

LexisNexis: Government consults on reforms to working time rules, holiday pay and TUPE

In a recent LexisNexis article, BDBF's Principal Knowledge Lawyer [Amanda Steadman](#) discusses the UK government's consultation on retained EU employment law following publication of the "Smarter regulation to grow the economy" policy paper. The consultation asks for views on proposed reforms affecting the calculation of holiday pay, working time rules, and TUPE.

Please click the image below to view the PDF:

Government consults on reforms to working time rules, holiday pay and TUPE

Employment analysis: On 12 May 2023, the government published a consultation paper, setting out its plans regarding the future of retained EU employment law. The consultation paper confirms the government's intention to keep retained EU employment laws in the following areas without any change: family leave rights (maternity, paternity, adoption and parental leave), 'atypical' workers' rights (part-time workers, fixed-term workers and agency workers), and information and consultation rights. However, certain reforms are proposed in the areas of working time, paid holiday rights and rights upon the transfer of a business or an outsourcing. The government says it has identified areas for reform of laws it considers are 'too onerous for business to be used effectively or too complex for workers to know, understand and use'. Amanda Steadman, principal knowledge lawyer at Brahams Dutt Badrick French LLP, sets out the proposed changes in the consultation and the next steps.

This analysis was first published on Lexis®PSL on 25 May 2023 and can be found [here](#) (subscription required).

Changes to working time record-keeping requirements

In 2019, the Court of Justice of the European Union (CJEU) in *Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*, [Case C-55/18](#) ruled that [Directive 2003/88/EC](#), the Working Time Directive (WTD) required employers to have a system in place to measure the daily working time of all workers. Importantly, that system had to go beyond merely recording overtime hours or drawing upon other sources of information which could be pieced together to identify daily working hours. The system of recording daily hours had to be objective, reliable and accessible.

The [consultation](#) says the government believes that this requirement is 'disproportionate' and 'damaging to relationships between employers and their workers' (although it is not said exactly how it is damaging). The government wishes to legislate to clarify that businesses do not have to keep a record of daily working hours of their workers.

In fact, the Working Time Regulations 1998 (WTR 1998), [SI 1998/1833](#) (which implement the WTD) only require employers to keep adequate records to show whether the weekly working time limits (and night work limits) are being complied with. Currently, there is no requirement in the WTR 1998 to record daily or weekly rest breaks, or the actual number of hours worked overall each day. Therefore, the proposal does not involve removing anything from the WTR 1998, rather it would mean adding a new provision stating that such records are not required.

Technically speaking, employers should have complied with the daily working time record-keeping obligation following the CJEU's decision. Yet we suspect that many employers would not even have been aware of the CJEU's ruling and, even if they had been, would not have put in place such a system without it being required expressly by the WTR 1998. In conclusion, this reform is unlikely to make much difference in the real world to the way that the majority of employers are managing their working time records.

Creation of a single annual leave entitlement of 5.6 weeks

Currently, the WTR 1998 provides that workers are entitled to 5.6 weeks' annual leave per year. However, this holiday entitlement is split into two allocations:

- four weeks' leave as required by the WTD (known as 'regulation 13 leave')

Brahams Dutt Badrick French LLP are a leading specialist employment law firm based at Bank in the City. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

The FCA and PRA review of the Senior Managers and Certification Regime (SM&CR) – BDBF Response

On 30 March 2023, the Financial Conduct Authority (FCA) and UK Prudential Regulation Authority (PRA) published a joint discussion paper on the review of the Senior Managers and Certification Regime (SM&CR), inviting responses by 1 June 2023.

The FCA and PRA are seeking views on the effectiveness, scope and proportionality of the SM&CR, and potential improvements to the regime. Of particular interest is how the regime is operating in practice (we include comments from the employee perspective).

You can read our full response in the PDF below:

The FCA and PRA review of the Senior Manager and Certification Regime (SM&CR)

Brahams Dutt Badrick French LLP - Response

Details of the Respondent

We are a specialist employment law firm based in the City of London. We are experienced in advising on the impact of the SM&CR for individuals, including issues such as:

- the scope and consequences of statements of responsibility;
- the certification process;
- investigations into an individual's conduct or competence;
- the impact of findings regarding fitness and propriety; and
- regulatory references

We have answered those questions from the SM&CR Discussion Paper where we feel our practical experience in this area may be of assistance.

Responses

Q1: To what extent do you agree or disagree that the SM&CR has made it easier to hold individuals to account?

We would strongly agree that it is having the effect of holding individuals to account.

Q2: To what extent do you agree or disagree that the SM&CR regime has improved safety and soundness and conduct within firms?

We are not able to comment in relation to 'safety and soundness'. In relation to 'conduct', we continue to advise individuals who are accused of issues of conduct. Generally speaking, there is a trend away from cases of financial misconduct (e.g. market manipulation) and towards non-financial misconduct (e.g. sexual harassment).

Q3: To what extent do you agree or disagree that the fitness and propriety requirements support firms in appointing appropriately qualified individuals to Senior Manager roles?

Not able to comment.

Q4: Please provide any suggestions that can help ensure that appropriately qualified individuals are not deterred from taking up relevant Senior Manager roles.

Not able to comment.

Q5: To what extent do you agree or disagree that the SM&CR has made it easier for firms to hold staff to account and take disciplinary action when appropriate against them?

In our view, the pendulum has swung too far the other way. Of course it is right that staff should be held to account and, where appropriate, disciplined if there are legitimate concerns about their

If you need advice on the [Senior Managers and Certification Regime \(SM&CR\)](#), please contact Nick Wilcox (nickwilcox@bdbf.co.uk) or your usual BDBF contact.