



CONSULTATION SUBMISSION

# Consultation on measures to increase transparency in the UK labour market

Submission from the Institute for Employment Studies, May 2018

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## Background

IES is an independent, apolitical, international centre of research and evidence-based consultancy in public employment policy and HR management. We work closely with employers in all sectors, government departments, agencies, professional bodies and associations, and have a membership network of employers whom we consult on HR issues. IES is a focus of knowledge and practical experience in employment and training policy, the operation of labour markets, and HR planning and development. IES is a not-for-profit organisation.

Our recent research includes a report on the experiences of individuals in the gig economy commissioned by the Department for Business, Energy & Industrial Strategy (Broughton A et al, 2018).

## Summary

Overall we agree with the direction and intention behind most of these proposals but suggest that their impact will be limited unless they are proactively enforced.

We agree with Matthew Taylor's report that providing individuals with better knowledge of their employment rights may help in some cases to allow individuals to negotiate more beneficial working conditions. Generally raising awareness of employment rights issues may also be beneficial. The requirement for organisations to declare their gender pay gap seems to have been effective at raising awareness of the issue and encouraging organisations to take positive actions. Government could consider a similar disclosure requirement for organisations to declare the number of employees, workers and contractors they have working for them to encourage a similar effect.

However for vulnerable or low-paid workers, our research suggests that providing information alone is unlikely to provide a sufficient lever to improve their working conditions. In this case, government must be more proactive in enforcing legislation and supporting these workers, and we welcome David Metcalf's recently published Labour Market Enforcement Strategy (Metcalf, 2018).

# Our response

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## Section A: Written Statements

### **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?**

We agree with the principle of extending the written statement to give a clear statement of employment rights from day one of employment as an important concrete step to ensuring individuals know their employment rights.

However, the written statement is only useful if its contents are easily understandable and verifiable to individuals. The relative complexity of rights such as holiday pay and sick pay means that an individual may not be in a position to easily check the contents of their statement for accuracy and ensure that, for example, they are receiving the holiday pay they are entitled to. The quality of the written statement is likely to depend on the size of the organisation: if the organisation is large enough to have an HR department or trade union representation, it is more likely the written statement will be professional and accurate.

In order to allow individuals to check their written statement, the content of the statement could contain information on how an employee can check the legality of the terms of their employment, such as through the online holiday pay calculator. A standard template for all written statements may help individuals to check the accuracy of their written statement. However, this consultation states that government has ruled out providing a standard template. We suggest that best practice guidance should be made available to all organisations in how to produce written statements, but particularly for smaller organisations that may lack professional HR staff. Acas could be the vehicle for this guidance, as it has been for gender pay gap reporting.

## Section D: Right to Request

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

We agree with the principle that individuals on atypical contracts should be supported to progress to a more stable form of employment should they wish to do so.

This principle aligns with the conditionality of in-work Universal Credit entitlements which are designed to taper as individuals derive more of their income from their employer rather than welfare payments. It is therefore in the government's interest to support

individuals to progress in employment, whether through a Right to Request a stable contract or through other initiatives, as this will likely allow the proportion of income contributed by the state to decrease as they receive more steady work from an employer.

Supporting progression could be achieved in a number of ways, including through a Right to Request a more stable contract. An alternative may be to ensure that individuals on atypical contracts are always made aware by their employer of any opportunities for progression, such as training opportunities or permanent contracts. Acas guidance could be used to stipulate that employers have a responsibility to highlight opportunities for progression to their employees. We also highlight the limited evidence on the extent to which individuals are choosing whether to work on atypical contracts or are forced into their type of work by employers or circumstance. Further research into choice is recommended to better inform the design of new policies.

See question 33 for more evidence on the effectiveness of Right to Request regulations.

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

We have no evidence to suggest that any groups of workers should be excluded from this right if it were to be implemented.

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

Based on our previous research, we would be cautious about the extent to which this right would resolve the issue of 'one-sided flexibility'. The available evidence suggests its impact may be limited.

Our recent research into the impact of the more recent Right to Request Time to Train Regulations, commissioned by the Department for Education, suggests that take-up for the Right to Request has generally been low. It also found that it did not provide enough leverage to significantly increase access to training in organisations that had a weak approach to training. Levels of awareness of the right were found to be 'patchy' among individuals, and we recommended a promotional campaign in future. On the other hand, the 'soft' effect of giving some individuals more confidence to request training was welcomed and it was generally felt that existence of the Right was better than nothing (IES, 2017).

We have not carried out specific research into the Right to Request Flexible Working but understand anecdotally that it has generally been successful, with many individuals who request more flexible hours subsequently receiving them. We are however not aware of any evidence on the number of individuals who do not feel able to use the right.

A right to request more stable employment is a very different scenario to training or flexible working, particularly because individuals in this case may be in a vulnerable situation without permanent employment. This is in contrast to individuals requesting flexible work and training who are more likely to be permanently employed with the associated employment protections this brings. Individuals on atypical contracts may be

unwilling to use the request if they feel it will prejudice their employer against them, with a particular fear of so-called ‘zero-ing down’ on their hours. A recent report by the Resolution Foundation highlights that monopsony may be emerging as an issue in the UK labour market, and allowing some employers to wield excessive power over low pay workers in particular (D’Arcy, 2018). If this is the case, it seems unlikely that a Right to Request alone would provide sufficient leverage to enable these workers to access more stable employment.

A recent trial by the fast food chain, McDonald’s, may suggest a likely rate of uptake for the right to request. In a recent trial where employees were offered fixed-hours contracts, 20 per cent of employees chose to move onto the fixed contract, while most chose to remain on a flexible zero hours contract (BBC, 2017).

The effectiveness of the right to request is likely to be affected by labour market context as employers may be less willing to accommodate requests to retain existing staff when the labour market is depressed and there is a surplus of workers available. Similarly, it will depend on employers’ appetite to manage the risk of taking on full-time employees.

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

Yes.

Firstly, we suggest that logically the inclusion of SMEs would be crucial to the success of the mechanism of the right to request. If there were a threshold for the right to be applicable based on the number of employees, it could create an artificial disincentive for small organisations to expand and employ individuals on a more permanent basis. As organisations grow and approach the threshold for the implementation of the regulation, they might defer taking on permanent employees and retain them on zero-hours contracts or as agency workers in order that they are not subject to further regulation. It would therefore be key to meeting the policy aim, of enabling individuals to access stable work and the willingness of employers to do so, that the right to request applied to organisations of all sizes.

Secondly, our appraisal of the Right to Request Time to Train consulted a number of SMEs and found that they did not consider the implementation of the regulations would impose an undue burden on them and their operations, provided they were ‘adequately supported through simple, easy to access and easy to understand guidance’ and supported through the initial set-up phase (IES, 2017, p.56). We recommend that the right to request applies to SMEs but for the benefit of all organisations is administered in a light-touch way. As an additional measure to ease the burden on SMEs, the government could consider using the mechanism applied to the roll-out of Automatic Enrolment of Pensions. The gradual implementation for smaller organisations seems to have been effective and given SMEs time to become aware of and adjust to the changes.

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

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### **41. How might the ICE regulations be improved? 42. Should the ICE regulations be extended to include workers in addition to employees?**

There is a powerful business case for employee engagement. Evidence shows a strong positive correlation between employee engagement and organisational productivity and other organisational benefits, with strong employee involvement and voice shown as key drivers of engagement (Rayton, Dodge and D'Analeze, 2012; Robinson, Perryman and Hayday, 2004; Barber, Hayday and Bevan, 1999). We therefore suggest that expanding the ICE regulations to include workers would be beneficial, alongside any other measures introduced that might increase employee engagement.

### **43. Should the threshold for successfully requesting ICE regulations be reduced from 10 per cent of the workforce to 2 per cent?**

Yes. Research carried out by the Industrial Relations Research Unit at the University of Warwick in 2015 recommended that the threshold should be lowered in order to increase impact, while also making a number of other suggestions that could be considered. This also included integrating recognised unions into the ICE framework (Hall, Purcell and Adam, 2015). Anecdotally, we understand that ICE regulations have suffered from having little support for their implementation from either employers who do not wish for further regulatory impact in their organisation, or from recognised unions who have even regarded ICE as a threat to their own collective bargaining. In order for ICE to be more effective it seems likely this will need to be addressed.

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