



On the horizon

Last updated: 16 January 2024



Details awaited



Open consultation; imminent implementation; ongoing activity



In force



Sexual harassment and non-disclosure agreements (NDAs)

Throughout the course of 2018 and 2019 there were a series of reports and consultation papers relating to the strengthening of protection against workplace sexual harassment, and the tighter regulation of NDAs. At that time, the government confirmed that it will:

- Legislate to ensure that a confidentiality clause cannot prevent an individual disclosing to the police, regulated health and care professionals or legal professionals;
- Legislate so that the limitations of a confidentiality clause are clear to those signing them;
- Legislate to improve independent legal advice available to an individual when signing a settlement agreement;
- Provide guidance on drafting requirements for confidentiality clauses;
- Introduce new enforcement measures for confidentiality clauses that do not comply with legal requirements.

The government also asked for views on:

- The evidence for the introduction of a mandatory duty on employers to protect workers from harassment and victimisation in the workplace, enforceable both by individuals and the EHRC, and breach of which could potentially lead to a financial penalty;
- How best to strengthen and clarify the laws in relation to third party harassment;
- The evidence for extending employment tribunal time limits in the Equality Act from the existing 3 months;
- Whether interns are adequately protected by the Equality Act;
- The evidence for extending the protections of the Equality Act to volunteers; and
- Non-legislative interventions to prevent sexual harassment or, where it has occurred, to stop it from happening again.

In July 2021, the government published its response on sexual harassment in the workplace and stated:

- The government will introduce a duty requiring employers to take 'all reasonable steps' to prevent sexual harassment. The government believes that the implementation of this duty will encourage employers to take proactive steps to make the workplace safer for everyone.
- Explicit protections from third-party harassment (for example, harassment by a customer or a supplier) will also be introduced. Employers will have a defence to claims of this type if they are able to demonstrate that they took 'all reasonable steps' to prevent harassment occurring.
- Explicit protections will not be extended to volunteers and interns. In most cases interns are covered by the existing legislation and the government considers that extending protection to volunteers would create a disproportionate level of liability and difficulty for organisations.



On the horizon

Last updated: 16 January 2024

- The government will look closely at the option of extending the time limits for bringing Equality Act based claims to an employment tribunal from 3 to 6 months. If an extension is introduced, it is likely that this would be across all Equality Act claims. This would avoid the risk of confusion which could result if the limits were increased only for claims based on specific grounds.
- The government is to encourage further EHRC strategic enforcement action so that enforcement will not rely solely on individuals pursuing employment tribunal claims. In addition, the EHRC will be supported to develop a statutory code of practice to complement its 2020 [technical guidance](#). The government will also produce its own guidance for employers which will outline practical steps that organisations can take to improve their workplace practices and culture which impact on sexual harassment at work.

The government said that the legislative changes required to introduce these measures would be introduced 'as soon as parliamentary time allows'. It then confirmed its support for a Private Members' Bill seeking to implement some of these reforms relating to the prevention of sexual harassment in the workplace. That Bill received Royal Assent in October 2023 and will come into force in October 2024.

However, NB the final legislation is a watered down version of the initial proposals and will only introduce a duty on employers to take reasonable steps (**not** 'all' reasonable steps) to prevent sexual harassment. A potential uplift in compensation of up to 25% may be applied where an employer is found not to have complied with the duty. The legislation also no longer includes any express protections against third party harassment.

There is no recent news in relation to the government's proposals for tightening the regulation of NDAs.

KEY PUBLICATIONS

[Worker Protection \(Amendment of Equality Act 2010\) Act 2023](#)

[Consultation on sexual harassment in the workplace: Government response](#) (July 2021)

[Non-disclosure agreements: ACAS guidance](#) (February 2020)

[GEO: Consultation on sexual harassment in the workplace](#) (July 2019)

[BEIS: Confidentiality clauses: Government response to consultation on measures to prevent misuse in situations of workplace harassment or discrimination](#) (July 2019)

[Women and Equalities Committee report: The use of non-disclosure agreements in discrimination cases](#) (June 2019)

[BEIS: Confidentiality clauses – Consultation on measures to prevent misuse in situations of workplace harassment or discrimination](#) (March 2019)

[WEC's report on sexual harassment in the workplace](#) (November 2018)

[Government response to sexual harassment in the workplace report](#) (November 2018)

[Women and Equalities Committee report: Sexual harassment in the workplace](#) (July 2018)



On the horizon

Last updated: 16 January 2024

Employment contracts

	Work schedules
	<p>In July 2019, the government also consulted on two recommendations of the Low Pay Commission regarding a right to reasonable notice of work schedules, and a policy to provide compensation for shifts that are cancelled at short notice. The government is seeking to identify what current practice exists in relation to these two recommendations, what impacts they would have on employers and workers, how best the policies could be designed to ensure they effectively address one-sided flexibility and how any legislative policies can be supplemented with guidelines for employers.</p> <p>The consultation seeks views on:</p> <ul style="list-style-type: none">• What would be defined as 'reasonable notice' of work schedules;• Whether this would vary between different types of work or contexts;• What working hours should be in scope;• What the impact would be of the introduction of the right to reasonable notice of work schedules;• Whether the right to a reasonable notice of work schedules should be guaranteed from the start of someone's employment, or whether an individual would need to work for a certain amount of time before becoming eligible and, if so, how long;• Whether government should set a single notice period for work schedules which applies across all employers, or whether certain employers / sectors should be allowed some degree of flexibility from the 'baseline' notice period and, if so, which employers/sectors;• What would be an appropriate 'baseline' notice period and degree of flexibility;• Whether there are any instances where reasonable notice of a work schedule would not need to be given;• How reasonable notice of a work schedule would be recorded;• What the penalty for non-compliance should be; and• What should be contained in a statutory Code of Practice. <p>There has been no progress on implementation of these reforms since July 2019 although the government did decide to back the Private Members' Workers (Predictable Terms and Conditions) Bill which received Royal Assent on 18 September 2023 (see Worker Status below).</p> <p>KEY PUBLICATIONS</p> <p>Good Work Plan: Consultation on measures to address one-sided flexibility (July 2019)</p> <p>Low Pay Commission response to the government on 'one-sided flexibility' (December 2018)</p>



On the horizon


Last updated: 16 January 2024


	Non-exclusivity clauses
	<p>In December 2020, the government published a consultation paper on measures to extend the ban on exclusivity clauses in contracts of employment. In 2015, legislation banned exclusivity clauses within zero hours contracts and, at the same time, gave employees the right not to be unfairly dismissed or to be subjected to a detriment for failing to comply with an exclusivity clause. The proposal in 2020 was to extend the ban on exclusivity clauses beyond zero hours contracts to contracts where a worker's guaranteed weekly income is less than the Lower Earnings Limit. The intention was to allow low-income workers to seek additional work elsewhere.</p> <p>The government published its response to consultation in May 2022. The government confirmed:</p> <ul style="list-style-type: none">• It would be taking forward legislation to extend the ban on exclusivity clauses, making them unenforceable in employment contracts where the guaranteed weekly income is below or equivalent to the Lower Earnings Limit.• This legislation would also extend the right not to be unfairly dismissed and the right not to be subjected to a detriment for failing to comply with an exclusivity clause, and to claim compensation to workers on employment contracts where the guaranteed weekly income is below or equivalent to the Lower Earnings Limit.• Legislation bringing the government's proposals into effect came into force on 5 December 2022. <p>KEY PUBLICATIONS</p> <p><u>Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022</u></p> <p><u>Exclusivity clauses: Response to the government's consultation on measures to reform exclusivity clauses in contracts of employment</u> (May 2022)</p> <p><u>Exclusivity clauses: Consultation on measures to extend the ban on exclusivity clauses in contracts of employment</u> (December 2020)</p>



On the horizon

Last updated: 16 January 2024

	Reform of non-compete clauses
	<p>In December 2020, the government published a consultation paper on measures to reform non-compete clauses in contracts of employment as part of an initiative to explore avenues for unleashing innovation, creating the conditions for new jobs and increasing competition. The government sought views on:</p> <ul style="list-style-type: none">• Making post-termination non-compete clauses enforceable only when the employer provides compensation for the period the clause prohibits the employee from working for a competitor or starting their own business; and/or• Introducing a maximum limit on the period of non-compete clauses; or• Making all post-termination non-compete clauses unenforceable. <p>In May 2023, the government published its response to consultation stating that it would introduce a statutory limit on the length of non-compete clauses of 3 months, with the limit applying to contracts of employment and to limb (b) worker contracts. The relevant legislation will be introduced 'when Parliamentary time allows'.</p> <p>KEY PUBLICATIONS</p> <p><u>Non-compete clauses: Response to the government consultation on measures to reform post-termination non-compete clauses in contracts of employment (May 2023)</u></p> <p><u>Non-compete clauses: Consultation on measures to reform post-termination non-compete clauses in contracts of employment (December 2020)</u></p>

	Increased redundancy protection for women and new parents
	<p>The 2017 Taylor Review of Modern Working Practices recommended consolidation of the protections for pregnant women and new parents to make it easier for businesses and individuals to understand their rights. In early 2019 the government consulted on proposals to extend redundancy protection and, in July 2019, committed to:</p> <ul style="list-style-type: none">• Ensuring that the period during which pregnant women benefit from redundancy protection applies from the point the employee informs the employer that she is pregnant;• Extending the redundancy protection period for 6 months once a new mother has returned to work from maternity leave;• Extending redundancy protection for a 6 month period following return to work for those taking adoption leave; and• Extending redundancy protection into a period following return to work for those taking shared parental leave, proportionate to the leave taken and the threat of discrimination. <p>In May 2021, the government indicated in its response to a Women and Equalities Committee report that it would bring these proposals into effect 'when parliamentary time allows'. However, the government then confirmed that it would instead back a Private Members' Bill seeking to implement these reforms. This Bill completed its journey through the</p>



On the horizon

Last updated: 16 January 2024

legislative process and received Royal Assent on 24 May 2023. The government has now published secondary legislation in order to implement the new entitlements, and this will come into force on 6 April 2024.

KEY PUBLICATIONS

[The Maternity Leave, Adoption Leave and Shared Parental Leave \(Amendment\) Regulations 2024](#)

[Protection from Redundancy \(Pregnancy and Family Leave\) Act 2023](#)

[Unequal impact? Coronavirus and the gendered economic impact: Government response](#) (May 2021)

[Unequal impact? Coronavirus and the gendered economic impact \(WEC report\)](#) (February 2021)

[Good Work Plan: Pregnancy and maternity discrimination consultation: Government response](#) (July 2019)

[Pregnancy and maternity discrimination: Consultation on extending redundancy protection for women and new parents](#) (January 2019)

[Taylor report](#) (July 2017)



Employee health

The government has announced that it must work 'hand-in-hand with employers' to reduce ill health-related job loss, whilst stating that, 'there is a case for employers to do more to support their employees who are managing health conditions or who are experiencing a period of sickness absence'.

In this context, the government originally proposed a new right to request workplace modifications on health grounds for employees who do not meet the Equality Act 2010 definition of being a 'disabled person'. This would have potentially significantly widened employers' obligations in this regard, albeit it was suggested that a request could be refused on legitimate business grounds.

Other proposals of note for employers were:

- Strengthening statutory guidance to support employers to take early, sustained and proportionate steps to support a sick employee to return to work before that employee can be fairly dismissed on the grounds of ill health;
- Extending Statutory Sick Pay (SP) to those who earn less than the Lower Earnings Limit;
- Reforming SSP to allow for greater flexibility in returning to work following sickness absence;
- Imposing fines on employers who fail to pay SSP where it is due;
- Enforcing SSP through a new single, labour market enforcement body;
- Requiring employers to automatically report sickness absence through their payroll system;
- Improving the provision of advice and information to support management of health in the workplace and encourage better informed purchasing of expert led advice;
- Reducing the costs for SMEs of purchasing occupational health services.

In May 2021, as part of its response to a Women and Equalities Committee report, the government indicated that it would be publishing a response to its consultation shortly. The response was finally published in July 2021 and stated:

On the horizon

Last updated: 16 January 2024

- The government has decided not to proceed with the introduction of the proposed right to request workplace modifications at this stage. This new right would have permitted requests for workplace modifications on health grounds by employees who do not meet the Equality Act 2010 definition of being a 'disabled person', and would potentially have significantly widened employers' obligations in relation to workplace adjustments.
- HSE will explore ways to strengthen guidance on how employers can best support disabled people and those with long-term health conditions to remain in work, and on managing related sickness absence. HSE will strengthen existing non-statutory guidance before exploring the introduction of statutory guidance.
- Reforms to SSP require further consideration. The government has decided that now is not the right time to introduce changes to the sick pay system.

In December 2021, the Disability Unit of the Cabinet Office published a consultation on reporting of workforce disability for employers with 250 employees or more. The consultation addresses both mandatory and voluntary reporting. The consultation closed on 25 March 2022.

This consultation was in response to a commitment in the National Disability Strategy, published in July 2021. It aims to increase transparency on reporting practices which have been identified as crucial to introducing the social changes necessary in establishing a more inclusive workplace and society. Responses to the consultation were expected to be published by 17 June 2022 but have not yet been made available.

On 15 March 2023, the Department for Work and Pensions published the *Transforming support: the health and disability White Paper*.

The White Paper sets out the government's aims to help unemployed disabled people and those with long-term health conditions get back into and remain in work. It sets out how the government will deliver this by:

- Increasing employment support for people with disabilities or health conditions.
- Reforming the benefits system so that it is easier for disabled people to navigate and access support when applying for and receiving health and disability benefits and to work while retaining health-related benefits.

KEY PUBLICATIONS

[Transforming support: The health and disability White Paper](#) (March 2023)

[Disability workforce reporting consultation](#) (December 2021)

[Shaping future support: The health and disability Green Paper](#) (July 2021; updated March 2023)

[National disability strategy](#) (July 2021)

[Government response: Health is everyone's business](#) (published July 2021; updated October 2021)

[Unequal impact? Coronavirus and the gendered economic impact: Government response](#) (May 2021)

[Unequal impact? Coronavirus and the gendered economic impact \(WEC report\)](#) (February 2021)

[Health is everyone's business: Proposals to reduce ill-health-related job loss](#) (July 2019)



[Improving lives: The future of work, health and disability](#) (November 2017)

[Thriving at work: The Stevenson/Farmer review of mental health and employers](#) (October 2017)



On the horizon

Last updated: 16 January 2024

	Worker status
	<p>The government had planned to make changes to:</p> <ul style="list-style-type: none">• Align the employment status frameworks for the purposes of employment rights and tax• Improve the clarity the employment status test and improve guidance and online tool• Introduce a right to request a more stable contract• Increase the time required to break a period of continuous service <p>Currently a gap of one week in employment with the same employer can break what counts towards continuous service, making it difficult for some employees to accrue employment rights. The government proposes to allow a break of up to 4 weeks before continuity is affected.</p> <p>In July 2022, the government confirmed that it would not introduce legislation to reform employment status. Instead, it issued new guidance which purports to bring together employment status case law into one place for businesses and individuals to access. The aim is that the guidance will support workers by improving their understanding of what rights they are entitled to at work, enabling them to have informed discussions with their employer and take steps to claim or enforce them where necessary.</p> <p>In February 2023, the government confirmed that it was backing the Private Members' Workers (Predictable Terms and Conditions) Bill. The Bill received Royal Assent on 18 September 2023. The new legislation seeks to ensure that all employees, including agency workers, are able to request a more predictable working pattern. It provides that if an employee's existing working pattern lacks certainty in terms of the hours they work, the times they work, or if it is a fixed term contract for less than 12 months, they may make a formal application to change their working pattern to make it more predictable. Employers must consider the request reasonably but are able to rely on one of a number of statutory grounds for refusal to turn the request down. The new rules are expected to come into force in autumn 2024.</p> <p>At present, there is no further news on the proposals relating to continuous service.</p> <p>KEY PUBLICATIONS</p> <p>Workers (Predictable Terms and Conditions) Act 2023</p> <p>Employment status and rights: Support for individuals (July 2022)</p> <p>Employment status consultation (February 2018)</p> <p>Good work: A response to the Taylor Review of Modern Working Practices (February 2018)</p>
	Family-friendly leave
	<p>In July 2019, a consultation was launched on changes to parental leave entitlements as the government said it wanted these to 'better reflect our modern society and the desire to share childcare more equally'. The consultation:</p> <ul style="list-style-type: none">• Questions whether statutory paternity leave for fathers and same sex partners should be changed;

On the horizon

Last updated: 16 January 2024

- Seeks suggestions on ways in which shared parental leave (introduced in 2015) could be improved;
- Proposes a new Neonatal Leave and Pay entitlement for parents of premature and sick babies who need to spent a prolonged period in neonatal care following birth;
- Proposes that employers should publish their pay and flexible working policies and questions whether there should be a requirements for employers to consider advertising jobs as flexible.

In March 2020, the government published a response to its consultation proposals on **neonatal leave and pay**, confirming that it will introduce neonatal leave and statutory pay for parents of babies in neonatal care. The relevant provisions were intended to be included in a new Employment Bill; however, instead, the government chose to support a Private Members' Bill seeking to bring these provisions into force. This Bill completed the legislative process and received Royal Assent on 24 May 2023, with the entitlements due to take effect in April 2025. The government will introduce secondary legislation to bring those entitlements into effect 'in due course'.

A response on **unpaid carer's leave** was published in September 2021. This indicates the following:

- One working week of unpaid carer's leave (per employee, per year) will be available as a day one right for employees managing caring responsibilities for those with long-term care needs alongside work;
- Eligibility in terms of who the employee is caring for will be broadly defined (following the definition of dependant used in the right to time off for dependants);
- The long-term care need person of the being cared for will be defined by reference to disability or issues related to old age, with limited exemptions;
- Leave will be available to be used for providing, or making arrangement for, the provision of care;
- The leave will be available to take flexibly (from half day blocks to a whole week);
- The administrative process to ensure legitimacy of requests to take carer's leave will be light touch;
- The leave will be subject to a minimum notice period of twice the length of time being taken, plus 1 day (in line with annual leave notice periods).

The government indicated that this new carer's leave entitlement would be introduced 'when parliamentary time allows'. However, the government then confirmed that it would support a Private Members' Bill seeking to introduce this new entitlement to leave. This Bill has now completed its journey through the legislative process and received Royal Assent on 24 May 2023. Regulations to implement the provisions of the statute were published in December 2023 and will come into force on 6 April 2024.

On 29 June 2023, the government published its response to proposed reforms for **paternity leave, unpaid parental leave and shared parental leave**. It confirmed that there will be no changes at this time to unpaid parental leave and shared parental leave.

In relation to **paternity leave**, the government has confirmed it will:

- Allow fathers and partners to take their two week paternity leave entitlement in two separate blocks of one week (instead of the current requirement to take either one week or two consecutive weeks);
- Allow fathers and partners the ability to take paternity leave at any time in the first year of the child's birth, rather than in just the eight weeks (56 days) following birth; and
- Change the notice requirements for paternity leave to make them more proportionate to the amount of time the father or partner plans to take off work. This will change the current requirement (to give notice of leave dates 15 weeks before the EWC) to a new requirement to give notice of entitlement 15 weeks before birth and notice of the dates intending to be taken 28 days before each period of leave.



On the horizon

Last updated: 16 January 2024

	<p>In terms of time-frame, the government published draft regulations in January 2024 which are stated to apply to employees whose expected week of childbirth is on or after 6 April 2024.</p> <p>KEY PUBLICATIONS</p> <p>The Paternity Leave (Amendment) Regulations 2024</p> <p>The Carer's Leave Regulations 2024</p> <p>Parental leave and pay: Good Work Plan – Proposals to support families (June 2023)</p> <p>Neonatal Care (Leave and Pay) Act 2023</p> <p>Carer's Leave Act 2023</p> <p>Carer's leave consultation: Government response (September 2021)</p> <p>Unequal impact? Coronavirus and the gendered economic impact: Government response (May 2021)</p> <p>Unequal impact? Coronavirus and the gendered economic impact (WEC report) (February 2021)</p> <p>Neonatal leave and pay: Good Work Plan – proposals to support families (March 2020)</p> <p>Good Work Plan: Proposals to support families (July 2019)</p>
--	---

	<p>Flexible working</p>
	<p>In September 2021, the government published its heavily-trailed consultation on new proposals to make the right to request flexible working a day one entitlement. Currently, the statutory right to request flexible working only applies to employees with 26 weeks or more service with their employer. The government's 2019 manifesto committed to encourage flexible working and consult on making it the default position. The consultation applied to a wide range of flexible working options such as job-sharing, flexitime, compressed, annualised and staggered hours, as well as phased retirement.</p> <p>The government's response to consultation was published in December 2022 and confirmed that:</p> <ul style="list-style-type: none">• The right will remain a right to request (not have) flexible working arrangements;• The right to request flexible working will be a day one right;• Employees will be able to make 2 requests each year (instead of one);• Employers will have to respond to an employee's request within two months (instead of three months);• Employers will have to consult with an employee before rejecting a request;• The 8 statutory business reasons for refusing a request will remain available to employers.



On the horizon

Last updated: 16 January 2024

The government is implementing these reforms to flexible working through a Private Members' Bill which received Royal Assent on 20 July 2023. Secondary legislation, which fleshes out the details of the new regime, was published in December 2023 and will come into force on 6 April 2024. In the meantime, the government published a Call for Evidence in relation to non-statutory flexible working. This closed in November 2023 but responses have not yet been published. ACAS also issued a consultation paper on changes to its Code of Practice for handling flexible working requests and published the revised Code of Practice in January 2024.

KEY PUBLICATIONS

[ACAS Code of Practice on requests for flexible working](#)

[The Flexible Working \(Amendment\) Regulations 2024](#)

[Employee Relations \(Flexible Working\) Act 2023](#)

[ACAS consultation on the draft Code of Practice on handling requests for flexible working](#) (July 2023)

[Call for evidence: Non statutory flexible working](#) (July 2023)

[Consultation on making flexible working the default: Government response](#) (December 2022)

[Making flexible working the default](#) (September 2021)



Ethnicity pay gap reporting

In 2018/2019 the government consulted on options for employer-level ethnicity pay reporting. Following this, the government met with businesses and representative organisations to understand the barriers to reporting and to explore what information could be published to allow for meaningful action to be taken. This data was then analysed by the government.

In May 2021, as part of its response to a Women and Equalities Committee report, the government indicated that it would be publishing a response to its consultation in due course. In September 2021, a petition to introduce mandatory ethnicity pay gap reporting was debated in the House of Commons and, separately, in October 2021, the issue was debated in the House of Lords. In March 2022, the government confirmed that it would not be introducing any mandatory requirements on employers to report ethnicity pay gaps; instead it would remain a voluntary process. The government committed to publishing guidance in the summer of 2022 and it was finally published in April 2023. The government published its formal response to consultation in July 2023.

KEY PUBLICATIONS

[Ethnicity pay reporting: Government response to consultation](#) (July 2023)

[Ethnicity pay reporting: Guidance for employers](#) (April 2023)

[Inclusive Britain: Government response to the Commission on Race and Ethnic Disparities](#) (March 2022)

[Unequal impact? Coronavirus and the gendered economic impact: Government response](#) (May 2021)

[Commission on race and ethnic disparities: The report](#) (March 2021)


[Unequal impact? Coronavirus and the gendered economic impact \(WEC report\)](#) (February 2021)


[Ethnicity pay reporting: Consultation](#) (January 2019)



On the horizon

Last updated: 16 January 2024

	Industrial action
	<p>On 10 January 2023, the Government published the draft Strikes (Minimum Service Levels) Bill with the aim of restricting the protections which apply to trade unions and employees in respect of certain public sector strikes where provision has been made in regulations for minimum levels of service. The Bill received Royal Assent on 20 July 2023.</p> <p>Under the new law:</p> <ul style="list-style-type: none">• employers covered by the rules will be able to issue a work notice to unions, at least one week before a planned strike, setting out who is required to work during a strike to ensure minimum service levels;• before serving a work notice, the employer must consult the union and consider their views on how many people are identified in the work notice and the work they are required to undertake to meet minimum service levels;• the work notice cannot identify more people than is reasonably necessary to provide the minimum service levels;• if a union fails to take reasonable steps to ensure that all members identified in the work notice comply with it, the union will lose its immunity in tort. The employer could then sue the union for resulting losses and discipline employees for non-compliance. <p>The sectors which are covered are health, education, fire and rescue, transport, border security, and nuclear decommissioning and radioactive waste management services.</p> <p>In December 2023, the government published a Code of Practice on the reasonable steps to be taken by a trade union to effect minimum service levels. However, no minimum service levels will be imposed until implemented by secondary legislation.</p> <p>KEY PUBLICATIONS</p> <p>Code of Practice issued by the Secretary of State under section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992 on reasonable steps to be taken by a trade union (Minimum service levels) (December 2023)</p> <p>Minimum Service Levels: Issuing work notices – A guide for employers, trade unions and workers (November 2023)</p> <p>Strikes (Minimum Service Levels) Act 2023</p>

	Retained EU law
	<p>The Retained EU Law (Revocation and Reform) Bill received Royal Assent on 29 June 2023. It was initially intended to automatically repeal all EU law retained after Brexit by 31 December 2023, subject to the government taking positive action to preserve the relevant laws before the end of 2023 (subject to a potential extension to June 2026 in certain circumstances). However, in April 2023, in a significant row-back of this proposal, reports indicated that the government would only remove 800 statutes (instead of 3,700). The proposals were further watered down on 10 May 2023 when the government announced that it would replace the current 'sunset' in the legislation with a list of the retained EU laws that it intends to revoke at the end of 2023. This means that EU law will remain binding in the UK <i>unless</i> it is expressly repealed. The government has, however, retained powers which allow it to continue to</p>



On the horizon

Last updated: 16 January 2024

amend EU laws, so that more complex regulation can still be revoked or reformed after proper assessment and consultation.

In May 2023, the government then published a policy paper, *Smarter regulation to grow the economy*, which highlighted the government's intentions to revise UK law in relation to TUPE and annual leave, for which it says there are opportunities for improvement. It then published a consultation paper seeking views on these proposals. The consultation closed on 7 July 2023 and the government's response to consultation was published on 8 November 2023.

Working Time Regulations (WTR)

Initial proposals

The first aspect of the WTR addressed by the consultation was **record keeping**, where the requirements were thought to be an area of uncertainty for employers following a 2019 judgment of the European Court of Justice (ECJ). The government proposed to legislate to clarify that businesses do not have to keep a record of daily working hours of their workers.

The second aspect of the WTR where reform was proposed is in relation to **annual leave**. The government wanted to simplify the system of annual leave and holiday pay calculations. It proposed to achieve this by:

- Creating a single annual leave entitlement of 5.6 weeks, as opposed to the current system which provides 4 weeks' annual leave set by the Working Time Directive plus an additional 1.6 weeks' leave beyond the EU requirements.
- Permitting carry forward of 1.6 weeks' leave to the following leave year if agreed in writing between employer and employee. Carry over of entitlement of more than 1.6 weeks will only be permitted where an individual has been unable to take leave due to long-term sickness absence or a form of family leave.
- Providing that during the first year of employment, workers will accrue their annual leave entitlement at the end of each pay period.
- Setting a minimum rate of holiday pay for the new single statutory leave entitlement. The consultation will be used to explore how this rate should be defined, with the suggested options including basic pay or normal pay (which would include regular overtime pay, regular commission and regular bonuses).
- Permitting rolled-up holiday pay as an option for all workers, so that a worker receives an additional amount with every payslip to cover holiday pay, as opposed to receiving holiday pay only when they take annual leave. The government's proposal is that rolled-up holiday pay is paid at 12.07%, which is the proportion of statutory annual leave in relation to the working weeks of each year.

Outcome

- The government has decided to remove the effects of the 2019 ECJ judgment to remove any risk that the current record keeping requirements may change.
- The government has decided **not** to introduce the single annual leave entitlement, but to maintain the two distinct pots so that workers continue to receive 4 weeks at normal pay and 1.6 weeks at basic pay. However, legislation will clarify what counts as 'normal' pay by requiring the following types of payment to be included:
 - Payments intrinsically linked to the performance of tasks which a worker is contractually obliged to carry out;
 - Payments for professional or personal status relating to length of service, seniority or professional qualifications;
 - Payments such as overtime which have been regularly paid to a worker in the previous 52 weeks.



On the horizon

Last updated: 16 January 2024

- The government will also introduce rolled-up holiday pay for irregular hours and part-year workers only, but employers who choose to use rolled-up holiday pay will be required to calculate it based on a worker's total earnings in a pay period.
- The government will also legislate to restate certain ECJ judgments to retain workers entitlement to carry over leave when a worker is unable to take their leave due to being on maternity/family related leave or sick leave.
- The legislation will come into force on 1 January 2024.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

Initial proposals

In the consultation paper, the government recognised that the TUPE regulations, which provide a legal framework for transfers of staff in a business acquisition or service provision change, provide important protections for employees and also recognised the importance of an employer consulting with employees and employees' representatives in relation to a transfer. However, given that businesses can find some aspects of the regulations burdensome, the government proposed changes to **TUPE consultation requirements** with the aim of simplifying the transfer process. The proposals were that:

- small businesses (with fewer than 50 employees); and
- businesses of any size involved with small transfers of employees (where fewer than 10 employees are transferring)

should be permitted to consult directly with their employees on a TUPE transfer, if there are no employee representatives in place, rather than being required to arrange elections for new employee representatives. If employee representatives are already in place, then the employer would still be required to consult with them.

Outcome

The government will proceed with the planned reforms to the TUPE consultation requirements to allow small businesses (fewer than 50 employees) and businesses of any size undertaking a transfer of fewer than 10 employees to consult directly with their employees if there are no existing worker representatives.

KEY PUBLICATIONS

[Retained EU Employment Law: A government response to the consultation on reforms to retained EU employment law and the consultation on calculating holiday entitlement for part-year and irregular hours workers \(November 2023\)](#)

[Retained EU Law \(Revocation and Reform\) Act 2023](#)

[Policy paper: Smarter regulation to grow the economy \(May 2023\)](#)

[Retained EU Employment law: Consultation on reforms to the Working Time Regulations, holiday pay and the Transfer of Undertakings \(Protection of Employment\) Regulations \(May 2023\)](#)

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper UK LLP and DLA Piper SCOTLAND LLP will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please speak to your DLA Piper contact on +44 (0)20 7349 0296.

www.dlapiper.com

DLA Piper UK LLP is authorised and regulated by the Solicitors Regulation Authority. DLA Piper SCOTLAND LLP is regulated by the Law Society of Scotland. Both are part of DLA Piper, a global law firm operating through various separate and distinct legal entities. For further information please refer to www.dlapiper.com
UK switchboard: +44 (0)20 7349 0296. Copyright ©2023 DLA Piper. All rights reserved. UKD/KD/KM/UK/UKG/113512620.1 DEC2023