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Regulation and the Use of Statutory Codes & Guidance Some GB examples

**Gill Dix
Head of Strategy
Acas
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Government and Regulation



- The Better Regulation Task Force (1997-98)
- **The Red Tape Challenge (2011-13)**
- The Department of Business Innovation and Skills (BIS)–employment law review

Acas Council



**Employer
representatives**



**Trade union
representatives**



**Independent
members**



“Our view is that one employer’s red tape might be another’s business certainty”..

Acas Council response to the Red Tape Challenge into the Equality Act - July 2012

Acas Codes



- Combine an explanation of the law, with good practice; they combine 'must' with 'should'
- The Employment Tribunal must take into account the Acas Code (as appropriate) when considering relevant cases: legal dimensions are a requirement.

Statutory Codes of Practice



- **1977 Discipline and Grievance**
Revised 2000, 2004, 2009, 2014
- **Information for Collective Bargaining 1977**
- **Time of for Union Duties 1977**
Revised 2003 and 2010
- **Settlement Agreements (2013)**
- **Requests to Work Flexibly (later in 2014)**

The law, codes and guidance – different approaches

- **Why?**

As an effective alternative to legislation – what should codes and guidance look like?

- **To enable light touch legislation – through prescription or principles?**
- **To replace legislation – question of impact**
- **Changing the Discipline and Grievance Code – a shift from prescription to principles – some lessons learned**

Use of Acas Code of Practice



- Set out issue in writing
- Hold a meeting to discuss the matter
- Opportunity to appeal

	Discipline		Grievance	
	2004	2011	2004	2011
% of workplaces with				
All three principles, all of the time	69	81	37	46
All three principles, some of the time	15	11	28	36
One or two principles only	15	5	32	16
None of the three principles	2	2	3	2

Base: All workplaces

Lighter touch Regulation – the Right to Request Flexible Working

- **2006/7: right to request flexible working for parents and some: highly prescriptive**

Removed

- **New legislation to come into force:**
 - which widens the law to be open to all workers, and yet offers a lighter touch:
 - for requests 'must considered in a reasonable manner'
- **Asked Acas to provide a Code to support this.**

**Bringing clarity (fleshing out)
legislation**



A Code of Practice on Settlement Agreements

**Extension to Section 111A of the
Employment Rights Act (ERA) 1996**

In 2013 Enterprise and Regulatory Reform Bill

- **Politically sensitive code**
- **What is 'improper behaviour'**

Non statutory guidance to replace - Section 138 of the Equality Act

- **Removal of procedural elements and replaced by a common need to exchange information to settle or resolve case**
- **A risk to access to justice?**
- **Growing interest in non statutory Codes**

Concluding thoughts

Non-Regulatory Alternatives: Codes and Guidance

- **The importance of involvement**
- **The importance of the messenger (effectively the Acas Council)**
- **Supported by practical examples of how to do things**

Both rely on a strong relationship between the social partners and a willingness of stakeholder groups and individuals to contribute in time and resources

The question of enforcement remains?