



Changing the world  
of work for good

# **Make Work Pay: workplace monitoring technologies**

**The TUC's response to the consultation  
from the Department for Business,  
Innovation, Science and Trade**

September 2026

# Make Work Pay: Workplace monitoring technologies

## Contents

|                                                                                                                                                                                                                                                                                                            |    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Executive Summary.....                                                                                                                                                                                                                                                                                     | 3  |
| The current impact of WMT on workers.....                                                                                                                                                                                                                                                                  | 4  |
| Why the current regime is not effective, and non-statutory interventions cannot meet the government's stated principles.....                                                                                                                                                                               | 9  |
| Why a legislative requirement to consult and negotiate with trade unions or elected representatives on WMT is the only viable option.....                                                                                                                                                                  | 11 |
| Establishing a mandatory minimum standard is good for workers and for good employers .....                                                                                                                                                                                                                 | 11 |
| Effective consultation and negotiation are pre-emptive, supporting more effective technology deployment .....                                                                                                                                                                                              | 11 |
| Collective agreements enable local level and contextual regulation and enforcement mechanisms .....                                                                                                                                                                                                        | 12 |
| A legislative framework should be supported by a statutory code of practice with guidance.....                                                                                                                                                                                                             | 12 |
| Regulatory and legislative changes to give effect to principles for responsible use of WMT .....                                                                                                                                                                                                           | 13 |
| "Whether consultation should be automatic in all cases, limited to higher risk uses, or triggered by a request from workers or representatives." .....                                                                                                                                                     | 13 |
| "What information employers should provide to workers, and when" .....                                                                                                                                                                                                                                     | 14 |
| "Whether the process should involve engagement/consultation only, or include negotiation with a view to agreement", AND "Whether minimum time periods or procedural steps should apply" AND "Who should be consulted including recognised trade unions, worker representatives or direct engagement" ..... | 15 |
| "How the requirement would interact with existing legal frameworks such as data protection law" .....                                                                                                                                                                                                      | 15 |
| "What enforcement mechanisms or remedies should apply where the process is not followed" .....                                                                                                                                                                                                             | 19 |
| "Whether the requirement applies to those with employee status or extends to workers" .....                                                                                                                                                                                                                | 21 |
| Other issues of relevance – Prohibiting dynamic pay setting .....                                                                                                                                                                                                                                          | 21 |

## Executive Summary

The TUC is the voice of Britain at work. We represent more than 5.3 million working people in 47 unions across the economy. We support unions to grow and thrive, and we stand up for everyone who works for a living.

The TUC welcomes this [consultation on workplace monitoring technologies](#) (WMT). The government's *Plan to Make Work Pay* sets out that "At a minimum [a Labour government will] ensure that proposals to introduce surveillance technologies would be subject to consultation and negotiation, with a view to agreement of trade unions or elected staff representatives where there is no trade union. Where there is a collective agreement relating to surveillance this will not override it."

This commitment recognises a reality that is all too familiar to workers: that WMT are introduced by employers without the consultation and negotiation that is a prerequisite for fair and effective technology adoption. This undermines workers' rights and their dignity at work. It also hinders the effective deployment of technology by undermining trust and not drawing on the expertise of workers. This is starkly illustrated by surveys of union members across sectors.

A 2020 survey of 7,500 members by the trade union Prospect found that more than 70 per cent of respondents have "no confidence" in how their employers engage them in decisions on technology.<sup>1</sup> A 2024 Communications Workers Union survey of members in the telecoms, finance and tech sectors found that 80 per cent of respondents "do not trust technological advances in workplaces".<sup>2</sup> The Union of Shop, Distributive and Allied Workers (USDAW) surveyed members in 2026, with 85 per cent of respondents stating that employers had not consulted them on new technology or could not identify if a meaningful consultation had taken place. Over 75 per cent reported inadequate training on the new technology.

To address this, the TUC welcomes the principles the government has set out in the consultation for "responsible use of WMT which supports good industrial relations". In particular, the principle of meaningful "worker engagement and voice" that the consultation identifies is central to the responsible and effective use of WMT. Worker engagement and voice is most effectively realised through independent trade unions engaged in consultation and negotiation with – as the government recognises – a view to reaching agreement. The current legal and policy framework – predominantly governed by UK General Data Protection Regulation (GDPR) – cannot effectively realise these principles or the positive outcomes sought by government and needed by workers. As it stands, data rights are often ignored, and the data protection regime relies on the unrealistic idea that individuals will have the ability and resources to pursue redress after the fact. Reform along the lines set out here would bring a

---

<sup>1</sup> Prospect. [Future of Work: Employers' collection and use of worker data](#). February 2020.

<sup>2</sup> CWU. [AI Awareness: Making AI Work for Workers](#).

collective dimension to data rights and processes of consultation and negotiation that can pre-empt abuse and misuse of WMT, enabling fair and effective use of technology.

Of those set out in the consultation paper, Option B supplemented by a statutory code of practice and guidance is the only viable route to achieving this. A statutory regime would establish a minimum floor which all employers must adhere to, preventing the undercutting of good practice by unscrupulous competitors. It would provide the practical and legally enforceable basis for workers and their representatives to effectively exercise “worker voice” as the government seeks. Requiring employers to be transparent and proportionate in use of WMT would not inhibit the positive use of WMT, such as for health and safety. Rather, it would raise standards of technology development and workplace relations. Significant evidence from Gallup<sup>3</sup> and the Chartered Institute for Personnel and Development<sup>4</sup> (CIPD) demonstrates that in general robust processes for worker voice lead to a range of better outcomes. This is the opportunity to bring WMT into this frame.

Though generative AI is not the focus of this consultation, the experience of too many workers is of unilateral imposition of technology. This is a driver of the high levels of concern now expressed by working people on the changes that task-automation technologies may bring. As part of a wider agenda on AI, the government must grasp this opportunity to empower workers to have voice, rights and a fair share of technology at work.

Finally, whereas most cases of WMT will be improved by consultation and negotiation, it is essential to recognise that some types of this technology are fundamentally exploitative by design. Dynamic pay setting is one such case. Opaque algorithmically changeable pay setting is an affront to basic standards of decent employment and should be prohibited under all circumstances. The TUC calls on the government to confront this degradation of working lives.

## **The current impact of WMT on workers**

*Consultation questions addressed: Q6 – 20, Q29, Q30*

As defined in the consultation, Workplace Monitoring Technologies cover a wide range of technologies and contexts. Some instances may be uncontentious. Others will be highly exploitative of workers by their nature. In some cases, the particular use and process of deployment of a technology by an employer matter far more than the technology itself. In designing policy, recognising this context will be key to ensuring a universal high standard.

The use of various forms of WMT is very prominent in the logistics sector. Most egregiously, Amazon is known to deploy a suite of WMT tools to intensify the pace of work. Amazon gathers data from handheld scanners, which are used to scan an item

---

<sup>3</sup> Gallop. [The Relationship Between Engagement at Work and Organizational Outcomes](#). 2024.

<sup>4</sup> CIPD. [UK industrial relations: a future with trade unions](#). October 2025

every time it moves in the logistical process. As well as tracking the items, the data is used for performance management. It collects data to assess against a target "rate" of scans, and to monitor how much time workers are classified as "Time Off Task (TOT)". As there is no appreciation of context by the software, the lack of discretion can lead to punitive and inappropriate outcomes. The algorithm does not factor in differences such as illnesses, abilities, personal circumstances or age. Even small periods of TOT can damage a worker's performance rate. Shockingly, though workers are assessed against a target, they cannot know what that target is as this information is withheld. The opaque target drives workers to compete to ensure their rate is in the top 95 per cent. Daily, workers who are in the bottom 5 per cent are subject to a meeting with management. If a worker is subject to five meetings, they can be dismissed.<sup>5</sup>

In an indictment of the current regime to ensure fairness and dignity at work, the information available on the operation and impact of Amazon's WMT had to be revealed by the arduous work of trade unions, investigative researchers and parliamentarians.<sup>6</sup> Amazon has no effective legal obligation to be transparent on its use of WMT, nor to consult or engage with the workforce. This was a key driver of the effort by workers to seek union recognition and a concerted campaign by the employer to prevent the same.<sup>7</sup>

As the lead firm in a highly competitive sector, Amazon's unregulated use of WMT undercuts other employers, driving down standards across the board. In 2023, the CWU stated that Royal Mail was adopting Amazon's tactics as it was revealed the employer was using Postal Delivery Assistants, a form of WMT, in a punitive way.<sup>8</sup> The employer eventually acknowledged that the use of the WMT in this context was contrary to the company's policies and collective agreements.<sup>9</sup> The current legal regime effectively permits such uses of WMT, which are only revealed in the highest profile cases through protracted processes.

The use of WMT extends far beyond sectors such as logistics. In 2025, the Chartered Management Institute (CMI) found that one in three employers reported using

---

<sup>5</sup> Foxglove. [Amazon Busting: Amazon's myths about its unsafe warehouses and management by algorithm](#). 2023

<sup>6</sup> GMB. [Amazon slammed for 'misleading' MPs over worker monitoring](#). 2022; Business and Human Rights Centre. [UK: Lawmakers accuse Amazon of providing 'misleading' evidence on warehouse conditions & tracking technology at parliamentary hearing](#). 2023; Letter from Darren Jones MP and Chair of the Business, Energy and Industrial Strategy Committee to Katherine Mercer, Head, Public Policy UK Operations of Amazon. [BEIS Select Committee inquiry – AI and technology in the workplace](#). 2023

<sup>7</sup> Institute of Employment Rights. [Trade-union recognition, the Amazon case, and a New Deal](#). 2024.

<sup>8</sup> [CWU letter to BEIS Select Committee, 20th January 2023](#)

<sup>9</sup> Sweney, Mark. [Royal Mail boss blames rogue managers for tracking devices on workers](#). The Guardian. 2023

“bossware” to monitor the online activity of employees.<sup>10</sup> This includes technologies that monitor mouse movement and keystrokes on a keyboard, recording calls or meetings and accessing employees’ webcams. The CMI research notably found that 42 per cent of managers were opposed to invasive forms of WMT as it damaged trust. The CMI found that “Effective management [of WMT] depends on trust, fairness and confidence”.<sup>11</sup> However, the current regime relies entirely on voluntarism to establish these conditions. The lack of obligations on employers to fully consider the impact of WMT through engagement with the workforce breeds an over-reliance on surveillance as opposed to effective management, producing perverse outcomes.

These practices contribute to the widespread phenomenon of “productivity theatre” or digital “presenteeism,” with research by Asana finding that 67 per cent of workers engage in this in response to over-surveillance.<sup>12</sup> A search for mouse “jigglers” (to give the impression of working to a WMT system) returns 3,000 results on Amazon marketplace.<sup>13</sup>

Such pervasive use of WMT can have disproportionate impacts on workers who share protected characteristics. Research conducted by Kings College London with the TUC found that Black workers were particularly likely to be subject to petty yet oppressive digital surveillance. One worker reported receiving automated emails after staying just one minute longer than the official break period before logging back on, despite routinely working past official shift finish times.<sup>14</sup>

It is often impossible for workers to assess whether the application of workplace technologies is discriminatory, or otherwise in breach of fundamental rights without adequate information provided, to themselves or their trade unions, as to:

- their personal data that is being processed;
- the additional data being used, especially to generate algorithmic and automated outputs, and in technology products used in the workplace; and
- the results of such outputs and uses of technology by reference to protected characteristics under the Equality Act.

Research by experts on WMT and algorithmic management at Southampton University highlight the range of impacts of the use of these tools, and their unilateral imposition. This includes having “a chilling effect” on exercising the right to freedom of association, which is the fundamental legal basis for the right to form and join trade unions. Other

---

<sup>10</sup> Booth, Robert. [A third of UK firms using ‘bossware’ to monitor workers’ activity, survey reveals. The Guardian](#). 2025

<sup>11</sup> CMI. [Highlights – 24 September](#). 2025

<sup>12</sup> Asana. [The State of Work Innovation](#). 2024

<sup>13</sup> [Archive of Amazon.co.uk search: “jiggler”](#). Accessed 30 September 2026

<sup>14</sup> Trades Union Congress. [Making hybrid inclusive: Black workers experiences of hybrid working](#). 2024

negative effects include increased stress and anxiety, physical and mental health risks, and lower levels of autonomy, trust, and satisfaction at work.<sup>15</sup>

A recent high-profile case illustrates how a breakdown of trust occurs when employers are not obliged to engage with the workforce. Meta – the corporate owner of Facebook – unilaterally initiated a plan to collect data from the screens of US-based workers to train AI agents that would ultimately perform the tasks of those workers. The plan is now on pause following a backlash from workers – including in the UK – with a petition signed by 1,600 employees, with major damage to industrial relations as a result.<sup>16</sup>

Other instances have been relayed to the TUC by affiliated trade unions. For example Mitie's imposition of WMT without consultation on cleaning and security staff on Network Rail and TfL contracts is causing industrial unrest, particularly amongst RMT's members at Bristol Temple Meads. Member concerns include uncertainty over individual performance measurement, use of location tracking and sensor technology, inadequate training, no consultation on resulting changes to working practice, data storage and use, and whether it's being used to justify reduced staffing hours.

A key differentiator in the fairness and effectiveness of WMT deployment is whether employer use is subject to robust safeguards and workers are effectively able to exercise rights.

The CWU's negotiation with Openreach over the Peoplesafe Lone Worker App is an example of how engagement with a trade union can produce better outcomes on WMT. A union-employer negotiated trial period revealed reliability failures in welfare check-ins, battery drain and crashes on older devices, the app logging users out rather than running in the background, and a design that several members experienced as intensifying monitoring and workload rather than reducing risk. While not all issues were resolved, an agreement secured concrete limits to ensure this health and safety WMT did not stray into disproportionate surveillance. In particular, location data is only captured when an alarm is actively triggered rather than continuously tracked; line managers' dashboard access was restricted to names, contact details, app status and logged events, explicitly excluding personal information, location data and closed alarm reports; use on personal phones was made voluntary, and the medical-conditions feature was built as opt-in and user-controlled.

In a separate case, the employer introduced WMT that automatically evaluates every recorded customer conversation through speech analytics in a contact centre. Although the company consulted, there was very little negotiation. A particular concern is that managers are often unable to explain why the machine had generated a particular score that has a direct impact on bonuses and management judgements about performance. Workers report feeling increasingly surveilled by the technology, with

---

<sup>15</sup> University of Southampton. [Workers need meaningful say over digital surveillance at work, says report](#). 2025

<sup>16</sup> Milmo, Dan. [Meta pauses employee tracker for AI training amid privacy concerns](#). The Guardian. 2026

continuous assessment contributing to the intensification of their workday. This case demonstrates that consultation alone is not sufficient if workers have no meaningful influence over WMT design and operation.

ASLEF, the trade union for train drivers, negotiated with an employer regarding fatigue monitoring technology on London trams. The agreed trial surfaced rostering practices that contribute to fatigue and helped identify underlying health conditions, leading to reasonable adjustments for affected drivers. However, when GB Railfreight began using the system outside the agreed parameters during a wider heavy rail trial, ASLEF withdrew its agreement to the trial entirely, underscoring the need to support good industrial relations with robust rules. The current framework enabled an employer to unilaterally break an agreement, depriving workers, the employer and wider public of the benefits of this technology. Only legislation can prevent this, whereas now the workforce's only course of action is to withdraw in the event of an employer acting in bad faith.

ASLEF members on the Elizabeth line trialled a similar health and safety app before rollout, and their suggestions shaped its design. Their agreement includes a structural safeguard restricting data to depot level rather than individual level, reinforcing the tool's safety rather than disciplinary purpose. Ongoing joint review through a full-time officer and company council continues to monitor use against the agreement.

These more positive examples rely on established industrial relations practice and a significant trade union presence. The policy that develops from this consultation must seek to support all workers and employers to similarly improve fair and effective processes of consultation and engagement, from which good tech deployment follows.

However, some WMT is highly exploitative by design, performs no legitimate goal and should be prohibited by law in all circumstances. Dynamic pricing or wage setting in the platform economy is one such case. Dynamic pay replaces fixed rates or transparent tariffs with opaque, constantly shifting pricing mechanisms. Under this system, two workers performing the same task may be paid different amounts. A worker performing identical tasks across two days may receive vastly different pay. And individuals have almost no ability to anticipate income, plan financially, or verify the accuracy or fairness of their compensation. It is sometimes not even clear to workers how much they will be paid at the point they must decide whether to accept or reject an offer of work.

The most comprehensive evidence on dynamic pay in the UK comes from the 2025 study conducted by University of Oxford and Worker Info Exchange, which analysed 1.5 million trips by 258 Uber drivers between 2016 and 2024.<sup>17</sup> Uber had long taken a flat fee of 25 per cent commission, but dynamic pricing transforms this into a variable and personalised take. The study found that Uber now takes as much as half for many trips, with drivers frequently retaining only 50–60 per cent of the fare. Uber's surplus per

---

<sup>17</sup> University of Oxford. [New Oxford research reveals Uber's algorithmic pricing leaves drivers and passengers worse off](#). 2025

hour increased by 38 per cent following the introduction of dynamic pay. The TUC has highlighted the harrowing impact of this on drivers, who are subject to this material hardship and indignity.<sup>18</sup>

To meet the government's goals, any policy on WMT must enable positive use cases by driving up standards, empowering worker voice and prohibiting exploitative use cases. This requires robust policy action as described below.

## **Why the current regime is not effective, and non-statutory interventions cannot meet the government's stated principles**

*Consultation questions addressed: Q27, Q31, Q57 - Q63*

Workplace Monitoring Technologies almost always involve processing of workers' personal data. The legal and policy regime governing use of WMT is therefore predominantly the UK GDPR, intersected by aspects of employment, equalities and health and safety law.

However, existing UK GDPR rights and mechanisms encourage compliance box-ticking rather than meaningful engagement between controllers and data subjects, while the rights regime is individual and largely reactive. There is currently no legal obligation on employers to consult and negotiate, with a view to seeking agreement, with trade unions on the implementation of technology in the workplace. There is no effective legal mechanism to enable workers to establish what personal data of theirs is being processed for the purpose of decision-making, what other data is being used in that decision-making, and the impact on groups with protected characteristics. For a worker to use their data rights in any practical WMT situations, they need to be highly informed, to identify themselves to their employer as the person objecting and be prepared for a protracted process with very limited regulatory enforcement, potentially falling back on an expensive and risky court claim. This makes the rights hard for workers to use and contributes to distrust and dissatisfaction.

To comply with the GDPR, there must be a "lawful basis" for data collection and processing, which is intended to ensure the rights and principles outlined in the GDPR are upheld. Because the ICO doesn't believe workers can freely give consent, legitimate interest is often used as the legal basis for WMT. The ICO makes it clear that Legitimate Interest is only valid if the employer passes a three-part test (including the balancing test, which looks at the interests of data subjects) and, where required, carries out a Data Protection Impact Assessment (DPIA).

However, the two principal judgements that determine whether WMT is introduced - the legitimate interests balancing test and the Data Protection Impact Assessment (DPIA) - are both made by the employer about itself, in private with no legal obligation - despite it being good practice - to disclose the DPIA or to engage the workforce who

---

<sup>18</sup> TUC. [The human price of dynamic pay](#). 2026

will be subject to data processing. There is no external check unless an individual worker exercises their data rights and involves a regulator or a court.

These characteristics of UK data protection law mean that it has limited force in ensuring worker voice in the introduction of WMT, and in incentivising employers to adhere to key principles set out by the government in the consultation, such as necessity, proportionality, accountability and reliability.

Other developments have further limited an effective regime for fair and effective use of WMT. The EU GDPR provided for member states to create their own specific laws regarding personal data in the workplace (Article 88), in recognition of the sensitivities and inherent power imbalance and contractual relationship of workers with their employer. This provision was removed from the UK GDPR as part of Brexit implementation, despite other similar provisions being converted into powers for the relevant Secretary of State to make further provision via statutory instrument.

Separately, there is a route to enable not-for-profit organisations to take legal action without the explicit mandate of data subjects, such as workers.<sup>19</sup> This is a potentially important mechanism for enabling action to be taken on behalf of highly precarious workers subjected to exploitative use of data-driven WMT technologies - such as dynamic pricing or "automated dismissals" in the platform economy. These workers are prevented from accessing full union representation through the refusal of platform operators to accept their status as employees. The UK government has (to date) chosen not to empower worker in this way, falling behind comparable European jurisdictions, particularly following the introduction of the Collective Redress Directive.<sup>20</sup>

The current UK GDPR regime, its application and enforcement permit non-compliance, frustrate transparency and prevent collective rights. It is not presently a sound basis for effectively delivering the principles and policy aims the government set out in this consultation and committed to in the Plan to Make Work Pay.

Other related law is not sufficient, specifically health and safety and the Information and Consultation of Employees (ICE) regulations. As the government recognises in the consultation, these regulations do "not generally represent engagement on the routine adoption of workplace technologies as described under this proposal."

"Option A - Statutory code of practice with guidance", as set out in the consultation paper, cannot resolve these challenges. As the government recognises, this option merely adds another voluntary compliance process to a regime defined by weak adherence, non-enforcement and an individual redress process ineffectively provided for through an already overburdened employment tribunal and court system and

---

<sup>19</sup> Such provision would be necessary for effective and cost-efficient group claims by workers in relation to data protection breaches, since English case law has closed off other avenues such as CPR representative actions.

<sup>20</sup> The Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers introduces a right of collective redress across the EU.

limited Information Commissioners Office (ICO) enforcement. For the same reasons, Option C should be dismissed in that it would do nothing to promote the agenda set out by the government.

The TUC proposes a series of regulatory and legislative amendments to achieve the stated goals of the *Plan to Make Work Pay* while maintaining the integrity of the UK GDPR regime and associated legislation.

### **Why a legislative requirement to consult and negotiate with trade unions or elected representatives on WMT is the only viable option**

*Consultation questions addressed: Q24, Q28, Q32 - Q41, Q45 - Q47, Q54, Q55*

Legislation is the only mechanism that can give force to the government's "principles for responsible use of WMT which supports good industrial relations" as defined in the consultation.

### **Establishing a mandatory minimum standard is good for workers and for good employers**

As described above, the current regime is not able to achieve the goals of fair and effective WMT deployment. The legal obligations required to deliver on the commitment made in *Make Work Pay* simply do not exist at present. Any layering of a new code of practice or guidance that does not create a legal obligation with a credible enforcement mechanism merely creates an environment where good employers may be disadvantaged relative to employers who choose not to follow it, in the expectation that there will be no consequence.

As the government sets out in this consultation paper, a key goal of the Employment Rights Act 2025 and the wider *Plan to Make Work Pay* is "raising standards across the board creating a level playing field".

This can only be achieved through a legislative requirement to consult and negotiate, with a view to reaching agreement, with the workforce creates a positive duty on all employers, establishing a minimum floor that limits undercutting by competitors.

### **Effective consultation and negotiation are pre-emptive, supporting more effective technology deployment**

The current regime is defined by a series of decisions made by the employer behind closed doors, with workers only interacting with WMT at the point of deployment, often without clarity on the purpose, justification, or expected impact of the technology. This causes distrust and leads to operationally ineffective or disproportionate use of technology.

In this process, the only route for worker voice is to seek post-deployment redress through grievance procedures or their individual data subject rights e.g. Subject Access Requests, objection to data processing, complaining to the ICO or even bringing a civil claim. This process is cumbersome and protracted for even the most committed and well-resourced workers to utilise and emphasises a litigious, rather than mutually beneficial, approach.

An effective consultation and negotiation process (which must be with a view to reaching agreement) supports the pre-emption of industrial relations and technical issues by engaging with the workforce's concerns, experience and expertise. As the consultation highlights, "Workers and their representatives can help identify practical risks that may not be visible at the design or procurement stage, including impacts on workload, wellbeing, equality, privacy, autonomy and accuracy." Ensuring worker voice is effectively engaged is vital to give force to the consultation's stated principles. The CWU-Openreach case study above shows the gains possible from an improved regime.

More generally, worker engagement and representation are drivers of better technology adoption. The OECD states that "evidence based on cross-sectional European data shows for instance that the adoption of technologies with AI components in companies which have some forms of workers' representation, is significantly associated with better working conditions than adoption in employers without such workers' voice structures".<sup>21</sup>

### **Collective agreements enable local level and contextual regulation and enforcement mechanisms**

The consultation states that: "Decisions about WMT are also often highly context specific – the same technology may be low risk in one workplace but more impactful in another." Mandatory consultation and negotiation processes – especially when supported by a collective bargaining agreement – provide a mechanism for determining this without reliance on overly prescriptive regulations.

In the event of a dispute or challenge, the current regime's primary reliance on employment tribunals, courts, and ICO enforcement mechanisms is protracted and expensive for all. While court or tribunal route will always be needed, collective agreements negotiated by a union representing the workforce and the employer allow for mechanisms appropriate to particular workplaces.

### **A legislative framework should be supported by a statutory code of practice with guidance**

There are a wide range of WMT that are context-specific in application and changeable due to the dynamic nature of algorithmic and AI-enabled WMT. The legislative

---

<sup>21</sup> OECD. [OECD Employment Outlook 2023: Artificial Intelligence and the Labour Market](#). 2023

mandate should be durable to change and focused on enabling a positive duty and right of consultation and negotiation. This should be supplemented with a statutory code of practice with guidance, supporting workers and employers with practical implementation.

## **Regulatory and legislative changes to give effect to principles for responsible use of WMT**

*Consultation questions addressed: Q45 - Q49, Q52 - Q56*

The TUC sets out here responses to the consultation's stated design considerations for legislation and regulatory changes as avenues to give force to the goals set out by the government.

### **"Whether consultation should be automatic in all cases, limited to higher risk uses, or triggered by a request from workers or representatives."**

A statutory threshold should be established that places a firm duty on employers to instigate a process of consultation and negotiation. Workers and trade union representatives must also be able to trigger this process if the employer does not. It is essential that the obligation is not just one of "consultation" or "negotiation", but of "consultation and *negotiation with a view to reaching agreement*" as set out in the MWP commitment.

This threshold should be consistent with established standards existing within data protection law. For example, Article 35 of the UK GDPR currently triggers the requirement to conduct a DPIA where data processing is "likely to result in a high risk to the rights and freedoms of natural persons". This would be supported by adding WMT to the ICO's list of data processing where a DPIA process should always be undertaken.

Legislation should apply this standard to initiate a mandatory consultation process and, where a recognised trade union is present, a negotiation process at the stage where proposals are still formative, and at the very latest, one month before any relevant data processing commences.

This legal requirement builds on the original intent of the GDPR. Article 35(9) reads: "Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing [...]."

To meet the stated principles, this should be amended to establish a firm duty on employers in the following terms:

"The controller shall consult and, where a trade union is recognised, negotiate with data subjects or their representatives on the intended processing [...]."

An alternative, or supplementary, route to establish the primary right would be to amend trade union legislation.

In particular, by explicitly adding WMT (or technology generally) to the topics of voluntary bargaining (s.178), the mandatory topics in statutory trade union recognition and including WMT and technology related information for the purposes of bargaining within updated associated Codes of Practice and Guidance (s.181).

Furthermore, the remedies which are associated with the promised negotiated rights will need to include mechanisms to compel the provision of information for the purpose of the negotiations, and to include penalties for non-compliance. In the trade union sphere, appropriate enforcement bodies already exist in the form of Employment Tribunals and the CAC, as already provided for in TULRCA.

### **"What information employers should provide to workers, and when"**

Currently, there is no duty to disclose intentions of relevant data processing or the DPIA itself. This is a fundamental barrier to consultation and negotiation.

At a minimum, there should be a firm duty - provided for in legislation – to consult and negotiate with the workforce and then to disclose the DPIA for any WMT to workers and representatives. This would be done in conjunction with the process of consultation and negotiation at the start of the process, as highlighted above, that will in general include the production of a DPIA.

Further, given the dynamic nature of data processing using algorithmic and AI technologies, once relevant use of WMT starts, the process should be mandated to be repeated every 12 months for as long as deployment continues or as otherwise provided for in a collective agreement between a recognised union and the employer.

To effectively aid this process, there is a need for trade union representatives to be able to access the data that the WMT is processing. As established in related areas of law (s.181 - s.185 The Trade Union and Labour Relations (Consolidation) Act 1992), appropriate provision of information is a pre-requisite for effective negotiation. There should be a right established for trade unions to be provided with all the data collected by an employer that relates to its members that is used or is proposed to be used by the employer for WMT. Again, this merely builds – in principle if not in the same legislative vehicle – on existing provision in the UK GDPR for employees to access copies of their own personal data, and to delegate the exercise of that right to their union or other representative.

Consistent with those principles, the right should be enforceable. Where an employer refuses, the union should be able to complain to the Central Arbitration Committee, as under the 1992 Act in respect of information for collective bargaining, with the Committee able to specify the information to be disclosed and the period within which it must be provided. Any exceptions to the duty should be narrowly defined - for example where disclosure would contravene another enactment or would reveal

information about an identifiable third party who has not consented - rather than a general commercial confidentiality carve-out.

Where a trade union exercises this right, the employer should provide the data in an accessible form within two months of the date of the request. Except where the trade union's members expressly agree in writing, the data shall be provided in an anonymised form.

**"Whether the process should involve engagement/consultation only, or include negotiation with a view to agreement", AND "Whether minimum time periods or procedural steps should apply" AND "Who should be consulted including recognised trade unions, worker representatives or direct engagement"**

Where there is a recognised trade union, the entire relevant workforce should be engaged in negotiation via trade union representatives as is established in other areas of law. This should establish a framework based on legal foundations and applicable to the employment context, current and potential uses of WMT.

In the absence of a recognised trade union that is able to represent and negotiate on behalf of the workforce, a consultation process should take place in line with the standards and processes established by the law governing collective consultation in the event of redundancies.<sup>22</sup> Crucially, this process must have integrity by enabling collective discussion without managers present and enabling discussion and negotiation through elected workforce reps. This must be supported by minimum standards on timelines and processes that ensure consultation is meaningful and not tokenistic.

**"How the requirement would interact with existing legal frameworks such as data protection law"**

The TUC considers that the aims and changes set out above can be achieved through changes to data protection and associated law such as employment law, in many cases using statutory instruments as well primary legislation.

### **1. Automated Decision-Making:**

UK GDPR Article 22D(3) permits the Secretary of State to make regulations that add to or supplement the Article 22C safeguards on automated decision-making, including specifying "how and when" the safeguards listed in Article 22C(2) must be carried out.

The Secretary of State should use this power to:

- i) require notification before a significant automated decision is first taken about a worker or group of workers; and

---

<sup>22</sup> ACAS. [Collective consultation for redundancy](#). 2026

- ii) require that the safeguards in Article 22C(2)(b) to (d), including the rights to make representations, obtain human intervention and contest a decision, can be exercised collectively through a recognised trade union or elected representatives, rather than only on an individual basis.

These changes fall within the powers set out in Article 22D(3) and would address gaps in the current framework that are inconsistent with the principles set out in the consultation, particularly transparency and worker voice. The ability to exercise these rights collectively would be especially important in the WMT context, where decisions are typically taken at scale using the same underlying logic for groups of workers, and where individual workers are often least able to challenge them effectively.

## **2. Representative action without data subject mandate: Article 80(2) regulations.**

Many workers (especially in the platform economy) are subject to harmful uses of WMT but are deprived of individual and collective employment rights due to the refusal of platform operators to recognise them as employees.

While there is existing provision within UK GDPR for representative legal actions to be taken by not-for-profit organisations (Article 80(1)), this requires a mandate from every data subject involved in the claim. Given the scale of the workforce in a platform economy, which is defined by high precarity and geographic diffusion, this can be practically very difficult to obtain. Article 80(2) allows the Secretary of State to make regulations enabling mandate-free representative legal claims by not-for-profit representative bodies. Such regulations should be consulted on and made, to facilitate the cost-efficient bringing of representative data protection actions on workers' behalf.

UK legislation provides a route for doing this. Section 190 of the Data Protection Act 2018 empowers the Secretary of State to make regulations exercising the Article 80(2) option, and to enable a body to exercise a data subject's rights under Article 82 without authorisation from the data subject. That power became exercisable following the review required by section 189, which was carried out in 2020-21. Implementation therefore requires secondary legislation only. Regulations should adopt the same eligibility criteria as apply under Article 80(1), so that the bodies able to act without a mandate are the same properly constituted, not-for-profit bodies active in the field of data protection that may already act with one, and should include trade unions among them.

## **3. Code of Conduct on third-party exercise of data subject rights**

Article 40 of the UK GDPR allows industry bodies and associations to create sector-specific codes of conduct. The Information Commissioner's Office (ICO) reviews and approves these frameworks. These codes help organisations prove compliance with

data protection laws. In this case a new code should be developed to guide data controllers in respond to trades union exercise of worker data rights on their behalf.

A code approved under Article 40 can, under Article 41, be monitored by a body accredited by the Commissioner with power to take action against members that infringe it, which gives an Article 40 code status that guidance alone does not have. The code should address the practical obstacles employers currently raise: how a union verifies its mandate to access workforce-related data, the timescales for responding to requests made on behalf of multiple members, the format in which data is provided so that it is capable of analysis, and the handling of information relating to other identifiable individuals.

#### **4. The ICO's Article 35(4) list**

The ICO specifies ten key types of processing operations that require a DPIA, either automatically or when combined with other "high risk" criteria. WMT should be added by the ICO to this list to underscore the need for robust processes, alongside the other amendments on consultation and transparency. Listing has two concrete consequences:

- i) a DPIA becomes mandatory rather than a matter for the employer's own screening assessment, and
- ii) where the DPIA shows a residual high risk that the employer cannot mitigate, Article 36 requires prior consultation with the Commissioner before the processing begins.

Both are existing mechanisms that would require no legislative change.

#### **5. Make consultation mandatory in Article 35(9) OR Amend the TULCRA 1992 to establish the primary right**

Article 35(9) should be amended to establish a firm duty on employers. Specifically, where the Article currently reads "Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing [...]."

This should be amended to:

"The controller shall consult and, where a trade union is recognised, negotiate with data subjects or their representatives on the intended processing [...]."

The amendment should also make express what is currently arguably only implicit:

- i) That the views must be sought before the processing begins and at a point when the employer's proposals can still be changed;
- ii) That where a trade union is recognised for the relevant group of workers, that union is the "representative" whose views must be sought; and

- iii) That the controller must record the views obtained, and its response to them, in the DPIA itself, building on the requirement in Article 35(7)(d) to record the measures taken to address the risks identified.

An alternative to establish the primary right would be via amendment to TULCRA 1992. By explicitly adding WMT (or technology generally) to the topics of voluntary bargaining (s.178), the mandatory topics in statutory trade union recognition and including WMT and technology related information for the purposes of bargaining within updated associated Codes of Practice and Guidance (s.181).

## **6. Mandated DPIA and data transparency**

As above, require employers to provide WMT-relevant DPIAs to the workforce. The absence of such a requirement undermines transparency and leaves workers without an effective route to understand, scrutinise or engage with WMT.

The workforce-facing version should, as a minimum, set out the purposes of the processing, the categories of data collected and how long they are retained, whether and how the outputs are used in performance management, capability or disciplinary processes, whether any decision-making is automated within the meaning of Articles 22A to 22D, and the necessity and proportionality assessment relied on. Withholding material (as opposed to the DPIA as a whole) should be permitted only where disclosure would reveal a specific security vulnerability or a genuine trade secret, and the employer should be required to state where material has been withheld and why.

## **7. Amend enforcement routes for failure to consult**

Currently, only the ICO could “enforce” a failure to comply with Article 35(9) (even if it were converted into a firm duty). An enforcement route which can be initiated by workers’ representatives, including via employment tribunals, would make the obligation much more meaningful. This could overlap with the Article 80(2) changes mentioned above.

Two features of the present position explain why this is necessary. First, Article 35(9) is enforceable only by the Commissioner; there is no free-standing right of action for breach of it, and a claim for compensation under Article 82 requires an *individual data subject* to establish damage, which is rarely a realistic route in response to a failure of process. Second, a duty whose enforcement depends entirely on the regulator's appetite and capacity is, on the evidence of recent performance, not a duty that employers take account of in how they run their businesses.

## **8. Restore an Article 88 equivalent for Secretary of State power to make employment-specific rules**

Article 88 of the (EU) GDPR allowed EU member states to create specific national rules or collective agreements for handling employee personal data in the workplace – in recognition of the specific power imbalance at work and the risk of exploitation as a result. This could have been transposed into provision for the Secretary of State to

make regulations on the same, but the article was removed as part of the UK's withdrawal from the EU. It should be reinstated.

Reinstating this power or making an alternative provision with a similar effect would allow ministers to address specific WMT issues such as hiring, work management, and safety. A restored power should be framed in the terms of Article 88(2) of the EU GDPR, enabling the Secretary of State to make provision by regulations for "suitable and specific measures" to safeguard workers' human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, and monitoring systems at the workplace - and, as Article 88(1) contemplates, across recruitment, the performance of the contract of employment, the management, planning and organisation of work, equality and diversity, and health and safety.

This would:

- i) Encourage employer/controllers to comply and engage in good faith, since non-compliance would make the case for the Secretary of State to exercise the rule-making power; and
- ii) Open up a route for more "dynamic" alignment with rules such as the ILO Convention on Platform Work that seeks to address the harms of WMT and algorithmic technologies on hundreds of thousands of workers.

### **"What enforcement mechanisms or remedies should apply where the process is not followed"**

As established above, the current regime's reliance on after-the-fact individual rights and the ICO/court enforcement regime is not sufficient. Enforcement that depends on a worker identifying themselves to their employer as the person objecting, and then sustaining a process measured in years, is not enforcement that will be used by the workers most exposed to WMT.

For the new regime to be effective there must be mechanisms and remedies that incentivise adherence in the first instance and provide a route for enforcement - including through employment tribunals.

"Standing" should sit with the recognised trade union where there is one, with elected representatives where there is not, and with affected workers in the alternative, mirroring the approach taken to collective consultation on redundancies under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992. The employment tribunal should be the primary forum: it already determines questions of collective consultation, detriment and dismissal, and is accessible to workers' representatives in a way that the courts and the Commissioner's complaints process are not. Disputes about the provision of information under the process would be better suited to the Central Arbitration Committee, consistent with sections 183 to 185 of the same Act.

Time limits should run from the date on which the employer decides to proceed with, or begins, the relevant processing, with a discretion to extend where it is just and equitable to do so. Because WMT is frequently introduced in stages, as a pilot and then an extension, and because its uses change after deployment, the limitation rule should be drawn so that an employer cannot defeat a claim by pointing to an earlier phase that was not challenged at the time.

Remedies and enforcement mechanisms may vary depending on the facts, for example:

- i) Complete failure to consult or negotiate
- ii) Failure to effectively comply with specific aspects, such as the provision of information

Mechanisms or remedies that may apply to WMT could include:

- i) Automatic unfair dismissal where process is not followed - that is, where a worker is dismissed in reliance on WMT introduced without the required process
- ii) Tribunal recommendations
- iii) Protective awards, modelled on sections 189 and 190 of the 1992 Act: a fixed maximum, set by reference to the seriousness of the employer's default rather than to loss suffered, so that an award does not depend on individual workers (or groups) establishing damage
- iv) A declaration that the employer has failed to comply, which the Commissioner could take into account in exercising its own enforcement powers
- v) An order that the employer suspend, or not further extend, the relevant use of WMT until the process has been completed
- vi) A restriction on an employer relying on data generated by WMT that was introduced in breach of the duty, in any capability, disciplinary or dismissal process [or in defending a claim arising from one]. This is the remedy most likely to change employer behaviour, because it removes one of the main benefits of non-compliance.
- vii) Protection from detriment, and automatically unfair dismissal, for representatives and workers who raise or take part in the process, modelled on sections 47 and 103 of the Employment Rights Act 1996
- viii) A reversed burden of proof, so that where the employer has not disclosed the DPIA, it is for the employer to show that the required process was followed

These routes should sit alongside, and not displace, the Commissioner's and the courts' existing UK GDPR enforcement powers. A failure to consult would remain an infringement of Article 35, for example. A tribunal or Committee finding should be capable of being relied on by the Commissioner, and vice versa, so that the two routes reinforce rather than duplicate each other.

For workers whose status is contested, and who therefore cannot readily access the employment tribunal at all, the Article 80(2) regulations described above are the practical route to enforcement. That is a further reason for making them, and for ensuring that the two reforms are designed together rather than in isolation.

### **“Whether the requirement applies to those with employee status or extends to workers”**

It is not a coincidence that the most abusive uses of WMT are found in the platform economy, where many workers are deprived of basic rights that flow through employee or worker status. As the consultation acknowledges, these workers are highly impacted by harmful use of WMT.

Without further moves to a single worker status<sup>23</sup>, the ability for workers misclassified as independent contractors to participate in consultation or negotiation is limited.

The UK can take steps to address the harms endured by platform workers by ratifying the International Labour Organisation (ILO) Decent Work in the Platform Economy Convention, 2026 (No. 193). This internationally agreed standard establishes rights and protections on WMT for workers.

The government should also move swiftly to close loopholes that allow for many platform workers to be classified as self-employed and to put in place measures moving towards a single status of worker.

### **Other issues of relevance – Prohibiting dynamic pay setting**

*Consultation questions addressed: Q67*

The TUC agrees that there are positive use cases for WMT. However, some use cases of WMT cannot be positive. Dynamic pay setting is one such case. Hundreds of thousands of workers are subject to the manifest unjustness of pay that is not transparently set and is changeable through algorithmic technologies based on WMT.<sup>24</sup> The fact that pay is not transparent and static fundamentally destroys the basis of any decent employment relationship, and individual or collective pay bargaining – the exchange of labour for an agreed wage. Dynamic pay is a relatively new development in the platform economy, serving no purpose other than to drive down pay of the most vulnerable workers and thereby also harming the wider economy and public services.

Dynamic pay should be prohibited under all circumstances. The TUC calls on the government to confront this degradation of working lives.

---

<sup>23</sup> TUC. [Taylor Review: Employment Status](#). 2018

<sup>24</sup> Partridge, Joanna. [Food delivery riders call on platforms to open up AI ‘black box’ they say has cut pay](#). 2026;

TUC. [The human price of dynamic pay](#). 2026