where we otherwise may not have done) where a redundancy situation has arisen.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - The meaning of establishment in complex situations e.g. home-workers,

Line2 - the link between collective and individual consultation, guidance on determining when the consultation process should commence

Line3 - i.e. whether the strategic business decision (as opposed to the potential employment impact) is within the scope

Line4 - of the consultation duty, guidance for employers in relation to the consequences of there being

Line5 - a wider definition of redundancy in TULRCA than there is in the ERA, how much info we need to start consultation.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Acas could provide training for smaller employers. Care should be taken to ensure that there is meaningful consultation rather than a box-ticking exercise.

Line2 - The prospect of Tribunal claims/protective awards will also be a deterrent.

Line3 - We

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Training for smaller employers, use of the telephone advisory service, an easy to understand framework that encourages the right culture.

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - There is no general rule of thumb and this depends on the circumstances.

Line2 - As we have stated previously, where there is a site/business closure where there is no realistic alternative way to meet the business objective and no need to consult about

Line3 - selection of employees because all employees at the site are at risk, consultation could finish within 30 days. Selection generally takes longer.

Line4 - Where there are election or representation issues, this can take time. Union involvement can make a big difference to the length of consultation.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - We have experienced loss of morale not only for staff at risk but staff not at risk, loss of productivity, customer impact and increased levels of absence.

1. Your name:

Network Rail Infrastructure Limited - Sian Williams

2. What organisation do you represent (if any)?

Network Rail Infrastructure Limited

3. E-mail address:

Sian.Williams2@networkrail.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Not sure

9. Please provide comments to support your answer.

Line1 - This will depend on the quality and clarity of the guidance in the code of practice

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - Greater detail

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - During this period employees can feel stressed and unsure about their best course of action

REPRO DTP

From: Williams Sian [Sian.Williams2@networkrail.co.uk]
Sent: 19 September 2012 16:07
To: Collective Redundancies

Attachments: img Swilliams1058.pdf



img
Williams1058.pdf (3 M)

Dear Mr Davies

Please see the attached response on behalf of Network Rail Infrastructure Limited.

Yours sincerely

Sian Williams

Legal Advisor

Legal Services

Kings Place | 90 York Way | London N1 9AG

Tel: 020 3356 9302 (int: 085 67302)

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Annex C: Collective Redundancies: Consultation on changes to the rules response form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 19/09/2012

Name: **SIAN WILLIAMS**

Organisation (if applicable): **NETWORK RAIL INFRASTRUCTURE LTD.**

Address: **KINGS PLACE, 90 YORK WAY, LONDON, N1 9AG**

Please return completed forms to:

Carl Davies,

3rd Floor Abbey 2, 1 Victoria Street

London SW1 H 0ET

Telephone: 020 7215 6220

Fax: 020 7215 6414

email: collectiveredundancies@bis.gsi.gov.uk

If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group from the list below.

| | |
|---|---|
| | Business representative organisation/trade body |
| | Central government |
| | Charity or social enterprise |
| | Individual |
| ✓ | Large business (over 250 staff) |
| | Legal representative |
| | Local Government |
| | Medium business (50 to 250 staff) |
| | Micro business (up to 9 staff) |
| | Small business (10 to 49 staff) |
| | Trade union or staff association |
| | Other (please describe) |

Question 1

Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

- Yes No Not sure

Comments:

Question 2

Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

- 30 45 Not sure

Comments:

Question 3

Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'? Please provide comments to support your answer.

Yes

No

Not sure

Comments:

Question 4

Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

No

Not sure

Comments:

This will depend upon the quality and clarity of the guidance in the code of Practice.

Question 5

Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

Yes No Not sure

Comments:

Question 6

Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Comments:

Question 7

What changes are needed to the existing Government guidance?

Greater detail.

Question 8

How can we ensure the Code of Practice helps deliver the necessary culture change?

Question 9

Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes

No

Not sure

Comments:

Question 10

Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

Yes

No

Not sure

Comments:

Question 11

If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Question 12

If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

During this period employees can feel stressed and unsure about their best course of action.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

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1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

URN 12/808

1. Your name:

NG Bailey - John Anderson

2. What organisation do you represent (if any)?

NG Bailey

3. E-mail address:

john.anderson@ngbailey.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

OGN North Sea Ltd - Maxine Mason

2. What organisation do you represent (if any)?

OGN North Sea LTD

3. E-mail address:

maxine.mason@ogn-group.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

PWC - Lucy Howcroft

2. What organisation do you represent (if any)?

PWC

3. E-mail address:

lucy.howcroft@uk.pwc.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: lucy.howcroft@uk.pwc.com
Sent: 19 September 2012 10:39
To: Collective Redundancies
Subject: Collective Redundancies: Consultation on changes to the rules

Dear Sirs

I am writing on behalf of the Business Recovery Services practice of PwC in response to the consultation, and in particular in relation to the issue of consultation in insolvency situations. We do not propose to comment in respect of other aspects of the consultation.

We are disappointed to note that despite responses made to the previous Call for Evidence (referred to in paragraph 4.47 of the current consultation) there is no intention to legislate to provide for insolvency proceedings to constitute 'special circumstances' for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992. We know that the arguments for doing so have already been cogently made (we have seen the response to the Call For Evidence made by the Association of Business Recovery Professionals ('R3')) and we therefore do not intend to repeat them here.

We note that instead it is intended that the proposed new Code of Practice will include guidance on dealing with consultation in insolvencies, and that the Government is keen to hear from respondents who would be willing to participate in the development of this. We would welcome the opportunity to take part in order to assist the Government in coming up with practical and workable guidance.

I look forward to hearing from you in due course.

Regards

Lucy Howcroft
PwC | Solicitor
Direct: +44 (0) 121 265 5448 | Mobile: +44 (0) 773 9449110
Email: lucy.howcroft@uk.pwc.com
PricewaterhouseCoopers LLP
Cornwall Court, 19 Cornwall Street, Birmingham, B3 2DT

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1. Your name:

Severn Trent Water Ltd - Kiera Mcternan

2. What organisation do you represent (if any)?

Severn Trent Water Ltd

3. E-mail address:

kiera.mcternan@severntrent.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - It would remove the long period of uncertainty for those potentially affected by redundancy proposals and allow volunteers to exit the business earlier than under current 90 day rules

Line2 - , as well as reducing costs for the business.

Line3 - Consideration should be given to segmenting the requirement, to prevent rules being onerous for small and medium sized enterprises.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - Establishment is a concept that will be very difficult to define to suit every circumstance and will be open to challenges that could delay and obfuscate the process of business restructuring

Line3 - It will be easier to provide guidelines and illustrate the spirit of what is intended by Establishment in a Code of Practice compared with primary legislation

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - A code of practice rather than legislation will avoid lengthily and costly legal challenge and allow ET's to continue to test the application of good practice.

Line2 - Codes of practice are more easily updated to take into account the changing diversity and nature of the work place and of employment arrangements.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - Guidelines should expand on and better outline the roles and responsibilities of all the parties involved in a restructuring, in particular emphasising the need to work together

Line2 - to secure the best next steps for those affected, rather than oposing the business rationale or process for restructuring, with procedural challenges.

Line3 - More emphasis on the quality of individual consultation and less on the primacy of collective, especially trade union-led, collective consultation,

Line4 - as Trades Unions become less representative in the workplace.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Ensure that the Code is consulted with and adopted by, the widest possible range of stakeholders

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Workshops that mix employers and employee representatives

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

Line1 - In particular the unintended possible effects on how contractors are treated need to be considered as contractual arrangements become more short term and diverse.

Line2 - The quality of collective consultation where led by Trades Unions who represent a minority of the affected workforce needs attention.

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - 6 months

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - We experience the expected drop in morale and operating efficiency of those in scope for proposals but recover our operational efficiency and effectiveness relatively quickly,

Line2 - with the help of our Trade Union partners

REPRO DTP

From: McTernan, Kiera [Kiera.McTernan@severntrent.co.uk]
Sent: 19 September 2012 17:18
To: Collective Redundancies
Cc: STW Ofwat
Subject: 12-808rf-collective-redundancies-consultation-form v2 response sent 120919
Attachments: 12-808rf-collective-redundancies-consultation-form v2 response sent 120919.doc

Please see the attached response form from Severn Trent Water, in relation to 'Collective Redundancies : Consultation on changes to the rules.'

Our response is weighted more towards the proposed options to the consultation timescales, however we have provided responses in relation to the other proposed changes.

Kind Regards

Kiera McTernan
HR Hub Manager
Human Resources
☎ Mobile: 07824624073
☎ General HR Enquiries: (7)150 (Internal) or 02476 478202
✉ Email: kiera.mcternan@severntrent.co.uk

Please note our location address is:

**Severn Trent Centre
2 St John's Street
Coventry
CV1 2LZ Sat Nav CV1 2LU**

The address for general STC post is:- **PO Box 5309, Coventry, CV3 9FH.**

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(registered number 2366686) (together the "Companies") are both limited companies
registered in England & Wales with their registered office at Severn Trent Centre,
2 St John's Street, Coventry, CV1 2LZ

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Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Kiera McTernan

Organisation (if applicable): Severn Trent Water Ltd

Address: PO Box 5309, Coventry, CV3 9FH

Telephone: 07824624073

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

It would remove the long period of uncertainty for those potentially affected by redundancy proposals and allow volunteers to exit the business earlier than under current 90 day rules, as well as reducing costs for the business.

Consideration should be given to segmenting the requirement, to prevent rules being onerous for small and medium sized enterprises.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Establishment is a concept that will be very difficult to define to suit every circumstance and will be open to challenges that could delay and obfuscate the process of business restructuring

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

It will be easier to provide guidelines and illustrate the spirit of what is intended by Establishment in a Code of Practice compared with primary legislation

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

A code of practice rather than legislation will avoid lengthy and costly legal challenge and allow ET's to continue to test the application of good practice.

Codes of practice are more easily updated to take into account the changing diversity and nature of the work place and of employment arrangements.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Question 7: What changes are needed to the existing Government guidance?

Guidelines should expand on and better outline the roles and responsibilities of all the parties involved in a restructuring, in particular emphasising the need to work together to secure the best next steps for those affected, rather than opposing the business rationale or process for restructuring, with procedural challenges.

More emphasis on the quality of individual consultation and less on the primacy of collective, especially trade union-led, collective consultation, as Trades Unions become less representative in the workplace.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Ensure that the Code is consulted with and adopted by, the widest possible range of stakeholders

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Workshops that mix employers and employee representatives

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

In particular the unintended possible effects on how contractors are treated need to be considered as contractual arrangements become more short term and diverse.

The quality of collective consultation where led by Trades Unions who represent a minority of the affected workforce needs attention.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

6 months

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

We experience the expected drop in morale and operating efficiency of those in scope for proposals but recover our operational efficiency and effectiveness relatively quickly, with the help of our Trade Union partners

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London SW1H 0ET
Tel: 020 7215 5000

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URN 12/808

1. Your name:

SFK (U.K.) Limited - Keith Robinson

2. What organisation do you represent (if any)?

SKF (U.K.) Limited

3. E-mail address:

keith.robinson@skf.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - 30 days is too short to allow restructuring and meaningful negotiations

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - I support this view

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - Clarification of redundancy pay for employees with more than 20 years service and over the age of 65

Line2 - The current guidance is not helpful and is in conflict with age discrimination

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - typically it takes 2 months

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - very little if you communicate correctly

REPRO DTP

From: Joanne Braddock [Joanne.Braddock@simmons-simmons.com]
Sent: 19 September 2012 08:33
To: Davies Carl (RGFL)
Cc: Judith Hogarth
Subject: Simmons & Simmons BIS s188 response
Attachments: Simmons & Simmons BIS s188 response (14159693_1).DOCX

Dear Mr Davies,

Sent on behalf of Judith Hogarth.

Kind regards,

Jo Braddock
Professional Support Officer
Simmons & Simmons LLP
DD +44 20 7825 3155

joanne.braddock@simmons-simmons.com

Simmons & Simmons was named a top tier law firm in the Financial Times Innovative Lawyers Report 2011 and we were winners in the Dispute Resolution and Anti-bribery and Corruption categories. We put collaborative relationships and innovation at the heart of how we work.

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Simmons & Simmons LLP

Response to 'Collective Redundancies: Consultation on changes to the rules'

Contact details

Philip Bartlett
Partner
Employment Department
Direct dial: +44 20 7825 4470
philip.bartlett@simmons-simmons.com

Address: CityPoint, One Ropemaker Street, London EC2Y 9SS
Website: www.simmons-simmons.com

Introduction

The Simmons & Simmons UK employment practice is a recognised leader in the UK marketplace having been consistently rated as a Band 1 firm for many years.

We work almost exclusively for employers and approximately 80% of our clients are in the financial services sector. We advise on the full range of restructuring and merger/ acquisition activity, including implementing collective redundancies, advising on TUPE obligations on business transfers, change of service providers, and effecting variations to terms and conditions of employment as an alternative to making redundancies.

In preparing this submission we took soundings from a number of our most high profile clients on the issues raised in the consultation document and hosted a focus group for BIS.

Responses

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

We agree that the focus of the statutory rules should be changed. We also believe that clear and practical guidance will consolidate, and spread, the good consultation practice that already exists.

The experience of the clients we represent is that having a 90-day consultation period does not of itself lead to a material difference in the outcome of consultation on the core business decisions they make on questions such as which functions are affected and numbers to be dismissed. Furthermore, the complexity of issues (and therefore the need for longer collective consultation) does not increase automatically with the number of employees the employer is proposing to dismiss.

Accordingly, reducing the 90-day threshold and providing guidance emphasising what a meaningful consultation exercise looks like will:

- Make it easier for companies to respond effectively to rapidly changing commercial imperatives. Currently, our clients tell us, so much time can elapse under the 90-day regime that the business does not fully benefit from the restructuring/re-shaping exercise, which can result in the employer having to make more redundancies further down the line. The competitive pressure that led to the redundancy in the first place cannot be mitigated (by going live with new initiatives, new structures, etc) until the redundancy exercise has finished and the staff who are being retained are in post and focused on the new approach/new business, new productive lines, etc.

There is the possibility of a downward spiral, therefore, in the fortunes of a business unit the longer a collective redundancy exercise goes on for.

- Reduce employer costs, which in turn is likely to result, overall, in fewer redundancies.
- Enable a more rounded view of the impact of a redundancy exercise on all employees, not just those eventually dismissed. Currently, individual consultation may not begin until very late in the statutory minimum 90-days collective consultation period even where employee representatives may not have raised any new issues for some time. This seems to be the case even where there is a recognised trade union and/or no standing body of elected employee representatives.

Therefore, the collective consultation process is usually unnecessarily drawn out, which is not beneficial to employers, employees nor neutral in its impact as it can damage morale and productivity. Being at risk of redundancy is a highly stressful life experience and most people want to know where they stand as early as possible. Employers report they often lose the staff they would prefer not to put at risk because those staff feel unsettled and leave voluntarily.

In summary, focusing on the quality of consultation rather than minimum time scales would, as one of our financial services sector clients put it, ensure employers can 'respond to changing market conditions and balance the interests of the employees made redundant with those remaining'.

We also agree that the Government's approach could result in simplifying the legislative framework. This is primarily because reducing the 90-day period, and especially to a single 30-day minimum period for redundancy exercises involving 20 or more staff would, of itself, mean the 'establishment' point becomes less important in practice (see below).

Question 2: Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Our clients tell us that 30 days is ample time for them to undertake substantive quality collective consultation, irrespective of the scale of the redundancy exercise. Further, in the infrequent cases where employee representatives say they need more time, employers, in accordance with good employee relations practice, respond positively and extend the consultation period.

Companies report that the process would be simpler, less burdensome, easier to explain to employees and their representatives, and generally fairer, if collective consultation kicked in at 20 or more employees for a minimum period of 30 days with no graduated threshold. A single minimum period of 30 days would be consistent with the provisions of the Directive (which does not require a two speed approach) and would allow employers to be more responsive to the particular circumstances.

Therefore, we see no basis for providing a longer statutory minimum period of 45 days. As a matter of principle, higher numbers do not automatically bring complexity nor require more time for consultation.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'? Please provide comments to support your answer.

We recognise that ECJ case law has left the Government with limited room to manoeuvre on setting out a clearer definition in the legislation on the meaning of 'establishment' for the purposes of collective consultation.

Generally speaking, though, in our experience the definition is not contentious between employers and representatives but does cause some employers concern, on a case by case basis, about whether they are approaching the issue correctly.

The fact that there are not many examples in the UK of disputes about this suggests that by and large employers usually 'get it right'. That said, they would welcome greater clarity, through guidance in a Code, to make the process of deciding on the appropriate unit (and the level of aggregation) less burdensome. Such guidance would be especially helpful to SMEs, and to elected representatives/unions, who are often less familiar with the relevant considerations.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Employers want the law on when collective consultation is triggered (the establishment question) to reflect the realities of how they organise their staff and not require them artificially to aggregate staff for consultation purposes.

In principle, defining establishment in a Code of Practice could give those employers who need it greater clarity and generally would be welcome as long as the non-statutory Code is not presented as providing legal certainty on this issue. A Code of Practice, which we support, would be very helpful but cannot deliver legal certainty especially in the absence of a tighter legal definition, which the ECJ case law does not permit.

Including worked examples in the Code may make the decision-making process about the establishment less burdensome. The guidance should reflect the wide variety of employers' operations and should not, therefore, be too simplistic. Also, there are specific examples of where employers feel some guidance would be helpful, such as where employees do not have a strong tie with any particular administrative function/business unit.

Simmons & Simmons would be pleased to assist BIS in ensuring that the Code is fit for purpose in this (and any other) respects.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

We agree that, as with the definition of establishment, the Government's proposal to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation is sensible and pragmatic given the current state of relevant law. The different factors driving the decision not to renew such contracts, and the requirement to ensure that fixed-term employees are not treated less favourably than comparable permanent employees, make constructing an exemption difficult.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Within the parameters set by the relevant EU law, we think employers will be supportive of the balance between legislation and guidance proposed in the consultation document, save for in one material respect - TUPE.

The artificial separation between 'TUPE' issues and 'collective redundancies' in law (and repeated by the Government's approach to consulting separately on the two matters) is a continuing source of frustration for employers and employee representatives. The two topics are inextricably linked in practice and the law/guidance should recognise this. Instead, employers are reliant on their advisers proposing legal 'work arounds' to facilitate practical solutions, which advice is costly to obtain and costly to execute. The legal provisions should be recast to facilitate, where appropriate, the transferor and transferee working together in a constructive way.

Question 7: What changes are needed to the existing Government guidance?

We believe SMEs in particular would welcome more guidance on the practical implications of *Junk* and the relationship between collective and individual consultation. Some employers report

being confused about when it may be 'legally safe' to begin individual consultation and when it is safe to issue notice of termination particularly when the employer has the option or follows the practice of paying in lieu of notice. This confusion leads to a direct cost, both in terms of spend on legal advice and in companies employing people for longer than they can afford which impacts on competitiveness.

Removing the 90-day consultation period may of itself reduce the confusion, and especially reduce the complexity caused by individuals asking to leave early, before the collective consultation period has technically closed (even if, de facto, it is over). That said, the proposed guidance should include typical scenarios covering the points in the preceding paragraph.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

As one of our clients in the financial service sector has commented: "The Code of Practice should be practical and clear. The Code should encourage quality consultation rather than focusing on the amount of time consultation must take. We consider that this focus will support the necessary culture change."

We also agree that a non-statutory Code of Practice focusing on principles and behaviours can ensure that consultation is conducted in the right spirit and will not lead to superficial consultation.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

No.

Question 10: Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

See our responses to Questions 1 & 2 above.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

As we report above, our clients generally say that meaningful consultation is usually concluded within 30 days irrespective of whether 100 or more employees have been proposed as redundant (and so the employer is complying with a 90-day minimum period). The process is the same as for a 30-day period and, to everyone's frustration, including employee representatives, the business cannot get on with implementation.

1. Your name: .

Tata Steel UK Ltd - Daniel Jones

2. What organisation do you represent (if any)?

Tata Steel UK Ltd

3. E-mail address:

daniel.jones@tatasteel.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

Not sure

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Quality is more important than duration. A Code might enable effective/meaningful consultation. Shortening the minimum period when 100+ proposed dismissals will improve flexibility/enable employers to

Line2 - make timely decisions. No objection to shorter minimum period on basis that a. minimum period only b. where meaningful consultation not concluded, it continues beyond the minimum period. Some employers

Line3 - may treat minimum period as a maximum and superficially engage with process and so legislation should stress importance of meaningful consultation. Another issue is whether employer and representative

Line4 - get the opportunity to agree that meaningful consultation has concluded before the minimum consultation period concludes. Useful to have this expressly recognised in legislation, particularly if 45 day

Line5 - minimum period is selected. Enables the employer to continue its reduction/ closure programme without matters becoming unnecessarily protracted and avoiding continued uncertainty for employees

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - We agree with the Government's analysis. Any definition of establishment provided in primary legislation would be subject to the constraints of EU law

Line2 - We concur that this issue is best addressed by guidance in a Code of Practice.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - Regarding question 10: Clarity would be beneficial. An option would be to describe the characteristics of an establishment with a checklist of factors pointing to or away from a particular business

Line2 - unit being an establishment. This is similar to that used by HMRC in guidance on whether a particular employment relationship constitutes a contract of employment or a contract for services. The HR1

Line3 - Form should be amended to take into account guidance on the meaning of establishment to ensure consistency.

Line4 - question 11: Greater clarity would be beneficial. The Government should take the opportunity to state in legislation whether fixed term employees must be included in the employee threshold for

Line5 - collective consultation. Employers are looking for is certainty on whether fixed term employees should be counted. This should be dealt with in primary legislation rather than a Code of Practice

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - According to feedback from the Company's IR practitioners the following support and guidance would be beneficial:

Line2 - i. How to manage a counter proposal for an intended job reduction exercise (reasonable steps and access to company/financial information)

Line3 - ii. Logical sequencing of agenda items for collective consultation (practical guide)

Line4 - iii. The link between collective consultation and consultation with individuals

Line5 - iv. Support documentation / templates relating to the election of employee representatives and v. Guidance on redeployment and outplacement support

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - One suggestion is to obtain the input of ACAS on developing the proposed Code of Practice. Employers and employee representatives are heavily influenced by codes that have ACAS involvement.

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Feedback from the company's IR practitioners suggests that consultation exercises have lasted for a variety of periods – 30, 60 and 90 days depending on the nature and complexity of the situation.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - Feedback from the company's IR practitioners suggests 1) Adverse effect on employee morale 2) Revision of annual plan commitments (to reflect time associated with activity)

Line2 - 3) Possible IR tension, making other collectively bargained issues more difficult to progress than would have ordinarily been the case.

1. Your name:

The Road Haulage Association - Sonia Purser

2. What organisation do you represent (if any)?

The Road Haulage Association

3. E-mail address:

s.purser@rha.uk.net

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - We agree that proper training for relevant staff about any rule changes would be essential.

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Sonia Purser [s.purser@rha.uk.net]
Sent: 18 September 2012 16:24
To: Collective Redundancies
Subject: Response of the Road Haulage Association to the BIS large scale Collective Redundancies consultation on changes to the rules

Attachments: RHA response to the BIS large scale collective redundancy FINAL.doc

To:

Carl Davies
Department for Business, Innovation and Skills (BIS)
1 Victoria Street
London
SW1H 0ET

I attach the response of the Road Haulage Association to the above consultation.

Sonia Purser, Policy Manager

Road Haulage Association Ltd, The Old Forge, South Road, Weybridge, Surrey, KT13 9DZ
Tel: 01932 838924, Fax: 01932 852516, Mob: 07789 397760



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Response of the Road Haulage Association to the consultation from the Department for Business Innovations and Skills on changes to the rules in relation to large scale Collective Redundancies

Key concerns of the Road Haulage Association

- The RHA welcomes plans to implement measures that help to accelerate the pace of decision-making to allow enterprises to restructure effectively
- The RHA supports the aim of helping employers act to save administrative cost, at the same time as giving all employees certainty about their future at an earlier stage
- We welcome the proposal to produce a new non-statutory code of practice that will provide greater clarity to both employer and employees, and which will encourage a high quality and meaningful consultation process

The Road Haulage Association (RHA) is the trade and employers organisation for the hire-and-reward sector of the road haulage industry. The RHA represents some 7,300 companies throughout the UK, with around 100,000 HGVs and with fleet size and driver numbers varying from one through to thousands.

Generally, RHA members are entrepreneurs, including many family-owned businesses as well as some plcs. Without the activities of RHA members the UK would come to a halt both socially and economically.

While many RHA members are smaller operators we do have a significant number of operators in membership running large businesses that would be affected by some of the proposed rule changes.

We note that the changes are intended to apply in England, Wales and Scotland. We do not intend to complete all of the questions in the standard questionnaire to this consultation because some of it is aimed directly at employers and we are responding as a trade association rather than as an employer.



Consultation Questions

Question 1 Do you agree with the Government's overall approach to the rules on collective redundancy consultations?

We support the proposal to reduce the minimum period before redundancies of 100 or more employees can take effect. We are keen to see greater flexibility introduced into the process so that businesses can restructure themselves efficiently and effectively.

Question 2 Which of the two proposed options should replace the 90 day minimum period? Please explain why you think your choice would better deliver the Government's aim than the alternative option.

Of the two options suggested in the consultation, we would support the adoption of a cautious approach that would see the longer **45 day consultation** period replace the current 90 day period.

We note that in the Impact Assessment for this consultation, in paragraph 43 it is stated that most employers felt that most consultations could be satisfactorily completed in this time frame. We also think that a longer 45 day consultation period would allow the employees affected more time to make personal arrangements.

We understand that where a business seeks to make redundant between 20 and 99, employees the consultation period is already 30 days. We acknowledge that to reduce the consultation period to 30 days in all cases does have the attraction of simplicity.

However, on balance we take the view that a 30 day period might have a negative impact on morale of all workers, and might not be long enough for some restructuring issues to be considered fully or to be worked through in many workplaces.

We understand that the shorter consultation period can be extended with agreement, however we feel that some employees might feel that they were obliged to bring issues to a conclusion if the statutory period was 30 days in all cases, and this might have an impact on the quality of the consultation.

Question 3 Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of "establishment"? Please provide comments to support your answer.

We agree with the government's assessment of the risk of taking a legislative route on the issues of establishment. The primary reason is that it would be extremely difficult to attempt to clearly define the various establishment within legislation.



Establishments could range in the extreme from a single site traditional structure, through to an organisation that has a virtual office where employees working from home and are linked by technology.

Question 4 Will defining “establishment” in a Code of Practice give sufficient clarity?

Although we acknowledge the difficulty of defining the term establishment in legislation, hauliers are non-lawyers, some with limited access to in-house human resources expertise and they would welcome some clarification of a definition.

We suggest that the definition of establishment should be clarified through the use of a Code of Practice, to which weight could be given by ACAS and at potential tribunals in the event that such disputes remain unresolved in the workplace.

Question 5 Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

N/A

Question 6 Have we got the balance right between what is for statute and what is contained in government guidance and a Code of Practice?

N/A

Question 7 What changes are needed to the existing government guidance?

RHA members with experience of handling large scale collective redundancies have advised that if the current process is followed correctly, where there is in-house human resources or legal expertise and an established trades union, then there may be no significant issues working with current guidance.

However for with RHA members less familiar with the current rules, the proper process to adopt in, for example, issuing letters to employees, can be an area causing concern.

With some operators, uncertainty over the process leads to delays in decision making, which may have a significant negative impact on some enterprises. Some of our members have reported feeling obliged to have at least three collective redundancy consultation meetings with staff before the process can conclude.

Therefore on balance additional guidance on how the process should be handled would be welcome.



Question 8 How can we ensure the Code of Practice helps deliver the necessary culture change?

We suggest that the government should publicise any new code widely.

Question 9 Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

We agree that proper training for relevant staff about any rule changes would be essential.

Question 10 Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

Broadly, yes.

Question 11 If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

N/A

Question 12 If you have carried out a collective redundancy consultation in the last five years, what effect, if any

N/A

In conclusion

The RHA would welcome additional guidance and clarification for its members on these complex issues.

**Sonia Purser,
Policy Manager,**

The Road Haulage Association Ltd, The Old Forge, South Road, Weybridge, Surrey, KT13 9DZ

E-mail: s.purser@rha.uk.net - Tel: 01932 838924 - Fax: 01932 852516 - Mob: 07789 397760

September 2012

1. Your name:

The Royal Bank of Scotland plc - Jane Bunch/ Oliver Dale

2. What organisation do you represent (if any)?

The Royal Bank of Scotland plc

3. E-mail address:

Alice.Heatley@rbs.co.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Heatley, Alice [Alice.Heatley@rbs.co.uk]
Sent: 19 September 2012 16:31
To: Collective Redundancies
Subject: RBS response to BIS consultation
Attachments: RBS Plc - Response to BIS Consultation on Collective Redundancies (19.09.2012).pdf

Dear Sir/Madam

Please find attached below the response submitted by The Royal Bank of Scotland Plc to the BIS consultation on changes to the rules on collective redundancies.

I should be grateful if you would acknowledge receipt of this e-mail and the attached response.

Many thanks.

Kind regards

Alice

<<RBS Plc - Response to BIS Consultation on Collective Redundancies (19.09.2012).pdf>>

Alice Heatley

Solicitor
RBS - HR Policy & Employment
15 Bishopsgate, 3rd Floor, London EC2N 3NW - Depot:028

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leadtheway 

HR Policy&Employment

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21/01/2012

Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Jane Bunch / Oliver Dale

Organisation (if applicable): The Royal Bank of Scotland plc

Address: 15 Bishopsgate, 3rd Floor, London EC2N 3NW

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

THE ROYAL BANK OF SCOTLAND PLC

**RESPONSE TO BIS CONSULTATION ON CHANGES TO THE RULES ON COLLECTIVE
REDUNDANCIES**

Question 1

Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes: X No: Not sure:

The Government's recognition of an employer's need to be able to react more quickly to changing workforce requirements is positive for businesses, particularly in the present economic climate.

We agree with the Government's proposal to reduce the minimum period between the start of collective consultation and the first dismissal taking effect from 90 days (where more than 100 redundancies are proposed), as this will allow greater flexibility for employers. We agree that a shorter minimum period will provide employees with more certainty; from experience they are often keen to avoid the consultation going on for any longer than necessary.

We also agree with the Government's proposal of better guidance on collective consultation, especially on the meaning of "establishment" and whether fixed-term workers should be included in redundancy consultations, both of which need to be clearer.

However, whether the Government's approach will be successful depends ultimately on how the proposed changes are implemented.

Question 2

Which of the two proposed options should replace the 90-day minimum period? Please explain why you think your choice would better deliver the Government's aims than the alternative option.

30: X 45: Not sure:

A minimum period of 30 days will afford employers the greatest degree of flexibility to respond as quickly as possible (and as required) to changing demands in the workforce. Each collective redundancy situation will be different; reducing the minimum period to 30 (rather than 45) days will give us the best opportunity to tailor the consultation process to the particular circumstances.

A minimum period of 30 (as opposed to 45) days also means that employees will not be employed for longer than necessary, thereby reducing salary and other staff-related costs to the employer. Should the minimum period before dismissals can take effect be reduced to only 45 days, we believe that many employers will feel the need to actually consult for this amount of time, even where meaningful consultation has already been completed within a 30 day period. As mentioned above, employees themselves are often in favour of a shorter consultation period, as this avoids having to go through a prolonged period of uncertainty, and they are able to move on sooner.

The 30 day period would only be the minimum period between the start of consultation and the first dismissal taking effect. Therefore, should certain situations (such as larger scale or high impact redundancies) require longer in order for consultation to be truly meaningful before the first dismissal takes effect, then the employer would, of course, be obliged to consult for more than 30 days before making the first redundancy - and it would have the flexibility to do so. We are aware of our obligations in this regard, but would welcome clarification from the Government on this in its guidance.

The minimum period required by EU law between notice of proposed redundancies and the first dismissal taking effect is 30 days. Given the Government's intention to reduce the "gold-plating" of EU directives, it seems sensible to reduce the current 90 day minimum to 30 days across the board.

Question 3

Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of "establishment"? Please provide comments to support your answer.

Yes: X No: Not sure:

We agree that it would be difficult to define "establishment" in legislation, in light of the varying case law in this area. The risk of attempting to come up with a definition, to be enshrined in statute, is that such a definition could prove to be too restrictive. "Establishment" should be interpreted with sufficient flexibility to take into account the different business structures of different employers.

Of importance to us is that the interpretation of "establishment" is not solely defined in geographical terms, and that it also takes into account the organisational management of a business. This is important to us since we, and no doubt many other employers, have a number of business divisions that are based across more than one location. Even within one division there can be separate sub-divisions and different management teams, so maximum flexibility is needed on what can constitute an "establishment". A purely geographical approach to the meaning of "establishment" would be problematic, particularly where redundancies are proposed by different business divisions that are based at the same physical site.

We note that recent ECJ cases take into account organisational factors as well as geographical location when considering the meaning of "establishment". This means that separate workplaces can constitute one establishment for the purposes of collective redundancy consultation, where business divisions cut across multiple locations. We suggest that this is reflected in any Code of Practice and / or guidance issued by the Government on the matter.

The options set out in the HR1 Form (concerning redundancies at establishments) do not readily cater for redundancy situations involving complex organisations, which are multi-organisational and multi-divisional. This can cause problems when trying to complete the form. We suggest that the HR1 Form is updated so that it can cater for a wider range of scenarios, particularly those involving larger and more structurally complex employers.

Question 4

Will defining "establishment" in a Code of Practice give sufficient clarity?

Yes: No: Not sure: X

Please see our answer to question 3 above.

We believe it would be particularly helpful for the Government to provide clear guidance and practical examples / case studies for employers on what constitutes an "establishment". Whilst a more flexible definition of "establishment" in a Code of Practice is preferable to a definition in statute, there are still concerns about defining "establishment" in a Code of Practice, given the evolving case law in this area. Although not legally binding, Codes of Practice often end up being treated as law. There is concern that if the position in European case law in this area shifts, we are left with a Code of Practice that conflicts with European law, leading to confusion for employers and employees.

Any definition of "establishment", whether in a Code of Practice or otherwise, would therefore need to be as broad and flexible as possible.

Question 5

Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation? Please provide comments to support your answer.

Yes: No: X Not sure:

Both employers and employees are in need of greater clarity and certainty in this area. There is conflicting case law (the *University of Stirling v University and College Union* case conflicts with an earlier decision in *Lancaster University v The University & College Union*), so a clear decision is required: either fixed-term contracts are to be included in redundancy consultations, or they are not.

The relevant EU Directive on collective redundancies expressly excludes fixed-term contracts from the scope of collective consultation legislation. This is another area where the Government could reduce its "gold-plating" of EU law and, therefore, we recommend that TULR(C)A 1992 is amended to expressly exclude fixed-term contracts from the scope of collective redundancy consultation. Furthermore, given that fixed-term workers should, by the very nature of their contracts, always know in advance when their contract will expire, we do not consider it necessary for them to be included in collective redundancy situations.

Question 6

Have we got the balance right between what is for statute and what is contained in government guidance and a Code of Practice?

Yes: No: Not sure: X

Please see our responses to questions 3, 4 and 5 above.

Question 7

What changes are needed to the existing government guidance?

Government guidance needs to be simple and more commercial. Existing guidance could be clearer on a number of topics.

Further guidance on when collective redundancy consultation should start and end would be useful, as well as what the consultation should actually comprise (i.e. what should actually be consulted on). In addition, it is not always clear what should happen when agreement between the employer and employees cannot be reached – at what point can an employer be sure that meaningful consultation can come to an end, and the first dismissal start to take effect?

We would also welcome guidance on the situation regarding mobile workers, as it can be difficult to ascertain which establishments such workers should be assigned to when they work at multiple locations. In addition, guidance on the status of voluntary redundancies would be helpful, particularly on whether voluntary dismissals could be effected lawfully before the end of the minimum period before the first dismissal can take effect.

More guidance and clarity on the overlap between TUPE and collective redundancy consultations is required. For example, when do redundancies fall within the "ETO" exception in a TUPE transfer? Another area where difficulties often arise include where the transferee in a TUPE transfer cannot technically begin consultation until it actually becomes the employer under TUPE – which can often be too late, from a commercial perspective. Currently, if the transferee does consult with transferring employees about potential redundancies before the transfer, this consultation does not legally count as collective consultation under s.188 TULR(C)A 1992.

We propose that not only further guidance is required in this area, but also changes to the legislation (i.e. the TUPE Regulations and s.188 TULR(C)A) to clarify that transferees can, if appropriate, consult lawfully in advance of the transfer. We believe this would reduce unnecessary expense for the transferee if they are in a position to commence consultations earlier. Consultation pre-transfer can also be more beneficial to the transferring employees, as the transferee may be better placed to make changes to its proposals before, rather than after, the relevant transfer.

Finally, we would welcome clearer guidance on the relationship between individual consultation and collective consultation. In particular, guidance should clarify how consultation carried out on an individual basis can count towards an employer's obligation to consult collectively (if at all).

Question 8

How can we ensure the Code of Practice helps deliver the necessary culture change?

The Government needs to ensure that the principles set out in the Code of Practice are drafted from a sufficiently commercial perspective, to reflect the needs of businesses in what is a particularly challenging economic environment. The avoidance of unnecessary "gold-plating" of EU legislation will go some way to help achieve this.

Given that one of the main driving factors behind the proposed changes is a wish for simplification, the Code of Practice needs to provide informative and straightforward guidance for employers. Whilst no redundancy is the same, we would find the use of practical examples and case studies for the most common and typically complex scenarios to be particularly helpful.

As mentioned above in our response to question 4, any Code of Practice should be flexible enough to encompass changing European case law in this area (as there is bound to be).

Question 9

Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes: X No: Not sure:

Training by ACAS for employee representatives involved in the collective consultation process (who are not union members) would be useful.

Question 10

Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

Yes: X No: Not sure:

We believe the Government has correctly identified the main impact areas, including:

- that the reduction in the minimum period before redundancies can take effect will reduce business costs for employers, but will also help employees by reducing stress and the uncertainty around their future role;
- that there is no "typical" collective redundancy situation and that, whilst there will be some reduction in the time between the start of some collective consultations and redundancies taking effect, many employers will continue to consult beyond this minimum period where there is an identifiable benefit of doing so, such as looking for alternative roles for employees; and
- improved guidance will provide a degree of clarity for both employers and employees, and will help improve employer confidence in progressing meaningful consultations. This will in turn lead to better quality of consultation and better outcomes for all concerned.

However, the Government should be mindful that it does not make the UK seem an 'easy' place for employers to make redundancies, compared with other countries. Any changes to collective redundancy consultation rules should not undermine the importance that meaningful consultation plays in protecting the rights of employees, as well as helping businesses.

Question 11

If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

We note that the Government has used the wording "to reach agreement" in question 11. Whilst employers are required to consult collectively on proposed redundancies, it is not always the case that agreement can be reached. As referred to in question 7 above, greater clarity on this is needed.

Question 12

If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

We recognise that we are obliged to consult meaningfully with employees, and that we should extend consultation where required in order to facilitate this. However, as senior members of staff were involved in managing the redundancy exercises, this inevitably impacted on delivery outputs as those members of staff spent time out of their working day on the consultation process. Consultation procedures (particularly as part of restructurings) often meant that the business had to put other plans "on hold", until such consultations had been concluded before new business structures could be implemented.

The redundancy consultations were a disruption to the usual workplace routine, and, consequently, there was sometimes a negative impact on productivity by affected employees as well as their managers involved in the consultation process.

The Royal Bank of Scotland Plc

19 September 2012

1. Your name:

Hannah Donagey

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Ellie Tansley

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Jane Drake

2. What organisation do you represent (if any)?

Individual

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Lisa Overall

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - More time for the individual

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No

9. Please provide comments to support your answer.

Line1 - Disagree with the idea best to leave it as it is.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Paul Riddell

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

S Wallace

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Jennifer Kimbe

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Brian Winch

2. What organisation do you represent (if any)?

Various

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Micro business (up to 9 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - The aim of having a notice period is to allow time and effort to have proper consultation with employees. Redundancy can be an emotional experience to anyone. Good redundancy consultation consists of

Line2 - careful selection of groups and individuals to represent these . Trade Unions or not it does not matter and to allow time to evaluate the reasons for

Line3 - redundancy and its size. It also allows employees time to sort out what they want.

Line4 - For example an individual may well volunteer fr redundancy. In my experience all consultation gets wrapped up within 30days and the 90 days notice really ends up with no more than 60 days extrapay.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - Generally it is easy to decide on an establishment. I see no point in excess complexity.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - A code of practice is a good concept. Mostly employers use one

Line2 - Again its mostly obvious

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - I suggest that ACAS has a sufficient reputation for any sensible employer to follow

16. Are there other non-legislative approaches that could assist – e.g. training?

No

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - I have done several. In no case did it take longer than 30 days to wrap up consultancy and employees were glad to end the uncertainty.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - Not good it never it.

REPRO DTP

From: Brian Winch
Sent: 22 June 2012 16:50
To: Collective Redundancies
Subject: Response Form
Attachments: 12-808rf-collective-redundancies-consultation-form.docx

Attached

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisation's IT Helpdesk.
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Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Brian Winch

Organisation (if applicable): Various

Address: Old Rectory, Knpton Green, Norfolk NR28 0RU

Telephone: 1263720612

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

The aim of having a notice period is to allow time and effort to have proper consultation with employees. Redundancy can be an emotional experience to anyone. Good redundancy consultation consists of careful selection of groups and individuals to represent these. Trade Unions or not it does not matter and to allow time to evaluate the reasons for redundancy and its size. It also allows employees time to sort out what they want. For example an individual may well volunteer for redundancy.

In my experience all consultation gets wrapped up within 30 days and the 90 days notice really ends up with no more than 60 days extra pay.

There is no point whatever in 45 days - useless

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Generally it is easy to decide on an establishment. I see no point in excess complexity.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

A code of practice is a good concept. Mostly employers use one

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Again its mostly obvious

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Question 7: What changes are needed to the existing Government guidance?

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

I suggest that ACAS has a sufficient reputation for any sensible employer to follow

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

I have done several. In no case did it take longer than 30 days to wrap up consultancy and employees were glad to end the uncertainty.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Not good it never it.

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This publication is also available on our website at www.bis.gov.uk

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

URN 12/808

1. Your name:

Mark Jermy

2. What organisation do you represent (if any)?

No Response

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Small business (10 to 49 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

VODG - John Adams OBE

2. What organisation do you represent (if any)?

VODG

3. E-mail address:

vodgensec@btinternet.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: John Adams [vodgensec@btinternet.com]
Sent: 19 September 2012 08:46
To: Collective Redundancies
Subject: Collective redundancies consultation
Attachments: Changes to the rules regarding collective redundancy consultation.doc

Please find attached a response to the collective redundancies rules consultation - from the Voluntary Organisations Disability Group (VODG).

John Adams OBE
General Secretary
VODG
07917 670 509

This email was received from the INTERNET.

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Response to the Government's consultation on the proposed changes to the rules regarding collective redundancy consultation

This response is submitted as a collective response to the Government's consultation on the proposed changes to the rules regarding collective redundancy consultation. The response collates the views of members of the Voluntary Organisations Disability Group (VODG*) and is prepared on behalf of VODG by Anthony Collins Solicitors. The views represent the interest group of members of VODG as employers in the health and social care sector where employee numbers within those organisations will range from 1 - 1000+. The views of the members of VODG were assembled via written responses to the consultation and those responses have been put together in this response to reflect the general views.

Response to questions

Question 1

Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes, simplification of the legislation will be welcomed by most organisations as it would allow greater flexibility.

Comments:

- **Simplifying the legislation and reducing the 'red tape' regarding redundancy consultation will allow businesses to act quickly and fairly in redundancy circumstances without the process having to take up a considerable length of time.**
- **A Code of Practice will help employers to focus on the key aspects of consultation to help make it more meaningful and will help employers to work towards good practice in redundancy consultation.**

Question 2

Which of the two proposed options should replace the 90 day minimum period?
Please explain why you think your choice would better deliver the Government's aims than the alternative option.

The consensus would suggest that a 30 day minimum period would suffice for the purpose of consultation. The general views are that:

- **30 days would be a sufficient period to enable employers to consult with employees' representatives in order to achieve effective consultation and, in some circumstances, the 90 days has been bureaucratic and has hindered restructuring within organisations.**
- **30 days allows for redundancy consultation to maintain momentum whilst still allowing sufficient time for consultation to take place.**
- **It is generally viewed as good practice to consult with individuals alongside consulting with representatives. It seems a better approach for employers to be able to voluntarily increase the time period to a time scale that better suits them in the circumstances. Employers, whilst adhering to an effective minimum period, should have the flexibility to increase the period as they see fit in discussion with unions/staff forums.**

Question 3

Do you agree with the government's assessment of the risks of taking a legislative route on the issue of establishment? Please provide comments that support your answer.

Yes

Comment: It is important that employers have clarity and operate consistently in respect of consultation and applying the definition of 'establishment' to ascertain whether the consultation obligations will apply. At the moment, the lack of clarity could lead to some employers consulting where others do not. Clarifying the meaning of 'establishment' through the Code of Practice will therefore be widely welcomed.

Question 4

Will defining 'establishment' in a code of practice give sufficient clarity?

Yes, provided that the definition reflects the approach taken as a result of case law. We would suggest that the Code of Practice gives examples of what would and would not be regarded as an establishment.

Question 5

Is the Government right to address the fixed term contract issue in guidance and the proposed code of practice rather than in legislation? Please provide comments that support your answer.

We consider the Government should address the fixed term contract issue through legislation. We consider the definition of redundancy is too wide. Not only is the expiry of a fixed term contract caught but also a dismissal and re-engagement exercise to effect a change in terms and conditions. This leads to employers having to provide information, complete an HR1 and consult on points that are not strictly relevant to the dismissals in question. Separate requirements for non redundancy dismissals (i.e. dismissals which do not fall within the definition of redundancy in the Employment rights Act but which are not connected with the individual concerned) would be easier for employer's to comply with and if drafted appropriately provide more clarity as to how an employee will be treated in those circumstances.

Question 6

Have we got the balance right between what is for statute and what is contained in government guidance and code of practice?

See comments in relation to Question 5. It is considered that where legislation provides for a proposed set of steps to take place in relation to consultation, it is likely to be adhered to more consistently by employers than non-statutory codes of practice.

Question 7

What changes are needed to the existing government guidance?

We would agree that the headings should follow those set out at paragraph 3.24 of the Consultation document and in addition should cover the interplay with individual consultation and suggest possible approaches to this. The Code of Practice should also deal with the question of appeals as these can sometimes appear futile in a change to terms and conditions exercise which has already been subject to collective consultation.

Question 8

How can we ensure the code of practice helps deliver the necessary culture change?

We would suggest that a draft revised Code of Practice is put out for consultation.

Question 9

Are there any other non-legislative approaches that could assist e.g. training? Please explain what other approaches you consider appropriate.

The only comment received on this was to use people to train who have had extensive practical business experience of this type of consultation.

Question 10

Have we correctly identified the impacts of the proposed policies? If you have any evidence relating to possible impacts we would be happy to receive it.

No responses received to this question.

Question 11

If you have been involved in a collective redundancy consultation in the last 5 years, how long did it take to reach agreement?

- **The responses to this are varied. However, generally, member feedback was that where trade unions have been involved, consultation has become prolonged. Where they are not involved, the period is often shorter albeit individual consultation is more important.**
- **The quality of consultation does not change in either scenario and, therefore, when Unions are involved, the process can often take much longer without reasonable cause.**

Question 12

If you have carried out a collective redundancy consultation in the last 5 years, what effect, if any, did it have on your regular business during this time?

A number of VODG members have been through organisational change in the last 5 years, including reducing pay, changing terms and conditions and redundancy. Whilst in house HR teams (where they exist) have supported line managers in that process, the reality is that HR manage the process extensively. The associated administration work is also carried out by HR. This necessarily means that other projects get pushed aside. Lengthy consultation has also impacted negatively on staff morale and hence front line service delivery.

*The Voluntary Organisations Disability Group (VODG) is the only national, pan-disability umbrella group of voluntary sector, not-for-profit, social care providers for disabled people. The Group's members work with people with a wide range of physical, sensory and cognitive impairments, including people with learning disabilities. Member organisations, in partnership with local and national government, provide social care and related services to over one million disabled people.

Though diverse in terms of their size, history and individual strategies, VODG member organisations share common values. These are clearly discernible through

work which promotes the rights of disabled people, approaches to user empowerment and in successfully delivering person centred services. In addition the VODG leads the sector in terms of its investment in the social care workforce collectively employing more than 75,000 staff.

1. Your name:

Zurich UK - Tara Hutton

2. What organisation do you represent (if any)?

Zurich

3. E-mail address:

mary.bradbury@uk.zurich.com

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - In Zurich UK's view, the current rules are too restrictive particularly in respect of large scale exercises requiring a 90 day consultation period. The current rules can delay our ability to respond

Line2 - to changing market conditions in a timely manner. This can have an impact on our ability to restructure as effectively or efficiently as we would like. In turn this can hamper growth, market

Line3 - competitiveness and the earlier realisation of cost savings. A 30 day period will enable organisations to be more flexible and adapt to changing market conditions more quickly. In addition as the 30

Line4 - days is a minimum period organisations will be able to extend this, if necessary, to meet their consultation requirements. This will also be advantageous to employees as it will reduce the period of

Line5 - For more - see Word response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - The need for flexibility and the wide ranging factors that effect what constitutes an establishment together with the constraints of European law make it

Line2 - difficult and risky to take a legislative route on the issue of establishment.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - The issue of determining an establishment is complex especially for organisations like Zurich that have multiple business functions and locations spread across the UK and in other countries which

Line2 - would be affected by any definition. In Zurich's view its difficult to comment on whether defining establishment in the Code of Practice will give sufficient clarity prior to seeing the definition.

Line3 - Within Zurich UK whenever possible we treat fixed term employees in the same way as permanent employees if they are within scope of any collective redundancy consultation to avoid any potential issues.

Line4 - In Zurich UK's view it would be helpful to have some clarity as to when it is acceptable for a fixed term contract to be terminated in a redundancy programme.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - In principle it would appear that the balance is right, however, until this is implemented and operational it is difficult to be sure.

Line2 - Zurich UK would recommend focussing on key principles which remain practical, simple to interpret and understand whilst giving protection to employees

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - In Zurich UK's view this can be helped by involving organisations in the development of the Code of Practice.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Zurich UK agrees that training is likely to be beneficial.

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Zurich UK has been involved in collective redundancy exercises and endeavours to reach agreement within the required timescales, however, there have been occasions where consultation

Line2 - has been completed prior to the required 30 or 90 day period and due to the current rules we have been unable to issue formal notice until the 30 or 90 day period has elapsed.

Line3 - Most consultation have been completed within 30 days rather than 90 days.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - Whilst Zurich UK tries to continue to operate on a business as usual basis it is aware that employees at risk of redundancy, even though not all of them will be made redundant, can

Line2 - find it very stressful and this can result in some employees disengaging with the company and their work.

Line3 - In turn this does have a negative impact on morale and productivity for both at risk employees and those employees not at risk.

REPRO DTP

From: Mary Bradbury [mary.bradbury@uk.zurich.com]
Sent: 13 September 2012 11:24
To: Collective Redundancies
Cc: Tara Hutton
Subject: Collective Redundancies : Consultation on changes to the rules. Response from Zurich.
Attachments: BIS Collective Redundancies Consultation Response from Zurich .doc

Dear Mr Davies,

Please find attached response on behalf of Zurich.

We do hope our feedback assists the review. If you have any further query, please do not hesitate to contact me.

Kind regards

Mary

Mary Bradbury
Analyst, Government and Industry Affairs
Corporate Affairs
Zurich Insurance plc
Second floor, 3000B Parkway, Whiteley, Hants, PO15 7JZ

E-mail: mary.bradbury@uk.zurich.com
Tel: 01489 864528

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Postal address:

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Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Tara Hutton

Organisation (if applicable): Zurich

Address: 3000B Whiteley, Hampshire, PO15 7JZ

Telephone: 01489 864641

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

In Zurich UK's view, the current rules are too restrictive particularly in respect of large scale exercises requiring a 90 day consultation period. The current rules can delay our ability to respond to changing market conditions in a timely manner. This can have an impact on our ability to restructure as effectively or efficiently as we would like. In turn this can hamper growth, market competitiveness and the earlier realisation of cost savings.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

A 30 day period will enable organisations to be more flexible and adapt to changing market conditions more quickly. In addition as the 30 days is a minimum period organisations will be able to extend this, if necessary, to meet their consultation requirements.

This will also be advantageous to employees as it will reduce the period of uncertainty during which time employees don't know if they are to be made redundant or if they will remain in employment. This period of time can be very stressful for employees who prefer to know what their position is sooner rather than later.

A longer consultation period also has a negative impact on morale and productivity therefore reducing this to 30 days should be beneficial.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

The need for flexibility and the wide ranging factors that effect what constitutes an establishment together with the constraints of European law make it difficult and risky to take a legislative route on the issue of establishment.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

The issue of determining an establishment is complex especially for organisations like Zurich that have multiple business functions and locations spread across the UK and in other countries which would be affected by any definition.

In Zurich UK's view it is difficult to comment on whether or not defining establishment in the Code of Practice will give sufficient clarity prior to seeing the definition.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Within Zurich UK whenever possible we treat fixed term employees in the same way as permanent employees if they are within scope of any collective redundancy consultation to avoid any potential issues.

In Zurich UK's view it would be helpful to have some clarity as to when it is acceptable for a fixed term contract to be terminated in a redundancy programme.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

In principle it would appear that the balance is right, however, until this is implemented and operational it is difficult to be sure.

Question 7: What changes are needed to the existing Government guidance?

Zurich UK would recommend focussing on key principles which remain practical, simple to interpret and understand whilst giving protection to employees.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

In Zurich UK's view this can be helped by involving organisations in the development of the Code of Practice.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Zurich UK agrees that training is likely to be beneficial.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Zurich UK has been involved in collective redundancy exercises and endeavours to reach agreement within the required timescales, however, there have been occasions where consultation has been completed prior to the required 30 or 90 day period and due to the current rules we have been unable to issue formal notice until the 30 or 90 day period has elapsed.

Most consultation have been completed within 30 days rather than 90 days.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Whilst Zurich UK tries to continue to operate on a business as usual basis it is aware that employees at risk of redundancy, even though not all of them will be

made redundant, can find it very stressful and this can result in some employees disengaging with the company and their work. In turn this does have a negative impact on morale and productivity for both at risk employees and those employees not at risk.

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URN 12/808

1. Your name:

Imperial College London - Audrey Fraser

2. What organisation do you represent (if any)?

Imperial College London

3. E-mail address:

audrey.fraser@imperial.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

Higher Education Institution

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - It supports the principle of protecting employees whilst creating a more flexible legislative and non-legislative framework along with clear information on what Government support is available.

Line2 - A 30 day minimum consultation period would link to the timing that employers are required to give the Government of any potential redundancies. It would allow employers the flexibility to identify

Line3 - the appropriate period required for each redundancy exercise unlike the current legislation which forces large employers or Higher Education Institutions, who often have a large number of staff

Line4 - employed on fixed term contracts, to apply a 90 day consultation period to

Line5 - small groups of staff based on the cumulative total for the consultation period.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - Taking the legislative route could undermine the principle of a flexible and responsive framework.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Not sure

12. Please provide comments to support your answer.

Line1 - Producing guidance based on the Stirling case will assist.

Line2 - However, it will be dependant on the content of the guidance and Code of Practice and how compliance with these will be viewed by Employment Tribunals.

Line3 - It would greatly assist Higher Education Institutions if our representative bodies could either be consulted or allowed to provide input into the guidance and Code of Practice.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - This will become clear once the change of law is implemented along with the Government Guidance and Code of Practice. Guidance needs to be provided to employers on how Employment Tribunals will view

Line2 - compliance with the Code of Practice.

Line3 - I would be willing to contribute towards the development of the Government Guidance and Code of Practice.

Line4 - I have never referred to the current Government guidance just the relevant pieces of legislation. I think this is reflective of one of the changes the Government is attempting to implement,

Line5 - 'Improved guidance on the support on offer from Government'.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Diverse input from the 'obvious' stakeholders such as employers, employer representatives, and vocal employees.

Line2 - Consideration should be given to engaging the 'less obvious' stakeholders through alternative means.

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

Line1 - Through a mixture of proposed legislative and non-legislative changes.

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - The consultation period lasted 90 days, following which staff were given either 3 months notice or longer.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - During the 90 day consultation period, there was lowered moral and

reduced work performance amongst some staff, the destabilising of the wider workforce,

Line2 - negative impact on the staff that remained and a reduction of trust and confidence.

REPRO DTP

From: Fraser, Audrey [audrey.fraser@imperial.ac.uk]
Sent: 08 August 2012 16:38
To: Collective Redundancies
Cc: Lindsay, Louise E
Subject: Government Consultation on Collective Redundancies
Attachments: UCEA 12044 - (Attachment 1) - Government Consultation on Collective Redundancies.doc

Please find attached Imperial College London's response to the Government Consultation on Collective Redundancies.

Should you have any queries regarding the attached, please do not hesitate to contact me.

Kind regards

Audrey

Head of HR Policy, Systems & Information
Imperial College London
Faculty Building
Level 3
London SW7 2AZ

Tel: +44(0) 20 7594 5547
Fax: +44(0) 20 7594 5543
Email: audrey.fraser@imperial.ac.uk
www.imperial.ac.uk

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Postal address:

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Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Audrey Fraser

Organisation (if applicable): Imperial College London

Address: Level 3, Faculty Building, South Kensington Campus, London SW7 2AZ

Telephone: 2075945547

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe) Higher Education Institution

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

It supports the principle of protecting employees whilst creating a more flexible legislative and non-legislative framework along with clear information on what Government support is available.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

A 30 day minimum consultation period would link to the timing that employers are required to give the Government of any potential redundancies. It would allow employers the flexibility to identify the appropriate period required for each redundancy exercise unlike the current legislation which forces large employers or Higher Education Institutions, who often have a large number of staff employed on fixed term contracts, to apply a 90 day consultation period to

small groups of staff based on the cumulative total for the consultation period.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Taking the legislative route could undermine the principle of a flexible and responsive framework.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

It is likely to go some of the way, but not all, as this is complex area, which is why the Government has decided not to implement the legal option for the definition.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Producing guidance based on the Stirling case will assist. However, it will be dependant on the content of the guidance and Code of Practice and how compliance with these will be viewed by Employment Tribunals.

It would greatly assist Higher Education Institutions if our representative bodies could either be consulted or allowed to provide input into the guidance and Code of Practice.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

This will become clear once the change of law is implemented along with the Government Guidance and Code of Practice. Guidance needs to be provided to employers on how Employment Tribunals will view compliance with the Code of Practice.

I would be willing to contribute towards the development of the Government Guidance and Code of Practice.

Question 7: What changes are needed to the existing Government guidance?

I have never referred to the current Government guidance just the relevant pieces of legislation. I think this is reflective of one of the changes the Government is attempting to implement, 'Improved guidance on the support on offer from Government'.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Diverse input from the 'obvious' stakeholders such as employers, employer representatives, and vocal employees. Consideration should be given to engaging the 'less obvious' stakeholders through alternative means.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Through a mixture of proposed legislative and non-legislative changes.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

The consultation period lasted 90 days, following which staff were given either 3 months notice or longer.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

During the 90 day consultation period, there was lowered moral and reduced work performance amongst some staff, the destabilising of the wider workforce, negative impact on the staff that remained and a reduction of trust and confidence.

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URN 12/808

1. Your name:

Keele University - Human Resources, Nicola Ratcliffe,

2. What organisation do you represent (if any)?

Keele University

3. E-mail address:

n.l.ratcliffe@keele.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Simplifying the leg and reducing the 90 period are welcome changes, however, relying on guidance to 'increase certainty' around fixed-term contracts and the definition of an establishment still does

Line2 - not provide certainty or clarity to employers who have to deal with these two particular thorny issues. There will remain scope for legal challenge and the potential for different precedents to be

Line3 - set through the tribunal and appeal processes Introducing a standard 30 day minimum period of consultation for all collective consultation exercises provides a simple system with increased flexibility

Line4 - and importantly more certainty for both employers and employees If the consultation exercise requires more time then we would extend the consultation period over the minimum 30 day period. 30 days

Line5 - is proportionate as a minimum period for the purposes of consultation, as highlighted in the consultation document, the role of notice periods is to provide time to seek alternative employment etc.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Not sure

9. Please provide comments to support your answer.

Line1 - The definition of an establishment is not of particular concern for our institution.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - The proposal does not appear to provide sufficient clarity on an area which is regularly challenged by employee representatives.

Line2 - if the definition is only covered in a code of practice then it will remain something which is easily

Line3 - and regularly open to challenge and will not assist with the Government aims to simplify this area of legislation.

Line5 - See separate doc for details on FTA issue

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

Line1 - Specifically in relation to fixed-term contracts (see response to question 5)

Line2 - The guidance is rather short and quite basic. Suggest that more is incorporated around the purpose of consultation and address specific questions such as: when to start, what to cover,

Line3 - what information must be provided, why it is important

Line4 - to consult and

Line5 - how you can consult meaningfully in very difficult circumstances.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Unsure that a code of practice can in itself bring culture change

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Training and awareness raising is important but unsure how it is possible to ensure that the right groups are attending the training and are engaged with it.

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

Line1 - Over-estimated the positive impacts of introducing the code of practice and guidance - reasons outlined in this document

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - All collective redundancy consultations which have been carried out relate to

Line2 - fixed-term contracts only and the number of proposed dismissals has always been below 100.

Line3 - Consultation normally lasts between 30-40 days. Agreement has always been reached, with the University undertaking that alternatives to

Line4 - dismissal will continue to be sought up to the individual's dismissal date.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - Collective consultation has had to become part of our regular business in Human Resources due to the numbers of fixed-term contracts used at the University.

Line2 - Collating data and updates on each individual across the University is time consuming and an administrative burden for very little, if any benefit.

REPRO DTP

From: Nicola Ratcliffe [n.l.ratcliffe@keele.ac.uk]
Sent: 07 September 2012 11:50
To: Collective Redundancies
Subject: Response from Keele University
Attachments: 12-808rf-collective-redundancies-consultation-form.docx; Q5 response.docx

Dear Sir/Madam,
Please find attached our response to the Consultation on collective redundancies,
Kind regards,
Nicola

--
Nicola Ratcliffe
HR Strategic Support Manager
Human Resources Department
Keele University
Tel: 01782 (7)34404
Email: n.l.ratcliffe@keele.ac.uk

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Postal address:

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Department for Business, Innovation and Skills (BIS)
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Fax: 0207-215 6414

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The closing date for this consultation is: **19 September 2012**

Your details

Name: Nicola Ratcliffe, Human Resources

Organisation (if applicable): Keele University

Address: Keele University, Keele, Staffordshire, ST5 5BG

Telephone:

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Simplifying the legislation and reducing the 90 period of consultation are welcome changes, however, relying on guidance to 'increase certainty' around fixed-term contracts and the definition of an establishment still does not provide certainty or clarity to employers who have to deal with these two particular thorny issues. There will remain scope for legal challenge and the potential for different precedents to be set through the tribunal and appeal processes.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Introducing a standard 30 day minimum period of consultation for all collective consultation exercises provides a simple system with increased flexibility and importantly more certainty for both employers and employees. If the consultation exercise requires more time then we would extend the consultation period over the minimum 30 day period.

30 days is proportionate as a minimum period for the purposes of consultation, as highlighted in the consultation document, the role of notice periods is to provide time to seek alternative employment etc.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

The definition of an establishment is not of particular concern for our institution.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

The proposal does not appear to provide sufficient clarity on an area which is regularly challenged by employee representatives.

If the definition is only covered in a code of practice then it will remain something which is easily and regularly open to challenge and will not assist with the Government aims to simplify this area of legislation.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Please see attached sheet.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Specifically in relation to fixed-term contracts (see response to question 5)

Question 7: What changes are needed to the existing Government guidance?

The guidance is rather short and quite basic. Suggest that more is incorporated around the purpose of consultation and address specific questions such as: when to start, what to cover, what information must be provided, why it is important to consult and how you can consult meaningfully in very difficult circumstances.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Unsure that a code of practice can in itself bring culture change.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Training and awareness raising is important but unsure how it is possible to ensure that the right groups are attending the training and are engaged with it.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Over-estimated the positive impacts of introducing the code of practice and guidance - reasons outlined in this document.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

All collective redundancy consultations which have been carried out relate to fixed-term contracts only and the number of proposed dismissals has always been below 100. Consultation normally lasts between 30-40 days. Agreement has always been reached, with the University undertaking that alternatives to dismissal will continue to be sought up to the individual's dismissal date.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Collective consultation has had to become part of our regular business in Human Resources due to the numbers of fixed-term contracts used at the University. Collating data and updates on each individual across the University is time consuming and an administrative burden for very little, if any benefit.

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The Directive allows for an exemption for fixed-term contracts and we believe that this should be adopted. Exercising this exemption would not be treating fixed-term staff less favourably if it only excludes 'true' fixed-term dismissals.

If a redundancy exercise is undertaken and the pool includes staff on fixed-term contracts, their proposed dismissal is not related to their fixed-term contract but to the reason for the restructure and they should be included in the collective consultation process. However, if the dismissal is because an individual's contract is ending (due to an individual reason such as project funding or a substantive member of staff returning from a period of leave) then this should not be included in the collective consultation numbers because it is an individual decision planned from the outset of their employment. If a member of staff believes that their contract should be permanent and a redundancy process should have been carried out rather than the end of a fixed-term contract process, then they have scope to address this through the tribunals already under unfair dismissal and Fixed-Term Working Regulations.

Relying on the Stirling decision, which both our lawyers and Xpert HR have described as a decision which should be regarded with a degree of scepticism, is not a satisfactory response. The decision does not exclude all fixed-term contracts but relies on an individual's state of mind at the outset of the contract which leaves an unworkable level of unpredictability in this area. Further by only providing guidance through a code of practice leaves scope for challenge and provides courts/tribunals with scope to adopt their own interpretation. UCU will appeal the Stirling decision, and since it could be overturned we continue to include fixed-term contract dismissals in collective consultation. Reducing the 90 day period will have no effect on the situation at Keele University. The size of the University and the seasonal nature of teaching means that we consistently trigger the requirements to collectively consult for 30 days and we have established a rolling program of consultation. This brings an administrative burden and our experience demonstrates that there are minimal benefits to carrying out the collective consultation – the only benefit has been improving relations with our Unions who welcome the additional information, the individual staff have not realised any benefit. Individual consultation is much more appropriate for proposed dismissals relating to fixed-term contracts and has more success in mitigating the consequences of dismissals and identifying alternatives to dismissal. It is difficult to consult with representatives about a group of fixed-term dismissals because the reason for each dismissal is different and the potential options open to the individuals are also different.

1. Your name:

Kingston University - Ken Morrison and Ian Breese

2. What organisation do you represent (if any)?

Kingston University

3. E-mail address:

k.morrison@kingston.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Charity or social enterprise

University

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Clears up uncertainty

Line2 - Costs savings

Line3 - Allows people to enter the job market sooner

Line4 - quicker pace of change, so that it doesn't lose momentum

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - Industrial Relations is all about establishing good local practices

Line2 - Sensitive to employer's specific economic and other factors

Line3 - Not prescriptive, one size doesn't fit all in every circumstance

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - The legislation should treat all employees the same

Line2 - If its not law, people won't follow it.

Line3 - This proposal seems at odds with the EU drive towards equal treatment of all employees regardless of their employment contract status

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

Line1 - Government guidance is all fine and well, but it isn't legally binding as statute would be.

Line2 - Guidance is non-binding, and the tendency would then be to ignore or only invoke when favourable

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Make it compulsory, in the same way as the ACAS code is within other parts of our employment law.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - ACAS guidance and training is invaluable already, supplementing it would be good

Line2 - Some guidance on e.g. directgov.uk would be good too, and as its free its a useful starter for ten before involving lawyers

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Yes, 30 days but that was because it was below 20 staff affected.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - Unsettling for staff

Line2 - uncertainty

Line3 - As we're in the public sector, we aren't used to having to make redundancies, so it was a bit of a shock to the organisation

1. Your name:

Liverpool John Moores University - Julie Lloyd

2. What organisation do you represent (if any)?

Liverpool John Moores University

3. E-mail address:

G.Holmes@ljmu.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

Higher Education

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - 45 days is a minimum period and meaningful consultation should continue beyond this period when required.

Line2 - An individual notice periods commence once redundancy notices have been issued, periods anylonger will prolong employees uncertainty. A reduction should therefore improve employee morale

Line3 - The issue of consultation applying to fixed term workers who have an end date from appointment should be addressed. We are currently reporting fixed term workers under the section 188 requirements. .

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - There are a wide range of factors that affect what constitutes an establishment as highlighted in the responses to the evidence.

Line2 - This and the constraints of European case law would make it both difficult and risky to define 'establishment' in legislation.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - The different factors affecting the non renewal of contracts and the requirement to ensure that fixed-term workers are not treated

Line2 - less favourably than comparable permanent employees would make

constructing a legal exemption extremely difficult.

Line3 - (see previous comment on fixed term workers).

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - Needs to be reviewed to ensure it is accurate and fit for purpose following the legislative changes proposed addressing the issues

Line2 - raised in the call for evidence that will not be covered in the revised legislation eg. fixed term contracts.

Line3 - Also, needs to include how employers can engage effectively with the Government.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - By addressing key issues around the processes and how to handle fixed-term contracts. This should facilitate a more positive relationship between the parties involved.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Support for employees in finding new jobs and training to minimise the effect of the redundancy and the severe economic environment. .

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Yes, mainly involving the ending of fixed-term contracts.

Line2 - We normally reach agreement within 3 months. We commence the consultation process as close to 90 days as possible. (see previous comments on fixed term workers)

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - The majority of collective redundancy consultations involve fixed term redundancies.

Line2 - These redundancies involve a considerable amount of administration in order to meet the collective redundancy consultation requirements.

REPRO DTP

From: Holmes, Gaynor [G.Holmes@ljmu.ac.uk]
Sent: 31 August 2012 15:17
To: Collective Redundancies
Subject: UCEA 12044 3108
Attachments: UCEA 12044 3108.doc

Hi Carl,

Please find attached LJMU response to Collective Redundancies.

Regards

Gaynor

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London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Julie Lloyd

Organisation (if applicable): Liverpool John Moores University

Address: Human Resources, 3rd Floor, Kingsway House, Hatton Garden, Liverpool L3 2AJ

Telephone: 0151-904-6113

Fax: 0151-904-6142

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
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- Charity or social enterprise
- Individual
- Large business (over 250 staff)
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- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe) Higher Education

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

- 45 days is a minimum period and meaningful consultation should continue beyond this period when required.

- An individual notice periods commence once redundancy notices have been issued, periods any longer will prolong employees uncertainty. A reduction should therefore improve employee morale.

- The issue of consultation applying to fixed term workers who have an end date from appointment should be addressed. We are currently reporting fixed term workers under the section 188 requirements.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

There are a wide range of factors that affect what constitutes an establishment as highlighted in the responses to the evidence. This and the constraints of European case law would make it both difficult and risky to define 'establishment' in legislation.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

The different factors affecting the non renewal of contracts and the requirement to ensure that fixed-term workers are not treated less favourably than comparable permanent employees would make constructing a legal exemption extremely difficult. (see previous comment on fixed term workers).

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Question 7: What changes are needed to the existing Government guidance?

Needs to be reviewed to ensure it is accurate and fit for purpose following the legislative changes proposed addressing the issues raised in the call for evidence that will not be covered in the revised legislation eg. fixed term contracts.

Also, needs to include how employers can engage effectively with the Government.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

By addressing key issues around the processes and how to handle fixed-term contracts. This should facilitate a more positive relationship between the parties involved.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Support for employees in finding new jobs and training to minimise the effect of the redundancy and the severe economic environment.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Yes, mainly involving the ending of fixed-term contracts. We normally reach agreement within 3 months. We commence the consultation process as close to 90 days as possible. (see previous comments on fixed term workers)

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

The majority of collective redundancy consultations involve fixed term redundancies.

These redundancies involve a considerable amount of administration in order to meet the collective redundancy consultation requirements.

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1. Your name:

LSE - Gail Keeley

2. What organisation do you represent (if any)?

LSE

3. E-mail address:

G.Keeley@lse.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Medium business (50 to 250 staff)

Higher Eductaion

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - A 30-day consultation period for all employees will provide adequate time to carry out a thorough consultation process. The timescale will lead to savings in terms of management time and the amount

Line2 - of salary payable to employee during the consultation period. A shorter period of consultation when it is clear that redundancies cannot be avoided may

Line3 - minimise periods of uncertainty surrounding the future of those affected.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Not sure

9. Please provide comments to support your answer.

Line1 - The Government's assessment of the risks of taking a legislative route on the issue of 'establishment'" is not clear in the 'Consultation on the changes in the rules'.

Line2 - There is a need for clarity in terms of work location or an entire business to ensure compliance with the duty to consult in large scale redundancies.

Line5 - It is dependent on the clarity of the wording used in a Code of Practice.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - Research-leading universities who use a high volume of fixed-term contracts because of finite projects and are reliant on project-specific research funding provided by external third parties need the

Line2 - flexibility that can be provided by a Code rather than legislation. Researchers are aware at the start of employment of the basis of the funding and the project end date so employment

Line3 - legislation puts an unnecessary burden on employers.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - If there is less reliance on statute and the Code of Practice provides sufficient and clear guidance that takes account of the flexibility that

Line2 - employers need e.g. for the employment and dismissal of fixed-term employees then the balance would be right.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - A recognition that dismissals of fixed-term researchers are an everyday event and that good employers such as research-leading universities will take steps to redeploy and/or develop the careers of

Line2 - employees whenever they can in order to attract and retain the best employees. It is a win-win situation, the best employees are employed who produce the best research and therefore

Line3 - ensure the success and future of the employer.

Line4 - Carry out research of what employers would find helpful to include in the Code of Practice and review on a regular basis.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Training would help to clarify and reinforce the Code of Practice.

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: G.Keeley@lse.ac.uk
Sent: 19 September 2012 18:58
To: Collective Redundancies
Subject: FW: Collective redundancies consultation form submission

Attachments: 12-808rf-collective-redundancies-consultation-form1.doc



12-808rf-collective-redundanci...

Please see the attached submission:

<<12-808rf-collective-redundancies-consultation-form1.doc>>
Gail
Gail Keeley
HR Manager, Policy and ER
Human Resources Division
London School of Economics and Political Science Houghton Street London
WC2A 2AE Direct telephone: 0207 955 6545
Website: <http://www.lse.ac.uk/humanresources>
<<https://exchange.lse.ac.uk/exchweb/bin/redirect.asp?URL=https://exchange.lse.ac.uk/exchweb/bin/redirect.asp?URL=http://www.lse.ac.uk/humanresources>>

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Fax: 0207-215 6414

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The closing date for this consultation is: **19 September 2012**

Your details

Name: Gail Keeley

Organisation (if applicable): LSE

Address: Houghton Street, London WC2A 2AE

Telephone: 2079666545

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe) Higher education

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

A 30-day consultation period for all employees will provide adequate time to carry out a thorough consultation process. The timescale will lead to savings in terms of management time and the amount of salary payable to employee during the consultation period. A shorter period of consultation when it is clear that redundancies cannot be avoided may minimise periods of uncertainty surrounding the future of those affected.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

The "Government's assessment of the risks of taking a legislative route on the issue of 'establishment'" is not clear in the 'Consultation on the changes in the rules'. There is a need for clarity in terms of work location or an entire business to ensure compliance with the duty to consult in large scale redundancies.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

It is dependent on the clarity of the wording used in a Code of Practice.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Research-leading universities who use a high volume of fixed-term contracts because of finite projects and are reliant on project-specific research funding provided by external third parties need the flexibility that can be provided by a Code rather than legislation. Researchers are aware at the start of employment of the basis of the funding and the project end date so employment legislation puts an unnecessary burden on employers.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

If there is less reliance on statute and the Code of Practice provides sufficient and clear guidance that takes account of the flexibility that employers need e.g. for the employment and dismissal of fixed-term employees then the balance would be right.

Question 7: What changes are needed to the existing Government guidance?

A recognition that dismissals of fixed-term researchers are an everyday event and that good employers such as research-leading universities will take steps to redeploy and/or develop the careers of employees whenever they can in order to attract and retain the best employees. It is a win-win situation, the best employees are employed who produce the best research and therefore ensure the success and future of the employer.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Carry out research of what employers would find helpful to include in the Code of Practice and review on a regular basis.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Training would help to clarify and reinforce the Code of Practice.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

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1. Your name:

Manchester Metropolitan University - Professor John Brooks

2. What organisation do you represent (if any)?

Manchester Metropolitan University

3. E-mail address:

Y.Hill@mmu.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

University with 4,500 staff

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - Clarity and clear advice on the role of Trade Unions particularly in the Public Sector

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Good communication strategies, wide dissemination and training programmes.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - See Q7.

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - In reality agreement is not reached collectively because of the fundamental objection from the TUs.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - Paralysis and worse. The uncertainty and prolonged consultation creates disturbances in parts of the organisation unaffected by the redundancy.

REPRO DTP

From: Yvonne Hill [Y.Hill@mmu.ac.uk]
Sent: 04 July 2012 14:02
To: Collective Redundancies
Subject: Response form
Attachments: Government Consultation on Collective Redundancies.doc

Dear Carl,

Please see the attached form for the 'Collective Redundancies: Consultation on changes to the rules: Response form'.

Kind regards

Yvonne Hill MSc BSc (Hons)
Executive Assistant to the Vice-Chancellor
Vice-Chancellor's Office
Manchester Metropolitan University
All Saints Building
All Saints
Manchester
M15 6BH
United Kingdom

Tel. +44 (0)161 247 5901
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Web page: <http://www.mmu.ac.uk>

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Collective Redundancies: Consultation on changes to the rules : Response form

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(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Professor John Brooks

Organisation (if applicable): Manchester Metropolitan University

Address: All Saints Building, Manchester, M15 6BH

Telephone: 1612471560

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe) University with 4,500 staff

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Question 7: What changes are needed to the existing Government guidance?

Clarity and clear advice on the role of Trade Unions particularly in the Public Sector

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Good communication strategies, wide dissemination and training programmes.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

See Q7.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

In reality agreement is not reached collectively because of the fundamental objection from the TUs.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Paralysis and worse. The uncertainty and prolonged consultation creates disturbances in parts of the organisation unaffected by the redundancy.

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URN 12/808

1. Your name:

Northumbria University - Geoff Foster

2. What organisation do you represent (if any)?

Northumbria University

3. E-mail address:

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

45 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - 30 days would be a very tight timescale within which to conduct 'meaningful' consultation

Line2 - in accordance with the legal requirements of trying to avoid redundancies

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - It would be more helpful if clear legislative direction were to be given as to whether notice has already been provided, given that the period of the contract is fixed term.

Line2 - The fixed term workers directive provides appropriate protection with the requirement to convert staff to open ended contract.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - The CoP needs to set the right balance between protecting employees from unscrupulous employers but allowing employers to effect change within their organisations within a reasonable period of time

Line2 - within a legal framework.

Line3 - For example, if the fixed term contract issue is to be addressed via a CoP, the consistent interpretation of the code will be critical.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Training and support (eg via Acas) is essential

Line2 - The development of the CoP with the trade union and employers would also be a good way forward.

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

1. Your name:

Queen Mary, University of London - Guy Halliwell

2. What organisation do you represent (if any)?

Queen Mary, University of London

3. E-mail address:

g.halliwell@qmul.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

Higher Education Institution

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - See Word response for comments on Qs 1 &2

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Not sure

9. Please provide comments to support your answer.

Line1 - The concentrated geographical location of Queen Mary's campuses and the range of academic activities within them means that

Line2 - it is not possible to advance an argument that each of them is a separate establishment within the law. It is not an issue for the College.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - See Word form for comments

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - In regard to Question 5. Queen Mary endorses the comments of Chris Mordue of Pinsent Masons LLP in regard to existing difficulties with collective redundancy practice.

Line2 - The requirement to Equality Impact Assess redundancy proposals is clear. The institution struggles to balance the requirement to assess them at a

point early enough to influence proposal design,

Line3 - yet late enough to ensure that the outcomes are non-discriminatory. Data on outcomes of redundancies for protected groups are rarely statistically significant e.g. trans gender.

Line4 - The "in good time" approach to sharing information is appropriate and helpful.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - We have no comment to share.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - The Insolvency Service (IS) requires employers to submit data in respect of anticipated redundancies. Given that the termination of large numbers of FTCs is caught within collective redundancy

Line2 - legislation, Higher education Institutions are obligated to supply projections of the numbers of FTCs coming to an end within the forthcoming period. It is assumed that this data is used to model

Line3 - employment trends, numbers of persons being made redundant etc. It is evident that the purpose of the HR1 and the data requested are at odds. Data supplied corrupts the understanding of numbers of

Line4 - redundancies, given that what is described is numbers of fixed term contracts (many of which are renewed).

Line5 - Staff of the IS struggle to interpret regulations on HR1. This suggests that the returns demanded are of no statistical or practical value.

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - various. Rolling FTC Collective Consultations relating to 150 staff every quarter notionally take ninety days, but practically they involve a single meeting.

Line2 - Reorganisations of academic department 1. Staff affected 40. Consultation 40 days.

Line3 - Reorganisations of academic department 2. Staff affected over 20. Informal consultation 45 days. Formal consultation 45 days.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - None

REPRO DTP

From: Guy Halliwell [g.halliwell@qmul.ac.uk]
Sent: 17 September 2012 17:46
To: Collective Redundancies
Subject: Response to Consultation on changes to the rules on Collective Redundancies

Attachments: bis_consultation_on_collective_redundancies_-_response_form[1] QM 12 09 2012.doc



bis_consultation_on_collective...

Dear sir or madam,

I attach a copy of the response of Queen Mary University of London in regard to the proposed changes to regulations in regard to collective redundancies.

The focus of our concern is about the inclusion of large numbers of Fixed Term Contracts in the requirement to consult collectively. The second issue relates to the supply of information about the above via the HR1 to the Insolvency Service.

Over the past three years my staff have spent up to five person days per quarter preparing data for the first of these purposes to share with recognised trades unions. The second task takes about two days per annum of management information analyst report preparation time.

Neither task has any practical value to trades union or the organisation. I suspect that the impact of HR1 data on FTCs is to distort otherwise useful information.

Regards

Guy Halliwell

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Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Guy Halliwell

Organisation (if applicable): Queen Mary, University of London

Address: Mile End Road

Telephone: 2078823673

Fax: 2089833440

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe) Higher Education Institution

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

The primary concern of the organisation in regard to collective redundancies relates to the practicality of existing arrangements for collective consultation in respect of the termination of large numbers of Fixed Term Contracts. If the Code of Practice or legislation allows consultation about Fixed Term contracts to occur at an individual rather than collective level, the key difficulty on redundancy consultation facing this HEI will be resolved.

The requirement to have a collective dialogue about contracts each of which are entered into for separate and distinct purposes is currently not adequately considered. QM is a research-based HEI. In any 90 day period over 100 dismissals are contemplated. Most dismissals relate to a separate, distinct pieces of research. These matters can only be meaningfully discussed between affected staff and their line manager. However existing legislation obligates the organisation to do so collectively.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Queen Mary's procedures, culture and typical notice periods of three months make it unlikely that the organisation would be ready to effect a large number of redundancies in less than the ninety day period. The College would wish to make its own procedures more flexible. If it succeeds in achieving this end, the removal of the 90 day consultation period could reduce the risk of procedural error.

There appears to be some confusion amongst reps as to whether the law requires a 90 day consultation period or 90 day period before redundancies take effect. This is unhelpful.

It is appropriate to report that existing arrangements lead to allegations that their organisation artificially separated consultations into discrete units in order to avoid numbers exceeding 100 staff affected.

Protracted consultations often erode staff morale and cause ETs > a separate concern of central government.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

The concentrated geographical location of Queen Mary's campuses and the range of academic activities within them means that it is not possible to advance an argument that each of them is a separate establishment within the law. It is not an issue for the College.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

However, the clarity of the term "establishment" is not one that causes any difficulty to Queen Mary.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

The removal of FTCs from legislation is the optimal outcome for QM. Failing that, clear HEI examples/exemptions within guidance or a code of practice will be of value. Evidence in paragraph 4.62 captures many of the concerns of Queen Mary about the existing requirement to conduct a collective consultation about fixed term contract redundancies. What is not described is the effect on employee relations of conducting the necessary rolling programme of

consultations. Because in a collective consultation about FTCs, neither party has adequate understanding of the circumstances of every person whose contract is proposed to be terminated; the resultant dialogue tends to be empty of practical value and gravitates towards procedural and policy-based concerns. Owing to the fact that consultation of this type is of limited value, trades unions rarely attend. The process protects corporate interests against the possibility of a protective award.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

In regard to Question 5. Queen Mary endorses the comments of Chris Mordue of Pinsent Masons LLP in regard to existing difficulties with collective redundancy practice.

Question 7: What changes are needed to the existing Government guidance?

The requirement to Equality Impact Assess redundancy proposals is clear. The institution struggles to balance the requirement to assess them at a point early enough to influence proposal design, yet late enough to ensure that the outcomes are non-discriminatory. Data on outcomes of redundancies for protected groups are rarely statistically significant e.g. trans gender.

The "in good time" approach to sharing information is appropriate and helpful.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

We have no comment to share.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

The Insolvency Service (IS) requires employers to submit data in respect of anticipated redundancies. Given that the termination of large numbers of FTCs is caught within collective redundancy legislation, Higher education Institutions are obligated to supply projections of the numbers of FTCs coming to an end within the forthcoming period.

It is assumed that this data is used to model employment trends, numbers of persons being made redundant etc. It is evident that the purpose of the HR1 and the data requested are at odds. Data supplied corrupts the understanding of numbers of redundancies, given that what is described is numbers of fixed term contracts (many of which are renewed).

Staff of the IS struggle to interpret regulations on HR1. This suggests that the returns demanded are of no statistical or practical value.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Various. Rolling FTC Collective Consultations relating to 150 staff every quarter notionally take ninety days, but practically they involve a single meeting.

Reorganisations of academic department 1. Staff affected 40. Consultation 40 days.

Reorganisations of academic department 2. Staff affected over 20. Informal consultation 45 days. Formal consultation 45 days.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

None.

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URN 12/808

1. Your name:

The University of Nottingham - Peter Mccracken

2. What organisation do you represent (if any)?

The University of Nottingham

3. E-mail address:

Peter.Mccracken@nottingham.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Charity or social enterprise

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes

12. Please provide comments to support your answer.

Line1 - As long as the code of practice encompasses reasons for end of fixed term contract that might not be redundancy e.g. cover for maternity.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes

14. What changes are needed to the existing Government guidance?

Line1 - We agree that employers find it confusing in terms of how long they should consult for when the guidance is written in terms of duration before the redundancies take effect.

Line2 - We would prefer clarity of timescales e.g. minimum of 30 days consultation before giving notice.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - It can encourage consultation to start before plans are finalised and it can encourage consultation to be meaningful.

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Being in the HE sector we agree with the analysis that we are in a continuous cycle of consultation on account of the high use of fixed term contracts.

Line2 - One example of a restructuring involved TUPE took approx 7 months

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - The long timescales associated i.e. 90 day consultation has resulted in disruption to normal business and high levels of anxiety for those directly and indirectly affected.

Line2 - Often reported is people 'just wanting to know' what is happening to them. It would be better to reduce the uncertainty earlier.

1. Your name:

The University of Nottingham - Peter McCracken

2. What organisation do you represent (if any)?

The University of Nottingham

3. E-mail address:

peter.mccracken@nottingham.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Charity or social enterprise

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

No Response

6. Which of the two proposed options should replace the 90-day minimum period?

No Response

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

No Response

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

No Response

9. Please provide comments to support your answer.

No Response

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

No Response

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No Response

12. Please provide comments to support your answer.

No Response

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No Response

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

No Response

16. Are there other non-legislative approaches that could assist – e.g. training?

No Response

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

No Response

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

No Response

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Peter Mccracken [Peter.Mccracken@nottingham.ac.uk]
Sent: 05 September 2012 11:43
To: Collective Redundancies
Cc: Clare Martlew; Jaspal Kaur
Subject: Consultation Response
Attachments: UCEA_12044_-_ (Attachment_1)_-_Government_Consultation_on_Collective_Redundancies[1].doc

Please find attached our response to the consultation on the proposed changes to the rules on collective redundancies.

Kind regards,

Peter McCracken
Deputy Director of Human Resources
The University of Nottingham

Tel. +44 (0) 115 84 67830
<http://hr.nottingham.ac.uk/>

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Collective Redundancies: Consultation on changes to the rules : Response form

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(<https://www.surveymonkey.com/s/36S3QYT>)

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Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Peter Mccracken

Organisation (if applicable): The University of Nottingham

Address: King's Meadow Campus, Lenton Lane, Nottingham

Telephone: 1158467830

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

As long as the code of practice encompasses reasons for end of fixed term contract that might not be redundancy e.g. cover for maternity.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

We are not sure what status Annex A in the consultation document has. We are concerned by reference in the second bullet point to "Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible" since this seems to contradict reference to moving to a 30 day minimum period.

We are also not sure what is meant in Annex A by reference to "keeping the burden of consultation to a minimum"

Question 7: What changes are needed to the existing Government guidance?

We agree that employers find it confusing in terms of how long they should consult for when the guidance is written in terms of duration before the redundancies take effect.

We would prefer clarity of timescales e.g. minimum of 30 days consultation before giving notice.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

It can encourage consultation to start before plans are finalised and it can encourage consultation to be meaningful.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Being in the HE sector we agree with the analysis that we are in a continuous cycle of consultation on account of the high use of fixed term contracts.

One example of a restructuring involved TUPE took approx 7 months

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

The long timescales associated i.e. 90 day consultation has resulted in disruption to normal business and high levels of anxiety for those directly and indirectly affected. Often reported is people 'just wanting to know' what is happening to them. It would be better to reduce the uncertainty earlier.

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URN 12/808

1. Your name:

The University of Sheffield - Stephanie O'brien

2. What organisation do you represent (if any)?

The University of Sheffield

3. E-mail address:

s.j.obrien@sheffield.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - This proposed reduction of the 90 minimum period (and replacing it with a single 30-day period or a shortened 45-day period should provide us with greater flexibility

Line2 - to agree a shorter consultation period with recognised Trade Unions where appropriate.

Line3 - A straightforward approach should enable employers to focus clearly on consultation collectively with representatives and individually with staff affected and to ensure that the consultation is

Line4 - meaningful, responding to any suggestions and ideas rapidly in order to seek to find the best solutions to the redundancy situation and maintain morale amongst those affected.

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - Given the european case law it is understandable.

Line2 - Although need to ensure the Code is not overly prescriptive/ inflexible

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - Our own organisation has been subject to a s.188 legal challenge based upon technicalities around the process and timescales, rather than the quality of the consultation - the Trade Unions claim was

Line2 - possible due to the volume of FTC's which may have expired at the time. Although the Stirling judgement represents a departure from previous thinking in case law, it is still open to challenge and

Line3 - appeal, or further case law may see a reversal in this interpretation. It is our understanding that the EU Directive on collective consultation exempts dismissals occurring at the end of fixed term

Line4 - contracts. If this the case the provisions in TULRCA 1992 are more extensive than the corresponding EU legislation, as these include expiry and non-renewal of FTCs.

Line5 - My concern is that guidance and a Code of Practice will not go far enough to support employers whose business model is reliant on the flexibility of employment contracts such as FTCs.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Not sure

14. What changes are needed to the existing Government guidance?

Line1 - For employees - flowcharts, less passive tone, more about their role during consultation, simplified approach.

Line2 - The focus of existing guidance is very much on employee rights to compensation if employer gets it wrong, rather than what it might look and feel like.

Line3 - For employers - flowcharts, not overly prescriptive, simplified approach.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Ensure that all government guidance in different places has a similar tone and provides similar messages - work with CIPD and ACAS and other

bodies (e.g UCEA) to share expertise and provide

Line2 - something which is 'joined-up'.

Line3 - Involve employers, TU's etc in the development and implementation.

Line4 - Simplify but ensure clarification is there - avoid being overly prescriptive.

Line5 - A reduction in compensatory awards for employers where the Code of Practice has been followed, and there is evidence that there has been a genuine effort made to consult in a meaningful way.

16. Are there other non-legislative approaches that could assist – e.g. training?

Yes

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Training and case studies, as mentioned previously, working with CIPD, ACAS etc.

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

Line1 - Where staff are employed on Tier 2 or Tier 5, there is an additional anxiety during redundancy consultations over whether they will have to leave the UK - this is a potential issue in sectors such as

Line2 - Higher Education where high volumes of employees are from overseas and are genuinely contributing to the UK economy.

Line3 - The proposed shortening of consultation periods may help to reduce any future period of anxiety where such staff are affected by potential redundancies in the future.

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Currently difficult to reach agreement with Trade Unions in anything less than 90 days.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

No Response

REPRO DTP

From: Stephanie J O'Brien [s.j.obrien@sheffield.ac.uk]
Sent: 19 September 2012 14:30
To: Collective Redundancies
Subject: Collective Redundancies: Consultation on changes to the rules: Response form attached
Attachments: 19092012 Sheffield-Government Consultation on Collective Redundancies.docx

Dear Carl

Please find attached a response to the consultation on changes to the collective redundancies, sent on behalf of the University of Sheffield.

Kind Regards

Stephanie O'Brien
HR Manager (Employee Relations)

This email was received from the INTERNET.

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Collective Redundancies: Consultation on changes to the rules : Response form

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You can complete your response online through Survey Monkey :
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Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Stephanie O'brien

Organisation (if applicable): The University of Sheffield

Address: Firth Court, Western Bank, Sheffield, S10 2TN

Telephone: 1142221497

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

This proposed reduction of the 90 minimum period (and replacing it with a single 30-day period or a shortened 45-day period should provide us with greater flexibility to agree a shorter consultation period with recognised Trade Unions where appropriate.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

A straightforward approach should enable employers to focus clearly on consultation collectively with representatives and individually with staff affected and to ensure that the consultation is meaningful, responding to any suggestions and ideas rapidly in order to seek to find the best solutions to the redundancy situation and maintain morale amongst those affected.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

Given the european case law it is understandable.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Although need to ensure the Code is not overly prescriptive/ inflexible.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

Our own organisation has been subject to a s.188 legal challenge based upon technicalities around the process and timescales, rather than the quality of the consultation - the Trade Unions claim was possible due to the volume of FTC's which may have expired at the time.

Although the Stirling judgement represents a departure from previous thinking in case law, it is still open to challenge and appeal, or further case law may see a reversal in this interpretation.

It is our understanding that the EU Directive on collective consultation exempts dismissals occurring at the end of fixed term contracts. If this the case the provisions in TULRCA 1992 are more extensive than the corresponding EU legislation, as these include expiry and non-renewal of FTCs.

My concern is that guidance and a Code of Practice will not go far enough to support employers whose business model is reliant on the flexibility of employment contracts such as FTCs.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

For the reasons provided in question 5.

Question 7: What changes are needed to the existing Government guidance?

For employees - flowcharts, less passive tone, more about their role during consultation, simplified approach. The focus of existing guidance is very much on employee rights to compensation if employer gets it wrong, rather than what it might look and feel like.

For employers - flowcharts, not overly prescriptive, simplified approach.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Ensure that all government guidance in different places has a similar tone and provides similar messages - work with CIPD and ACAS and other bodies (e.g UCEA) to share expertise and provide something which is 'joined-up'.

Involve employers, TU's etc in the development and implementation.

Simplify but ensure clarification is there - avoid being overly prescriptive.

A reduction in compensatory awards for employers where the Code of Practice has been followed, and there is evidence that there has been a genuine effort made to consult in a meaningful way.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Training and case studies, as mentioned previously, working with CIPD, ACAS etc.

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Where staff are employed on Tier 2 or Tier 5, there is an additional anxiety during redundancy consultations over whether they will have to leave the UK - this is a potential issue in sectors such as Higher Education where high volumes of employees are from overseas and are genuinely contributing to the UK economy. The proposed shortening of consultation periods may help to reduce any future period of anxiety where such staff are affected by potential redundancies in the future.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Currently difficult to reach agreement with Trade Unions in anything less than 90 days.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

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URN 12/808

1. Your name:

UCEA - Nicola Carter

2. What organisation do you represent (if any)?

UCEA

3. E-mail address:

n.carter@ucea.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Business representative organisation/trade body

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Not sure

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - Whilst the proposed reduction of the consultation period, a Code of Practice and improved guidance are all welcome, there is serious concern that the proposed approach to the expiry of fixed-term

Line2 - contracts is not sufficient. We would have preferred to have seen an exemption for the expiry of fixed-term contracts from the legislation on collective consultation for redundancies.

Line4 - See word form and appendix for details

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - There is an acceptance that this is a complex area and that there is a broad range of factors that may determine an "establishment" in this context.

Line2 - It is also accepted that the factors will vary from case to case.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - The sector would welcome a clear legislative exemption that the routine / anticipated expiry of a fixed-term contract would not count towards numbers for

Line2 - collective consultation purposes. There is therefore a strong concern that a Code of Practice will not provide a sufficiently robust response to this issue.

Line3 - Please see appendix for a full response and issues for the HE sector.

Line5 - Whilst increased clarity and guidance through a Code of Practice would be welcomed, the sector would benefit from a clear legislative change in respect of the expiry of fixed-term contracts.

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

Line1 - In general, HEIs would welcome straight-forward guidance in plain English. One HEI has suggested flow-charts for employers and employees to illustrate the processes. It would also be useful for

Line2 - guidance to cover the "look and feel" of collective consultation, rather than just rights and processes; it is hoped that this would encourage focus on the quality of consultation.

Line3 - The sector would welcome guidance that addresses the particular issues that face HEIs in collective consultation, for example in terms of the expiry of fixed-term contracts.

Line4 - HEIs would welcome a clear explanation on when collective consultation can be considered to be finished and when employers can issue notices of redundancy.

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - We would welcome clarity over the intended status of the proposed Code of Practice, including how Employment Tribunals will view compliance, or non-compliance with the Code. BIS should engage key

Line2 - stakeholders in the drafting of the Code - UCEA would be happy to be involved in this process. There should be a joined-up approach to

implementation, e.g. with ACAS, trade unions, employer bodies etc

Line3 - The Code should use clear, simple language. The Code will need to take account of practical difficulties, e.g. the expiry of multiple fixed-term contracts in the HE sector. There should also be

Line4 - sufficient flexibility to accommodate different circumstances and sectors. The Code should focus on what should actually happen during collective consultation and the quality of consultation

Line5 - (not just the duration). There should be flexibility to account for different situations.

16. Are there other non-legislative approaches that could assist – e.g. training?

Not sure

17. If yes, please explain what other approaches you consider appropriate.

Line1 - Suggestions for other approaches include: - training - case studies - FAQs for employers and employees - General awareness-raising of any changes to current legislation / practice

18. Have we correctly identified the impacts of the proposed policies?

Yes

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Institutions consult for the full statutory 90-day period, and often continue consultations during the notice period - typically 3 months - which follows the statutory consultation period.

Line2 - Many institutions have no choice but to conduct an ongoing cycle of collective consultations given the volume of fixed-term contracts that are due to expire at various points in the year.

Line3 - Collective consultation is usually required due to the expiry of fixed-term contracts, which depend on external funding over which the institution and trade union have no control, therefore it is

Line4 - difficult to conduct meaningful consultation or reach agreement. Some institutions have reported that it is difficult to ever reach agreement with

Line5 - their trade union representatives, regardless of the length of the consultation period.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - The inclusion of fixed-term contracts in the consultation threshold means that many institutions conduct ongoing cycles of 90-day collective consultation. This brings significant costs in terms

Line2 - of administration, management time, union representatives' time and increased support for staff during the consultation period.

Line3 - Ongoing consultation on fixed-term contracts, where the employer has no control over the funding source, directs attention and resources away from other areas of work.

Line4 - Also, managers' time could be better spent advising employees on applying for additional funding. Consultation has a negative impact on morale and performance and can destabilise the wider workforce.

REPRO DTP

From: Nicola Carter [N.Carter@ucea.ac.uk]
Sent: 19 September 2012 17:00
To: Collective Redundancies
Subject: UCEA consultation response
Attachments: 12-808rf - Collective Redundancies - UCEA response appendix.doc; 12-808rf-collective-redundancies - UCEA response.doc

Dear Carl

Please find attached the response from UCEA (the Universities and Colleges Employers Association) to the consultation on collective redundancies.

As previously advised, I had to use an appendix for a couple of the questions as the text boxes were too short.

Kind regards
Nicola

Nicola Carter
Senior Employee Relations Adviser
UCEA
Woburn House
20 Tavistock Square
London, WC1H 9HU

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Collective Redundancies: Consultation on changes to rules

Response from the Universities and Colleges Employers Association (UCEA): Appendix to main UCEA response form

Question 2: Explanation for a 30-day minimum consultation period

One minimum period for all collective consultations would remove the graduated approach and would provide welcome simplicity. It is a minimum and could be extended if required. Also, it would not "gold-plate" EU legislation.

HE institutions (HEIs) would welcome a shorter period that focuses on the quality of consultation, rather than the duration. 30 days would allow employers to respond swiftly to business need whilst still providing time for meaningful collective and individual consultations.

As noted in the consultation document, HEIs employ a significant number of staff on fixed-term contracts. This is principally the case for research staff who work on research projects that are funded for a finite period by an external funder, and where the HEI is only able to employ the researcher on account of that external funding. There are also a considerable number of associate teaching staff employed on fixed-term contracts for a term or an academic year to cope with fluctuations in student numbers and demand for particular subjects. In both of these cases, the HEI will have little information on the prospect of renewing the fixed-term contract very far in advance of the notice period: confirmation about the prospect of further funding is usually only given at a very late stage. Similarly, student numbers for the following term or academic year will not be known 90 days before the beginning of a lecturer's notice period. A 30-day consultation period will mean that there is a greater likelihood that an HEI will know at an earlier stage in the consultation process whether there is a possibility of renewing an employee's contract.

For the reasons outlined above, a 30-day consultation period will result in a more meaningful consultation period. It will also avoid prolonged uncertainty and stress for the employees concerned.

Often the majority of employees included in the consultation at the start of a 90-day period do not end up being dismissed. In many cases, nearer the end of the consultation period, information on student numbers or funding becomes available that leads to contracts being extended. A shorter consultation period would mean that many of the staff who are currently included in the collective consultation process (with all the uncertainty that that brings) would no longer be "caught" by collective consultation requirements as their continued employment would already have been confirmed. The current 90-day period, based on numbers of staff whose fixed-term contract is due to expire months in the future, is artificial.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

The sector would welcome a clear legislative exemption that the routine / anticipated expiry of a fixed-term contract would not count towards numbers for collective consultation purposes. There is therefore a strong concern that a Code of Practice will not provide a sufficiently robust response to this issue.

The inclusion of the expiry of fixed-term contracts for the purpose of collective consultation places a heavy burden on HEIs, who employ a significant number of staff on such contracts, mainly due to external funding arrangements for research (please see the response to question 3, above).

Collective consultation is often impractical and of little value for fixed-term staff in HE. The legislation requires employers and employee representatives to consult on ways of avoiding dismissals, reducing the number of dismissals and mitigating impact. However, as noted

above, the reason that fixed-term contracts are usually used for work of a limited term is due to external factors, such as external funding for fixed-term research staff, or student numbers for fixed-term associate teaching staff. These are issues that neither the employer nor the trade unions have any influence over, meaning that they are very unlikely to be able to achieve the aims of collective consultation.

In addition, the people engaging in collective consultation on behalf of the HEI and the trade union(s) are unlikely to have sufficient understanding of the particular circumstances and contracts of all the fixed-term staff about whom they are consulting. These situations are very different to one-off large-scale redundancies: in HE collective consultation is most often about a large number of individuals whose contracts happen to be coming to an end (as anticipated from the outset of the contract) within the same 90-day period, but who are employed in diverse areas of the institution and whose work is funded by various different third parties. As such, collective consultation is of little value and becomes meaningless for the employees concerned. The real value is in the individual consultations with the employees concerned.

Currently, due to the volume of fixed-term staff employed whose contracts are due to expire at various dates throughout the year, many HEIs have to conduct collective consultation on an ongoing basis in order to avoid falling foul of the legislation. This is time-consuming for both sides in the consultation process and creates a significant administrative burden.

Whilst we accept that the proposal to reduce the minimum consultation period – hopefully to 30 days – will go some way towards mitigating the issues outlined above, it will not remove the requirement to go through the collective consultation process for the expiry of fixed-term contracts, which provides little value for the employees concerned. We would prefer to see an exemption, with a focus instead on robust, meaningful individual consultation.

Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
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Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
3 Abbey 2
1 Victoria Street
London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Nicola Carter

Organisation (if applicable): UCEA

Address: Woburn House, 20 Tavistock Square, London, WC1H 9HU

Telephone: 2073832444

Fax: 2073832666

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Whilst the proposed reduction of the consultation period, a Code of Practice and improved guidance are all welcome, there is serious concern that the proposed approach to the expiry of fixed-term contracts is not sufficient. We would have preferred to have seen an exemption for the expiry of fixed-term contracts from the legislation on collective consultation for redundancies.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

One minimum period for all collective consultations would remove the graduated approach and would provide welcome simplicity. It is a minimum and could be extended if required. Also, it would not "gold-plate" EU legislations.

HE institutions (HEIs) would welcome a shorter period that focuses on the quality of consultation, rather than the duration. 30 days would allow employers to respond swiftly to business need whilst still providing time for meaningful collective and individual consultations.
Please see appendix for a full response and issues for the HE sector.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

There is an acceptance that this is a complex area and that there is a broad range of factors that may determine an "establishment" in this context. It is also accepted that the factors will vary from case to case.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Whilst the assessment of risks is accepted, there is a concern that a non-statutory Code of Practice would not give sufficient certainty/clarity for employers in interpreting the definition of "establishment" and that the matter will still be determined by case law.

Many HEIs are complex, multi-site organisations and several HEIs have subsidiary companies or joint ventures. The sector would welcome clarity over the definition of "establishment" for collective consultation purposes.

Whether or not the Code gives sufficient clarity will depend on the content of the Code when it is produced. It was also unclear from the consultation document what the intended status of a Code of Practice would be, particularly in relation to employment tribunal decisions.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

The sector would welcome a clear legislative exemption that the routine / anticipated expiry of a fixed-term contract would not count towards numbers for collective consultation purposes. There is therefore a strong concern that a Code of Practice will not provide a sufficiently robust response to this issue.

Please see appendix for a full response and issues for the HE sector.

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

Whilst increased clarity and guidance through a Code of Practice would be welcomed, the sector would benefit from a clear legislative change in respect of the expiry of fixed-term contracts.

Question 7: What changes are needed to the existing Government guidance?

In general, HEIs would welcome straight-forward guidance in plain English. One HEI has suggested flow-charts for employers and employees to illustrate the processes. It would also be useful for guidance to cover the "look and feel" of collective consultation, rather than just rights and processes; it is hoped that this would encourage focus on the quality of consultation.

The sector would welcome guidance that addresses the particular issues that face HEIs in collective consultation, for example in terms of the expiry of fixed-term contracts. HEIs would welcome a clear explanation on when collective consultation can be considered to be finished and when employers can issue notices of redundancy.

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

We would welcome clarity over the intended status of the proposed Code of Practice, including how Employment Tribunals will view compliance, or non-compliance with the Code. BIS should engage key stakeholders in the drafting of the Code - UCEA would be happy to be involved in this process. There should be a joined-up approach to implementation, e.g. with ACAS, trade unions, employer bodies etc. The Code should use clear, simple language.

The Code will need to take account of practical difficulties, e.g. the expiry of multiple fixed-term contracts in the HE sector. There should also be sufficient flexibility to accommodate different circumstances and sectors. The Code should focus on what should actually happen during collective consultation and the quality of consultation (not just the duration). There should be flexibility to account for different situations.

Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Suggestions for other approaches include:

- training
- case studies
- FAQs for employers and employees
- General awareness-raising of any changes to current legislation / practice

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Institutions consult for the full statutory 90-day period, and often continue consultations during the notice period - typically 3 months - which follows the statutory consultation period. Many institutions have no choice but to conduct an ongoing cycle of collective consultations given the volume of fixed-term contracts that are due to expire at various points in the year.

Collective consultation is usually required due to the expiry of fixed-term contracts, which depend on external funding over which the institution and trade union have no control, therefore it is difficult to conduct meaningful consultation or reach agreement. Some institutions have reported that it is difficult to ever reach agreement with their trade union representatives, regardless of the length of the consultation period.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

The inclusion of fixed-term contracts in the consultation threshold means that many institutions conduct

ongoing cycles of 90-day collective consultation. This brings significant costs in terms of administration, management time, union representatives' time and increased support for staff during the consultation period.

Ongoing consultation on fixed-term contracts, where the employer has no control over the funding source, directs attention and resources away from other areas of work. Also, managers' time could be better spent advising employees on applying for additional funding. Consultation has a negative impact on morale and performance and can destabilise the wider workforce.

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URN 12/808

Collective Redundancies: Consultation on changes to rules

Response from the Universities and Colleges Employers Association (UCEA): Appendix to main UCEA response form

Question 2: Explanation for a 30-day minimum consultation period

One minimum period for all collective consultations would remove the graduated approach and would provide welcome simplicity. It is a minimum and could be extended if required. Also, it would not "gold-plate" EU legislation.

HE institutions (HEIs) would welcome a shorter period that focuses on the quality of consultation, rather than the duration. 30 days would allow employers to respond swiftly to business need whilst still providing time for meaningful collective and individual consultations.

As noted in the consultation document, HEIs employ a significant number of staff on fixed-term contracts. This is principally the case for research staff who work on research projects that are funded for a finite period by an external funder, and where the HEI is only able to employ the researcher on account of that external funding. There are also a considerable number of associate teaching staff employed on fixed-term contracts for a term or an academic year to cope with fluctuations in student numbers and demand for particular subjects. In both of these cases, the HEI will have little information on the prospect of renewing the fixed-term contract very far in advance of the notice period: confirmation about the prospect of further funding is usually only given at a very late stage. Similarly, student numbers for the following term or academic year will not be known 90 days before the beginning of a lecturer's notice period. A 30-day consultation period will mean that there is a greater likelihood that an HEI will know at an earlier stage in the consultation process whether there is a possibility of renewing an employee's contract.

For the reasons outlined above, a 30-day consultation period will result in a more meaningful consultation period. It will also avoid prolonged uncertainty and stress for the employees concerned.

Often the majority of employees included in the consultation at the start of a 90-day period do not end up being dismissed. In many cases, nearer the end of the consultation period, information on student numbers or funding becomes available that leads to contracts being extended. A shorter consultation period would mean that many of the staff who are currently included in the collective consultation process (with all the uncertainty that that brings) would no longer be "caught" by collective consultation requirements as their continued employment would already have been confirmed. The current 90-day period, based on numbers of staff whose fixed-term contract is due to expire months in the future, is artificial.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

The sector would welcome a clear legislative exemption that the routine / anticipated expiry of a fixed-term contract would not count towards numbers for collective consultation purposes. There is therefore a strong concern that a Code of Practice will not provide a sufficiently robust response to this issue.

The inclusion of the expiry of fixed-term contracts for the purpose of collective consultation places a heavy burden on HEIs, who employ a significant number of staff on such contracts, mainly due to external funding arrangements for research (please see the response to question 3, above).

Collective consultation is often impractical and of little value for fixed-term staff in HE. The legislation requires employers and employee representatives to consult on ways of avoiding dismissals, reducing the number of dismissals and mitigating impact. However, as noted

above, the reason that fixed-term contracts are usually used for work of a limited term is due to external factors, such as external funding for fixed-term research staff, or student numbers for fixed-term associate teaching staff. These are issues that neither the employer nor the trade unions have any influence over, meaning that they are very unlikely to be able to achieve the aims of collective consultation.

In addition, the people engaging in collective consultation on behalf of the HEI and the trade union(s) are unlikely to have sufficient understanding of the particular circumstances and contracts of all the fixed-term staff about whom they are consulting. These situations are very different to one-off large-scale redundancies: in HE collective consultation is most often about a large number of individuals whose contracts happen to be coming to an end (as anticipated from the outset of the contract) within the same 90-day period, but who are employed in diverse areas of the institution and whose work is funded by various different third parties. As such, collective consultation is of little value and becomes meaningless for the employees concerned. The real value is in the individual consultations with the employees concerned.

Currently, due to the volume of fixed-term staff employed whose contracts are due to expire at various dates throughout the year, many HEIs have to conduct collective consultation on an ongoing basis in order to avoid falling foul of the legislation. This is time-consuming for both sides in the consultation process and creates a significant administrative burden.

Whilst we accept that the proposal to reduce the minimum consultation period – hopefully to 30 days – will go some way towards mitigating the issues outlined above, it will not remove the requirement to go through the collective consultation process for the expiry of fixed-term contracts, which provides little value for the employees concerned. We would prefer to see an exemption, with a focus instead on robust, meaningful individual consultation.

1. Your name:

University College London - Fiona Daffern

2. What organisation do you represent (if any)?

University College London

3. E-mail address:

f.daffern@ucl.ac.uk

4. Please tick the boxes below that best describe you as a respondent to this call for evidence – No fault dismissal

Large business (over 250 staff)

University

5. Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Not sure

6. Which of the two proposed options should replace the 90-day minimum period?

30 days

7. Please explain why you think your choice would better deliver the Government's aims than the alternative option.

Line1 - See word copy for comments

8. Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes

9. Please provide comments to support your answer.

Line1 - It is clear that there are difficulties in legislating the issue of establishment, as brought out in European case law.

Line2 - Not clear within the consultation document why the definition of establishment cannot be enshrined in legislation but it can adequately be addressed in guidance.

Line3 - It really depends on the quality of the definition within guidance and to the status of this guidance within the UK Employment Tribunals as to whether this will establish clarity.

10. Will defining 'establishment' in a Code of Practice give sufficient clarity?

Not sure

11. Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

No

12. Please provide comments to support your answer.

Line1 - I would prefer legislation that would give clarity to recent case law, specifically the Stirling ruling.

Line2 - It is not clear how guidance will give sufficient certainty to interpretation, especially if the basic law is not clarified

13. Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

No

14. What changes are needed to the existing Government guidance?

No Response

15. How can we ensure the Code of Practice helps deliver the necessary culture change?

Line1 - Simplicity and clarity with flexibility for different circumstances so that the focus is on dialogue rather than argument about the interpretation of the law or procedure.

Line2 - Take out the artificiality of the requirement for collective consultation for fixed term contracts. At UCL we consistently only make c20% of those potentially at risk of redundancy actually redundant,

Line3 - but we are required to go through the collective process, when the reality is that individual consultation is more appropriate and would be better treated as such.

16. Are there other non-legislative approaches that could assist – e.g. training?

No

17. If yes, please explain what other approaches you consider appropriate.

No Response

18. Have we correctly identified the impacts of the proposed policies?

Not sure

19. If you have any evidence relating to possible impacts we would be happy to receive it.

No Response

20. If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Line1 - Because of the number of staff on finite funded contracts we are in a perpetual cycle of consultation on the same matters which never reaches a final conclusion.

21. If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

Line1 - The perpetual cycle of collective consultation has had no material impact on the number of actual redundancies, which remain constant as a percentage of those potentially at risk. In that respect,

Line2 - business remains as normal, but additional work is generated through the consultation process.

REPRO DTP

From: Daffern, Fiona [f.daffern@ucl.ac.uk]
Sent: 03 August 2012 09:58
To: Collective Redundancies
Subject: UCL response
Attachments: 12-808f-collective-redundancies-consultation-form.doc

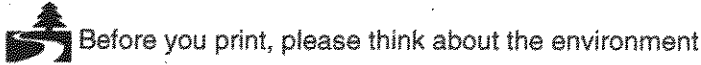
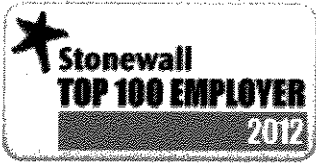
Dear Carl

Please find attached a response to the current BIS consultation on Collective Redundancy from UCL. If you have any queries in relation to this please do not hesitate to contact me

kind regards

Fiona

Fiona Daffern
Head of Employment Policy Development
University College London
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Collective Redundancies: Consultation on changes to the rules : Response form

A copy of the consultation on **Collective Redundancies: Consultation on changes to the rules** can be found at:

<http://www.bis.gov.uk/consultations>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/36S3QYT>)

Alternatively, you can email, post or fax this completed response form to

Email:

collectiveredundancies@bis.gsi.gov.uk

Postal address:

Carl Davies
Department for Business, Innovation and Skills (BIS)
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London SW1H 0ET

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **19 September 2012**

Your details

Name: Fiona Daffern

Organisation (if applicable): University College London

Address: Gower Street, London WC1E 6BT

Telephone: 2031085970

Fax:

Please tick the boxes below that best describe you as a respondent to this

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe) University

Question 1: Do you agree with the Government's overall approach to the rules on collective redundancy consultation?

Yes No Not sure

Some aspects are very welcome, e.g. the proposals to reduce the timescales for large scale consultation. However for other aspects I would prefer to see clear and decisive legislative change rather than guidance or codes of practice . It is not clear what status the guidance or CoP would have and how this would interplay with existing legislation, if that is not changed.

I think there are also some areas of missed opportunity, e.g. changes to the maximum protective award which would reduce costs and eliminate anomalies which could prove extremely costly for employers. Additionally I would like to see clarity on the application of recent case law on fixed term employees (Stirling case) through clear legislation rather than guidance.

Question 2: Which of the two proposed options should replace the 90-day minimum period?

30 days 45 days Not sure

Please explain why you think your choice would better deliver the Government's aims than the alternative option.

The key argument for applying the 30 day limit is that this is consistent with the EU Directive. This would tie in with the government's stated objective to reduce the 'gold plating' of EU obligations in UK employment law and give one consistent standard for all redundancies. It is more important to focus on the quality of consultation rather than an arbitrary duration.

As a HEI we are in a perpetual cycle of 90 day collective consultation because of the no of people whose contracts are subject to finite funding. This is more suited to individual consultation and given the often late information as to renewal of or additional funding 30 days is more than sufficient for meaningful consultation. Where lots of smaller or individual redundancy scenarios, with different effective dates, combine at an establishment it is preferable to have one standard timeframe.

Question 3: Do you agree with the Government's assessment of the risks of taking a legislative route on the issue of 'establishment'?

Yes No Not sure

Please provide comments to support your answer.

It is clear that there are difficulties in legislating the issue of establishment, as brought out in European case law.

Question 4: Will defining 'establishment' in a Code of Practice give sufficient clarity?

Yes No Not sure

Not clear within the consultation document why the definition of establishment cannot be enshrined in legislation but it can adequately be addressed in guidance.

It really depends on the quality of the definition within guidance and to the status of this guidance within the UK Employment Tribunals as to whether this will establish clarity.

Question 5: Is the Government right to address the fixed-term contract issue in guidance and the proposed Code of Practice rather than in legislation?

Yes No Not sure

Please provide comments to support your answer.

I would prefer legislation that would give clarity to recent case law, specifically the Stirling ruling. It is not clear how guidance will give sufficient certainty to interpretation, especially if the basic law is not clarified

Question 6: Have we got the balance right between what is for statute and what is contained in Government guidance and a Code of Practice?

Yes No Not sure

see above comments

Question 7: What changes are needed to the existing Government guidance?

Question 8: How can we ensure the Code of Practice helps deliver the necessary culture change?

Simplicity and clarity with flexibility for different circumstances so that the focus is on dialogue rather than argument about the interpretation of the law or procedure.

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Question 9: Are there other non-legislative approaches that could assist – e.g. training? If yes, please explain what other approaches you consider appropriate.

Yes No Not sure

Question 10: Have we correctly identified the impacts of the proposed policies?

Yes No Not sure

If you have any evidence relating to possible impacts we would be happy to receive it.

Question 11: If you have been involved in a collective redundancy consultation in the last five years, how long did it take to reach agreement?

Because of the number of staff on finite funded contracts we are in a perpetual cycle of consultation on the same matters which never reaches a final conclusion.

Question 12: If you have carried out a collective redundancy consultation in the last five years, what effect, if any, did it have on your regular business during this time?

The perpetual cycle of collective consultation has had no material impact on the number of actual redundancies, which remain constant as a percentage of those potentially at risk. In that respect, business remains as normal, but additional work is generated through the consultation process.

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