EMPLOYMENT RIGHTS ACT UPDATE – LABOUR MARKET AND SKILLS POLICY COMMITTEE, Q3 2026

Below is an overview of developments and Make UK's work on the Employment Rights Act over the last three months. If there is anything you would like to discuss – on a one-to-one basis or as part of our next committee meeting – or there are government consultations you would like to input into or see Make UK's written submission, please let Jamie know.

New consultations published

- Holiday pay compliance and enforcement (closed 22nd September)
- Acas – consultation on the draft code of practice on disciplinary and grievance procedures (closed 23rd September)
- Workplace monitoring technologies (closes 30th September)
- Equal pay (closes 27th October)

Consultations closed – Make UK responded

- **TUPE call for evidence (closed 1st July).** Make UK's submission called for:
    - Changes to ETO reasons, including removal of requirement to involve a change in the workforce, introduction of a time limit after which ETOs expire, previous employer able to rely on new employer's ETO, and ability to vary some terms prior to transfer
    - Additional guidance on areas including clearer definition of contract for the sale of goods, pensions consultation requirements, and interaction between TUPE and new ERA regulations e.g. fire and rehire, collective consultation
- **Misuse of non-disclosure agreements (closed 8th July).** Make UK's submission called for:
    - Not requiring independent, written legal advice for workers before entering into an 'excepted agreement'
    - Not prohibiting an employer from raising the possibility of an excepted agreement
    - Not requiring a cooling off or review period for an excepted agreement – if cooling periods must be implemented, they should be kept as short as possible
    - Restricting the number/type of people to whom a worker can make 'permitted disclosures' about an excepted agreement
- **Reforms to zero hours and similar contracts – also known as the right to guaranteed hours and associated measures (closed 25th August).** Make UK's submission called for:
    - Eligibility threshold no higher than 8 contracted hours per week
    - Initial and subsequent reference periods of 52 weeks
    - Reasonable notice of shifts to be no longer than one day

- Short notice of cancelled or curtailed shifts to be no longer than 12 hours, and payment no higher than 30% of relevant minimum wage rate
- Agency workers to be excluded from the rights to reasonable notice of shifts and payment for shifts cancelled or curtailed at short notice
- Implementation to be delayed until at least 2028

- **Employment rights for unpaid carers and parents of seriously ill children (closed 1st September).** Make UK's submission called for:
  - No substantive changes to current entitlements for unpaid carers
  - If there are new rights to paid leave, employers must be supported with the cost of this by introducing cost recovery similar to statutory maternity pay
  - If a right to return is introduced, eligibility should be limited to a period of up to 3 months for unpaid carers who have worked for their employer for at least 6 months

Consultations closed – government response published

- **Protection from detriments for taking industrial action (government response published 23rd June):**
  - The consultation proposed two options for introducing protection against detriments for taking industrial action: prohibiting all detriments to align with existing protections against detriments for trade union activity, or creating a specific list of prohibited detriments which would have allowed other detriments to be permitted.
  - Make UK's response asked the Government to opt for the latter, on the basis that other ERA measures (reduction of notice periods, lengthening of mandates) had already restricted employers' ability to manage the impact of industrial action.
  - The Government has chosen to introduce the former option, and this will take effect on 30th October 2026.
- **Improving access to flexible working (government response published 15th September):**
  - The consultation proposed changes to a new process for when employers are considering rejecting a flexible working request.
  - It is positive to see changes that Make UK lobbied for, and that were highlighted by this committee, taken on board. These include giving 'fair notice' of a meeting to the employee based on what is reasonable for the circumstances (rather than a prescriptive numerical requirement) and the decision not to include a requirement for the decision-maker to be present during the meeting.
  - We await further information on the substance of the reasonableness test that will be applied but understand that the new requirements will come into force in August 2027.
  - You can find more information here, but for a summary of the new process, we would recommend skipping to page 33: Improving Access the Flexible Working Consultation Response.
- **Leave for bereavement including pregnancy loss (government response published 22nd September):**

- The Government consulted on an entitlement to two weeks' unpaid bereavement leave for a range of family members/relationships, and for all types of pregnancy loss before 24 weeks.
- Make UK's submission called for the scope of the right to be limited to immediate family, for leave to be taken in blocks of one week within a window of 56 weeks after the loss, and for the employer to have a right to request evidence from the employee.
- The Government's response extends the right to immediate family (including half/step relatives, adoptive and foster parents, kinship carers), allows leave to be taken discontinuously over 56 weeks and with no requirement for the employee to provide evidence.
- The entitlement will take effect from April 2027.

- **Employer duty to inform workers of their right to join a trade union (government response published 25th September):**
  - The Government consulted on a new duty for employers to inform workers of their right to join a trade union. Members discussed this consultation with officials in November 2025, alongside the proposed measures on the new right for trade unions to access workplaces.
  - In addition to feeding back directly on the content of the statement, Make UK called for the Government not to require regular reminders of the right by the statement being re-issued to staff, and that any reminders should be indirect (e.g. via a noticeboard or handbook).
  - The Government's template statement has been published – this is the version that all employers will be required to use, adapted to provide the relevant information about the company and any recognised trade union(s).
  - The Government has chosen to require direct delivery of the statement alongside employment particulars to new workers; for existing workers, the statement can be delivered indirectly. For workers who have received it directly, the employer will be required to re-issue the statement on an annual basis before 5th April each year; for workers who have received it indirectly, the employer will be required to maintain the statement in a visible and easily accessible place and issue an annual reminder.
  - Importantly, the timing of implementation has changed: originally proposed for 30th October 2026, the duty will now come into effect from 1st January 2027.

Implementation updates

- **Other consultations not listed above are still awaiting government response** – these include fire and rehire (inclusion of changes to expenses/benefits and shift patterns as 'restricted variations') and collective redundancy consultation (introduction of a new organisation-wide threshold to require collective consultation).
- **Non-statutory guidance on trade union access rights** – due for publication early October, this will provide additional information on processes and procedures, with advice on sector-specific considerations for employers and unions.

Other Make UK activity

- Make UK's submission to HM Treasury ahead of the Autumn Budget on 28th October calls for the right to guaranteed hours to be delayed until at least April 2028 and for the policy options which incur the lowest possible financial costs for businesses.
- Jamie and Rose continue to meet regularly with the relevant BIST officials across the Employment Rights Directorate on all of the issues listed above, as well as the teams in the department and Acas with overarching responsibility for implementation. Recent discussions have included:
    - Roundtables with business groups and employer representatives on the above consultations
    - Meeting with the BIST and Acas implementation teams to discuss early feedback on April 2026 changes and plans to support employers with October 2026 changes
    - Meeting with Kate Dearden MP (Minister for the Future of Work) and Kanishka Naryan MP (Minister for AI) on workplace monitoring technologies
    - Meeting with Torsten Bell MP (Minister for Pensions, HMT ministerial lead for labour market policy) on hiring and impact from the ERA and employment costs