



GOOD WORK PLAN: ESTABLISHING A NEW SINGLE ENFORCEMENT BODY FOR EMPLOYMENT RIGHTS

Issued 8 October 2019

ICAEW welcomes the opportunity to respond to the [Good Work Plan: Establishing a New Single Enforcement Body for Employment Rights](#) consultation published by the Department for Business, Energy & Industrial Strategy on 16 July 2019.

Employment rights law needs care and management provisions to enable those who enforce to allow technical breaches where employees, especially the low paid, benefit.

This response of 8 October 2019 has been prepared by ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 1.

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COMMENTS

1. We suggest that a review of who enforces employment rights needs also to have regard to the law and guidance that underpins what is being enforced.
2. To make enforcement fair and effective, employment rights law needs care and management provisions to enable those who enforce it to allow technical breaches, rather than penalise employers, where employees, especially the low paid, benefit.
3. For example, whilst we agree that employees should not be exploited, there are widespread problems for employers and employees arising from how HMRC enforces the national minimum wage (NMW) rules on behalf of BEIS. This is because HMRC has to enforce the letter of the law because it contains no care and management provisions to allow an approach to enforcement that achieves NMW policy intentions without penalising employers for technical breaches that actually benefit employees.
4. Examples of where HMRC has penalised employers for making deductions from wages agreed by and which benefit employees include Christmas savings clubs and holiday funds (eg the *Iceland* Christmas savings club) and employees buying goods and services from their employer at a discount (eg the *Middlesbrough Football Club* season tickets case *Middlesbrough Football & Athletic Company (1986) Limited v HMRC* ET 2501182/2018).
5. For further details see our March 2019 response [ICAEW REP 28/19](#) to the BEIS consultation *NMW: salaried workers and salary sacrifice schemes*. We recommended that NMW law and guidance and enforcement need a comprehensive review to ensure that:
 - they achieve their objective of protecting vulnerable workers from exploitative pay practices and permit rather than outlaw pay practices that are beneficial to both employees and employers, including allowing any pay frequencies and reasonable contractual arrangements that are commonly present in 21st century business;
 - the guidance includes practical real-life case studies and covers inter alia pensions and how to remedy a NMW compliance failure from a PAYE perspective; and
 - the policing of NMW is undertaken by an agency under the direct control of BEIS so that the law is enforced in accordance with the policy intent.
6. These recommendations apply *pari passu* to all aspects covered by the present review, and, we suggest, our *Ten Tenets for a Better Tax System* (summarised in Appendix 1) provide a starting point for a benchmark that could be applied to employment rights law and guidance.
7. We are disappointed that the Statutory Payments Consultative Group has not been asked to contribute or discuss the proposals in this consultation.
8. We consider that it is contrary to the spirit of open Government to have a Sunday deadline by which consultation responses have to be made, as in this case, and welcome the fact that the deadline was extended.
9. We are commenting from a payroll administration perspective so are answering only selected questions.

ANSWERS TO CONSULTATION QUESTIONS

Chapter 1 Reforming the current system

Question 1: Is the current system effective in enforcing the rights of vulnerable workers

10. In some cases those who enforce the law have to penalise employers where a technical breach has taken place that actually benefits employees, especially the lower paid.
11. The law needs to include care and management provisions so employees are not disadvantaged where enforcement officers have to take a literal view of the law instead of being allowed to decide whether or not a technical breach which actually benefits employees, including the lower paid, should be allowed.
12. See our General Comments above for examples of NMW technical breaches concerning Christmas clubs and sales at a discount of goods and services by employers to employees.

Chapter 2 Relationship with other areas of enforcement

Question 7: Should a single enforcement body take on enforcement of statutory sick pay if this process is strengthened

13. We are disappointed that representatives (of which we are one) on the government's [Statutory Payments Consultation Group](#) (sponsored by BEIS, DWP and HMRC) have not been asked directly by the SPCG secretariat to consider this question.

Chapter 3 The approach to enforcement

Question 12: Should enforcement focus on both compliance and deterrence?

14. Yes, enforcement needs to combine compliance and deterrents. Both should be underpinned by the law, with rights of appeal. The law also needs to include care and management provisions so enforcement officers have the power to decide whether a technical breach by an employer which actually benefits its employees can be allowed.
15. See General Comments above for examples of NMW technical breaches concerning Christmas clubs and sales at a discount of goods and services by employers to employees.

Chapter 4 Powers and sanctions

Question 23: Do the enforcement powers and sanctions currently available to the existing enforcement bodies provide the right range of tools to tackle the full spectrum of labour market non-compliance?

16. No. The law also needs to include care and management provisions so enforcement officers have the power to decide whether a technical breach which actually benefits employees can be allowed.
17. By way of examples of where the current lack of care and management powers in employment rights law disadvantages employees and unnecessarily penalises employers, see our General Comments above on NMW law as applied in practice, for example to Christmas savings clubs and sales at a discount of goods and services by employers to employees.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).