

New Statutory Right for Trade Unions to Access Workplaces

Earlier this month the government issued a [response](#) to its consultation on the new statutory right for trade unions to access workplaces, which is due to come into force in October 2026. The response provides the government's final policy position on matters such as how trade unions should request access, how employers should respond, the factors the Central Arbitration Committee (CAC) should consider when determining whether access should be granted and how enforcement mechanisms, including penalty fines, should operate in cases of noncompliance.

The government also issued a [draft code of practice](#) for consultation. The code will be the main source of practical guidance for employers and trade unions on the new statutory access framework, and includes greater detail on how requests should be made and how access agreements should be negotiated and implemented across different workplaces. This consultation is open until 20 May.

In the meantime, we are waiting for the government to issue the draft regulations that will include further specifics on how some of the new access arrangements will work.

The government believes this new right will make a big difference – we will of course have to wait and see. Trade unions do not currently have any general rights of access to the workplace, and so this certainly represents a significant change for employers, especially those that do not currently have a trade union presence and are not used to dealing with trade unions. Indeed, such employers are the ones most likely to be targeted by trade unions when it comes to exercising this new right, potentially with an eye to the longer-term goal of gaining recognition for collective bargaining purposes.

To support employers in preparing for this change, we have produced some [FAQs](#), which set out the typical questions they may have about this new right, and our outline answers.

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

As if it doesn't have enough on its plate implementing its ERA 2025 changes, the government has this month also issued a [call for evidence](#) on possible changes to TUPE. You might think that it should have better things to do at present, and it shows. As documents go, this one is more than a bit flimsy. The government says it is keen to hear about experiences under the current TUPE framework, and it will then consider how they might be improved. Responses to the call for evidence will be used to develop policy proposals, which will then be the subject of a further consultation on any potential changes to the regulations. The closing date for responses is 1 July 2026. Don't hold your breath for the subsequent consultation, let alone actual legislative change.

This is not the first time a government has contemplated changes to TUPE, since they were last heavily amended back in 2014. The most recent exercise was in 2024, when the conservative government proposed some "clarifications" to address some tricky issues that had been created for employers by case law, in particular the application of TUPE to workers and the "splitting" of employment contracts between multiple transferees. These proposals were never actioned, and it remains to be seen whether they will be picked up again as part of this latest exercise. The latter issue arose from the ECJ's decision in *ISS Facility Services NV v Govaerts* in 2020 plus the Scottish EAT's ruling in *McTear v Bennett*. While the two in combination certainly contained the seeds of chaos within them, most UK employers have since taken the pragmatic course of ignoring both cases, meaning that the practical point of an amendment now may be limited.



Transition – From the Gangmasters and Labour Abuse Authority and the Employment Agency Standards Inspectorate to the Fair Work Agency (FWA)

The FWA was officially established on 7 April 2026 and took over the existing enforcement functions of the Gangmasters and Labour Abuse Authority in relation to gangmasters licensing and serious labour abuse, and of the Employment Agency Standards Inspectorate in relation to agency workers. During 2026/2027, National Minimum Wage (NMW) enforcement will continue to be delivered by HM Revenue and Customs (HMRC) under a contracting arrangement with the FWA, with the full transfer of NMW functions to the FWA now taking place in April 2027.

The government has published its [expectations](#) for the FWA for its transitional year of operation (2026/2027). According to this, the FWA will also commence holiday pay enforcement in 2027. No mention was made at this time of when its enforcement powers in relation to Statutory Sick Pay will be introduced.

The extent of real threat the FWA poses to non-compliant businesses remains to be seen. On the one hand the government's document confirms that the FWA has been given greater funding to support it in its enforcement activities, but on the other, concerns have already been expressed by some trade unions that it risks becoming "a dead duck" after Matthew Taylor, its new chair, said that its priorities in its first year of operation included "thought leadership" and "reducing regulatory burdens".

Obviously, compliant employers would notionally have nothing to fear from the FWA, but in our experience even reputable "good" employers can find themselves accidentally non-compliant due to the complex, vague and/or technical nature of some employment legislation. Furthermore, companies could still face the financial and administrative burden of having to defend complaints raised with or by the FWA, even if they are wholly without merit.

To avoid steep penalties, employers should ensure in particular that they are calculating holiday pay and NMW entitlements correctly and look again at whether the individuals they are treating as fully self-employed are actually workers and so entitled to such payments after all.

Similarly, carrying out such a review in advance of a corporate disposal may be prudent to ensure that any irregularities are identified and rectified (where possible) in advance of the formal due diligence process.

Need help? Based on our extensive experience of undertaking compliance audits for clients, including in relation to HMRC investigations, we can provide valuable insight on key areas of risk for employers in this area, including practical advice on how to mitigate any such risks and handle such investigations. [Sign up for our webinar](#) on 8 July 2026, when we will discuss in more detail the FWA's new powers, the implications for employers and the steps employers should be taking now to ensure they do not appear on the FWA's radar.

Misuse of Non-disclosure Agreements: New Consultation

The government is clearly on a roll this month and at the time of writing it has just issued a [consultation](#) seeking views on its proposals to prevent the misuse of non-disclosure agreements (NDAs) in cases of workplace harassment and discrimination.

Under the ERA 2025 any provisions in an agreement, such as a settlement agreement, which seek to prevent a worker from making an allegation or disclosing information relating to "relevant harassment or discrimination," or the employer's response to such harassment or discrimination, will be void.

There will, however, be a carve out for provisions in an "excepted agreement" and this latest consultation seeks views on the regulations that will be introduced setting out which NDAs will still be valid – from the conditions which an NDA must meet (of which there are many!) to the list of individuals that workers who have signed the NDA will still be able to speak to. The consultation also invites views on whether these new protections should be expanded to cover a broader group of individuals in the future, e.g. agency workers and the self-employed.

The consultation closes on 8 July, and the government has indicated that these changes will come into force in 2027.



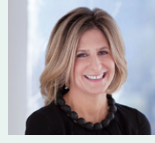
If you would like to discuss the implications of the ERA 2025 for your business, please speak to your usual contact at the firm or one of the partners listed below.

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