

Recent and pending government employment law changes

Key: ■ Proposed ■ In force ■ Other

Issue	Changes	Start date	Background/ Implications	Relevant dates
ACAS Code	Proposed <ul style="list-style-type: none"> Simplified dismissal process for small employers 	Not known	<p>Call for evidence: Dealing with dismissal and "compensated no-fault dismissal" for micro businesses</p> <p>To relieve the high cost and cumbersome process of dismissing under-performing or difficult employees for small employers, the Government has floated the idea of creating an alternative model of the ACAS Code.</p> <p>The results of the call for evidence are not yet available.</p>	<p>Call for evidence Commenced 15/03/12</p> <p>Closed 08/06/12</p>
Agency Workers	Proposed <ul style="list-style-type: none"> Consultation the Conduct of Employment Agencies and Employment Business Regulations 2003. Review of the Agency Workers Regulations 2010 but not before 2013 	Not known	<p>As part of its "Red Tape Challenge" (see below) the Government plans to consult over current agency regulation (ie the 2003 Conduct Regulations). No detail available as yet. See Vince Cable Speech 23/11/11 where he refers to consultation this year "with a view to scrapping unnecessary rules and making the remaining ones more comprehensible".</p> <p>Despite Government expressions of discontent with the Agency Workers Regulations 2010, no review is expected before the end of 2013.</p>	No dates or Timeframe for review as yet
Compromise Agreements	Proposals include: <ul style="list-style-type: none"> Template, simplified form No need to recite every claim Name change to "Settlement Agreements" 	Not known. Further consultation awaited	Part of Government Consultation on resolving workplace disputes looked into current use of compromise agreements and whether they are under-used.	<p>Consultation Commenced 27/01/11</p> <p>Closed</p>

	<p>Changes now in force</p> <ul style="list-style-type: none"> Amendment to s147 Equality Act 2010 (clearly extending use of such agreements to discrimination claims) 	<p>Amendment to Equality Act 2010 in force from 6 April 2012</p>	<p>The Government response indicated it was in favour of a template, simplified compromise agreement, removing the need to cite each and every potential claim (as Section 203 currently encourages).</p> <p>Further consultation over the use of these agreements is expected over "the summer".</p> <p>A change of name to "Settlement Agreements" has been approved in principle in Parliamentary debate over the Enterprise and Regulatory Reform Bill, published in May 2012.</p> <p>From 6 April the Consultation prompted a small amendment to the Equality Act 2010, section 147, to ensure compromise agreements are plainly available in the context of discrimination claims.</p>	<p>20/04/11</p> <p>Response 23/11/11</p> <p>Enterprise & Regulatory Reform Bill 23/05/12</p>
<p>Collective Redundancies</p>	<p>Areas of review:</p> <ul style="list-style-type: none"> Reduction of 90 day period to 30 or 45 days for redundancies; Focus on 'meaningful' consultation; A Code of Practice to ensure quality of consultation but will also address <ul style="list-style-type: none"> -def of "an establishment"; -affect on fixed term employees; -what should be discussed, when. Only looking at redundancy consultation for now –review of how the provisions inter-act with TUPE will follow. 	<p>Not known but aim is to issue response by Christmas and to implement changes in Spring 2013</p>	<p>BIS call for evidence on collective redundancy consultation sought views on the current requirements and how they are working (or hindering) consultation in practice. In particular views were sought on the fixed minimum periods of consultation and also how the Regs interact with the TUPE Regs.</p> <p>Formal consultation was launched on 21st June 2012 and proposes various measures in respect of redundancy consultation, such as reducing the 90 day period to 30 or 45 days and introducing a Code of Practice with a view to focussing on quality, not length of consultation.</p> <p>BIS Consultation on Collective redundancies</p>	<p>Call for evidence Commenced 23/11/11</p> <p>Closed 31/01/12</p> <p>Consultation Commenced 21/06/12</p> <p>Closes 19/09/12</p>
<p>Compensated no fault dismissals</p>	<p>Proposed</p> <ul style="list-style-type: none"> Compensated no fault dismissals for employers with fewer than 10 employees 	<p>Not known</p>	<p>Call for evidence: Dealing with dismissal and "compensated no-fault dismissal" for micro businesses</p> <p>To relieve the high cost and cumbersome process of</p>	<p>Call for evidence Commenced 15/03/12</p>

			<p>dismissing under-performing or difficult employees, the Government floated compensated no fault dismissals. The idea also received support in the Beecroft report.</p> <p>However, in the context of Parliamentary debate over the Enterprise and Regulatory Reform Bill, the Government appears to have ruled out any such approach, instead favouring greater use of compromise or "settlement" agreements.</p> <p>http://www.bis.gov.uk/assets/biscore/employment-matters/docs/d/12-626-dismissal-for-micro-businesses-call</p>	<p>Closed 08/06/12</p>
Directors' Pay	<p>Areas highlighted:</p> <ul style="list-style-type: none"> • Link b/w pay and performance • Transparency • Role of shareholders and of Remuneration Committees • Structure of pay • Promotion of good practice –is an independent body needed? 	Not known	<p>Discussion paper on executive remuneration sought views on executive remuneration in quoted companies and how to better align pay with company performance. Specific areas of review included pay structures themselves as well as the need for greater transparency and clarification of the role of shareholders and remuneration committees and of good practice.</p> <p>Subsequently, the Government launched a Consultation on executive pay and shareholder voting rights which considered the role and voting rights of shareholders in UK quoted companies.</p> <p>Pending further development in this area the Enterprise and Regulatory Reform Bill published in May 2012 includes a provision which, if approved, will amend the Companies Act 2006 (s439(5)) and allow companies to extend shareholder powers in the context of executive remuneration.</p>	<p>Discussion paper released 19/09/11</p> <p>Closed 25/11/11</p> <p>Consultation Commenced 14/03/12</p> <p>Closed 27/04/12</p>
Discrimination Questionnaires	<p>Proposal</p> <ul style="list-style-type: none"> • Removal of questionnaire process and current prescribed questionnaires (by 	Not known	<p>As part of the Govt "Red Tape Challenge", two aspects of discrimination law are the subject of consultation:</p> <ul style="list-style-type: none"> • Removal of discrimination questionnaires; and • Extension of ET powers to make recommendations 	<p>Consultation Commenced 15/05/12</p>

	repeal of s138 Equality Act 2010)		Govt Equalities Office: Equality Act 2010, a Consultation . The former are perceived as an excessive regulatory burden and have not achieved their objective of increasing settlement of claims.	To Close 07/08/12
Equality Act 2010 reform (see Discrimination questionnaires, third party harassment and Tribunal Orders/Awards)				
Equal Pay audits	Proposed <ul style="list-style-type: none"> Compulsory pay audits for employers who lose equal pay claims in the ET 	Not known	<p>After over 30 years of equal pay legislation a gender pay gap persists. Part of the Consultation on modern workplaces has invited comment upon requiring tribunals to subject employers which lose equal pay claims to a compulsory pay audit. The aim is to encourage greater equality.</p> <p>Formal response to the consultation is expected before the summer of 2012 but the Government announced in June 2012 that it would proceed with this proposal. Further consultation over how the process will work in practice.</p>	<p>Consultation Commenced 16/05/11</p> <p>Closed 08/08/11</p>
Flexible Working	Proposed <ul style="list-style-type: none"> Extending right to request to all employees Permitting more than one request in a year Replacing current procedure with Code of Practice Retaining current business reasons for rejection Retaining 6 month qualifying period 	Not known	<p>As part of the far-reaching Consultation on modern workplaces the Government looks to fulfil its pledge to extend the right to request flexible working to all employees, not just parents and carers. Micro-businesses (with fewer than 10 employees) are likely to be exempted.</p> <p>Formal response to the consultation is expected before the summer of 2012. The necessary primary legislation needed to implement the proposals is expected to appear in the Children and Families Bill in</p>	<p>Consultation Commenced 16/05/11</p> <p>Closed 08/08/11</p>

			2013.	
Parental Leave	Proposed <ul style="list-style-type: none"> • Retain 18 week paid maternity leave and 2 week paternity leave • Re-classify remaining leave as "parental leave" • Up to four weeks concurrent leave • More flexibility over how leave is taken (piece-meal or blocks) 	Not before 2015	<p>The Government has regularly extolled the benefits of shared parental leave. As part of its Consultation on modern workplaces it sets out some ideas to extend further the ability for leave to be shared.</p> <p>Any changes will not be effected before 2015.</p> <p>Formal response to the consultation is expected before the summer of 2012. The necessary primary legislation needed to implement the proposals is expected to appear in the Children and Families Bill in 2013.</p>	<p>Consultation Commenced 16/05/11</p> <p>Closed 08/08/11</p>
Protected Conversations	Proposed <ul style="list-style-type: none"> • Discussions or offers relating to the termination of employment may not be taken into account by ET; • Only relevant to unfair dismissal claims; • Excludes automatic unfair dismissal claims, such as whistleblowing; • Excludes situations involving "improper" behaviour by employer. 	Not known	<p>Although not specifically raised in the Government's Consultation on resolving workplace disputes, the Government response referred to an intention to consult on the introduction of a system of 'protected conversations' that would allow employers and employees to initiate conversations and try to resolve employment issues without fear.</p> <p>On 12 June 2012 a clause was added as a Tabled amendment to Enterprise and Regulatory Reform Bill 2012 with a view to facilitating this. Little further indication of how this might operate in practice has been revealed. Latest information suggests a consultation will be launched in summer 2012.</p>	Not known But forms part of Enterprise and Regulatory Reform Bill passing through Commons currently
Rapid resolution	Proposed <ul style="list-style-type: none"> • Optional rapid resolution system for low value, straightforward cases; • Paper-based; • Determined by non-judicial Legal Officers; 	Not known	<p>Respondents to the Government Consultation on resolving workplace disputes highlighted a concern that the costs of pursuing many low value, straightforward claims in the ET are disproportionate. This prompted the Government to look at a simpler, "fast track" process, relying on paper-based determination of complaints by non-judicial Legal</p>	<p>Consultation Commenced 27/01/11</p> <p>Closed 20/04/11</p>

	(See also, Tribunal Procedure below)		<p>Officers. The parties would need to elect to adopt this system and would then provide prescribed bundles of documents to the ET containing necessary info for the determination of their claim. There would be no hearing; any decision would be based on the documents.</p> <p>Full consultation will be launched in the very near future. In the meantime the Enterprise and Regulatory Reform Bill, published in May 2012, includes provision to effect the appointment/ additional powers of legal officers.</p>	<p>Response 23/11/11</p> <p>Enterprise & Regulatory Reform Bill 23/05/12</p>
Red Tape Challenge	Part of general commitment to reduce "red tape". Areas of discussion included; compliance and enforcement, letting people go, managing staff and taking people on.	Not known	<p>Discussion document</p> <p>Response expected Spring 2012 although some proposals are being actively pursued already such as a review by the Low Pay Commission as to how the administration of national minimum wage might be simplified and access to employee screening consolidated, for example through portable CRB checks.</p>	<p>Review Commenced 3/10/11</p> <p>Concluded 19/10/11</p>
Settlement Agreements (see Compromise Agreements, above)				
Sickness absence	<p>Proposed</p> <ul style="list-style-type: none"> • Employees absent for more than 4 weeks to be referred for indep assessment; • Fit notes to be revised; • After 20wks absence, employees to be referred to job-service 	Not known	<p>Review of the sickness absence system in Great Britain commissioned, chaired by David Frost and Dame Carol Black.</p> <p>Sickness absence review -terms of reference</p> <p>The Sickness absence review was published on 21/11/11</p> <p>Recommendations included: the establishment of an Independent Assessment Service (IAS) and revised fit note guidance. Government response expected "in due course".</p>	<p>Review Commenced 17/02/11</p> <p>Published 21/11/11</p>

Third-party harassment	Proposed <ul style="list-style-type: none"> Removal of third-party harassment liability for employers (by repeal of s40(2)-(4) Equality Act 2010) 	Not known	<p>The Equality Act 2010 introduced employer liability for third-party harassment of employees. The Govt sees this as exceeding European requirements under the Equal Treatment Directive but also believes it to be relatively unused. In the context of its Red Tape Challenge, therefore, Consultation has been launched into its repeal.</p> <p>Home Office Consultation into repeal of third-party harassment</p>	<p>Consultation Commenced 15/05/12</p> <p>To Close 07/08/12</p>
Tribunal Orders and Awards	Proposed areas of review: <ul style="list-style-type: none"> Deposit orders –may be extended following Underhill J review; Formula for rounding up annual uplifts to change; New penalties for employers who breach rights; Greater flexibility in setting cap on compensatory award 	Not known	<p>Part of Government Consultation on resolving workplace disputes looked into the existing ability of employment tribunals to make various monetary orders and awards, such as deposit orders, as well as compensation limits. In the main the premise appeared to be that greater flexibility is needed.</p> <p>The Government response indicated:</p> <p>Deposit orders: would increase from £500 to £1000 as soon as practicable, something which they effected on 6 April 2012. Further changes will form part of the Underhill Review (–see below, ET procedure);</p> <p>Costs awards: the maximum awards would increase from £10,000 to £20,000, again effected on 6 April 2012(–see below, ET procedure);</p> <p>Rounding-up: to reduce the perceived inflationary effect current legislation causes when RPI rates are low, the formula for rounding tribunal awards will be changed to the nearest pound;</p> <p>Financial penalties: will be introduced for employers found to have breached employment rights. The sum will be 50% of the tribunal award but within the parameters of a £100 minimum and £5000 maximum. The money will be payable to the Exchequer, not the claimant. The ET will have a degree of discretion where breach is not deliberate;</p> <p>Annual increases: support for automatic up-rating of ET awards and Stat Red Pay.</p>	<p>Consultation Commenced 27/01/11</p> <p>Closed 20/04/11</p> <p>Response 23/11/11</p>
	Changes now in force <ul style="list-style-type: none"> Deposit orders –increased from £500 to £1000; Costs awards limits – maximum increased from £10-20k. 	In force from 6 April 2012		<p>Enterprise & Regulatory Reform Bill 23/05/12</p>
	Proposed <ul style="list-style-type: none"> Reduction in ET powers to make recommendations in discrimination cases (by repeal of s124(3)(b) Equality Act 2010) 	Not known		

			<p>The Enterprise and Regulatory Reform Bill, published in May 2012, includes provision to effect these proposals relating to financial penalties for employers, the rounding-up of compensation limits and also provides greater flexibility for the Secretary of State to set the cap on compensatory awards (including power to reduce the cap significantly).</p> <p>Additionally, as part of the Govt "Red Tape Challenge", two aspects of discrimination law are the subject of consultation:</p> <ul style="list-style-type: none"> • Removal of discrimination questionnaires; and • Extension of ET powers to make recommendations <p>Govt Equalities Office: Equality Act 2010, a Consultation</p>	<p>Consultation Commenced 15/05/12</p> <p>To Close 07/08/12</p>
<p>Tribunal Procedure</p>	<p>Areas highlighted:</p> <ul style="list-style-type: none"> • Increased use of mediation; • Early conciliation (via ACAS pre-conciliation); • Strike out powers; • Statement of Loss in ET1; • Formalising settlement offers (sim to Part 36, Court rules); • Shorter hearings incl use of legal officers. <p>(See also compromise agreements, above)</p> <p>Changes now in force</p> <ul style="list-style-type: none"> • Shorter hearings - witness statements as read - judges sitting alone 	<p>Not known</p> <p>Extension of cases where Judges may sit alone and use of witness statements in force from 6</p>	<p>Various aspects of tribunal procedure were raised in the Consultation on resolving workplace disputes .</p> <p>The Government response indicated the following:</p> <p>YES TO:</p> <p>Mediation: pilot scheme to promote awareness is to begin in November 2012;</p> <p>Early conciliation: All tribunal claims (bar a few excepted cases) will have to be lodged with ACAS before the ET. Conciliation will then be available (but not compulsory) for 4 (or up to 6) weeks. Time limits for commencing claims will be adjusted accordingly;</p> <p>Witness statements to be taken as read: this was effected from 6 April 2012 (see Amendment to Tribunal Procedure Rules;</p> <p>Judges sitting alone: the types of case where this is permissible should be extended to unfair dismissal. This was effected from 6 April 2012 (see Amendment to Tribunals Act 1996).</p> <p>NO TO:</p>	<p>Consultation Commenced 27/01/11</p> <p>Closed 20/04/11</p> <p>Response 23/11/11</p> <p>Enterprise & Regulatory Reform Bill 23/05/12</p>

		April 2012	<p>Formalising settlement offers enabling parties to make an offer which, if not exceeded would have subsequent costs implications is rejected for the time being.</p> <p><u>FURTHER REVIEW:</u> Many aspects of the current ET rules are perceived as overly complex. Mr Justice Underhill was tasked with conducting a "root and branch review" by end April 2012. His report was published on 11 July 2012, along with some draft Employment Tribunal Rules, key recommendations including:</p> <ul style="list-style-type: none"> • Revision of tribunal forms which, once submitted, would be subject to an initial "sift" review by the ET to consider prospects of success and appropriate directions. • Costs: the £20,00 cap would be removed • Case management: a "preliminary hearing" would deal with all initial case issues plus ETs would be able to strictly control the time taken for oral evidence or submissions and would . • New guidance: would be provided by the President of the ETs to improve consistency of practice across the ETs <p>The Enterprise and Regulatory Reform Bill, published in May 2012, includes provision to effect the Government proposals relating to the new Early conciliation process and additional powers to legal officers although these are not reflected in the Underhill report or draft ET rules as yet.</p>	
Tribunal Fees	<ul style="list-style-type: none"> • Proposal 1 = scale of issue fees of £150-£250 (dependent upon the nature of claim), followed by a hearing fee of between £250 and £1,250; • Proposal 2 = an issue fee only for claims in excess of £30,000. 	Not known	<ul style="list-style-type: none"> • In the Consultation on charging fees in ET and EAT, the MOJ has proposed these two alternative options for further review. • Suggested timescale for implementation is currently 2013 for option 1 and 2014 for option 2. 	<p>Consultation Commenced 14/12/11</p> <p>Closed 06/03/12</p>

TUPE reform	Areas of review: <ul style="list-style-type: none"> • Service provision change; • Insolvency provisions; • Gold-plating?; • Interaction with collective consultation requirements. 	Not known	<p>Amid ongoing allegation that UK TUPE Regulations 2006 exceed European requirements in certain respects, the Government launched the BIS call for evidence-effectiveness of tupe regulations 2006 in November 2011. Although not itself providing clear proposals, the exercise seems likely to lead to formal consultation on revisions to the regulations during the course of 2012.</p>	<p>Call for evidence Commenced 23/11/11</p> <p>Closed 31/01/12</p>
Whistle-blowing	Proposed <ul style="list-style-type: none"> • Qualification of rights so that disclosures must be made in the public interest as well as in reasonable belief 	Not known	<p>The Govt is concerned that current whistle-blowing protection allows employees to raise claims based on their own employment contracts, rather than requiring disclosure in the public interest. Under reforms proposed the Enterprise and Regulatory Reform Bill, published in May 2012, qualifying disclosures would need to be made in the public interest.</p>	<p>Enterprise & Regulatory Reform Bill 23/05/12</p>
Working Time	Proposed <ul style="list-style-type: none"> • Amendment to WTR to allow for carry-over of holiday for those off sick, following EU case law; • Placing a limit on the amount of carry-over leave 	Not known	<p>As part of the far-reaching Consultation on modern workplaces the Government considers the recent case developments in Europe (such as Schulte) and the fact that WTR do not expressly allow for the carry-over leave by those unable to take it due to sickness absence. Assuming some degree of carry-over is required, in amending WTR the Govt will need to decide the amount of leave and period of carry-over. Current proposals suggest a limit on carry-over leave to four weeks (which is supported by the recent case of Neidel). The proposed period will need to be increased from 9 to 12 months in light of this case, however.</p> <p>Formal response to the consultation is expected before the summer of 2012.</p>	