

Update on Tax, Gift Aid and VAT

Sept 2023

Agenda

Budget – highlights

HMRC consultations and updates

Gift Aid – updates

IR35

VAT

The title 'Budget March 2023' is displayed in white text on a teal background. A small white horizontal bar is positioned above the word 'Budget'.

Budget
March 2023



Budget - highlights

New apprenticeship scheme (“returnerships”) targeted at over 50s who want to return to work to focus on flexibility and previous experience to reduce training length

Climate change agreement scheme extended for two years

Real Estate Investment Trusts: implementation of the Edinburgh reforms to increase attractiveness of regime

- **£100 million of support for charities and community organisations in England:** targeted at organisations most at risk, due to increased demand from vulnerable groups and higher delivery costs, as well as providing investment in energy efficiency measures to reduce future operating costs.
- **Community facilities:** £63m fund for public leisure centres and swimming pools
- **Nurseries:** increased direct funding to nurseries from Sept 23
- **VAT: fund management reform:** Following consultation (that closed in Feb) on proposed reform of the VAT rules on fund management to improve legal clarity and certainty, continued dialogue is being undertaken with interested stakeholders with an intention to publish a response in the next few months



Budget - highlights

Dividend annual allowance reduced from £2,000 to £1,000 from Apr 2023 and £500 from Apr 2024

Government has:

- reversed temporary increase in NICs from 6 Nov 2022
- cancelled the Health and Social Care Levy completely from Apr 23

Capital gains annual exempt amount will be reduced from £12,300 to £6,000 from Apr 2023 and to £3,000 from Apr 2024

- **UK tax reliefs for non-UK charities and their donors:** withdrawn. But overseas charities that qualified for relief on 15 March 2023 will continue with relief until April 2024
- **VAT relief for energy saving materials:** call for evidence on options to reform VAT relief for the installation of energy saving materials in UK. Possible extension of the relief to include buildings used solely for a relevant charitable purpose
- **Higher rates of theatre, orchestra, and museums and galleries tax reliefs:** extended from April 2023 for further 2 years
- **Social investment tax relief :** not continued and closed on 6 April for any new investments
- **Business rates:** review published by government and expect to expand the local retention of business rates to more areas in the next Parliament



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HMRC Consultations and updates



HMRC have published a Charities newsletter in June 2023

<https://www.gov.uk/government/publications/charities-newsletter-1-june-2023/newsletter-1-june-2023>

You can subscribe to receive updates from HMRC as and when they issue charity related matters as part of this link

HMRC newsletter

- Newsletter covers the charity tax consultation
- HMRC will consult with on reform of tax rules to help tackle non-compliance, whilst protecting the integrity of charity sector
- Would encourage charities to be involved to ensure reliefs are retained
- Also a consultation on the future of gift aid
- HMRC will continue to engage to improve the way that Gift Aid works by using digital technology to minimise administrative burdens
- Currently looking at how the Gift Aid service can be improved for everyone who uses it

Volunteer drivers

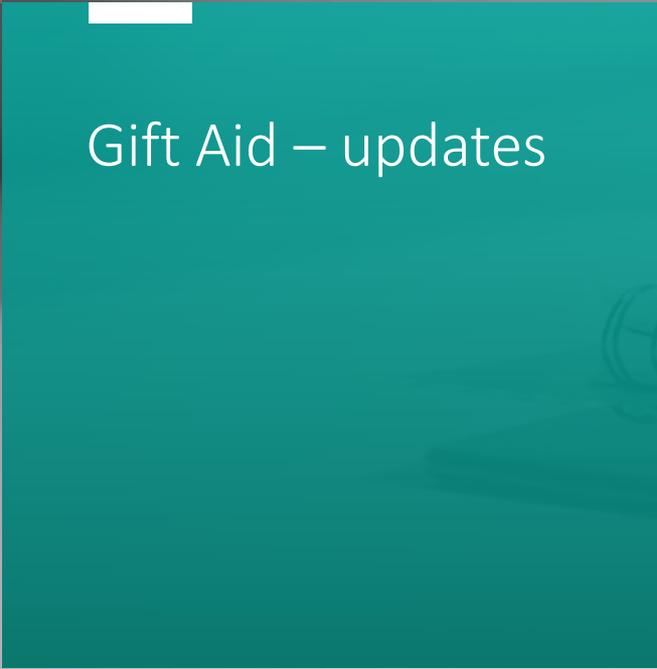
Paying mileage to a volunteer may result in needing to consider how this is taxed

Allowance given needs to be assessed against HMRC approved rates and any excess declared as income

Or allowance needs to have appropriate proportion of vehicles expenses deducted and excess declared and taxed

Volunteer Drivers

- New page added HMRC to Employment Income Manual
- £1,000 annual 'trading allowance'
- All taxpayers can receive up to £1,000 in miscellaneous income a year - no need to declare or be taxed
- If amount received exceeds this limit, only excess amount needs to be declared and taxed
- Guidance confirms this allowance can be used for volunteer drivers' mileage allowances
- Advantageous if mileage allowance exceeds HMRC's approved mileage allowance due to fuel price increases



Gift Aid – updates

Gift aid tip

Remember where you use digital platforms to generate donations and are charged an administrative fee, the gift aid can be claimed on the gross amount where you have evidence that supports the deductions made

HMRC engagement

- Really keep to use digital technology to improve gift aid process
- HMRC wants to speak to all sorts of charities in this regard -20 July 2023 consultation closes
- HMRC's user researcher Niamh Collard: niamh.cliffordcollard@hmrc.gov.uk
- HMRC looking to replace current Gift Aid Online service
- Expected to take 3 months before rolled out
- Aim is for system to be intuitive and contain all relevant information so no need to go to separate guidance

Loan waivers and claiming gift aid

Text in paras 3.13 and 3.45 is updated and much clearer

<https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-3-gift-aid>

- Loan repayment waiver - HMRC require there to be a legally enforceable document in place – i.e. a deed
- HMRC published guidance in May 2021 confirming that Gift Aid can be claimed on Waived Refunds and Loan Repayments
- Gift aid claimable provided agreement to waive the loan/right to a refund is clear and irrevocable
- Hence reason for needing a paperwork trail. Examples of this for waived refunds could include:
 - email exchange
 - letter out to the taxpayer and their response
 - recorded telephone call

Loan waivers and claiming gift aid

Corporate bodies restriction

- Loan repayment waiver will not work for a corporate body
- Include limited companies, trading subsidiaries and unincorporated associations
- If the loan to the charity is from an entity that is subject to corporation tax (rather than income tax), then it will not be possible to waive the loan and reclaim charitable donation relief
- The corporation tax loan relationships rules prevent this
- Will need to instead repay the loan
- Then receive the donation back
- Must have cash movements

Major donors and buildings

3.19.8

<https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-3-gift-aid>

- Policy updated
- Sometimes **charities may want to** name a building or part thereof after an individual donor who's provided a substantial donation to the charity
- Therefore avoid 'naming rights' contracts
- Allow charity to acknowledge donation
- as long as the naming does not act as an advertisement or sponsorship for a business, then naming of building or part after individual donor would not be considered a benefit

One to Many campaign letter

The One to Many approach is where HMRC sends a standard message to many customers, in this case, trustees of charities

A One to Many approach is not a compliance check

- HMRC have recently launched a One to Many letter campaign relating to Gift Aid repayment claims
- The aim is to influence customers' behaviour so that they are more likely to comply with their tax obligations
- This is an educational letter that has been issued to charities that make use of the "aggregated donations" provisions within their Gift Aid repayment claims
- The letter sets out the related rules and requirements and is aimed at supporting compliance

Aggregated donations

<https://www.gov.uk/guidance/schedule-spreadsheet-to-claim-back-tax-on-gift-aid-donations#aggregated-donations>

- Charities can aggregate donations of £20 or less from different donors and show them as one entry on their Gift Aid spreadsheet. The total donation on one line cannot be higher than £1,000 and the total cannot include donations associated with admissions to charity visitor attractions.
- To claim Gift Aid on aggregated donations, the following needs to be entered on claim:
 - Simple description in aggregated donations box – for example, “Thursday club”
 - Date of the last donation
 - Total amount raised
- There is no limit to the number of lines on a claim schedule. You should only add together donations that were made within the same accounting period.

Retail gift aid

<https://www.charitytaxgroup.org.uk/news-post/2023/retail-gift-aid-new-simplified-end-year-letters/>

Must be sent before 31 May each year

- New simplified end-of-year letter for charities using the de minimis retail gift aid option
- Compulsory to use this new letter in 2024
- Link to new letter template provided

IR35 – off payroll working



IR35 – not being repealed

Applies based on Size criteria -2 out of 3:

- £10.2M income (excludes donations)
- £5.1M balance sheet
- 50 staff on average in year

Always check sole traders regardless of size

Ensure evidence decision using HMRC or other employment tests

- Off-payroll working rules can apply if a worker or contractor provides their services through their own limited company or another type of intermediary
- Intermediary will usually be worker's own personal service company, but could also be any of the following:
 - a partnership
 - a personal service company
 - an individual
- Need to pass worker's employment status determination to the agency or other organisation you contract with
- Responsibility for deducting Income Tax and employee National Insurance contributions, and paying employer National Insurance contributions, is yours until you tell worker and person/organisation the determination and the reasons for it. Take reasonable care and undertake tests etc
- Appeal process

IR35

CTG has argued that the definition of turnover should exclude donation and grant income – HMRC has now confirmed that this is the case.

- Part-time teacher/ lecturer covering an academic term or longer is similar to fulltime and therefore likely to be probably employee
- Visiting teacher/ lecturer - occasional talk or short series not part of the core curriculum could be self-employed
- HMRC's view – teaching national curriculum is an employee
- ESM4100 - Particular occupations: entertainment industry <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4100>
- Intermediary (or agency)- person who makes arrangements for an individual to work for a third party or pay for work done for a third party. Intermediaries must return details of all workers they place with clients where the intermediary does not operate Pay As You Earn (PAYE) on the workers' payments to HMRC every 3 months.

VAT



VAT and social media

HMRC has recently confirmed their view on advertising presented via digital platforms in response to dialogue with Charity Tax Group

HMRC interpret the VAT treatment as follows where advertising takes place online:

- **‘Natural hits’** – not supplies of advertising for the purposes of Schedule 8 of the VAT Act 1994 and therefore standard rated
- **Pay-per-click adverts** – these are advertisements, do not involve selection of address so are zero rated
- **Direct placements on third party websites** – these are advertisements, do not involve selection of address so are zero rated
- **Social media/subscription websites** – these are advertisements which are targeted directly at a digital address so are standard rated
- **Retargeting of individuals revisiting a website** – these are advertisements retargeting a select IP address so are standard rated

VAT and social media

HMRC has written to some charities advertising on social media sites such as Facebook, LinkedIn and Twitter stating that they should be paying the standard rate of VAT for these services as such advertisements are often targeted at selected individuals and groups

Zero rating relief is available to all charities, regardless of whether they are VAT registered or not

- Review expenditure that will qualify for relief and **ensure that their suppliers are aware** you are a charity and thus qualify for zero-rating
- Review expenditure to check if you have been mistakenly charged standard rate VAT for a qualifying service and **request a refund** and a VAT only credit note if applicable
- Review expenditure incurred in last 4 years to check VAT correctly accounted for under **reverse charge mechanism** in respect of supplies of advertising services on social media sites from businesses located outside UK
- Review **contracts** with advertising suppliers, particularly those with social media and subscription websites

Yorkshire Agricultural Society VAT case

First Tier Tribunal case agreed admission charges to event where exempt under fundraising events exemptions:

- Activities within the shows were carried out in pursuance of charitable purposes of YAS
- YAS did not promote show as being “primarily” to raise money, but publicity, programme and admission tickets stated shows would raise funds for YAS and support farming/countryside
- Shows had **two purposes**: fundraising and education (charitable purpose)
- Tribunal stated that test is not whether or not fundraising is **the** primary purpose, but **a** primary purpose of event. So there can be more than one primary purpose and that it is one that is important, rather than being an indication of hierarchy of fundraising or charitable purpose. Therefore **it could be both**

YAS runs agricultural show

YAS used to treat the event as a charitable activity but deemed event to be a fundraising event and reclaimed VAT on income previously paid

Shows were planned to raise as much as possible and were budgeted and managed to make a surplus

FTT is **not binding** as it is only a tribunal ruling so care needed if this is to be applied to your circumstances. But interesting situation that FTT found event can be both charitable and fundraising event at the same time



3D Crowd CIC case

The First Tier tribunal found:

- Needed to be a link between supplies and intended taxable supplies
- Needed to prove capabilities to produce product and therefore donating PPE proved this and intention to be able to gain commercial contracts
- Fact no sales ever made was not relevant
- Therefore VAT incurred whilst trying to gain accreditation allowed
- General overheads allowed on basis of attribution to above versus philanthropy of initial gifts of PPE to NHS (non business) and disallowed
- Another case on business versus non business attribution

Raised initial finances through crowd funding

Started production of PPE using 3D printers

Donated to NHS as needed to go through accreditation

Never completed accreditation so never actually realised commercial sales

Intention was to generate commercial sales and be in business and thus registered for Vat and tried to reclaim its VAT



Contact us



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HR/Employment law update



Autumn 2023

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Topics for discussion

Hot Topics

- » The impact of the cost of living crisis on both employers and employees:
 - > Potential for increased redundancies.
 - > The impact on the mental health of employees.
 - > Increase in commuting costs.
 - > Increase in risk of theft by employees.
 - > Second jobs.
- » Remote working

What's on the horizon- legislation update

- » Flexible working.
- » Family-related legislation:
 - > Extension of redundancy rights.
 - > Neonatal care leave and pay.
 - > Carers' leave.
- » Harassment at work.
- » Retained EU law and related consultations.

Impact of cost of living crisis on both employers and employees

Potential for increased redundancies

Businesses are being forced to consider a wide range of cost saving measures, such as reducing hours and as a last resort, redundancies.

Definition of redundancy:

- > Business closure.
- > Workplace closure.
- > Diminished requirements for employees to do work of a particular kind.

[Campbell v Tesco Personal Finance Plc 2023 EAT 68.](#)

Facts

Tesco consolidated three teams into two. Two risk manager roles, which included C's, were replaced with two new risk roles.

C was put at risk of redundancy and later dismissed.

C claimed unfair dismissal, arguing that there was not a genuine redundancy as the requirement for risk managers remained the same.

Decision

The Employment Tribunal held that there was a redundancy situation and that the dismissal was fair.

C appealed. The Employment Appeal Tribunal remitted the case for a re-hearing. The Employment Tribunal failed to make any finding of fact that the requirement for employees to carry out risk management work of a particular kind had ceased or diminished. The fact that three risk teams became two was not enough.

Impact of cost of living crisis on both employers and employees

Potential for increased redundancies - continued

Redundancy should be the last resort

Redundancy process should involve:

- > **Consultation** – while the employees still have an opportunity to influence decisions.
- > **Selection pool** – the starting point is to consider which particular kind of work is ceasing or diminishing and which employees perform that work.
- > **Selection criteria** – should be both objective and capable of independent verification.
- > **Consider alternatives to dismissal:**

Lovingangels Care Ltd v Mhindurwa
[2023] EAT 65 (12 May 2023).

Facts

C was put at risk of redundancy due to reduction in live-in care work. She asked to be furloughed but this was refused. She was dismissed by reason of redundancy.

Decision

Employment Appeal Tribunal upheld the Employment Tribunal's finding that it was unfair to make an employee redundant without considering furlough as an alternative.

Impact of cost of living crisis on both employers and employees

Impact on the mental health of employees

- > Employers have a duty of care towards their employees.
- > It is important for employers to support their employees.
- > The Equality Act sets out the duty on employers to make reasonable adjustments to ensure that individuals with a disability are not placed at a disadvantage.
- > Examples of reasonable adjustments: flexible working arrangements, changes to physical environment, training and support, adjustments to workplace expectations and pay rates.
- > Acas non-statutory guidance on reasonable adjustments.



Impact of cost of living crisis on both employers and employees

🚗 Higher commuting costs

- > Increase in requests to work from home.
- > Requests may amount to a flexible working request.
- > If so, the statutory procedure must be followed.



Impact of cost of living crisis on both employers and employees



Increased risk of theft by employees

- > Ensure contract of employment allows employer to deduct any such sums misappropriated from wages.
- > If no contractual right- follow county court process.



Impact of cost of living crisis on both employers and employees

Second jobs

- > Employees may take second jobs to meet their increased outgoings.
- > Often employers want to prevent second jobs for a variety of reasons.
- > Contracts of employment can specifically state that employees cannot work for others during their employment.
- > Disciplinary action can be taken if not adhered to.



Remote working

Implications:

- > Immigration – advance immigration permission may be required depending on the identity of the host country and the employee's nationality.
- > Tax and social security- whether there are implications will depend on the length of stay and the rules of the host country.
- > Intellectual property and confidential information- contracts need to be checked to ensure that intellectual property and confidential information is protected.
- > Employment law – employees may become subject to local mandatory employment protections.
- > Data privacy implication- need to be ensure that data protection laws are not breached by transferring data to the employee.

How to minimise the risk:

- > Only accept requests if the employee's role can be effectively performed.
- > The shorter the period the smaller the risks are likely to be.
- > For any arrangement of extended duration always take expert local advice on tax, social security, immigration and employment obligations.
- > Check what data processing the employee will be doing and whether this can be carried out lawfully.
- > Check relevant insurance policies.
- > Agree the terms of any overseas working arrangement in writing.

| Any questions?

Flexible Working



New legislation on flexible working will mean that:

- > Employees will now be able to make two flexible working requests in any 12 month period.
- > Requests have to be dealt-with by employers within 2 months of receipt of a request if no extension is agreed.
- > Employers are not able to refuse a request until they have 'consulted' with the employee (although there is no legislative de minimis requirement of what that 'consultation' needs to include).
- > Employees will no longer, in their application, have to explain what effect the employee thinks agreeing to the request would have and how any such effect might be dealt with.

NB: The Act does not provide that requesting a flexible working pattern will become a "Day 1" right, but this is expected to be introduced by secondary legislation.

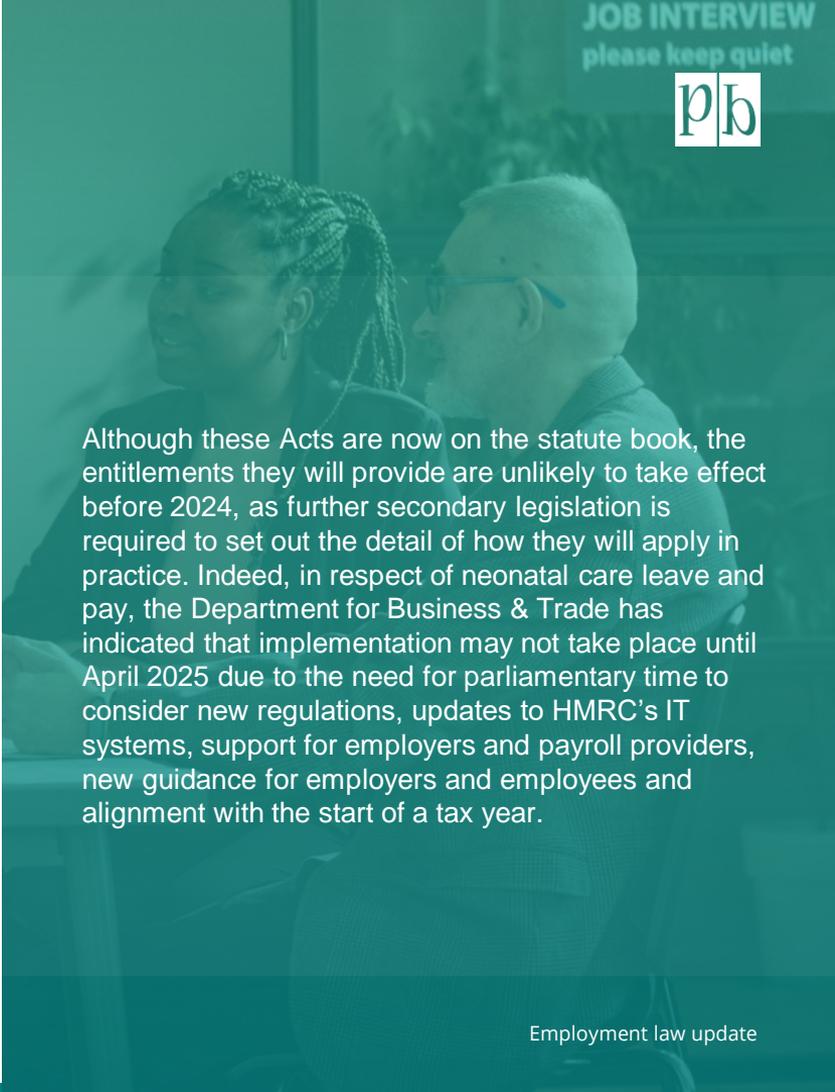
A draft ACAS code on flexible working is currently under consultation.



Family-related legislation

Three Government-backed Private Members' Bills received Royal Assent in May, becoming:

- > **the Protection from Redundancy (Pregnancy and Family Leave) Act 2023** which will extend the redundancy protections that currently apply to employees on maternity, adoption and shared parental leave to employees who are pregnant or who have recently returned to work from such leave.
- > **the Neonatal Care (Leave and Pay) Act 2023** which will allow eligible employed parents whose new-born baby is admitted to neonatal care to take up to 12 weeks of paid leave, in addition to other leave entitlements such as maternity and paternity leave. The right to leave will apply from day one of employment, although the right to pay will be subject to a 26-week service requirement.
- > **the Carer's Leave Act 2023** which will give employees who have a dependant with a long-term care need a statutory right to one week's unpaid care leave per year. This right will apply from day one of employment and employees will not be required to provide any evidence of their entitlement to the leave.



Although these Acts are now on the statute book, the entitlements they will provide are unlikely to take effect before 2024, as further secondary legislation is required to set out the detail of how they will apply in practice. Indeed, in respect of neonatal care leave and pay, the Department for Business & Trade has indicated that implementation may not take place until April 2025 due to the need for parliamentary time to consider new regulations, updates to HMRC's IT systems, support for employers and payroll providers, new guidance for employers and employees and alignment with the start of a tax year.

Extension of redundancy protection – an explanation

What is the current protection being extended, and what does this mean in practice?

- > The right to first refusal of suitable alternative roles.
- > Means that you may not be able to offer a suitable alternative role to your preferred candidate.



Harassment at work



The initial provisions of the Worker Protection (Amendment of Equality Act 2010) Bill:

- > An employer would be treated as harassing an employee (engaging in unwanted conduct related to a relevant protected characteristic) when a third party, such as a customer or client, harassed an employee in the course of their employment and the employer had failed to take all reasonable steps to prevent that harassment.
- > Employers would be under a new duty to take all reasonable steps to prevent sexual harassment of their employees in the course of their employment.
- > Other than in cases of sexual harassment, an employer would not be taken to have failed to take all reasonable steps to prevent harassment where the harassment involved a conversation in which the claimant was not a participant (or a speech which was not aimed specifically at the claimant), the conversation (or speech) contained the expression of an opinion on a political, moral, religious or social matter, the opinion expressed was not indecent or grossly offensive, and the harassment was not intentional.

Harassment at work



Recent revisions by the House of Lords

- > **Clause 1 of the Bill**, which made employers liable for third-party harassment of employees in the course of employment, has been removed.
- > **Clause 2 of the Bill** has been amended, so that employers will be required to take “reasonable steps”, rather than “all reasonable steps”, to protect employees from sexual harassment in the course of employment.



EU retained law and related consultations



Impact of Brexit on employment law:

- > The Retained EU law (Revocation and Reform) Bill provides an opportunity to review the EU-derived legislation which remains on the statute book as retained EU law. Although the "sunset clause" in the Bill has now been scrapped, meaning that retained EU law will not be automatically revoked at the end of 2023, the government has instead set out a list of some 600 pieces of legislation which will be revoked once the Bill is enacted.
- > As far as employment law is concerned, on 12 May 2023, the DBT published a consultation on reforms to the WTR 1998, holiday pay and the TUPE regulations. This consultation confirms that the government is not intending to weaken workers' rights through this process. The vast majority of retained EU employment law will be preserved.

Employment-related regulations to be amended

The government has identified three areas where it considers the obligations created by regulations impose an administrative burden on business, or are too complex for workers to understand or use effectively.

It is therefore consulting on:

- > Removing the record-keeping requirements under the WTR 1998.
- > Simplifying annual leave and holiday pay calculations in the WTR 1998.
- > Reforming the consultation requirements under the TUPE regulations for smaller businesses.



The WTR 1998



Proposed changes:

- » Removal of the record-keeping requirements under the WTR 1998, but records will still be necessary, for example, for the purposes of showing compliance with the minimum wage regulations.
- » Making holiday simpler, including the creation of a single entitlement, and allowing rolled up holiday pay.

Reforming TUPE consultation requirements for smaller businesses

Currently, micro businesses with fewer than ten employees may inform and consult affected employees directly if there are no existing appropriate representatives in place (for example, if there is no recognised trade union). Larger businesses, however, are required to arrange elections for affected employees to elect new employee representatives if they are not already in place, which can add to the complexity of the TUPE transfer process.

The government is proposing to remove the requirement to elect employee representatives for the purpose of TUPE consultation for:

- > Businesses with fewer than 50 employees.
- > Businesses of any size involved in a transfer of fewer than ten employees.

In both situations, businesses meeting these criteria will be able to consult directly with employees, where no existing employee representatives are in place.

The consultation states that the government wants to ensure that businesses are not unduly burdened by the current requirement to hold elections for employee representatives.

No other changes are being proposed to the TUPE consultation requirements.

| Any questions?

Thanks for
attending



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