

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Employment

Conciliation

Section 7: Conciliation before institution of proceedings

59. This section inserts new sections 18A and 18B into the ETA 1996.
60. Section 18A provides that, other than in certain circumstances (subsection (7)), a prospective claimant must first have submitted the details of their claim to ACAS before they can lodge the claim at an employment tribunal. The kinds of proceedings to which this requirement applies are set out in section 18(1) of the ETA 1996, and are referred to as “relevant proceedings” (see the amendment made by paragraph 5(3) of Schedule 1 to the Act). Under subsection (3) of section 18A, an ACAS conciliation officer will be required to try and achieve a settlement to the dispute, within a prescribed period, so that employment tribunal proceedings can be avoided. Subsection (4) of section 18A provides that, if during that time the conciliation officer concludes that a settlement is not possible, or the period expires with no settlement having been reached, the officer must issue a certificate to the prospective claimant and a claimant will not be able to lodge a claim with an employment tribunal without such a certificate (subsection (8)). The conciliation officer will, however, be able to continue to try and achieve a settlement to the dispute after the prescribed period has expired.
61. Subsection (9) of section 18A provides that, where prospective claimants are no longer employed by the employer, the conciliation officer may attempt to promote either the reinstatement or re-engagement of the individual or, if the individual does not want to be reinstated or re-engaged, or this is not practicable, attempt to achieve an agreement between the parties on the level of compensation to be paid by the employer.
62. Subsections (11) and (12) of section 18A give the Secretary of State the power to make any employment tribunal procedure regulations which are necessary for the operation of the early conciliation process.
63. Section 18B places an additional duty on ACAS to promote settlement in certain cases in which the duty under section 18A does not apply. Subsection (1) of section 18B requires an ACAS conciliation officer to try and achieve a settlement in a dispute where a person contacts ACAS requesting the services of a conciliation officer in a matter that might otherwise result in employment tribunal proceedings against them even though the prospective claimant has not contacted ACAS. Subsection (2) of section 18B requires the conciliation officer to try and achieve a settlement in a dispute where the prospective claimant contacts them, even where that person is exempted by virtue of section 18A(7) from the requirement to provide information to ACAS.

*These notes refer to the Enterprise and Regulatory Reform Act
2013 (c.24) which received Royal Assent on 25 April 2013*

64. Currently, section 18(3) of the ETA 1996 provides a discretionary power for ACAS to provide pre-claim conciliation to parties in an employment dispute, which 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.