

# Acas consultation on the draft Code of Practice on handling requests for a predictable working pattern

This consultation closed on 26 January 2024. [Read the summary of responses to this consultation.](#)

## Foreword from Susan Clews, Acas Chief Executive Officer

Acas has been asked by the Department for Business and Trade (DBT) to prepare a new statutory Code of Practice to provide guidance on new legislation which will give certain workers a right to request a predictable working pattern. We will also be producing new non-statutory guidance to sit alongside the Code.

The draft Code under consultation has been prepared with expert input from the employer representative, worker representative and independent members of the Acas Council. The draft is, however, the initial view of Acas Council and we are keen to hear what others think, particularly given that this is an entirely new area of regulation. Our aim is to ensure our Code can be understood easily so that it can effectively support compliance with the law and guide good practice in the workplace.

The Foreword to the Code explains that flexible contracts, such as zero-hours contracts or agency working, can benefit organisations and individuals where they meet the needs of both parties. These contracts should always be used responsibly and fairly. This includes regularly reviewing these arrangements to ensure they are working in both parties' interests. The Foreword emphasises that all requests for a more predictable working pattern must be handled reasonably and rejected only where there is a genuine business reason as set out in the legislation.

The draft Code sets out good practice principles including:

- allowing workers to be accompanied at meetings to discuss a request
- that organisations should set out any additional information which is reasonable to help explain their decision
- that organisations should allow an appeal where a request has been rejected

The draft Code draws on Acas's in-depth experience and knowledge of the world of work and of good employment relations. We encourage all interested individuals and organisations to respond to this consultation and look forward to receiving and considering your valuable contributions.

## Introduction

### Why we are consulting

Acas has agreed to a request from the Department for Business and Trade (DBT) to produce a new statutory Code of Practice on handling requests for a predictable working pattern.

The [Workers \(Predictable Terms and Conditions\) Act](#) received royal assent on 18 September 2023. The new legislation will give employees and workers a right to request a predictable work pattern under the Employment Rights Act 1996, subject to certain

eligibility criteria.

The [draft Acas Code](#) is intended to support employers, temporary work agencies, hirers, workers and representatives to understand their rights and responsibilities regarding the new right to request a predictable working pattern. The Code will not be legally binding, but will be taken into account by courts and employment tribunals when considering relevant cases.

## Consultation details

**Issued:** 25 October 2023

**Respond by:** 11:59pm on 26 January 2024

**Enquiries:** [workplacepolicy@acas.org.uk](mailto:workplacepolicy@acas.org.uk)

We welcome contributions from all interested individuals and organisations. This includes employers, employees and workers, trade unions, business representative groups, legal representatives, and any other bodies or individuals with an interest in flexible contracts and good employment relations.

## How to respond

This consultation has closed.

## Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act (FOIA) 2000, UK General Data Protection Regulation (GDPR) 2018 and the Data Protection Act (DPA) 2018, and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Acas.

Acas will process your personal data in accordance with the UK GDPR 2018 and DPA 2018 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Background

The [Workers \(Predictable Terms and Conditions\) Bill](#) was introduced as a Private Member's Bill by Conservative MP Scott Benton on 20 June 2022. The bill achieved royal assent on 18 September 2023 (further detail is set out in the [government's press release](#)). It is expected to come into force in autumn 2024.

The Workers (Predictable Terms and Conditions) Act 2023 will give certain workers and employees a new right to request a predictable working pattern if their existing working pattern lacks predictability.

In response to this new legislation, Acas has prepared a draft statutory Code of Practice on handling requests for a predictable working pattern. In accordance with section 200 of the Trade Union and Labour Relations (Consolidation) Act 1992, Acas is now publishing the draft Code for public consultation. We will consider any representations made to us about it and may then modify the draft accordingly. If we determine to proceed with the draft Code, it will be presented to the Secretary of State for Business and Trade who, if they

approve it, will lay it before parliament.

In addition to a new statutory Code, Acas will produce new non-statutory guidance which will provide more detailed guidance on the principles set out in the Code.

Comments are invited on all aspects of the draft Code, however there are a number of specific issues on which Acas is especially keen to hear your views. These are set out in the remainder of this document. We encourage you to read the [draft Code](#) in full before responding to the consultation.

## Consultation questions

The following questions relate to the draft Code of Practice on handling requests for a predictable working pattern.

[Read the draft Code before responding to our consultation](#)

### Section 1: Structure of the Code – requests to employers and requests to agencies or hirers

The Workers (Predictable Terms and Conditions) Act 2023 sets out different procedures to be followed, depending on whether a request is made by an:

- employee or worker to their employer
- agency worker to their agency or hirer

(Find further information in Section 2 below on these terms and other terminology used in our draft Code).

While there are similarities between these different statutory procedures for requests, Acas believes that there are sufficient differences to make it useful to present these in 2 separate sections in the Code. We have therefore adopted this structure, rather than setting out all procedural variations within a single section.

While we recognise that this results in some duplication of information and an overall lengthening of the Code, we believe that presenting the guidance in this manner will minimise the risk of confusion amongst users and allow them to clearly see, in one place, the full procedure relevant to their own particular situation.

#### Question 1

Should the Code be split into 2 sections: one dedicated to requests to employers, and another to requests to agencies or hirers?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

### Section 2: Language and terminology in the Code

#### Use of the term 'worker(s)'

As described in the glossary at paragraph 3 of the draft Code, the term 'worker(s)' is used throughout the Code, while each of the 2 main sections of the Code provide guidance on requests from different types of workers:

- Section A uses the term 'worker' to describe individuals who have a contract with an employer
- Section B uses the term 'worker' to describe agency workers (workers who have a contract with an agency to work under an assignment with a hirer)

Acas's aim in taking this approach is to provide a succinct way of referring to the different groups of workers throughout the Code, in the interests of making it easier to read.

An alternative option would be to use the same terms as those set out in the legislation. The act uses the terms 'workers (except agency workers)' to describe employees and workers who are not agency workers, and 'agency workers'. The [explanatory note to the bill \(PDF, 320KB\)](#) prepared by the Department for Business and Trade (DBT) also uses the umbrella term 'non-agency workers' to refer to the former category of worker. However, Acas considers that the use of such phrasing in the Code may make it more difficult to understand for many users, and could potentially cause confusion by using an unfamiliar term ('non-agency workers') that is not used elsewhere in law.

Acas would like to hear whether it has taken the best approach in using 'worker(s)' throughout the Code, and whether the draft makes it sufficiently clear that this term has different meanings under Section A and Section B.

## Question 2

Is the term 'worker(s)' and its associated meaning under the 2 separate sections of the Code sufficiently easy to understand?

- Yes
- No
- Don't know

If you answered 'yes' or 'don't know', please explain your reasoning.

If you answered 'no', what is your opinion on how the Code should differentiate between (a) employees and workers who are not agency workers and (b) agency workers?

Please explain the reasoning for your answer, and, where appropriate, please include any suitable alternative terminology that you would like to see.

## How the Code explains the act's provisions

The legislation introduces a number of different procedural requirements and considerations depending on:

- who is making the request
- who the request is being made to, in the case of agency workers

We have aimed to ensure that these various procedures and considerations are described in the Code in a way that is both legally accurate and accessible. However, we recognise that the technical detail of the legal provisions could result in the Code appearing complex in some places.

We are interested to hear about any areas of the Code that users may find particularly complex and where, for instance, use of plainer English may be desired to help make the Code clearer.

## Question 3

Please set out any specific areas of the Code that you feel would benefit from further clarification.

Please include your reasoning and suggestions for improvement.

### Section 3: Foreword

The draft contains a Foreword, which, while not part of the statutory Code itself, is intended to help set the tone for what follows in the Code.

It emphasises that flexible contracts should always be used responsibly and fairly. It also highlights the importance of several principles of good practice that are set out in the Code including:

- ensuring transparency in the decision-making process
- being proactive in offering an appeal if a request is rejected
- allowing individuals to be accompanied at meetings

#### Question 4

Does the Foreword to the Code set the right tone in encouraging the responsible and fair use of flexible contracts, while summarising the key principles of good practice included in the Code?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

### Section 4: Protection from detriment and dismissal

An area of particular interest to Acas relates to ensuring that workers have the confidence to use the Code in making requests for a predictable working pattern.

There are known challenges around some workers in flexible contractual arrangements lacking confidence to assert their statutory rights. Acas's analysis of calls to its helpline, for example, has found that workers on flexible contracts with limited or no guaranteed hours can sometimes feel unable to query or assert their entitlements for fear that their work opportunities may be reduced or ceased if they do so.

There are existing protections from detriment (for workers and employees) and from dismissal (for employees) in the Employment Rights Act 1996. These will be extended to apply to this new right to request a predictable working pattern. Acas considers that referencing such protections within the Code will help to increase awareness of these protections and of organisations' responsibilities, and may help encourage some employees and workers to make requests where confidence to do so may otherwise be lacking.

Where working hours are not contractually guaranteed, however, it may not be clear to workers or organisations whether, or in what circumstances, ceasing or reducing offers of those hours may constitute an unlawful detriment. Acas considers that it may be helpful for the Code to specifically reference that working hours should not be ceased or reduced as a direct response to making a request for a predictable working pattern. At the same time, it is important to recognise and be clear that the Code does not restrict the ceasing or reducing of working hours where there is a legitimate and genuine business reason to do so. We have included wording in the draft Code to reflect this.

There is a further option to include within the Code other examples to illustrate what may constitute a detriment. This would mean that employment tribunals would take this into account in relevant cases. An alternative would be to provide any such examples within Acas's non-statutory guidance, which employment tribunals do not need to take into account.

#### Question 5

Should the Code include a section on protections from detriment and dismissal?

- Yes

- No
- Don't know

If you answered 'no' or 'don't know', please explain your reasoning.

If you answered 'yes', should the example of ceasing or reducing hours, as a direct response to making a request for a predictable working pattern, be included in the Code? Or should this be included in the non-statutory guidance instead?

- The Code
- The non-statutory guidance
- Neither the Code nor the non-statutory guidance
- Don't know

Please explain your reasoning.

Please set out any other examples of detriment you would like to see included in either the Code or non-statutory guidance.

## Section 5: Procedural guidance in the Code

In addition to explaining the new legal provisions, there is an opportunity for the Code to include good practice considerations on various aspects of the reasonable handling of requests.

### Allowing workers to be accompanied

Workers do not have a statutory right to be accompanied at meetings held to discuss requests for a predictable working pattern. However, Acas considers that it can be helpful for a companion to be allowed at such meetings, where desired, to help support the discussion around what arrangement(s) may be possible and suitable. Companions can be a source of expertise, helping both sides to find a mutually agreeable solution.

The categories of companion in the draft Code – a fellow worker, a trade union representative or an official employed by a trade union – mirror those allowed in discipline and grievance meetings where a statutory right of accompaniment for workers does apply. Given that meetings to discuss requests for a predictable working pattern could have legal consequences for both the individual and the organisation, for instance where a variation to contractual terms on a working pattern is agreed, we consider there is benefit in the Code providing the option of accompaniment at these meetings by these categories of companion.

We do not anticipate that this will create an onerous burden on organisations. However, we recognise there is some risk that using the same categories of companion as those in discipline and grievance meetings could cause confusion about the applicable legal entitlements and protections for both individuals and their representatives in meetings held to discuss requests for a predictable working pattern. For this reason, the draft Code makes clear that allowing a worker to be accompanied is good practice, rather than a legal requirement.

In the case of agency workers, we also recognise that the term 'fellow worker' may be ambiguous as to whether this covers those working for the same agency, the same hirer or both. There is the option to specify this within the Code. Acas is interested to understand whether such a specification should be included and any practical implications of this, for instance, any challenges that may arise where an agency is handling a request and an agency worker requests to be accompanied by an individual working for the hirer rather than the agency.

#### Question 6

What are the advantages and disadvantages of the Code recommending that workers should be allowed to be accompanied at meetings to discuss a request for a predictable working pattern?

Please include your reasoning.

#### Question 7

What is your opinion on the Code recommending the same categories of companion as those that are allowed in discipline and grievance meetings?

Please include your reasoning.

#### **Question 8**

For agency workers, what are the practical considerations around the Code recommending that a companion may be a fellow worker from the agency, hirer or both?

Please include your reasoning.

### **Communicating the decision**

Acas considers it important to emphasise the need for transparency in decision-making about requests for a predictable working pattern, both in the interests of establishing trust that a request has been appropriately considered, and to enable an informed consideration by the individual of whether they wish to appeal the decision.

Specifically, the draft Code places a responsibility on the employer, agency or hirer, where they reject a request, to communicate not only the relevant business reason(s) as set out in the Employment Rights Act 1996, but also any additional information which is reasonable to help explain the decision.

We recognise that there may be limits to the information that may be shared with an individual, for example, confidential or commercially sensitive information. Our intention is therefore that the Code should state that only additional information which is reasonable to help explain the decision should be shared.

#### **Question 9**

Should the Code recommend that employers, agencies and hirers provide any additional information which is reasonable to help explain why a request has been rejected?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

### **Handling an appeal**

The draft Code makes clear that employers, agencies and hirers should proactively offer an appeal where a request has been rejected, and should handle an appeal in an impartial manner. Acas considers it good practice to appoint, wherever possible, a different manager to deal with an appeal. We recognise that this may already be common practice in many organisations, although it will not always be feasible in every circumstance.

#### **Question 10**

What are the advantages and disadvantages of the Code stipulating that, wherever possible, an appeal should be handled by a manager not previously involved with a request?

Please include your reasoning.

## **Section 6: The statutory right to request flexible working**

In December 2022, the government confirmed in its [consultation on making flexible working the default](#) that it would make a series of reforms to existing legislation on the right to request flexible working. Some of these measures are contained in the [Employment Relations \(Flexible Working\) Act](#), which received royal assent on 20 July 2023.

In response to these forthcoming changes to the law, and to changes in recent years to ways of working in the modern workplace, Acas is updating its [statutory Code of Practice on handling in a reasonable manner requests to work flexibly](#). Our [public consultation on that draft Code](#) ran between 12 July and 6 September 2023, and we are currently reviewing those submissions. Our intention is that the revised Code will come into force at the same time as the changes to the law in 2024.

The right to request flexible working and the right to request a predictable working pattern are interrelated in respect of how many requests an employee may make in any 12-month period, as well as rules around not having concurrent requests. Acas therefore considers it appropriate and helpful to include in the Code a section on this separate right for employees and its interaction with the right to request a predictable working pattern. This section aims to provide sufficient detail to highlight the overlapping areas, while encouraging users to find further information in the separate Acas Code of Practice on handling requests for flexible working.

#### **Question 11**

Should the Code include a section about the right to request flexible working?

- Yes
- No
- Don't know

If you answered 'no' or 'don't know', please explain your reasoning.

If you answered 'yes', do you believe that paragraphs 14 to 16 in the draft Code provide sufficiently clear guidance on the interaction between the 2 rights?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

### **Section 7: Additional detail in the Code, associated non-statutory guidance or both**

Acas is mindful that the draft Code relates to an entirely new statutory right. We therefore welcome views on any particular areas of the law or workplace practice that you believe should be included that are not currently covered in the draft Code.

Acas will also be producing new non-statutory guidance to provide more detailed advice on the principles included in the Code, and we are seeking comments on any matters that you would like to see covered in that guidance.

#### **Question 12**

Please set out any other areas that you feel should be included in the Code or non-statutory guidance.

Please include your reasoning.