

# UK Government Releases ‘Smarter Regulation to Grow the Economy’ Policy Paper: Effects on Employment Law

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On 10 May 2023, the United Kingdom’s Department for Business and Trade published its policy paper, “[Smarter Regulation to Grow the Economy](#).” The proposals contained therein are intended to “improve regulation across the board to reduce burdens, push down the cost of living and drive economic growth.”

Given the drive of economic growth, a number of employment-related reforms have been announced, including proposed changes affecting non-compete agreements, Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) requirements, the Working Time Regulations 1998, and retained EU law.

## Quick Hits

- The Government is proposing to limit non-compete agreements to three months.
- The Government is proposing to remove certain TUPE requirements so that small employers can consult directly with employees.
- The Government will be consulting on several revisions under the Working Time Regulations 1998.

## Non-compete Restrictions

The UK Government plans to limit the length of post-termination non-compete restrictions to three months. Non-competes (a type of restrictive covenant) restrict employees from entering into competition with their employers (i.e., setting up competing businesses or working for competitors) for a specified length of time after their termination dates.

Currently, non-competes are not governed by legislation and are instead deemed enforceable by the courts if a restriction is “reasonably necessary” to protect an employer’s “legitimate business interest,” which is usually confidential information, trade secrets, or customer relationships.

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The Government seeks to provide employees with more flexibility to join competitors earlier or establish competing businesses, which will in turn benefit the wider economy. A definitive date has not been set for the reform to come into effect, as it is subject to when “parliamentary time allows.”

There is no intention to limit the duration of other types of restrictive covenants, such as non-solicitation or non-poaching covenants.

## **Consultation Requirements Under TUPE**

The plan is to remove the requirement under TUPE that employers consult with employee representatives (or hold elections if there are no representatives in place) for employers employing fewer than fifty employees and transfers affecting fewer than ten employees and instead allow them to consult with employees directly.

While this is a minor change, it would benefit smaller employers and bring the law in line with employer practices, as it can be inefficient to consult with employee representatives in an instance when the number of affected employees is low, and some employers will choose to consult directly instead.

## **Working Time Regulations 1998**

The Government will consult on three changes to the Working Time Regulations 1998:

- merging the EU-derived annual leave entitlement of four weeks with the additional 1.6 weeks “statutory annual leave” (which is available in the UK) into a single entitlement. This would mean the full 5.6 weeks of annual leave would be treated the same when carrying it over into the next holiday year and for the purposes of calculating payment in lieu of notice;
- reducing record-keeping requirements for employers; and
- allowing employers to “roll up” holiday pay so that an employee’s hourly rate is inclusive of holiday pay (“so that workers can receive their holiday pay with every payslip”). Due to EU regulations, this is currently unlawful in the UK. This change could benefit flexible workers who would prefer their entitlement to be paid as they work.

## **Retained EU Law (Revocation and Reform) Bill 2022**

The Retained EU Law (Revocation and Reform) Bill 2022 set out a [“sunset clause” for 31 December 2023](#). This meant that by 31 December 2023, all EU law would be automatically revoked on that date unless a statutory instrument was passed to protect it. However, the Government has since changed its position so that EU law will remain binding in the UK unless it is expressly revoked on the sunset date. At first glance, this seems like an easier approach, given the number of EU laws the Government must review, as it allows resources to be spent on identifying which laws the Government intends on revoking or reforming.

The Government has now published a list of EU laws that it plans to revoke on the sunset date. At this stage, there are no key employment laws on the list; however, this could change later in the year as the Government works through the laws.

## Next Steps

Consultation will need to take place on the proposed changes relating to the Working Time Regulations 1998 and TUPE and will be open until 7 July 2023. Primary legislation will also be required to implement the restrictions on non-competes. As the paper states, this will happen when “parliamentary time allows.”

The Government has also stated that the above proposals are the “first in a series of regulatory reform announcements,” so employers can expect to see more in the coming months.

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