

## Response ID ANON-HGN9-CCP6-2

Submitted to **Good work: the Taylor review of modern employment practices - Consultation on measures to increase transparency in the UK labour market**

Submitted on **2018-05-23 10:02:41**

### About you

**What is your name?**

**Name:**

The Royal College of Nursing

**What is your email address?**

**Email:**

joanne.galbraith-marten@rcn.org.uk

**What best describes you?**

**Please select the appropriate option from the drop down list below.:**

Representing employers' or employees'/workers' interests

**If other please specify:**

**If you are replying as an individual, what best represents your employment status?**

**Please select the appropriate option from the drop down list below.:**

**If other please specify:**

**How would you classify your organisation/ organisation you work for?**

**Please select the appropriate option from the drop down list below.:**

Other

**If other please specify:**

Trade Union

**How many employees work for your organisation/ the organisation you work for?**

**Please select the appropriate option from the drop down list below.:**

Large-sized business (250+ employees)

**If you represent employers or employees/workers, what best describes you?**

**Please select the appropriate option from the drop down list below.:**

A trade union

**If other please specify:**

**If you are an employer, what proportion of individuals undertaking paid work at your workplace are:**

**Proportion of individuals - Permanent employees:**

**Proportion of individuals - Non-permanent staff - to include non-permanent agency workers, non-permanent casual and seasonal workers, those working under a contract for a fixed period or fixed task, or other types of non-permanent staff:**

**Are you happy for your response to be published?**

Yes

**Would you like to be contacted when the consultation response is published?**

No

**(optional) How did you hear about this consultation?**

**Where did you hear of this consultation?:**

Email from BEIS

Other (please specify):

## Written statements - Questions for employers

**1 Have you provided a written statement of employment in the last 12 months to:**

**Providing written statements - a) Your permanent employees:**

**Providing written statements - b) Your non-permanent staff:**

**If you answered yes to question 1b, approximately how many have you provided in the last 12 months?:**

N/A

**If you answered no to question 1b, please explain your reasons. :**

N/A

**2 In general, when do individuals starting paid work at your organisation receive:**

**When are written statements received - a) A written statement:**

N/A

**When are written statements received - b) An employment contract or other employment particulars:**

N/A

**3 How long, on average, would it take a member of staff to produce a written statement for a new starter?**

Between one hour and half a day

**4 How often do you seek legal advice when producing a written statement?**

Not Answered

**5 Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of?**

Don't know

**If you answered yes, please provide details below.:**

N/A in respect of our response to this consultation as we are responding as a Trade Union and not an employer but we believe that the costs associated with producing written statements is minimal. In any event any such business costs are outweighed by potential litigation costs related to uncertainty about terms and conditions of employment.

## Written statements - Questions for individuals

**6 If you are employed, have you received any of the following from your employer:**

**Have you received a written statement of employment contract - a) A written statement:**

**Have you received a written statement of employment contract - b) An employment contract or other employment particulars:**

**7 If yes, when did you receive the following in relation to starting paid work with your employer:**

**When did you receive written statement or contract of employment? - a) A written statement:**

**When did you receive written statement or contract of employment? - b) An employment contract or other employment particulars:**

**8 If yes, was the information presented in a way that was easy to understand?**

Not Answered

## Written statements - Questions for all

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

Agree strongly

**Please provide a reason for your answer:**

Providing written statements creates a consistent and clear framework for both employers and employees/workers in respect of their rights and obligations. This will reduce the risk of disputes, and employment tribunal claims (in particular relating to issues such as working hours and holiday pay calculation).

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

**Are the following helpful in setting out employment particulars - a) The Business's name:**

Yes

**Are the following helpful in setting out employment particulars - b) The employee's name, job title or a description of work and start date:**

Yes

**Are the following helpful in setting out employment particulars - c) If a previous job counts towards a period of continuous employment, the date the period started:**

Yes

**Are the following helpful in setting out employment particulars - d) How much and how often an employee will get paid:**

Yes

**Are the following helpful in setting out employment particulars - e) Hours of work (and if employees will have to work Sundays, nights or overtime):**

Yes

**Are the following helpful in setting out employment particulars - f) Holiday entitlement (and if that includes public holidays):**

Yes

**Are the following helpful in setting out employment particulars - g) Where an employee will be working and whether they might have to relocate:**

Yes

**Are the following helpful in setting out employment particulars - h) If an employee works in different places, where these will be and what the employer's address is:**

Yes

**If you answered no to any of the above, please provide your reasoning:**

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

**Do you agree these should be added? - a) How long a temporary job is expected to last, or the end date of a fixed-term contract:**

Agree strongly

**Do you agree these should be added? - b) How much notice the employer and the worker are required to give to terminate the agreement:**

Agree strongly

**Do you agree these should be added? - c) Sick leave and pay entitlement:**

Agree strongly

**Do you agree these should be added? - d) The duration and conditions of any probationary period?:**

Agree strongly

**Do you agree these should be added? - e) Training requirements and entitlement?:**

Agree strongly

**Do you agree these should be added? - f) Remuneration beyond pay e.g. vouchers, lunch, uniform allowance?:**

Agree strongly

**Do you agree these should be added? - g) Other types of paid leave e.g. maternity, paternity and bereavement leave?:**

Agree strongly

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

**12 To what extent do you agree that the principal written statement should be provided on (or before) the individuals start date?**

Agree strongly

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

Disagree strongly

### **Written statements - Questions for individuals**

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

Not Answered

**15 If you answered yes, did you:**

**Have you acted on not receiving a written statement - a) Consider lodging a complaint with an employment tribunal (even if you did not end up doing it)?:**

**Have you acted on not receiving a written statement - b) Pursue compensation?:**

**If you answered no to either of the above, please explain your reasoning:**

We have lodged complaints on behalf of some of our members as part of a wider employment tribunal claim (e.g. relating to unfair dismissal/discrimination claim). In our view some employees are either not aware of their right to lodge a complaint or feel vulnerable to assert their statutory right.

**16 If you answered yes to pursuing compensation, were you successful in securing compensation for failing to receive a written statement within 2 months of starting your job?**

Yes

**If you answered no, please provide a reason for your answer:**

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

**a) Individuals:**

It would create an incentive for individuals to assert their rights, and employers to comply with their legal obligation. It could lead to an increase in tribunal cases at least in the short term. However, this is the type of claim which is most suitable for resolution via ACAS early conciliation.

**b)Employers:**

**c) the tribunal service:**

## **Written statements - Questions for all**

**18 Which of the following best describes your awareness of the Acas guidance on Written Statements?**

**Please select the appropriate option from the drop down list below.:**

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

**Please select the appropriate option from the drop down list below.:**

Quite helpful

**Please provide reasons for your answer below:**

It is helpful for our members but ACAS could also provide more examples of non-binding written terms.

## **Continuous service**

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

**Please write answer in box below.:**

It gives some businesses a great degree of flexibility in creating short term employment and avoiding/minimising liability for claims.

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

**Please write your answer in the box below:**

For members on short term/agency contracts or on atypical contracts it has led to uncertainty and reduced rights.

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

Yes

**If yes, please provide examples:**

Yes, some of our members have been dismissed wrongfully short of two years continuous service preventing them from claiming unfair dismissal and/or redundancy pay. Another example involves TUPE transfers and/or reorganisations where employees have been dismissed prior to the transfer and are then re-engaged more than a week later to avoid automatic transfer of employment rights.

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

Yes

**Please specify your sector and explain your answer.:**

Please see the answer to question 22 above.

**24 We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be?**

**Please select the appropriate option from the drop down list below.:**

Other (please specify below)

**Please explain your answer:**

Either 1 month or 6 weeks as this period is sufficiently long to cover potential seasonal breaks (e.g. summer breaks) in some sectors.

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

Yes

**If no, what additional circumstances should be added:**

**26 We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance? (Select all that apply)**

Real examples from case law

**If other please specify:**

The guidance to refer to real examples from the case law (e.g. in education and agriculture sectors), and information/list of employment rights and whether continuity of service is required.

## **Holiday Pay**

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

Yes

**If no, please explain your answer:**

**28 If you answered yes to increasing the reference period, should government:**

**Should Government: - a) Increase the reference period from the current 12 weeks to the 52 weeks recommended in the review?:**

No

**Should Government: - b) Set a 52 week default position but allow employees and workers to agree a shorter reference period?:**

No

**Should Government: - c) Set a different reference period:**

Yes

**If you answered that government should set a different reference period, please specify what this should be.:**

We believe 26 weeks will be a sufficiently long reference period and could make it easier to keep record/calculate holiday pay for employees leaving employment prior to the end of their holiday year.

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

**Understanding of atypical arrangements in relation to holiday pay - a) Are they receiving and taking annual leave?:**

No

**Understanding of atypical arrangements in relation to holiday pay - b) Are they receiving holiday pay but not taking annual leave?:**

No

**c) Do you know of any other arrangements that are used? :**

Some are not taking annual leave or receiving holiday pay as they have been incorrectly informed that they have no legal entitlement because their status has been labelled as self-employed or an independent contractor.

**30 How might atypical workers be offered more choice in how they receive their holiday pay?**

**Please provide examples including how worker's entitlement to annual leave could be safeguarded so they are not deterred from taking leave. :**

They could be given a right to review/request their entitlement to annual leave and holiday pay at specified periods during their contract (e.g. start of a default holiday year in January, anniversary of start date of their contract) which should include consideration of their overall working hours and pattern of work during the preceding months.

## **Right to Request**

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

Yes

**Please explain your reasons:**

Yes as it provides better options and an improved bargaining positions for workers on atypical arrangements.

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

No

**Please explain your reasons:**

No, otherwise some workers would be placed at a disadvantage and it could potentially result in indirect discrimination (e.g. on ground of age/sex etc).

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

No

**Please explain your reasons:**

Not sure whether it will entirely resolve the issues but the position could be reviewed after 2-5 years.

**34 Should employers take account of the individual's working pattern in considering a request?**

Yes

**Please explain your answer:**

Yes, it could be a factor but there is still a risk of disproportionate impact on ground of certain protected characteristics under Equality Act if working pattern is the sole/main deciding factor. A list of other factors should also be provided for employers.

**35 Should there be a qualifying period of continuous service before individuals are eligible for this right?**

Yes

**Please explain your answer:**

Yes, 12 weeks as it is in line with qualifying period for agency workers' rights.

**36 What is an appropriate length of time the employer should be given to respond to a request?**

1 month

**37 Should there be a limit on the number of requests an individual can submit to their employer in a certain time period?**

Yes

**If yes, please explain your reasons for this and include a suggestion of what an appropriate limit might be and why. :**

Yes, 2 requests per year could strike the right balance between workers' rights and the impact on employers' administrative resources and costs.

**38 When considering requests, should Small and Medium Enterprises (SMEs) be included?**

Yes

**If yes, do you think they should have any dispensations applied e.g longer to respond? :**

No.

### **Information and Consultation of Employees Regulations (2004) (ICE)**

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

Not Answered

**If yes, were these provisions:**

Not Answered

**40 If you are an employee- Have you ever requested Information and Consultation of Employees (ICE) provisions in your workplace?**

Not Answered

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

Not Answered

**If you selected other, please explain:**

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

Not Answered

**Please explain your answer:**

**41 How might ICE regulations be improved?**

**Please type your response in the box below.:**

Irrespective of improvement to the ICE regulations, the role played by recognised trade unions in collective consultations on behalf of the workforce should be recognised, and not be diminished by any proposed improvement of the ICE regulations.

The improvements to the regulations could include rights being extended to workers at a particular site rather than the whole business entity.

**42 Should the ICE regulations be extended to include workers in addition to employees?**

Yes

**Please explain your answer:**

Yes, to provide consistency across the workforce and create a more meaningful consultation with the entire workforce.

**43 Should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%?**

Yes

**Please explain the reasons for your answers:**

**44 Is it necessary for the percentage threshold for implementing ICE to equate to a minimum of 15 employees?**

Don't know

**Please explain your answer:**

It is proportionate and it depends what % of the workforce the minimum represents.

**45 Are there other ways that the government can support businesses on employee engagement?**

**Please type your response in the box below.:**

By actively encouraging recognition of Trade Unions within the workplace and providing adequate facility time.

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

**Please explain your answer:**

The mechanism for engaging trade unions have long been established, the legislation in recent years imposing restrictions on their activities, as well as reducing remedies for protective awards should be reviewed.

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

**Please type your response in the box below.:**

Better information about groups of workers who are entitled to engage in the process. Allow other means of consultation (e.g. online forums) and greater transparency about business decisions and workforce data (e.g. statistics on disciplinary and dispute resolution/grievances, equality impact assessments, revision of various policies, etc.).

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

**Please write your answer in the box below:**

Please see our answers to questions 45, 46 & 47 above.