



Department for
Business & Trade

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

8 November 2023

Contents

Introduction	3
Conducting the consultation exercise	5
Activity during the consultation period	5
Retained EU Employment Law Consultation	5
Calculating holiday entitlement for part-year and irregular hour workers Consultation	5
Executive summary of consultation responses	5
Detailed information on responses	11
Reducing the administrative burden of the Working Time Regulations	11
Holiday Pay and Entitlement Reform	17
Proposal 1: Create a single annual leave entitlement of 5.6 weeks	17
Proposal 2: Introducing 'Rolled-Up' Holiday Pay	22
Calculating holiday entitlement for part-year and irregular hour workers	25
Proposal 1: Introducing a 52-week holiday entitlement reference period	25
The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)	35
Annex A: Formal consultation responses by Stakeholder Category	40
Annex B: List of Consultation Questions	41
Consultation on reforms to the Working Time Regulations, Holiday Pay, and the Transfer of Undertakings (Protection of Employment) Regulations	41
Calculating holiday entitlement for part-year and irregular hours workers	45

Introduction

Under this government we have seen employment reach near record highs and unemployment near record lows. The number of payroll employees for September was 30.1 million, 370,000 higher than this time last year and 1.1 million higher than before the pandemic. The UK's flexible labour market is at the heart of this success. It enables businesses to start up, grow, and create jobs and opportunity for people across this country.

As a government, we are committed to building on this record. We want to make Britain the most dynamic place in the world to work, and to launch, grow, and do business. We must build on and strengthen our flexible labour market. This will help drive growth and promote more competition in UK markets as we build a high-skills, high-wage economy, with a business-friendly culture, where creative enterprise is encouraged and rewarded.

The regulatory reform update *Smarter Regulation to Grow the Economy*, published in May 2023, set out the government's intention to reduce regulation which unnecessarily burdens business, impedes competition or acts as a block to innovation. This is particularly important following our exit from the EU, with significant quantities of out-of-date, unworkable and unnecessary EU laws still on our statute book. The Retained EU Law (Revocation and Reform) Act 2023 provides powers to amend, remove and replace unsuitable retained EU law with bespoke UK provisions.

We identified several areas of retained EU employment law where we saw opportunities for improvements following our exit from the EU. On 12 May 2023, the government launched a consultation on three areas which we believe could benefit from reform and where we could remove unnecessary bureaucracy:

- Record keeping requirements under the Working Time Regulations;
- Simplifying annual leave and holiday pay calculations in the Working Time Regulations; and
- Consultation requirements under the Transfer of Undertakings (Protection of Employment), or 'TUPE', Regulations.

The consultation sought views on specific proposals for these areas of retained EU employment law to ensure they are tailored to the needs of the UK economy.

We are also taking this opportunity to respond to an earlier consultation we launched on 12 January 2023 about calculating annual leave entitlement for part-year and irregular hours workers. The Supreme Court's decision in the *Harpur Trust v Brazel* case resulted in part-year workers being entitled to a greater annual leave entitlement than part-time workers who work the same number of hours across the year. We sought views on whether introducing a 52-week reference period for calculating holiday entitlement was the best way to respond to the effects of this judgment.

The reforms we are taking forward following both consultations will help to simplify and address concerns about the calculation of holiday entitlement for employers and make entitlement clearer for all irregular hour's workers, including part-year workers and agency workers.

By ensuring that employment regulations are fit for purpose, entrepreneurial businesses will have more opportunity to innovate, experiment, and capitalise on the UK's global leadership in areas like clean energy technologies, life sciences, and digital services. And important workers' rights will be protected. This will cement our position as a world-class place both to work and to start and grow a business.

Conducting the consultation exercise

Activity during the consultation period

Retained EU Employment Law Consultation

The government launched a consultation on retained EU employment law on 12 May 2023. It was open for 8 weeks and closed on 7 July 2023.

In total, there were 1916 formal responses to the consultation. Not everyone responded to all questions, instead some focused their responses on individual areas of policy reform. The largest number of formal responses to the consultation came from individual employees, 692 (36%), with the second largest number of responses coming from the general public, 578 (30%). 105 (5%) of responses identified as 'other', while 92 (5%) of responses were from SMEs. The remaining responses came from micro businesses, and HR professionals, large businesses, legal professionals, charities, entrepreneurs, trade unions, start-ups, trade bodies, devolved administrations/local government, membership bodies, public bodies and think tanks. A detailed breakdown of responses by stakeholder category can be found in Annex A.

During the consultation, an extensive engagement exercise was carried out consisting of meetings and roundtable discussions with a range of organisations including business representatives, unions, legal bodies, devolved governments, other government departments, and consultancies, representing diverse sectors and locations across the UK.

Calculating holiday entitlement for part-year and irregular hour workers Consultation

The government launched a consultation on calculating holiday entitlement for part-year and irregular hours workers on 12 January 2023. It was open for 8 weeks and closed on 9 March 2023.

In total, there were 1016 formal responses to the consultation. The majority of responses were from employers, 850 (84%). Other responses were from employees, 142 (14%) and employer and employee representatives, 24 (2%).

Among the employers responding to the consultation, 330 (32%) were from the private sector and 242 (23%) were from the public sector. The other main sub-groups were from the charity or voluntary sector.

Executive summary of consultation responses

Record keeping requirements under the Working Time Regulations

The Retained EU Employment Law consultation sought views on clarifying the current record keeping requirements of the Working Time Regulations by removing the risk and uncertainty created by the 2019 CJEU *Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE* judgment (henceforth referred to as the CCOO judgment).

The CCOO judgment held that objective, reliable and accessible records need to be kept in relation to the right to minimum daily rest breaks, weekly rest periods, and the limit on the maximum weekly working time. In practice, this presents a risk that employers would need to comply with increased record keeping requirements by recording the duration of time worked each day by each worker, rather than simply needing to ensure 'adequate' proportionate records in the context of a given workplace and particular working patterns. Therefore, the government sought views on a proposal to clarify that an employer need not record each worker's daily working hours to comply with the record keeping requirements.

The consultation asked 8 questions in relation to record keeping requirements of the Working Time Regulations. The first 3 questions were general questions to understand policy agreement and the importance of record keeping. The next 3 questions were for employers, to understand why and how they currently keep records in relation to the Working Time Regulation requirements. The final two questions were for workers, to understand why an employer may keep records of a worker's working time. Although a majority disagreed with the proposal to clarify that employers should not have to record the daily working hours of all their workers, this appears to represent a misconception that the policy intent was to reduce current record keeping requirements. However, the proposal was to remove the risk of a change in these requirements as a result of the CCOO judgment.

In contradiction to the answers to the first question, when asked for any suggestions for improvement, the key theme that emerged was 315 (54% of) respondents stating that they had a positive opinion of the Working Time Regulations or wanted no change to be made to the current record keeping requirements.

183 (64% of) employers or employer representatives responded that they keep records to specifically meet the requirements set out in the Working Time Regulations. This group of employers is likely to be affected by the risk posed by the CCOO judgment that record keeping requirements would increase, as they have based record keeping around compliance with the current requirements.

120 (43% of) employers or employer representatives stated that they go beyond the requirements set out in the Working Time Regulations. The main reason for keeping more detailed records was client billing. Other themes included flexible working arrangements, overtime calculations, pay and performance management. In answer to another question, 234 (86% of) employers or employer representatives answered that they currently have a system in place to record the daily working hours of workers.

623 (79% of) workers or worker representatives stated that they are paid a salary or a fixed amount for each day, week, or month. As most workers are paid a salary or fixed amount, this shows records are likely to be kept for reasons beyond pay. For the final question, 560 (72% of) workers or worker representatives answered that their employer keeps records of their daily working hours.

Government response

The responses to this section of the consultation evidence a level of misunderstanding surrounding the record keeping requirements placed on employers by the Working Time Regulations. The government also understands the need to clarify current standards and protect workers' rights.

We will therefore remove the effects of the CCOO judgment, which will remove the risk that current record keeping requirements change for businesses. Employers will still need to keep adequate records to demonstrate compliance with the Working Time Regulations, as is currently prescribed in legislation. The CCOO judgment did not give workers any new substantive rights and therefore, workers will not lose any workers' rights with the introduction of the removal of the effects of that case. It has never been the government's intention to remove the protections provided to workers by the Working Time Regulations, the proposal intends to remove the risk of increased requirements on businesses to keep records that were disproportionate to the cost, administrative burden and the effect on workers.

Holiday Pay and Entitlement

The Retained EU Employment Law consultation sought views on two proposals: the first was on creating a single annual leave entitlement of 5.6 weeks and the second was on introducing 'rolled-up' holiday pay¹. The first proposal sought views on creating a single statutory leave entitlement without reducing overall entitlement, changes to the rate of holiday pay, calculating leave in a worker's first year, and potential unintended consequences of removing Covid-19-related leave regulations. The second proposal asked for views on introducing 'rolled-up' holiday pay and the feasibility of implementing it in existing payroll systems, along with the 52-week reference period.

Of those who responded to the first proposal, a majority disagreed with the approach that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses. When asked about at what rate holiday pay should be calculated, 698 (70% of) respondents suggested 5.6 weeks of statutory annual leave at normal pay. 280 (49% of) employers and 510 (57% of) workers currently pay and receive 5.6 weeks of statutory annual leave at normal pay, respectively.

497 (57%) responded 'no' to whether it would be easier to calculate annual leave entitlement for workers in their first year of employment if they accrue their annual leave entitlement at the end of each pay period, although views depended on whether workers work irregular hours and their contractual arrangements. Lastly, there were split views on whether there would be any unintended consequences of removing the Working Time (Coronavirus) (Amendment) Regulations 2020 that allow workers to carry over up to 4 weeks of leave due to the effects of Covid-19, 393 (42%) answered yes to this question, whereas 375 (40%) answered no.

For the second proposal on rolled up holiday pay, 436 (45%) of respondents did not support the approach as they suggested it could lead to missed leave or reduced pay. Many of these respondents felt that it would not be suitable for typical workers, but some suggested that it would support those on irregular contractual arrangements. 486 (56%) of respondents did not know whether their existing payroll system would be able to calculate

¹ Rolled up holiday pay (RHP) is a model where a worker receives an enhancement (12.07% of pay) with every payslip to cover their holiday pay, as opposed to receiving holiday pay only when they take annual leave.

holiday pay using the rolled-up holiday pay calculation as well as the 52-week holiday pay reference period.

Calculating holiday entitlement for part-year and irregular hour workers

We also consulted in January-March on addressing the effect of the Harpur Trust judgment. In this first consultation, the government sought views on introducing a 52-week holiday entitlement reference period and related issues (like whether a reference period should be fixed or rolling) as well as calculating holiday entitlement for agency workers, using an accrual method that the sector is already familiar with.

The consultation sought views on introducing a 52-week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52-week period.

This method relies on employers holding sufficient data to calculate the reference period. Of those who responded to the consultation, the majority, 610 (60%) reported that they held sufficient data to calculate a 52-week reference period. However, a large number of respondents who held this information expressed concern around the administrative burden this would create and stated the subsequent need for additional resources. Stakeholders also responded that a 52-week reference period would present issues for workers whose hours differed year on year and for workers in their first year of employment. A common theme among responses was employers find it difficult and complex to calculate holiday entitlement and that a simplified approach would help to make things fair and simple.

We also consulted on an accrual method of calculating holiday entitlement as 12.07% of hours worked in the previous month for workers in the first year of employment. Feedback from stakeholders has been that overall, employers preferred using the accrual method of calculating holiday entitlement, even beyond the worker's first year of employment. This accrual method was also widely used before the Harpur Trust judgment and better reflects what workers have actually worked in the current leave year, as annual leave is accrued based on time worked each pay period.

The government recognises that holiday entitlement is difficult to calculate for agency workers due to their complex contractual arrangements. As part of this consultation, we also wanted to better understand these arrangements and the best method for agency workers to calculate entitlement. The consultation sought views on agency workers' holiday entitlement being calculated at 12.07% of their hours worked at the end of each month whilst on assignment. 752 (74%) respondents supported this. However, whilst respondents were generally supportive, there was a strong sentiment that this should be aligned to the workers' pay period, rather than monthly, making the process less burdensome. This is due to differing pay periods, for example, weekly or fortnightly pay.

The majority of respondents, 844 (83%) agreed that accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment, where no data for a 52-week reference period would be available. As part of our more recent consultation on Retained EU Employment Law we recognised that some employers may choose to provide their workers annual leave entitlement more frequently than monthly, for example if they pay their workers weekly or daily.

Government response

The government will not at this time be introducing a single annual leave entitlement as it is clear from the responses that this would only be beneficial if we have a single rate of holiday pay. Instead, we will maintain the two distinct 'pots' of annual leave and the two existing rates of holiday pay so that workers continue to receive 4 weeks at normal rate of pay and 1.6 weeks at basic rate of pay. As the Working Time Regulations 1998 do not address what is considered normal remuneration and nor is this settled in the growing body of European case law, we will legislate to clarify this in order to retain the two rates of holiday pay. This will allow employers to continue with their current payroll systems whilst providing clarity on what elements form part of normal remuneration. This will also allow us to assess the impacts of the reforms we are looking to make and allow us to consider more fundamental reforms to the rate of holiday pay.

The government proposed to introduce rolled-up holiday pay as an option for all workers. Despite the mixed response we have received through the consultation there are still clear benefits to business and workers in introducing this system. The main benefits of rolled-up holiday pay identified were in relation to irregular hours and part-year workers where this would significantly reduce the administrative burden to business of calculating holiday pay for these workers. There seems to be little benefit of rolled-up holiday pay for full time or full year workers. The government will therefore introduce RHP for irregular hours workers and part-year workers, which would include some agency workers.

The government recognises the concerns raised with using rolled up holiday pay, especially that it may disincentivise workers from taking leave. However, we consider the existing safeguards proportionate in addressing these concerns.

The government will also legislate to introduce an accrual method to calculate entitlement at 12.07% of hours worked in a pay period for irregular hour workers and part-year workers in the first year of employment and beyond. Other workers will continue to accrue annual leave in their first year of employment as they do now by receiving 1/12th of the statutory entitlement on the first day of each month and to pro-rate it thereafter. These reforms address the issues that the holiday entitlement consultation was seeking to correct with the 52-week reference period, so we are not taking this or the linked proposals forward.

We are also restating various pieces of retained EU case law that we consider necessary to retain workers' overall level of protection and entitlement in relation to carry over of annual leave when a worker is unable to take their leave due to being on maternity/family related leave or sick leave and introducing a method of accrual of annual leave for irregular hours and part-year workers when they have had other periods of maternity/family related leave or sick leave.

A summary of our response to each proposal is set out in table 9 on pages 32-34.

Transfer of Undertakings (Protection of Employment) Regulations

The consultation sought views on two proposals for reforming the TUPE regulations. The first proposal was that the flexibility for employers to consult directly with employees before a TUPE transfer should be extended to small businesses undertaking a transfer of any size (if there are no existing employee representatives in place).

The second proposal was that the flexibility to consult directly with employees should be extended to businesses of any size who are undertaking a small transfer of fewer than ten employees.

Of those who responded to the consultation, 180 (20%) agreed with the proposal to allow small businesses to consult directly with employees on TUPE transfer. Almost half of the small businesses who responded agreed with the proposal.

190 (22% of) respondents agreed with the second proposal to allow businesses of any size undertaking small transfers to consult directly with employees. Almost half of the small businesses who responded agreed with the proposal.

Trade unions expressed concerns that the proposals could weaken existing protections for workers. Some respondents expressed concerns that consulting directly with employees could make TUPE transfers more complex for businesses rather than less.

Those respondents who agreed with the proposals commented that they would give businesses more flexibility and make the process of TUPE transfers quicker.

Respondents were also asked about their experience of the TUPE regulations and for suggestions of other changes which could be made to the regulations. Several respondents felt that it should be easier for businesses to change the terms and conditions of their employees after a transfer has taken place. Others called for clarity about the application of TUPE to workers.

Government response

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

While we acknowledge some respondents' concerns about the changes adversely affecting the rights of employees involved in transfers and the quality of the consultation, our planned reforms will not change the existing requirement on businesses to consult employees on transfers. We are only proposing changes to the consultation process in instances where businesses do not have existing employee representatives to consult. Where employee representatives – including trade unions – are in place, employers will still be required to consult them.

Detailed information on responses

Reducing the administrative burden of the Working Time Regulations

The government proposed removing the uncertainty for employers about their record-keeping obligations after a 2019 judgment of the Court of Justice of the European Union (*Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*).

Questions 1-3: General Questions

Questions 1-3 sought views on the record keeping requirements of the Working Time Regulations. This included whether the government should legislate to clarify that employers do not need to record the daily working hours of workers, how important record keeping is, and what improvements could be made.

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
37	49	34	145	1043
3%	4%	3%	11%	80%

Table 1: Total count and percentage of responses to Q1

Question 1 sought views on whether the government should legislate to clarify that employers do not have to record the daily working hours of their workers. We received 1,309 responses to this question. 1,188 (91% of) respondents disagreed or strongly disagreed, 34 (3% of) respondents neither agreed nor disagreed, and 86 (7% of) respondents agreed or strongly agreed with the question. However, in most cases it appears this represents a misunderstanding as the primary concern of respondents was that the reforms would reduce current requirements rather than just avoid new ones. Furthermore, themes emerged among written respondents that they were concerned this would erode the record keeping requirements in place for other legislation such as the National Minimum Wage legislation or specific record keeping requirements to ensure the health and safety of night workers or transport workers. These would be unaffected by the proposals. Several trade unions including the TUC commented that “this proposal risks sending a strong signal that record keeping is unimportant.” Of those who responded, 964 (74%) were workers, 250 (19%) were employers, 57 (4%) were representing employer’s or employee’s interests, and 37 (3%) were in other categories.

Very Important	Important	Neither important nor unimportant	Unimportant	Don't know
1086	154	27	13	12
84%	12%	2%	1%	1%

Table 2: Total count and percentage of responses to Q2

Question 2 asked how important record keeping under the Working Time Regulations is to either enforce rights or prevent or defend disputes. We received 1292 responses to this question and 1240 (96% of) respondents felt that record keeping was important or very important, only 13 (1% of) respondents believed that record keeping was unimportant, and all other respondents felt it was neither important nor unimportant or did not know.

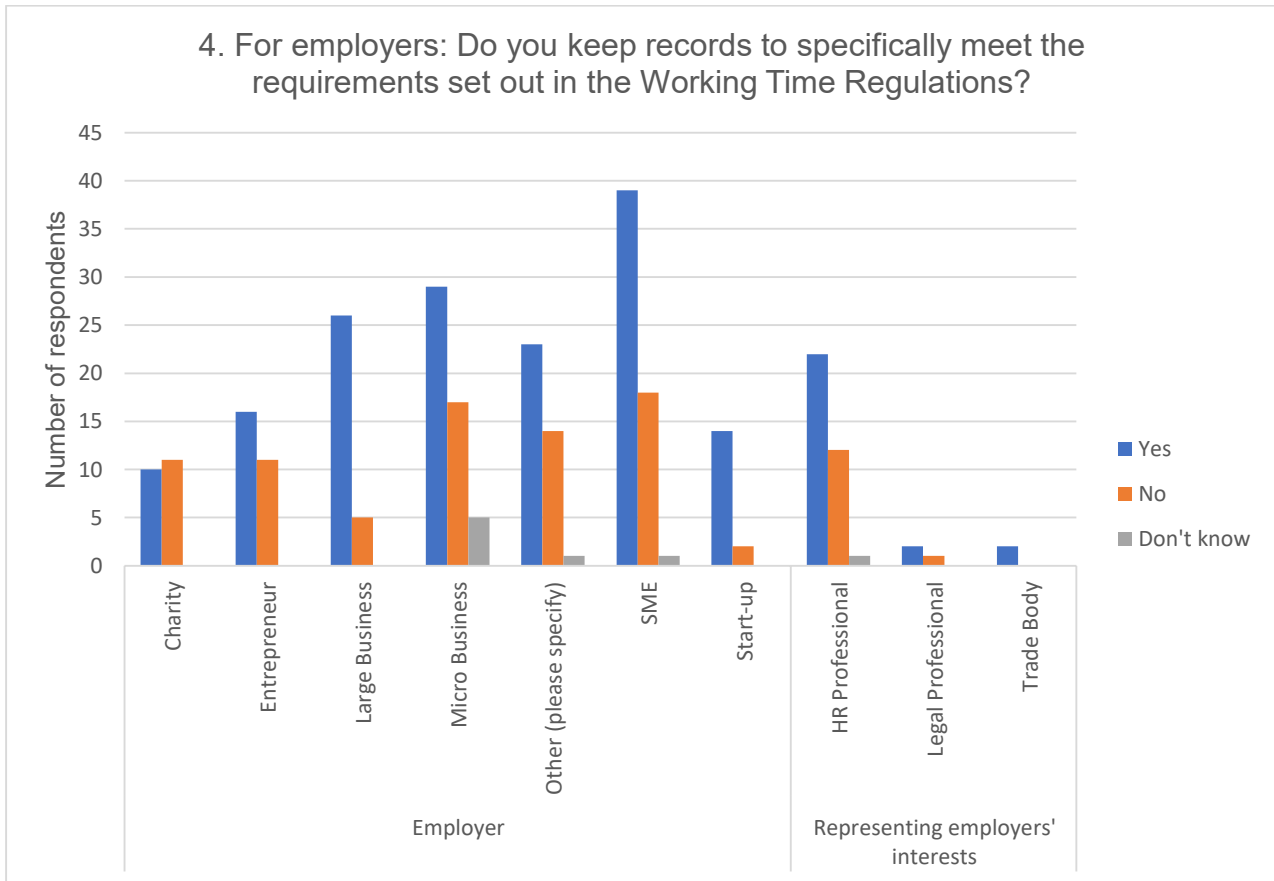
Of those who provided additional information, 207 (16% of) respondents felt that record keeping was important for gathering evidence for a dispute and 17 (1%) felt that record keeping was important for the purpose of holding employers accountable for duty of care. 118 (9% of) respondents felt that a main purpose of record keeping was to calculate pay, National Minimum Wage compliance, or health and safety legislation compliance.

Question 3 asked for respondents to detail their experience with record keeping under the Working Time Regulations and requested views on how this could be improved. We received 585 responses to this question, all of which were qualitative responses from which we have drawn a number of themes. 325 (54% of) respondents submitted a response that was positive about the current record keeping requirements and/or wanted no change to be made to the current record keep requirements. 58 (10% of) respondents provided suggestions which included improving enforcement and having a situational approach to determine whether an employer needs to record the daily working hours of their workers. 49 (9% of) respondents commented that recording was built into their payroll or other systems.

Questions 4-6: Questions for Employers

Questions 4-6 asked employers what records they keep for the purposes of the Working Time Regulations, including if they go further than current requirements and why.

Question 4 asked employers whether they keep records to specifically meet the requirements set out in the Working Time Regulations. We received 941 responses to this question, 243 (26% of) responses were from employers, 40 (4% of) responses were representatives of employers' interests, and 658 (70% of) responses were from non-employers. 183 (64% of) employers and employer representatives responded that records were kept specifically to meet the requirements set out in the Working Time Regulations, 91 (32%) responded that they did not, 8 (3%) responded that they did not know, and 1 gave no response. Of those employers who keep records, 61 provided additional information and 5 (8% of) these respondents stated that the additional reason was pay.



The above chart shows how each of the categories of employers and employer representatives responded to this question. Of employers, we received the most responses from SMEs, micro businesses and large businesses. 58 (24%) were SMEs, 51 (21%) were micro businesses and 31 (13%) were large businesses. Notably, 39 (67% of) SMEs and 14 (88% of) start-ups responded that they keep records to specifically meet these requirements. This category of respondent is most likely to be adversely affected by the risk of the CCOO judgment as they are less likely to have the resources to respond to significant legal change and the judgment represents a risk of increased record keeping requirements. 26 (84% of) large businesses also said that they keep records to comply with the Working Time Regulation requirements.

Question 5 asked if employers keep records that go beyond the requirements in the Working Time Regulations. We received 929 responses to this question, 241 (26%) were employers, 39 (6%) were representatives of employers' interests, and 649 (70%) were non-employers. 120 (43% of) employers and employer representatives said that they go beyond the existing record keeping requirements, 84 (30%) said they did not, and 74 (26%) did not know. Many employers who responded that they did keep records that go beyond the requirements gave additional information as to why they did this. The key themes were pay, client billing, overtime calculations, and monitoring employee wellbeing.

In question 4, most respondents stated that they keep records for the purpose of compliance with the Working Time Regulations, yet in question 5, most respondents stated that they kept additional records that went beyond the Working Time Regulations for other purposes.

Question 6 asked employers if they currently have a system in place to record the daily working hours of all staff. We received 928 responses to this question: 251 (27%) of these were employers, 22 (2%) were representatives of employers' interests, and 655 (71%) were non-employers.

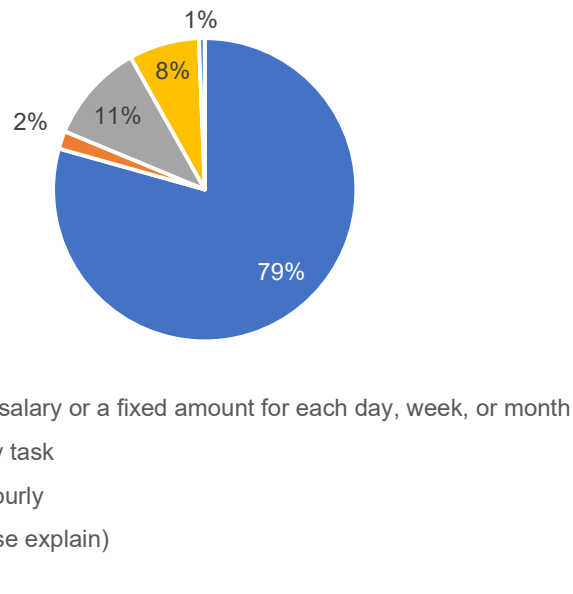
234 (86%) of employers and employer representatives answered that they did have a system in place to record the daily working hours of all their staff, 36 (13%) said they did not, and 2 (1%) said they did not know. Whilst 86% of employers stated that they keep records of daily hours worked, the Chartered Institute of Personal Development (CIPD) ran a survey of their members which found that only 57% of CIPD members have a system in place that records the daily hours of all their workers and that 15% of members keep records that go beyond the existing requirements set out in the regulations. Similarly, the legal body Trowers and Hamlins ran a study which concluded that only 48% of respondents had a system in place to record the daily working hours of staff. Micro businesses were least likely to have automated systems in place, relying instead on timesheets or spreadsheets.

Questions 7-8: Questions for workers

Questions 7 and 8 sought to ascertain information on the records kept for the purposes of the Working Time Regulations from the perspective of workers.

Question 7 asked workers to define how they were paid: hourly, by task, or a fixed amount. We received 1030 responses to this question, 777 (75%) were from workers, 8 (1%) were from worker representatives, and 244 (24%) were from non-workers. Of the workers and worker representatives that responded, 623 (79%) responded that they were paid a salary or fixed amount, 83 (11%) are paid hourly, 15 (2%) were paid by task, 5 (1%) didn't know, and 59 (8%) were paid in another way. The breakdown of these responses can be seen below.

Are you: paid hourly; paid by task; or paid a salary or fixed amount, for example for each day, week, or month, regardless of the hours you work?



Breakdown of worker responses to Q7

Question 8 asked workers to state whether their employer keeps records of their daily working hours.

Yes	No	Don't know
560	170	71
70%	21%	9%

Table 3: Total count and percentage of responses to Q8

We received 1005 responses to this question. 795 responses were from workers, 6 were from worker representatives, and 204 were from non-workers. Of the workers and worker representatives who responded, 560 (70%) said their employer did record their daily working hours, 170 (21%) said they did not, and 71 (9%) said they did not know. Workers comments demonstrated that most non-automated systems require workers to take administrative responsibility of recording their daily working hours where these records are required by businesses. Key themes workers gave for the reasons that their employer kept records were performance management, flexible working arrangements, overtime calculation, and client billing. This aligns with the reasons employers gave for keeping records.

Government response

Currently, Regulation 9 of the Working Time Regulations requires that employers must, among other things, keep adequate records to demonstrate compliance with:

- The maximum weekly working time
- Length of night work
- Health assessments and transfers of night workers to day work

However, the 2019 judgment of the Court of Justice of the European Union (*Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*) presents a risk that employers would need to comply with increased record keeping requirements by recording all daily working hours of all workers.

The government believes that this is disproportionate, particularly while the economy is recovering from the impact of the Covid-19 pandemic and the impacts of war in Ukraine. This case law does not give workers new substantive rights, and we believe in many cases such an obligation on employers to record the duration of time worked each day by each worker would be damaging to relationships between employers and their workers.

The government therefore intends to remove the uncertainty and the potential high cost of implementing a system of recording working hours and provide legal clarity on the record-keeping requirements in the Working Time Regulations.

We will clarify that businesses do not have to keep a record of all daily working hours of all their workers for the purposes of the Working Time Regulations if they are able to demonstrate compliance without doing so. An employer will still be obligated to adhere to current requirements to keep records which are adequate to show whether the employer has complied with the Working Time Regulations.

We support the public response that record keeping is important and recognise that the priority for businesses is maintaining continuity in the way that businesses keep records for the purpose of the Working Time Regulations. Similarly, we recognise the priority for workers is to maintain current protections. Therefore, it is important that businesses demonstrate compliance in a proportionate way so that workers can enjoy the protections from the Working Time Regulations, but also so that we do not create additional burdens for businesses. For this reason, we will clarify that employers may create, maintain and keep these records in such manner and format as the employer reasonably thinks fit.

The Working Time Regulations provide special protections for young workers and night workers and work alongside record keeping requirements such as in the National Minimum Wage legislation to protect vulnerable workers. The government is clear that all record keeping requirements put in place by other legislation will be untouched by the proposal and employers will remain bound by the record keeping requirements both for the purposes of the Working Time Regulations and any other legislation.

The government is committed to ensuring guidance for employers and workers on record keeping requirements is fit for purpose. We have committed to re-publishing guidance covering the Working Time Regulations and this will be published alongside the commencement of changes to Regulation 9 of the Working Time Regulations.

Holiday Pay and Entitlement Reform

Proposal 1: Create a single annual leave entitlement of 5.6 weeks

The government proposed to create one pot of annual leave entitlement for all workers in Great Britain. Now that we have left the EU, we can legislate to combine the 4 weeks and 1.6 weeks of leave conferred in the Regulations into a single leave entitlement governed by one set of rules. We proposed to replace regulations 13 and 13A with a new regulation to create a new single statutory annual leave entitlement, which will set out the minimum rate that holiday pay should be paid at. Under this proposal, the total statutory annual leave entitlement for workers would not change. Workers would continue to be entitled to 5.6 weeks of paid statutory annual leave.

Question 9

Question 9 sought views on whether creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses.

Information on response

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No response
68	88	145	199	409	25
7%	9%	16%	21%	44%	3%

Table 4: Total count and percentage of responses to Q9

We received 934 responses to this question. 68 (7% of) respondents strongly agreed with this question, 88 (9% of) respondents agreed, 199 (21% of) respondents disagreed, and 409 (44% of) respondents strongly disagreed with the question that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce the administrative burden on businesses. 145 (16% of) respondents neither agreed or disagreed and 25 (3%) did not answer the question.

Out of 934 respondents, 673 (72%) were employees, 191 (20%) were employers, and 36 (4%) were employer and employee representatives 34 (4%) respondents were undefined. 443 (47% of) respondents gave further information within their response.

Respondents were mostly aligned that creating a single statutory leave entitlement would not make it easier to calculate holiday pay and reduce administrative burden on businesses. Of those respondents that gave further information in their response, a few themes emerged. 66 (16%) were content with the current provision and a further 33 (8% of) respondents felt that the current administration of calculating holiday entitlement was not burdensome. Whereas 79 (19%) raised concern over the applied rate of pay and that it could lead to a potential reduced entitlement, and 22 (5%) highlighted their concern for workers' rights. Lastly, 17 (4% of) respondents were in favour of normal rate of pay instead of basic pay and increasing the minimum statutory entitlement of holiday entitlement.

Of those who were employers, 118 (63%) disagreed with creating a single statutory leave entitlement and this did not vary greatly depending on organisation size.

Of those who were representing employee and employer interests, there were two key themes from respondents. Either this proposal will have little practical impact or benefit on the great majority of employers or for employees, or it would be welcomed but only if workers will not see a single statutory leave entitlement based on basic pay. One union stated that “there should only be a single ‘pot’ of statutory leave entitlement if holiday pay is paid at ‘normal rate’ as is currently the position in respect of the 4 weeks’ ‘EU leave’, which includes basic pay, commission, bonuses, and some types of overtime”.

Holiday Pay Rate

Questions 10-12

Questions 10-12 sought views on changes to the rate of holiday pay. It sought evidence on the current rate of holiday pay and views on what it should be in the future.

Information on response

5.6 weeks of statutory annual leave at normal pay	5.6 weeks of statutory annual leave at basic pay	Don't know	Other (please explain)	No response
698	68	21	168	47
70%	7%	2%	17%	5%

Table 5: Total count and percentage of responses to Q12

We received 577, 899 and 1002 responses to questions 10,11 and 12 respectively.

Questions 10 and 11 request information on what current rate employers and workers pay and receive holiday pay. For employers, 279 (49% of) respondents offer 5.6 weeks of statutory annual leave at normal pay (including certain types of overtime, commission, and bonuses), whereas 41 (7% of) respondents offer 4 weeks of statutory annual leave at normal pay and 1.6 weeks of statutory annual leave at basic pay. 256 (44% of) respondents didn't know, had an alternative rate or did not respond. For workers, 510 (57% of) respondents receive 5.6 weeks of statutory annual leave at normal pay (including certain types of overtime, commission, and bonuses), whereas 87 (10% of) respondents receive 4 weeks of statutory annual leave at normal pay and 1.6 weeks of statutory annual leave at basic pay. 302 (34% of) respondents didn't know, had an alternative rate or did not respond

Question 12 sought views on what rate respondents think holiday pay should be paid at. 698 (70% of) respondents proposed 5.6 weeks of statutory annual leave at normal pay, whereas 68 (7% of) respondents would prefer 5.6 weeks of statutory annual leave at basic pay. 236 (24% of) respondents didn't know, had an alternative view, for example, keeping the current rate of pay or did not respond

There were two emerging themes from the responses. Most respondents felt 5.6 weeks of statutory annual leave at normal pay would be easier to calculate and would not negatively impact those who take annual leave as many businesses already pay the entire 5.6 weeks of leave at a worker's normal rate of pay. Whereas another group were keen to highlight that changing legislation would result in unnecessary burden and cost to businesses.

There was little variation in views between employees and employers, as both were mostly in favour of 5.6 weeks of statutory annual leave at normal pay over basic pay, but some of those that responded with further information requested guidance on the specifics on how this would work in practice. One HR professional requested further in-depth consultation on the legislative changes to avoid a high level of non-compliance. One large business suggested that “given the fast-evolving nature of employee remuneration packages, the adoption of the EU’s definition, which goes beyond that of the UK’s basic pay rate, feels fair and equitable and ensures that UK businesses continue to remain employers of choice”.

We also received several responses that stated that they were happy with current provisions, and that changing them may result in unnecessary burdens to businesses if the government does not set out clear guidance and/or legislation on classifying normal working hours.

Government response to questions 9-12 (Single leave entitlement and rate of holiday pay)

We understand that the current distinctions between the statutory leave entitlements in regulations 13 and 13A can cause confusion for both workers and employers. Employers are unsure how to calculate holiday pay for the different leave entitlements and which leave entitlement should accrue or be taken first. Confusion also arises from the fact that the two entitlements are required to be paid at different rates of pay: the 4 weeks entitlement deriving from regulation 13 is required to be paid at a worker’s normal remuneration while the 1.6 weeks entitlement from regulation 13A is currently required to be paid at a worker’s basic remuneration.

To solve this confusion, the government proposed creating one pot of annual leave entitlement for all workers in Great Britain by replacing regulations 13 and 13A. Under this proposal, there would be a new regulation to create the new single statutory annual leave entitlement. This new regulation would also set out a minimum rate that holiday pay should be paid at, though it should be noted this would only be beneficial if there was also a single rate of pay. Under a single entitlement workers would continue to be entitled to 5.6 weeks of statutory annual leave.

However, the government has decided that it will not at this time be introducing a single annual leave entitlement with a single rate of pay. Instead, we will maintain the two distinct pots of annual leave and the two existing rates of holiday pay. As the Working Time Regulations do not set out what is considered normal remuneration as established by European case law, we need to legislate to define this in order to retain the two rates of pay.

We have reviewed the case law in this area and considered feedback from our stakeholder engagement. Based on this, we will legislate to require that the following types of payment are included when calculating the normal rate of pay:

- Payments, including commission 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 payments, which have been regularly paid to a worker in the 52 weeks preceding the calculation.

This will allow employers to continue with their current payroll systems whilst providing clarity on what elements form part of normal remuneration. This will also allow us to assess the take-up of rolled up holiday pay and consider more fundamental reforms to the rate of holiday pay.

Calculating leave in a worker’s first year of employment

Question 13

Question 13 sought views on changes to calculating leave in a worker’s first year of employment including whether it would be easier to calculate leave entitlement in the first year of employment if the worker accrued their annual leave entitlement at the end of each pay period.

Information on response

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don’t know
35	80	240	210	287	13
4%	9%	28%	24%	33%	2%

Table 6: Total count and percentage of responses to Q13

We received 862 responses to this question. 35 (4%) responded ‘strongly agree’ to this question, 80 (9%) responded ‘agree’, 210 (24%) responded ‘disagree’, and 287 (33%) responded ‘strongly disagree’ with the question that it would be easier to calculate annual leave entitlement for workers in their first year of employment if they accrue their annual leave entitlement at the end of each pay period. 253 (30% of) respondents neither agreed or disagreed or answered, ‘don’t know’.

Out of 865 respondents, 615 (71%) were employees, 186 (22%) were employers, and 36 (4%) were employer and employee representatives. 314 (36%) respondents gave further information within their responses, where a few themes emerged.

Several respondents who answered that they were supportive of the suggested policy or were content with current provisions could see benefits of the proposed calculation for entitlement but were concerned about the weakening of workers’ holiday entitlement. Many respondents also highlighted that the ‘first year of entitlement’ is not reflective of workers who are not full time, permanent employees. Conversely, a few respondents suggested that this proposed regulation would support irregular hour workers and bring them in line with what happens in practice.

Government response

The 52-week reference period for entitlement assumes that a worker has been in employment for at least 52 weeks. However, there would need to be a method for workers in the first 12 months of employment whilst a reference period builds-up. Under regulation 15A of the Working Time Regulations, workers in the first 12 months of a job receive 1/12th of their annual holiday entitlement on the first day of each month. This is

straightforward for workers with fixed hours or working patterns as their annual leave is usually expressed in weeks or days.

The government proposes a similar accrual approach as the one in regulation 15A that could be used for workers with irregular hours, and as part of this consultation we previously said that holiday entitlement would need to be calculated at the end of each month based on actual hours worked in that month to be proportionate to the time worked e.g. hours worked in previous month x 12.07%= monthly statutory entitlement in hours. However, considering this further, we recognised that some employers may choose to provide their workers’ annual leave entitlement more frequently than monthly, for example if they pay their workers weekly or daily. The government wants to give employers the flexibility to provide annual leave entitlement when they pay their workers. Based on this we think entitlement for irregular hours workers and part year workers should be accrued at 12.07% of hours worked in each pay period, whatever that may be for each employer.

The government will therefore legislate to introduce an accrual method to calculate entitlement at 12.07% of hours worked in a pay period for irregular hours workers and part-year workers in the first year of employment and beyond. Other workers will continue to accrue annual leave in their first year in line with regulation 15A (i.e. receiving 1/12th of their statutory entitlement on the first day of each month).

As with other elements of holiday pay and entitlement, employers may choose to provide more generous contractual terms and give workers a greater annual leave entitlement up front.

Removing the Working Time Coronavirus Regulations 2020

Question 14

Question 14 sought views on whether there would be any unintended consequences of removing the Working Time (Coronavirus) (Amendment) Regulations 2020 which allowed workers to carry over up to 4 weeks of leave due to the effects of Covid-19

Information on response

Yes	No	Don't know	No response
393	375	125	43
42%	40%	13%	5%

Table 7: Total count and percentage of responses to Q14

We received 936 responses to this question. 393 (42% of) respondents answered yes to this question, 375 (40%) responded no, and 168 (18%) did not know or did not provide a response.

There were split views within the responses. 301 (32% of) employees felt that there would be unintended consequences of removing the Working Time (Coronavirus) (Amendment) Regulations 2020, whereas 119 (13% of) employers mostly responded ‘no’ to any unintended consequences. Respondents that were representing employers’ or employees’ interests mostly responded no to this answer or gave no answer to this question.

Of the respondents that stated that there would be unintended consequences, a few themes emerged.

Firstly, 46 (26% of) respondents were concerned about employees losing accrued leave that they are entitled to, and 34 (19% of) respondents stated that Covid-19 related sickness is still an issue, including long-Covid, therefore removing the regulations would have negative implications on those workers who are still affected. Additionally, employers wanted reassurance that both workers and employers are given enough notice of any changes to these regulations in order to allow workers to take leave in a way that does not disrupt the employer's business. Some employers also flagged they may struggle to afford the cost of paying out large numbers of days of leave which have been accrued but remain undertaken, one consultancy recommended that a ramp-down period should be considered.

Government response

The Working Time (Coronavirus) (Amendment) Regulations 2020 were introduced in March 2020 as emergency temporary legislation to prevent workers from losing annual leave entitlement if they were unable to take it due to the effects of coronavirus. They amended the Working Time Regulations to allow workers to carry over the 4 weeks of regulation leave into the following two leave years if it was not reasonably practicable for a worker to take this leave in the year to which it related. As we move on from the pandemic, we will be removing these regulations as they are no longer needed.

Therefore, the right to carry over leave under regulation 13(10) and 13(11) will be removed, so that the position reverts to that which was in place immediately before the amendments. This will mean that from 1 January 2024 workers can no longer accrue Covid-19 carryover leave, however we recognise that workers may still have leave to use, so workers will still be able to use all leave accrued prior to 1 January 2024 on or before 31st March 2024. Workers will still be able to carry over 1.6 weeks of leave into the next leave year in relation to regulation 13A.

There will also be a provision for those workers whose employment terminates on or before the 31st March 2024 so that they can claim any pay in lieu for any remaining entitlement that they were unable to use due to the effect of coronavirus.

Proposal 2: Introducing 'Rolled-Up' Holiday Pay

The government is proposing to introduce 'rolled-up' holiday pay as an option for all workers. Rolled-up holiday pay is a system where a worker receives an additional amount or enhancement with every payslip to cover their holiday pay, as opposed to receiving holiday pay only when they take annual leave. This proposal would give employers a choice between using the existing 52-week holiday pay reference period and rolled-up holiday pay to calculate holiday pay for their workers with irregular hours.

Questions 15-16

Questions 15-16 sought views on whether 'rolled-up' holiday pay should be introduced and the feasibility for existing payroll systems of introducing rolled-up holiday pay as well as the 52-week reference period.

Information on response

Yes, rolled-up holiday pay should be introduced as an option for employers in relation to all workers	No, rolled-up holiday pay should not be introduced	Don't know	Other (please explain)	No response
112	436	232	157	32
12%	45%	24%	16%	3%

Table 8: Total count and percentage of responses to Q15

We received 969 and 875 responses to questions 15 and 16, respectively.

Question 15 sought to understand whether respondents would like rolled-up holiday pay to be introduced. We had 199 (21% of) responses from employers, of which 34 (4%) agreed that rolled-up holiday pay should be introduced as an option for employers in relation to all workers. 85 (9% of) employers disagreed and suggested rolled-up holiday pay should not be introduced. 80 (9% of) employers didn't know or had an alternative response. For workers, we had 698 (72% of) responses, of which 60 (6%) agreed that rolled-up holiday pay should be introduced as an option for employers in relation to all workers. 322 (33% of) workers disagreed and suggested rolled-up holiday pay should not be introduced. 316 (45% of) workers didn't know or had an alternative response.

Question 16 sought to understand whether respondents' existing payroll systems would be able to calculate 'rolled-up' holiday pay and the 52-week holiday pay reference period. We had 875 responses to this question, with 151 (17% of) respondents answering 'yes', 207 (24%) answering 'no', 486 (55%) answering 'don't know', and 31 (4%) answering 'other'.

There were a few emerging themes from the responses to question 15 and 16. Most respondents were not in favour of introducing rolled up holiday pay and did not know whether their existing payroll systems would be able to calculate the proposed approach. Of the 175 (16% of) respondents that answered 'Other' to whether holiday pay should be introduced, some referenced that they were confused over what rolled-up holiday pay is. There were a few respondents that suggested that it would not be suitable for typical workers, but the main concerns from respondents was the potential reduction in holiday entitlement. For question 16, not many people answered this question, and 71 (8% of) respondents gave further information on their responses. We noted that there were a few concerns among both employers and employees about it being costly and complicated to implement using current payroll systems. Some respondents noted that it would be easy to implement rolled-up holiday pay, but the 52-week reference period would be more challenging to calculate.

Government response

Much of the complexity of holiday pay comes from aligning it to the pay a worker would have received if they had been at work instead of on holiday. Allowing holiday pay to be paid as an enhancement to a worker's pay at the time that the worker performed work, instead of when they are on holiday, would ensure that the worker's holiday pay was as closely aligned to the pay that they would have received as possible.

This is known as rolled-up holiday pay, which is currently unlawful following a 2006 ECJ ruling, due to concerns that workers may not be incentivised to take leave as they could earn more holiday pay by staying at work. We understand, however, that rolled up holiday pay is already used in a lot of sectors due to the simplicity it offers to calculate holiday pay for irregular hours workers.

As part of the consultation the government proposed to introduce rolled-up holiday pay as an option for all workers. However, in response to the stakeholder feedback we have had, the main benefits of RHP identified were in relation to irregular-hours and part-year workers. With workers with regular hours or full year workers there seems to be little benefit to RHP, but a higher risk of disincentivising leave, and the potential for additional complexity for employers. The government will therefore introduce RHP for irregular hours workers and part-year workers only.

The government notes the concern that allowing rolled up holiday pay may disincentivise workers from taking leave. We consider, however, that existing safeguards are proportionate in addressing these concerns. For example, employers are already required to provide an opportunity for workers to take leave and we have heard through our stakeholder engagement that this is taking place. We also have safeguards in relation to the 48-hour working week, where a worker cannot work more than 48 hours a week on average, (normally averaged over 17 weeks) unless they choose to opt out.

Additional reforms

Method for calculating Rolled up holiday pay if you have two rates of Holiday Pay

To avoid businesses having to apply the RHP calculation to two separate rates of holiday pay, the government will legislate to ensure that all employers that choose to use rolled-holiday pay calculate it based on a worker's total earnings in a pay period. We think this would avoid needless complexity for employers, as for most workers their basic pay is their normal rate of remuneration.

Calculating holiday entitlement for part-year and irregular hour workers

Proposal 1: Introducing a 52-week holiday entitlement reference period

The government proposed to introduce a 52-week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52-week period. This would bring the holiday pay and entitlement of part-year workers in line with the entitlements received by part-time workers who work the same number of hours across the year.

Question 16

Question 16 sought views on whether the information employers currently collect to calculate holiday pay would be sufficient to calculate holiday entitlement using a 52-week reference period.

Information on response

We received 910 responses to this question. 249 (27% of) respondents strongly agreed with this question, 357 (39%) responded agreed, 84 (9%) responded disagreed, and 109 (12%) responded strongly disagreed with the question on whether the information employers currently collect to calculate holiday pay would be sufficient to calculate holiday entitlement using a 52-week reference period. The other 111 (13% of) respondents neither agreed nor disagreed or didn't know.

Out of 910 respondents, 65 (7%) were employees, 834 (92%) were employers, and 11 (1%) were employer and employee representatives.

Most stakeholders reported that they currently calculate holiday entitlement using a 52-week reference period since the *Harpur v Brazel* judgment. They highlighted that they previously used a 12.07% accrual method to calculate entitlement which they considered to be less burdensome and easier to administer.

Of the 815 employers who responded to the question, 550 (67%) felt the information they collected would be sufficient, with 168 (21% of) employers who responded to the question answering that their information was insufficient, reporting that an accrual method aligned to workers pay period would be the preferred method. This was also a common theme among many of the respondents who agreed they held sufficient information. This was largely due to the administration and resource involved in the process. There was little variation among differing business sizes answering that their information was sufficient, with 50 out of 74 (68% of) micro businesses, 257 out of 369 (70% of) SMEs and 243 out of 372 (65%) agreeing overall.

A clear theme emerging from the respondents that gave further information was the 12.07% accrual method has been tried and tested and is the fairest method of calculating holiday entitlement. Some highlighted this would benefit workers with differing pay periods and help simplify the calculation for both employers and workers.

How to treat weeks without work in the reference period

Question 17

Question 17 sought views on whether including weeks without work in a holiday entitlement reference period would be the fairest way to calculate holiday entitlement for a worker with irregular hours and part-year workers.

Information on response

We received 1007 responses to this question. 470 (47% of) respondents strongly agreed with this question, 239 (24%) responded agreed, 67 (7%) responded disagreed, and 155 (15%) responded strongly disagreed with the question on whether including weeks without work in a holiday entitlement reference period would be the fairest way to calculate holiday entitlement for a worker with irregular hours and part-year workers. The other 76 (7% of) respondents neither agreed nor disagreed or didn't know.

Out of 1007 respondents, 138 (14%) were employees, 847 (85%) were employers and 22 (1%) were employer and employee representatives.

From the 709 (71% of) respondents who agreed overall, we heard that including weeks without work when calculating a 52-week reference period would create a level playing field and would be fair. Some said this would be less burdensome than excluding weeks from the calculation as this method would mean additional weeks would then need to be brought in to make up the full 52 weeks.

Much of the discussion from the 222 (22% of) respondents who disagreed overall with this proposal was around the additional cost this would create for businesses. This was highlighted by differing results depending on business size, for example, 295 of 378 (78% of) large businesses agreed including weeks without work in a holiday entitlement reference period would be the fairest way to calculate holiday entitlement compared to only 39 of 75 (52% of) micro businesses.

A few respondents highlighted this method would be unfair to part-time staff as they would receive a less favourable holiday entitlement due to working all year round.

Using a fixed or rolling reference period

Question 18

Question 18 sought views on whether a fixed holiday entitlement reference period would make it easier than a rolling reference period to calculate holiday entitlement for workers with irregular hours.

Information on response

We received 1000 responses to this question. 353 (35% of) respondents strongly agreed with this question, 263 (26%) responded agreed, 113 (11%) responded disagreed, and 114 (12%) responded strongly disagreed with the question on whether a fixed holiday entitlement reference period would make it easier than a rolling reference period to

calculate holiday entitlement for workers with irregular hours. The other 157 (16% of) respondents neither agreed nor disagreed or didn't know.

Out of 1000 respondents, 137 (14%) were employees, 843 (84%) were employers, and 20 (2%) were employer and employee representatives.

Of the 616 (61%) of the 1000 respondents who agreed overall that using a fixed reference period would make it easier to calculate holiday entitlement for workers with irregular hours, there was a consensus among most respondents this would be less burdensome than a rolling reference period and easier to administer. We heard this would be simpler for both employers and workers to understand how holiday entitlement was calculated and there would be less potential for error.

Some of the 227 (23%) who disagreed overall with the proposal responded that it would be difficult to use a fixed reference period for workers whose hours differ year on year and that more consideration would need to be given to this. A few respondents also raised the issue of workers in their first year of employment, where there was no data to review for a fixed reference period.

A common theme throughout was that workers want to be able to anticipate what their holiday entitlement will be and understand how this is calculated. 80 of 137 (58% of) workers responding to this question agreed overall that a fixed holiday entitlement reference period would make it easier than a rolling reference period to calculate holiday entitlement for workers with irregular hours.

Government response

This response relates to Q16-Q18

The government's proposal to introduce a 52-week reference period (Q16) sought consideration of how to treat weeks without work in the reference period (Q17) and whether to use a fixed or rolling reference period (Q18).

Much of the discussion in responses was around the 52-week reference period method being difficult to administer, burdensome to employers and complex for workers to understand.

We also consulted on an accrual method of calculating holiday entitlement as 12.07% of hours worked in each pay period for workers in the first year of employment as part of the more recent consultation on Retained EU employment law. Feedback from stakeholders has been that overall, employers preferred using the accrual method of calculating holiday entitlement, even beyond the worker's first year of employment. This accrual method was also widely used before the *Harpur Trust v Brazel* Supreme Court judgment and better reflects what workers have actually worked in the current leave year, as annual leave is accrued based on time worked each pay period.

Taking these views into consideration, the government will not take forward the proposal to introduce a 52-week reference period to calculate holiday entitlement. The government will instead legislate to introduce an accrual method to calculate entitlement at 12.07% of hours worked in a pay period for irregular hours workers and part-year workers in the first year of employment and beyond.

Holiday entitlement will be calculated at the end of each pay period rather than monthly (as the consultation suggested) to give flexibility to employers.

Other workers will continue to accrue annual leave in their first year of employment as they do now in line with regulation 15A (i.e., receiving 1/12th of their entitlement on the first day of each month, in the first year).

Consideration of how to treat weeks without work in the reference period (Q17) and whether to use a fixed or rolling reference period (Q18) would have been relevant if we had introduced a 52-week reference period for holiday entitlement. As we are not taking forward the proposal to introduce a 52-week reference period, a decision on this will not be needed.

Additional reforms

The following issues were raised as part of our stakeholder sessions which the government is looking to take forward. These further reforms will aim to provide support and clarity as part of the legislative changes we are looking to make in relation to holiday pay and entitlement.

Definition of Irregular Hour workers & Part-year workers

In relation to the introduction of the 12.07% accrual method for entitlement and for the purposes of rolled up holiday pay which will be limited to irregular hour workers and part-year workers, we will define in legislation what we mean by irregular hour and part-year workers. Stakeholders have requested that we are clearer on who this captures in relation to the effect of the Harpur v Brazel judgment.

Accruing annual leave when irregular hour workers have been on maternity/family-related leave or sick leave

To ensure irregular hour and part-year workers know how much leave has been accrued when they were on maternity/family-related leave (which will be defined as 'statutory leave') or sick leave, the government will legislate to introduce a 52-week reference period which would allow employers to look back and work out an average of hours worked across that period. Employers will need to include weeks not worked and not on statutory leave, so it is proportionate to the time actually worked. When calculating holiday pay an employer could use the current 52 weeks reference period for holiday pay however, weeks when a worker was not working should be excluded.

Calculation of holiday entitlement using a reference period in the first year of employment

Question 19

Question 19 sought views on whether accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment.

Information on responses

We received 1008 responses to this question. 533 (53% of) respondents strongly agreed with this question, 305 (30% of) responded agreed, 48 (5%) responded disagreed, and 44 (4%) responded strongly disagreed with the question of whether accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment. The other 78 (8% of) respondents neither agreed nor disagreed or didn't know.

Out of 1008 respondents, 139 (14%) were employees, 846 (84%) were employers, and 23 (2%) were employer and employee representatives.

Of the 838 (83%) expressing clear support for this proposal, stakeholders responded that this is the fairest way to calculate holiday entitlement in the first year of employment. Most of the respondents who provided further information in their response agreed this would be simple for workers to understand and easier to administer.

Of the 92 (9%) who disagreed overall, there was a strong preference to use a fixed pay period rather than the proposed monthly period, as this would be more effective, largely due to workers with irregular hours being paid with differing pay periods.

More broadly, we also heard that many employers think a reference period, aligned to a worker's pay period, should apply to all irregular hour workers, not just in the first year of employment.

Government response

The government will legislate to introduce an accrual method for calculating holiday entitlement for irregular hours and part-year workers in their first year of employment and beyond. Entitlement will be calculated as 12.07% of hours worked in a pay period, rather than monthly (as the consultation suggested) to give flexibility to employers. Other workers will continue to accrue leave at 1/12th of their entitlement on the first day of each month during their first year of employment.

Calculation of how much holiday is used by taking a particular day off

Question 20

Question 20 sought views on using a flat average working day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off.

Information on response

We received 1003 responses to this question. 300 (30% of) respondents strongly agreed with this question, 274 (27%) responded agreed, 142 (14%) responded disagreed, and 97 (10%) responded strongly disagreed with the question on using a flat average working day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off. The other 190 (19% of) respondents neither agreed nor disagreed or didn't know.

Out of 1003 respondents, 138 (14%) were employees, 846 (85%) were employers, and 19 (1%) were employer and employee representatives.

Of the 574 (57% of) respondents who agreed that using a flat average day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off, it was emphasised that this would be easier to administer for employers and would be a fairer approach to take.

Some employers argued this was not fair to the business as the worker may take leave for more hours than they usually work, and it should correlate more closely with the actual hours worked.

Employers from the education sector commented this would not be relevant to their staff who take annual leave during school closures.

Overall, 485 of 824 (59%) employers and 74 of 138 (54%) workers were both in favour of a flat average working day. Although some respondents mentioned that there could be an increased cost to the business, they also largely highlighted this would be the simplest process to administer.

Government response

This question would have been relevant if we had introduced a reference period for entitlement as there must be a way to calculate how much holiday a worker with irregular hours would use to take a particular day off. However, we will no longer need to consider this as part of the changes we are looking to make.

Calculating holiday entitlement for agency workers

Question 21-22

Questions 21-22 sought views on whether calculating agency workers' holiday entitlement as 12.07% of their hours worked at the end of each month whilst on assignment would make it easier to calculate their holiday entitlement and holiday pay.

Information on response

We received 952 responses to this question. 529 (56% of) respondents strongly agreed with this question, 216 (23%) responded agreed, 18 (2%) responded disagreed, and 9 (1%) responded strongly disagreed with the question on whether calculating agency workers' holiday entitlement as 12.07% of their hours worked at the end of each month whilst on assignment would make it easier to calculate their holiday entitlement and holiday pay. The other 180 (18% of) respondents neither agreed nor disagreed or didn't know.

Out of the 952 respondents, 132 (14%) were employees, 798 (84%) were employers, 22 (2%) were employer and employee representatives.

Of the 745 (78% of) respondents who agreed with the proposal, respondents highlighted practical benefits to introducing the measure which included creating consistency and transparency for both employers and workers. Many felt this would make calculating

holiday entitlement more straightforward, with only 27 (3%) disagreeing overall with the measure.

Respondents suggested using a reference period aligned to a workers' pay period, rather than monthly, would further simplify the process.

A common theme raised by stakeholders was that method of calculation should be applied more broadly to all part-year and irregular hour workers, not just agency staff.

Government response

The government will legislate to introduce an accrual method to calculate entitlement at 12.07% of hours worked in a pay period for irregular hours workers and part-year workers. Holiday entitlement will be calculated at the end of each pay period rather than monthly (as the consultation suggested) to give flexibility to employers. That accrual method will apply to an agency worker if the agency worker's arrangements fall within the meanings of both a "worker" (as already defined) and either an "irregular hours worker" or a "part-year worker", within the meaning of the new definitions that will be added to the Working Time Regulations. An agency worker who is a "worker" but is not an "irregular hours worker" or a "part-year worker", will continue to accrue leave at 1/12th of their entitlement on the first day of each month during their first year of employment.

Table 9 below shows each proposal by question and the next steps we are taking.

Consultation	Proposal	Next steps
Holiday Pay & Entitlement Reforms		
Holiday entitlement	Introduce 52-week holiday entitlement reference period.	We are not taking this proposal forward . It is no longer needed as the government is introducing an accrual method for calculating holiday entitlement for irregular hours and part-year workers. This will be the method of calculation in their first year of employment and beyond. Entitlement will be calculated as 12.07% of hours worked in a pay period. Other workers will continue to accrue leave at 1/12 th of their entitlement on the first day of each month during their first year of employment.
Holiday entitlement	How to treat weeks without work in a reference period.	This proposal is not relevant and is not being taken forward . It relates to the proposal for 52-week holiday entitlement reference period, which the government is not taking forward.
Holiday entitlement	Using a fixed or rolling reference period.	This proposal is not relevant and is not being taken forward . It relates to the proposal for 52-week holiday entitlement reference period, which the government is not taking forward.
Holiday entitlement	Calculating holiday entitlement using a reference period in the first year of employment.	We are not taking this proposal forward . Instead, the government is introducing an accrual method for calculating holiday entitlement for irregular hours workers and part-year workers. This will be the method of calculation in their first year of employment and beyond. Entitlement will be calculated as 12.07% of hours worked in a pay period. Other workers will continue to accrue leave at 1/12 th of their entitlement on the first day of each month during their first year of employment.
Holiday entitlement	Calculating how much holiday is used by taking a particular day off.	This is not relevant and is not being taken forward . The government is introducing an accrual method for calculating holiday entitlement as 12.07% of hours worked in a pay period for irregular hour and part-year workers.
Holiday entitlement	Calculating holiday entitlement for agency workers.	The government is taking this forward with a slight amendment . It is introducing an accrual method for calculating holiday entitlement for irregular hours workers and part year workers to be used in the first year and beyond, including, where applicable, agency workers. However, holiday

		entitlement will be calculated at the end of each pay period rather than monthly (as the consultation suggested) to give flexibility to employers.
REUL	Single annual leave entitlement	The government has decided that it will maintain the two existing rates of holiday pay so that workers continue to receive 4 weeks at their normal rate of pay and 1.6 weeks at their basic rate of pay. The government will therefore not be creating a single annual leave entitlement at this time but will consider this as part of any future reforms we do in this area.
REUL	Repeal Covid-19 carry-over regulations	The right to carry over leave under regulation 13(10) and 13(11) will be removed , so that the position reverts to that which was in place immediately before the amendments. Any leave accrued before 1 January 2024 will however be able to be used up until 31 March 2024.
REUL	Introduce rolled-up holiday pay	The government will introduce RHP for irregular hours workers and part-year workers only.
REUL	Method for calculating Rolled-up holiday pay if you have two rates of holiday pay	The government will legislate to ensure that all employers that choose to use rolled-holiday pay calculate it based on a worker's total earnings in a pay period.
REUL	Definition of Irregular Hour workers & Part-year workers	We will define in legislation what we mean by irregular hours workers and part-year workers. Stakeholders have requested that we are clearer on who this captures in relation to the effect of the Harpur v Brazel judgment.
REUL	Accruing annual leave when irregular hours workers and part-year workers go on maternity/family related leave or sick leave	The government will legislate to introduce a 52-week reference period which would allow employers to look back and work out an average of hours worked across that period.

Record Keeping		
REUL	Removing the uncertainty for employers about their record-keeping obligations	The government intends to remove the uncertainty and the potential high cost of implementing a system of recording working hours and provide legal clarity on the record-keeping requirements in the Working Time Regulations.
TUPE		
REUL	To change the consultation requirements in the TUPE regulations, to simplify the transfer process, while ensuring that workers' rights continue to be protected.	The government will proceed with the planned reforms to the TUPE consultation requirements. These reforms will allow small businesses (with fewer than 50 employees) and businesses of any size undertaking a small transfer (of fewer than 10 employees) to consult directly with their employees if there are no existing worker representatives in place.

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

In advance of a TUPE transfer, employers need to inform and consult with the affected workforce's existing representatives, or arrange elections for representatives if they are not already in place before the transfer takes place. Under Regulation 13A of the TUPE regulations, microbusinesses (with fewer than 10 employees) have the flexibility to consult directly with their employees where worker representatives are not already in place. The government proposed that the flexibility for employers to consult directly with employees is extended to small businesses (with fewer than 50 employees), and to all sizes of business where a transfer of fewer than 10 employees is proposed.

Businesses without existing representatives would be able to consult directly with employees if that were simpler and easier for the business, rather than arranging elections for affected employees to vote for new representatives. Direct consultation with employees would only be allowed if no existing employee representatives were in place. If employee representatives were already in place, then the employer would still be required to consult with them.

Questions 17-19

Questions 17-19 sought views on whether all small businesses (fewer than 50 employees) or businesses undertaking small transfers (fewer than 10 employees transferring) should be allowed to consult directly with their employees on TUPE transfers, if there are no employee representatives in place, rather than arranging elections for new employee representatives.

Question 17

Agree	Disagree	Neither agree nor disagree
180	700	2
20.4%	79.4%	0.2%

Table 10: Total count and percentage of responses to Q17

Question 17 asked for respondents' views on whether small businesses should be allowed to consult their employees directly on TUPE transfers. There were 882 responses to this question.

180 (20% of) respondents agreed with the proposal to allow small businesses to consult directly with their employees where no employee representatives are in place. 2 (0.2% of) respondents neither agreed nor disagreed and 700 (79% of) respondents disagreed with the proposal.

48% of small businesses who responded agreed with the proposal. 88% of trade bodies and business representative organisations agreed with the proposal.

Question 18

Agree	Disagree	Neither agree nor disagree
190	690	2
21.5%	78.2%	0.2%

Table 11: Total count and percentage of responses to Q18

Question 18 asked for respondents' views on whether businesses of any size undertaking small transfers should be allowed to consult directly with their employees on TUPE transfers. There were 881 responses to this question.

190 (22% of) respondents agreed with the proposal to allow small businesses to consult their employees directly where no employee representatives are in place. 2 (0.2% of) respondents neither agreed nor disagreed and 690 (78% of) respondents disagreed with the proposal.

47% of large businesses who responded agreed with the proposal. 89% of trade bodies and business representative organisations agreed with the proposal.

Question 19

Question 19 asked respondents to explain the impact that the changes outlined in questions 17 and 18 would have. There were 339 responses to this question. Those respondents who agreed with the proposals gave the view that the changes would allow the consultation process to start earlier, as there would be no need to facilitate an election process for representatives. Respondents also felt that the proposals will give businesses more flexibility and make the process of TUPE transfers easier. Some legal respondents commented that the proposals reflect what businesses are already doing, as many businesses already consult their employees on TUPE transfers directly where representatives are not in place.

Respondents who disagreed with the proposals generally did so due to concerns about the proposals undermining workers' rights or shifting the balance of power in TUPE transfers towards employers and away from employees. Several trade unions raised this concern.

Some respondents expressed concerns that consulting employees directly (as opposed to worker representatives) could make the process of TUPE transfers more complex for businesses, not less.

Some respondents were also concerned that the proposals could lead to different outcomes for individual employees from the same group of transferring employees, due to employees' varying abilities to negotiate with employers. These respondents felt that this could particularly disadvantage employees with protected characteristics.

A few respondents expressed concerns about the effects of the proposed TUPE reforms on Section 145B of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). Section 145B of the TULRCA prevents employers from making offers directly to employees – who are members of the employer's recognised trade union that is recognised by the employer or is seeking to be recognised – which would (if accepted) mean that their terms and conditions will no longer be determined by collective bargaining.

Government response

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

The government acknowledges some respondents' concerns about these changes adversely affecting the rights of employees involved in transfers and the quality of the consultation which takes place. However, our planned reforms will not change the existing requirement on businesses to consult on TUPE transfers. They will only change the consultation process for eligible employers where they do not have employee representatives in place to consult. Clear guidelines will remain in place for employers, regarding what they must consult employees on. Employers who fail to properly consult their employees about TUPE transfers could be taken to an employment tribunal. Microbusinesses (with fewer than 10 employees) can already inform and consult affected employees directly if there are no existing representatives in place.

In response to concerns that consulting directly with employees may make the TUPE transfer process more difficult for businesses, we would like to emphasise that the proposed reforms are permissive only. As stated in the consultation, businesses will still have the choice to elect and consult worker representatives, if that is their preference. The proposals only apply to small businesses and to businesses of any size undertaking very small transfers. In these scenarios, employers are more likely to have a more personal relationship with their employees, which may make consulting them directly – rather than electing new worker representatives – easier and quicker.

If employers consulted individual employees directly and offered more vulnerable groups differing outcomes (e.g. different terms and conditions of employment) then existing discrimination laws will apply in order to protect the affected employees. The government therefore does not agree that the reforms will lead to worse outcomes for more vulnerable workers with protected characteristics.

In response to concerns about the TULRCA, the government would like to reassure respondents that the reforms we are proposing will not affect how the TULRCA works. Employers will still be prohibited from undermining collective bargaining in breach of Section 145B of TULRCA.

Question 20

Question 20 asked respondents about their experience of the TUPE regulations and for suggestions of other changes which could be made to the regulations in the future. There were 312 responses to this question.

Several employees stated that they had direct experience of transferring to a new employer under the TUPE regulations and had a positive experience. Many of these respondents felt that the TUPE regulations provide important protections for workers and should not be reformed.

Many businesses and employers who have had direct experience of using the TUPE regulations agreed that the regulations provide important protections for workers and that

they should not be changed. However, some businesses commented that more clarity is required around the regulations.

Several Business Representative Organisations and trade bodies felt that it should be easier for businesses to change the terms and conditions of their employees after a transfer has taken place. Some trade unions on the other hand stated that they would be against such a change to the TUPE regulations.

Some legal stakeholders stated that they would welcome clarity around whether TUPE applies only to employees, or to employees and workers. Several trade unions called for TUPE to apply to both workers and employees.

Legal stakeholders also requested clarification around the impacts of the Govaerts case. The Govaerts case was a European Court of Justice case, which held that where an undertaking transfers to multiple transferees, contracts of employment can be split so that employees transfer to more than one transferee.

Government response

The government agrees that the TUPE regulations provide important protections for employees, and they provide a strong legal framework for staff transfers. This is why we are only proposing changes to the consultation requirements for those businesses without worker representatives in place. Workers' rights will continue to be protected.

We are grateful for stakeholders' suggestions of other changes which could be made to the TUPE regulations. These suggestions will help to improve government's knowledge of our stakeholders' experience of the regulations and will also help to shape the direction of our future work on TUPE.

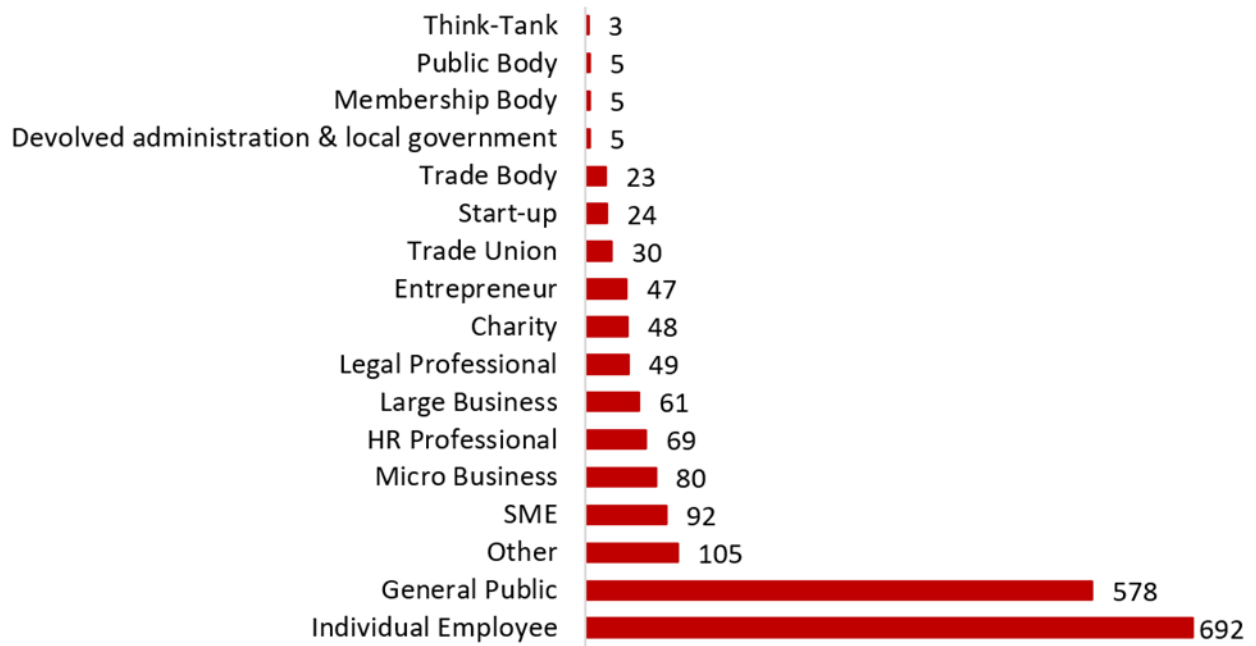
Following a TUPE transfer, employers can change an employee's terms and conditions if the reason is an 'economic, technical or organisational reason' (ETO) involving changes in the workforce or workplace. The government believes that the existing 'ETO reasons' strike a careful balance between allowing employers to make changes to terms and conditions where necessary and protecting the rights of transferring employees. The government therefore has no plans to allow employers to make changes to employees' terms and conditions following a transfer (other than for ETO reasons).

The government is aware of the Govaerts case and its implications for the TUPE regulations. We are continuing to monitor the issues raised by Govaerts and will consider whether any action is required on this in the future.

The government welcomes comments from stakeholders about clarity around the application of TUPE to workers. We will continue to monitor the case law around this issue carefully, and take any action required to address it.

<p>Legal disclaimer</p> <p>Whereas every effort has been made to ensure that the information in this document is accurate the Department for Business and Trade does not accept liability for any errors, omissions or misleading statements, and no warranty is given or responsibility accepted as to the standing of any individual, firm, company or other organisation mentioned.</p>	<p>Copyright</p> <p>© Crown Copyright 2023</p> <p>You may re-use this publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.</p> <p>To view this licence visit: www.nationalarchives.gov.uk/doc/open-government-licence or email: psi@nationalarchives.gov.uk.</p> <p>Where we have identified any third party copyright information in the material that you wish to use, you will need to obtain permission from the copyright holder(s) concerned.</p> <p>This document is also available on our website at www.gov.uk/government/organisations/department-for-business-and-trade</p> <p>Any enquiries regarding this publication should be sent to us at enquiries@businessandtrade.gov.uk</p>
---	--

Annex A: Formal consultation responses by Stakeholder Category



Annex B: List of Consultation Questions

Consultation on reforms to the Working Time Regulations, Holiday Pay, and the Transfer of Undertakings (Protection of Employment) Regulations

Reducing the administrative burden of the Working Time Regulations

1. Do you agree or disagree that the government should legislate to clarify that employers do not have to record daily working hours of their workers?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain your answer, including consideration of the costs and benefits that may affect employers and/or workers.

2. How important is record keeping under the Working Time Regulations to either enforcing rights (for workers) or for preventing or defending disputes (for employers)?

- Very important
- Important
- Neither important nor unimportant
- Unimportant
- Don't know

Please explain your answer.

3. What is your experience of record keeping under the Working Time Regulations? Beyond the proposal above, how, if at all, do you think they could be improved?

Please explain your answer

Questions for employers

The following questions focus on what, if any, system your business currently has for recording the working hours of your workforce.

4. Do you keep records to specifically meet the requirements set out in the Working Time Regulations?

- Yes

- No
- Don't Know

Please explain your answer. If you answered no, please explain which other records you keep to meet the requirements.

5. Do you keep working time records that go beyond the existing requirements set out in the Working Time Regulations?

- Yes
- No
- Don't Know

Please explain your answer, including considerations of the types of records that you keep and your reasons for doing this.

6. Do you currently have a system in place that records the daily working hours of all your staff?

- Yes
- No
- Don't Know

Please describe the system, including consideration of how the information is recorded practically, what information is recorded, the ways in which your system is automated, and whether the records are checked, verified and/or approved.

Questions for workers

The following questions focus on what, if any, role you currently have in recording your working hours.

7. Are you: paid hourly; paid by task; or paid a salary or fixed amount, for example for each day, week, or month, regardless of the hours you work?

- I am paid hourly
- I am paid by task
- I am paid a salary or a fixed amount for each day, week, or month
- Don't know
- Other (please explain)

8. Does your employer keep records of your daily working hours?

- Yes
- No
- Don't know

If you answered yes, please provide more details of how you provide records of your working hours to your employer, whether the process is automated, and whether your employer checks, verifies, or approves the records.

Holiday pay and entitlement reform

9. Would you agree that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain your answer.

10. (For employers): What rate do you currently pay holiday pay at?

- 5.6 weeks of statutory annual leave at normal pay (including certain types of overtime, commission, and bonuses)
- 4 weeks of statutory annual leave at normal pay and 1.6 weeks of statutory annual leave at basic pay
- Don't know
- Other (please explain)

11. (For workers): What rate do you currently receive holiday pay at?

- 5.6 weeks of statutory annual leave at normal pay (including certain types of overtime, commission, and bonuses)
- 4 weeks of statutory annual leave at normal pay and 1.6 weeks of statutory annual leave at basic pay
- Don't know
- Other (please explain)

12. What rate do you think holiday pay should be paid at?

- 5.6 weeks of statutory annual leave at basic pay
- 5.6 weeks of statutory annual leave at normal pay
- Don't know
- Other (please explain)

Please explain briefly in your answer what you think should be included as part of the holiday pay rate you have selected.

13. Would you agree that it would be easier to calculate annual leave entitlement for workers in their first year of employment if they accrue their annual leave entitlement at the end of each pay period?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

- Don't know

Please explain your answer.

14. Are there any unintended consequences of removing the Working Time (Coronavirus) (Amendment) Regulations 2020 that allow workers to carry over up to 4 weeks of leave due to the effects of Covid-19?

- Yes
- No
- Don't know

If yes, please explain your answer.

15. Do you think that rolled-up holiday pay should be introduced?

- Yes, rolled-up holiday pay should be introduced as an option for employers in relation to all workers
- No, rolled-up holiday pay should not be introduced
- Don't know
- Other (please explain)

Please explain your answer.

16. Would your existing payroll system be able to calculate holiday pay using the rolled-up holiday pay calculation as well as the 52-week holiday pay reference period?

- Yes
- No
- Don't know

Please explain your answer.

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

17. Do you agree that the government should allow all small businesses (fewer than 50 employees) to consult directly with their employees on TUPE transfers, if there are no employee representatives in place, rather than arranging elections for new employee representatives?

- Yes
- No

Please explain your answer

18. Do you agree that the government should allow businesses of any size involved with small transfers of employees (where fewer than 10 employees are transferring) to consult directly with their employees on the transfer, if there are no employee representatives in place, rather than arranging elections for new employee representatives?

- Yes
- No

Please explain your answer

19. What impact would changing the TUPE consultation requirements (as outlined above) have on businesses and employees?

Please explain your answer

20. What is your experience of the TUPE regulations? Beyond the proposals above, how, if at all, do you think they could be improved?

Please explain your answer

Calculating holiday entitlement for part-year and irregular hours workers

1. What is your name?

2. What is your email address?

If you enter your email address when responding online then you will automatically receive an acknowledgement email when you submit your response.

3. What is your organisation?

4. Are you happy for your response to be published?

- Yes
- Yes, but without identifying information
- No, I want my response to be treated as confidential

5. Are you (select the appropriate option):

- An individual
- An employer
- Representing employers' or employees' interests
- Other (please specify)

6. Are you (select the appropriate option):

- An employer or someone who is responding on behalf of an employer
- Employed (you are an employee or a worker)
- Self-employed
- Unemployed – Looking for work
- Unemployed – Not looking for work
- Retired
- Not looking for work – Other (please specify)

If you are an employer:

7. How would you classify your organisation?

- Private sector organisation
- Public sector organisation
- Charity or voluntary sector organisation
- Other (please specify)

8. How many people work for your organisation?

- Micro business (<10 people)
- Small business (10-49 people)
- Medium business (50-249 people)
- Large business (250+ people)
- Don't know

If you are employed:

9. What type of organisation do you work for?

- Private sector organisation
- Public sector organisation
- Charity or voluntary sector organisation
- Other (please specify)

10. How many people work for your organisation?

- Micro business (<10 people)
- Small business (10-49 people)
- Medium business (50-249 people)
- Large business (250+ people)
- Don't know

If you are an agency worker:

11. What are your contractual arrangements?

- Contract for services with employment business
- Contract of service (employment) with employment business
- Contract for services with umbrella company
- Contract of service (employment) with umbrella company
- Limited company contractor / personal service company
- Other (please specify)
- Don't know

12. How often do you receive holiday pay and entitlement?

- During assignments
- At the end of assignments only
- Other (please specify)
- Don't know

If you represent employers or employees:

13. Who do you represent?

- A trade union
- An industry or employers' association
- Other (please specify)

14. For employers: If you employ workers with irregular hours, how do you calculate their holiday entitlement?

15. For workers: If you work irregular hours, how is your holiday entitlement calculated?

16. For employers: Would you agree that the information you currently collect to calculate holiday pay would be sufficient to calculate holiday entitlement using a reference period?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain your answer.

17. Do you agree that including weeks without work in a holiday entitlement reference period would be the fairest way to calculate holiday entitlement for a worker with irregular hours and part-year workers?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain your answer.

18. Would you agree that a fixed holiday entitlement reference period would make it easier to calculate holiday entitlement for workers with irregular hours?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain your answer.

19. Do you agree that accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment?

- 1 Strongly agree
- 2 Agree
- 3 Neither agree nor disagree
- 4 Disagree
- 5 Strongly disagree
- 6 Don't know

Please explain your answer.

20. Would you agree that using a flat average working day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain your answer.

21. Would you agree that calculating agency workers' holiday entitlement as 12.07% of their hours worked at the end of each month whilst on assignment would make it easier to calculate their holiday entitlement and holiday pay?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain your answer.

22. Do you have any further comments about calculating holiday entitlement for agency workers?

Please explain your answer