

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Employment

Conciliation

Summary and Background

56. The Employment Tribunals Act 1996 (“ETA 1996”) provides a discretionary power for the Advisory, Conciliation and Arbitration Service (“ACAS”), to provide pre-claim conciliation to parties in an employment dispute that could be the subject of tribunal proceedings where either party requests it and where the conciliator believes that there is a reasonable prospect of a settlement being reached. In the main, matters are referred to pre-claim conciliation via the ACAS telephone helpline, e.g. where the operator believes that a caller has a justifiable case and is likely to make a claim to an employment tribunal, the operator can offer the caller the opportunity to go to pre-claim conciliation.
57. At present there is no obligation on prospective claimants to contact ACAS and/or consider conciliation at any stage and an employment tribunal cannot refuse to accept a claim on the basis that a claimant has not contacted ACAS. In addition, there is no duty on ACAS to provide conciliation before a claim has been filed at an employment tribunal – there is only a discretionary power.
58. Of all the claims lodged at an employment tribunal, less than a fifth of claimants will have contacted ACAS for advice before submitting their claim. As a result, the opportunity for ACAS to offer pre-claim conciliation is limited. Section 7 therefore requires individuals to contact ACAS with details of their claim and obtain written confirmation that pre-claim conciliation has been declined or unsuccessful before they can present a claim to an employment tribunal.