

**Response to Consultation on
Workplace Monitoring Technologies**

By

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The Institute of Employment Rights is an independent charity established in 1989. We exist to inform the debate around trade union rights and labour law by providing information, critical analysis, and policy ideas through our network of academics, researchers and lawyers.

This IER response, kindly drafted by the expert named, reflects the views of the author not the collective views of the Institute. The responsibility of the Institute is limited to approving its publications, briefings and responses as worthy of consideration.

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Institute of Employment Rights:

Response to Consultation on Workplace Monitoring Technologies

1. This is the Response of the Institute of Employment Rights (IER) to the Government's consultation, *Make Work Pay: Workplace Monitoring Technologies*, running between 8 July and 30 September 2026. The IER welcomes the opportunity to contribute to this consultation and believes that providing workers with meaningful collective voice over the use of monitoring and algorithmic management technologies is crucial for securing fundamental rights and decent conditions at work.
2. **Questions 1 and 3.** The IER is an independent charity established in 1989. We exist to inform the debate around trade union rights and labour law by providing information, critical analysis, and policy ideas through our network of academics, researchers and lawyers. The IER is located in the North-West.
3. This Response focusses on three areas in the Consultation: (i) the principles for the responsible use of WMT which supports good industrial relations; (ii) the role and value of worker engagement; and, especially, (iii) the options for intervention. The position adopted in respect of these issues can be summarised as follows:
 - (a) The principles put forward in the Consultation are generally sound, but omit several important elements of good practice, and will not be effective in practice unless given expression in binding legal duties (Questions 21-27).
 - (b) Meaningful worker engagement over WMT requires collective mechanisms and, above all, negotiation and agreement with independent trade unions. It is unlikely to be achieved through consultation with individual workers (Questions 28-30).
 - (c) The IER opposes Option A and Option C. Both options will have limited, if any, effect on employer behaviour (Questions 31-39 and 57-66).
 - (d) The IER supports Option B in its stronger form: an automatic duty to consult and negotiate with a view to reaching agreement before WMT is introduced or its use changed. This should be backed by effective remedies including the power to order the suspension of WMT pending proper consultation. (Questions 40-56)
 - (e) The IER welcomes the broad definition of WMT adopted in the consultation, which covers algorithmic management systems as well as

purely data gathering systems. Consultation duties should apply to all uses of WMT that fall under this definition rather than being limited to a narrower category of 'high risk' systems. In reality, all uses of WMT carry high risks to workers' rights and conditions.

(f) The duty should extend beyond employees to at least limb (b) and agency workers, and ideally to all who perform work personally and are not genuinely carrying on a business of their own. (Questions 52-53).

(g) Doing nothing is not a viable option. Consultation and negotiation duties are necessary but not sufficient, and must be accompanied by a floor of substantive rights, including prohibitions on uses of WMT which infringe workers' fundamental rights (Questions 67-68).

4. In light of the IER's expertise we do not respond to Questions 4-20, which seek to gather empirical evidence about the use of WMT in the workplace. It is clear to us, however, that there is substantial evidence that WMT poses serious risks to workers' rights and decent conditions.¹

Principles for Responsible Use of WMT which Supports Good Industrial Relations

5. The IER echoes the Government's comment that existing legal protections are not always applied in practice. It also agrees that the relevant principles should align with those set out in the existing law.
6. **Question 21. To what extent are the above 8 principles regarding WMT demonstrated in your workplace?** The IER cannot comment on this question.
7. **Question 22. Which of the 8 principles do you think are the most important for employers when introducing and using WMT?** The IER considers that the most important principles are (i) worker engagement and voice and (ii) human oversight and accountability.
8. Given the inequality of bargaining power in the employment relationship, collective mechanisms providing worker voice are essential if the other principles are to be achieved in practice. The issues to which WMT gives rise are systemic and the power imbalance in the individual relationship means that individual rights to access and consent (for example) will not offer solutions to the irresponsible, exploitative or unfair use of WMT.

¹ See, for example, Joe Atkinson and Philippa Collins, *Algorithmic Management and a New Generation of Rights at Work* (IER 2024); Ifeoma Ajunwa, *The Quantified Worker* (CUP 2023); Big Brother Watch, *Bossware: The Dangers of High-Tech Worker Surveillance and How to Stop Them* (2024); Alex Wood, *Algorithmic management: consequences for work organisation and working conditions*, JRC Working Papers Series 2021/07, (European Commission 2021); Agnė Paliokaitė, Aleksandr Christenko, Antonio Aloisi and others, *Study exploring the context, challenges, opportunities, and trends in algorithmic management in the workplace – Final report*, (Publications Office of the European Union, 2025).

9. In addition, it is essential that there is always human accountability for significant decisions taken in respect of workers, including those relating to their recruitment, remuneration and any disciplinary matters. Decision-making without human responsibility undermines worker dignity, is liable to result in poor decisions and will generate feelings of alienation and discontent. This need for accountability is recognised, albeit imperfectly, in Articles 22A-D of the UK GDPR, which require that workers must be provided with information and have the rights to make representations and obtain a human review of any significant decisions made on the basis of their personal data without meaningful human input.
10. **Question 23. To what extent do you agree that adherence to these principles during the introduction of WMT would improve worker trust and buy-in?** The IER agrees that adherence to these principles would improve worker trust.
11. **Question 24. What impact, overall, do you think adopting these principles would have on workplace productivity?** In the IER's view, adopting these principles would have a positive impact on productivity. The introduction of new workplace technologies is most likely to have beneficial outcomes where workers are actively engaged in and influence the process of adoption, understand the technologies involved, and are confident there is appropriate human oversight and accountability for their use. In particular, the evidence shows that there are significant productivity benefits of worker involvement and voice in relation to technology adoption.² Conversely, where WMT are introduced in breach of these principles, for example without worker engagement or in an opaque, intrusive or disproportionate manner, this will undermine the relationship of trust required for productive workplaces and can lead to counterproductive responses by workers that are detrimental to productivity.³
12. **Question 25. To what extent do you agree that these principles accurately reflect good practice in the use of WMT?** The IER agrees that the principles accurately reflect good practice in the use of WMT, subject to the answer to question 26 below.
13. **Question 26. Are there any important elements of good practice missing from these principles?** The IER considers that there are important elements of good practice missing from the principles. These are the following:

- (1) Prohibitions against WMT which infringe fundamental rights or

² Sandra Black and Lisa Lynch, 'How to Compete: The Impact of Workplace Practices and Information Technology on Productivity' (2001) 83 *Review of Economics and Statistics* 434; Virginia Doellgast et al, 'Global case studies of social dialogue on AI and algorithmic management', (2025) ILO Working Paper 144. See also Microsoft, *New Future of Work Report 2025* (December 2025).

³ Joe Atkinson and Joseph Evans, *Negotiating the Future of Work: Legislating to Protect Workers from Surveillance* (IPPR 2025).

interests. The Consultation principles state that employers should “engage” with workers or their representatives before WMT is introduced (principle (3)), should “consider” whether less intrusive measures could achieve the same outcome (principle (5)) and should “consider” impacts on mental health and well being (principle (7)). But this does not go far enough. Some uses of WMT should be prohibited altogether; where they do not pursue a legitimate purpose, for instance, or cannot plausibly be justified as a proportionate interference with workers’ rights. Prohibitions of this kind are required by Article 8 of the European Convention on Human Rights, which imposes positive obligations on States to protect workers’ Convention rights against arbitrary and disproportionate interferences with workers’ private life by employers.⁴ This includes, for example, serious interferences with the right to private life, such as the monitoring of workers in private spaces, monitoring their private conversations, or monitoring workers while they are not at work (save where this is necessary and proportionate for achieving a legitimate goal directly related to the employment relationship). In addition, the use of WMT to interfere with the right of freedom of association of workers and their union, such as monitoring communications between workers and their representatives or attempting to predict future exercises of workers’ associational rights, should be impermissible. So should the use of WMT to infer or predict sensitive matters about workers, such as their political opinions, religious or philosophical belief, ethnic origins, trade union membership or sexual orientation. The prohibitions of certain forms of monitoring and practices under Article 5 of the EU Artificial Intelligence Act and Article 7 of the Platform Work Directive may serve as useful starting points here.

- (2) A ban on significant decisions without human oversight. Principle (6) already states that there should be “meaningful human oversight” for decisions involving workers. It should be strengthened to make clear that no significant decisions, including matters relevant to termination of the relationship, should be taken in respect of a worker which do not involve human agency. The permissive regulation of automated decision-making contained in Article 22A-D of the UK GDPR, as amended by Data (Use and Access) Act 2025 s 80, is insufficient in this respect, and contrasts with the approach taken in §5.5 of the ILO Code of Practice on the Protection of Workers Personal Data.
- (3) A legitimate and lawful basis for use of WMT, which is (i) collectively agreed or (ii) is directly relevant to the work relationship, to protect workers or to comply with the law. Principle (1) simply states that the employer should be clear about why WMT is being used, without providing any limitation on the potential reasons for adopting WMT. First, in order to align the principles with those in the UK GDPR, at the

⁴ See, for instance, the Grand Chamber in *Barbulescu v Romania* [2017] IRLR 1032.

very least there should be a lawful basis for the use of WMT, the WMT should be used for a specified and legitimate purpose and it should not be used for other purposes (Article 5). But, second, the inequality of bargaining power in the employment relationship, and the potential for abuse throughout the relationship, requires stronger justifications relating to the purpose than those in Article 6 UK GDPR. It should not be sufficient, for example, that processing is necessary for the controller's legitimate interests: a more specific basis with a tighter connection with the employment relationship should be required. In particular, the use of WMT should be (a) collectively agreed or (b) "directly relevant" to the employment relationship - which is the terminology of the ILO Code of Practice (§5.1) - or necessary to protect the "vital interests" of an individual, or to comply with a legal obligation. Health or genetic information, for example, should only be collected where it is "directly relevant" to the employment relationship.

- (4) Individual worker consent should not be relevant. It is clear that genuine worker consent is a chimera in the employment relationship. Workers may not understand fully the purposes of WMT and are likely to give consent for fear of prejudicing their employment prospects: see e.g. the widespread use of standard form opt-outs for the 48-hour working week in the Working Time Regulations. The potential for this is why most employment law protections are non-waivable, and subject to statutory restrictions on contracting out. If individual consent is allowed to be a reason justifying the use of WMT this will in practice render all the other principles illusory. The ICO guidance on worker monitoring recognises that consent is not usually an appropriate basis for collecting and processing workers' data,⁵ although we would go further and say that consent should *never* be a lawful basis in the employment context. This also broadly accords with §5.13 in the ILO Code of Practice, by which workers may not waive their privacy rights.
- (5) Priority should be given to collectively agreed solutions. Principle (3) rightly recognises the importance of worker engagement in the responsible use of WMT. However, the principles should go further than simply requiring employers to "engage" with workers, trade unions or elected representatives. Rather, as argued below, collectively agreed mechanisms should be central to the introduction of WMT and trade unions (and worker representatives) should be integral to monitoring its effects. We agree with the Consultation that decisions about WMT are often highly context-specific: WMT is a perfect example where one size does not fit all and, as a result, collectively agreed solutions are the best means of adapting WMT to the particular

⁵ ICO, *Employment practices and data protection: monitoring workers* (ICO 2023).

workplace.⁶

- (6) Adequate, proportionate and dissuasive sanctions for breach of the principles. Without some form of sanctions, the principles are likely to have little weight. This is perhaps implicit in principle (6), on accountability, but it needs to be made explicit. The primary responsibility for compliance with the principles should always be with the employer. But in some circumstances, there should also be joint liability with the third-party software companies that developed the WMT or supplied it on a 'software as a service' basis. In any case, it is essential that sanctions are effective in practice.
14. **Question 27. What challenges, if any, do employers or workers face in applying these principles in practice?** The IER recognises that the challenges for applying these principles include lack of clarity for both employers, workers and unions around legal requirements for monitoring (something that has bedevilled the UK GDPR and the Data Protection Act 2018); cost and resource pressures (though these should not be overstated and to some extent can be mitigated by clarity in the law); the rapid evolution of technology (perhaps especially AI); lack of worker trust/confidence (exemplified by workplaces where there is limited knowledge of the existence of WMT, the purposes for which it may be used, and how these technologies operate); limited worker or representative capacity (something which can be assisted by the involvement of independent trade unions); and difficulties in smaller organisations. None of these, however, is a sufficient reason for not enacting clear, binding legal standards to give expression to the principles in the Consultation.

The Role and Value of Worker Engagement

15. The IER echoes the Government's view that collective engagement should be central to the practical achievement of the principles which should inform good practice in the use of WMT.
16. **Question 28. To what extent do you agree that local engagement with workers, trade unions or elected representatives is important to the responsible use of WMT?** The IER strongly agrees that engagement with workers and trade unions is important to the responsible use of WMT. There are many reasons for this, including those referred to in the Consultation at p 25, such as identifying the risks of WMT in particular workplaces or to particular workers.
17. **Question 29. What do you believe meaningful worker engagement looks like in practice?** In practice, meaningful worker engagement is not met by a duty to seek views, still less by an unenforceable exhortation to consult, as set

⁶ Joe Atkinson and Philippa Collins, 'Worker Voice and Algorithmic Management in Post-Brexit Britain' (2023) 29 *Transfer: European Review of Labour and Research* 37.

out in the ACAS guidance to which the Consultation refers at p 25. The consultations that already take place, or should take place, when employers are creating a Data Protection Impact Assessment (DPIA) under UK GDPR Article 35 are an example of this. This duty to consult is ineffective because it only applies where employers themselves consider it appropriate to do so, and there are no mechanisms that ensure workers views are listened to. Meaningful worker engagement means - or should mean - that collective mechanisms and independent trade unions take centre stage.

18. First, meaningful worker voice is very unlikely to be achieved by direct consultation with the workforce, or even with worker representatives appointed or elected for this particular purpose. Individual workers are unlikely to have the knowledge to identify the risks associated with WMT or the power to resist its implementation. Although preferable to an entirely individualised approach to consultation, worker representatives appointed from within the workforce are in a much weaker position for the purposes of consultation than trade unions. In light of the inequality in the labour relationship, any agreement to its use will replicate the problems that arise where individual consent is a ground for permitting the adoption of technology - as under, for instance, Article 6(1)(a) UK GDPR.
19. Second, the best means of achieving genuine worker engagement will be through negotiation and agreements with representatives from independent trade unions. This is especially important where the WMT system involves potential infringements of privacy, dignity or equality. The law should therefore seek to facilitate and incentivise collective agreements on monitoring and management technologies. A starting point would be expressly to include WMTs within the statutory list of matters that may be subject to collective bargaining and agreements under TULRCA s.178 and as the subject matter of trade disputes under s.244. In addition, to provide an incentive on employers to engage in collective bargaining, collective agreements with independent trade unions could be a permissible justification for the use of WMT in the employment relationship (see the response to Question 26 above), or could be a means of permitting some derogations from employer duties in respect of WMT⁷ - though this presupposes the principles are given expression in legal duties rather than guidance or a code of practice.
20. Third, there are various means of assisting this process to ensure that it is meaningful in practice. For example, employers should be under a duty to inform worker representatives of the types and purposes of WMT it is proposing to use, as this is a necessary precondition of any effective agreed solution. As suggested below, in response to Questions 40-56, employers should be under a duty to negotiate with worker representatives about the proper, and impermissible, uses of WMT before they are introduced. Worker representatives should also be involved in the monitoring of WMT in practice

⁷ See analogously in the context of employer duties to zero-hours workers, s.27BW of the Employment Rights Act 1996.

(including in impact assessments for employers above a certain size: see the example in Article 8 of the Platform Work Directive). They should have the right, too, to bring complaints to the appropriate body in the event that an employer is not complying with the relevant legal standards.

21. **Question 30. Are you aware of any examples of worker engagement or consultation regarding WMT or similar topics that have worked well or poorly – please explain.** Trade unions and worker representatives are increasingly seeking to negotiate with employers over the adoption and use of new workplace technologies, and many successful examples of this can be found outside the UK.⁸ Despite the lack of adequate legal support for consultation or collective bargaining on these issues in the UK, several unions have prepared guidance for reps and model collective agreements on these issues,⁹ and have had some successes in this area. This includes the Communication Workers Union framework agreement with the Royal Mail Group, which safeguards existing jobs and conditions and states that new technology will not be used to ‘de-humanise’ the workplace.¹⁰ In contrast, there are numerous examples where employer failures to engage with workers and get their support for the introduction of WMT have led to backlash and disputes.¹¹

Options for Intervention

22. The Government proposes three possible interventions (a) a statutory code of practice (CoP); (b) a legislative duty to consult and negotiate; or (c) non-statutory guidance. The Consultation also leaves open the option of no intervention if the evidence does not demonstrate a clear problem in relation to WMT. The IER strongly believes that intervention is needed in this area to protect workers’ rights to privacy, dignity and decent conditions of work

⁸ For some examples beyond the UK see Virginia Doellgast et al, *Global case studies of social dialogue on AI and algorithmic management*, (2025) ILO Working Paper 144; Peter Kerckhofs, *Collective bargaining on artificial intelligence at work*, (Eurofound 2025).

⁹ Prospect, ‘Digital technology: guide for union reps’ available at <https://prospect.org.uk/digital-technology-guide-for-union-reps/>; Unite, ‘Draft new technology agreement’ available at <https://www.unitetheunion.org/media/4960/new-tech-agreement.docx>; TUC, ‘AI guides for union officers and reps’, available at <https://www.tuc.org.uk/artificial-intelligence-ai/ai-guides-union-officers-and-reps>.

¹⁰ Joe Atkinson and Philippa Collins, ‘Worker Voice and Algorithmic Management in Post-Brexit Britain’ (2023) 29 *Transfer: European Review of Labour and Research* 37; Royal Mail and CWU, *Key Principles Framework Agreement. Collective agreement.* (2020), available at: https://www.cwu.org/wp-content/uploads/2020/12/Joint-draft-KEY-PRINCIPLES-FRAMEWORK-AGREEMENT_18_12_20_Final.pdf.

¹¹ BBC News, Barclays scraps ‘Big Brother’ staff tracking system (20 February 2020); Katie Paul, ‘Meta scales back plan for internal mouse-tracking tech, citing staff concerns’, (Reuters, 2 June 2026). See also C Thiel et al, ‘Stripped of agency: The paradoxical effect of employee monitoring on deviance’, (2023) 49 *Journal of Management* 709.

among other interests,¹² and is in favour of (b), subject to the comments on Option B set out below.

23. The IER is strongly opposed to Option A and Option C. In the absence of an enforceable legal duty with effective sanctions, neither a statutory CoP nor non-statutory guidance will deliver the relevant principles in practice. There is already a large volume of practical guidance on the existing law, such as that issued by the Information Commissioner on the UK GDPR. But that guidance is backed by legal duties, providing the incentive to adhere to it. Without the shadow of the law, a CoP or non-statutory guidance amounts to little more than the Government's view of good practice, likely to be unread and ignored.

Option A - Statutory Code of Practice with Guidance.

24. The IER is opposed to Option A.
25. **Question 31. Based on the description above, would a statutory WMT code of practice better support the responsible adoption and use of WMT and increased worker voice?** No - a statutory CoP would not support the responsible adoption and use of WMT, nor increase worker voice.
26. **Question 32. What impact would this option have on industrial relations?**
No impact.
27. **Question 33. Please explain your answer.** The proposal is that the CoP would be issued under s.203(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), on the basis that it will "promote the improvement of labour relations". As s.207(1) states, a failure to comply with the CoP (or the supplementary guidance) will not of itself give rise to any legal liability. The only suggested legal effects of the proposed CoP in the Consultation are at pp 27-28. In more detail, they are: (i) where any provision of the CoP "appears...to be relevant to any question arising in the proceedings" then a tribunal "shall" take it into account "in determining that question" (s.207(3)); and (ii) in existing proceedings in the jurisdictions listed in Schedule A", where it appears to a tribunal that the "claim to which the proceedings relate concerns a matter to which [the CoP] applies" (s.207A(2)(a)), and the employer unreasonably breached the CoP, it may lead to an uplift of damages under s.207A.
28. Both of these routes are likely to be little used by tribunals and ineffective and irrelevant in practice to delivering the principles in the Consultation.
29. As to the first route, the Consultation states that tribunals would take the CoP into account in "claims such as unfair dismissal or discrimination where the

¹² Atkinson and Collins (n 1).

use of WMT formed part of the background” (p 27). But it is not sufficient that WMT forms part of the “background”; under s.207(3) of TULRCA the CoP must appear to be “relevant” to a question in the proceedings. Tribunals are enjoined nowadays to keep the evidence and submissions sharply focussed on the issues they have to decide in accordance with the overriding objective in rule 3 of the Employment Tribunal Rules of Procedure. Case management is used to identify clearly the issues for the hearing. Arguments whether or not the employer breached a provision of a CoP on WMT are likely to be viewed by a tribunal as too distant from those issues to be of any relevance in addressing them.

30. Take unfair dismissal, where the statutory question is whether the employer acted within the range of reasonable responses when deciding to dismiss the employee. The starting point of a tribunal will be that whether an employer breached a provision of the CoP is of no assistance in answering that question. For example, whether the employer provided clear and transparent data about the use of WMT, did not consult with workers or their unions about its introduction, or did not consider the dignity and well-being of employees in using WMT all involve examining events very different from the decision to dismiss, will probably involve different witnesses, will add to the length of hearing and are liable to divert a tribunal from a proper focus on the legal issues. In other circumstances the CoP adds nothing to the statutory duty. For instance, if the decision to dismiss was taken without human oversight, a tribunal is likely to consider the decision to be unfair, regardless of what the CoP says. Moreover, a tribunal which *did* take account of a breach of the CoP in deciding that an employer acted fairly risks misdirecting itself because it will not have asked itself the relevant statutory question in s.98 of the Employment Rights Act 1996. In summary: whether the CoP was breached is likely to be seen as a distraction from the actual legal issues or superfluous to them at best, and liable to give rise to a misdirection at worst.
31. The CoP is even more irrelevant in relation to discrimination claims. The question on direct discrimination is usually based on the “reason why” the employer acted as it did: was it for a discriminatory reason or for some other reason? It is very hard to see how a failure of the employer to follow a provision in the CoP on WMT could *ever* be relevant to that question. At best, a breach of the CoP might have some relevance to whether the use of WMT gave rise to indirect discrimination because, for example, the criteria it uses subjects individuals with a protected characteristic to a “particular disadvantage”. But the number of such claims is vanishingly small: we are not aware of any decided cases to date.¹³ The vast majority of claims of discrimination are for direct discrimination or equal pay, where the

¹³ One example is *Manjang v Uber Eats*, is one such example involving facial recognition checks, which was funded by the Equality and Human Rights Commission but settled without any judgment.

employer's compliance with a CoP on WMT is beside the point and irrelevant.

32. As to the second route of legal effect, s.207A of TULRCA, the section is only triggered if the "claim...concerns a matter to which [the CoP] applies" (s.207A(2)(a)). The obvious example is the ACAS Code on Disciplinary and Grievance Procedures, to which s.207A is directed: it clearly "applies" to claims such as unfair dismissal. There are four serious problems with using this section as a backdoor means of enforcing a proposed CoP on WMT. First, such a CoP will not fall within the definition of "relevant code of practice" in s.207A(4) (see Question 38 below). Second, it is doubtful that a claim of, say, unfair dismissal or discrimination "concerns a matter" to which the CoP "applies", given that the CoP is not directed to such claims. Third, the uplift will only arise where the tribunal has already made an award under one of the jurisdictions in Schedule A2. Fourth, and most fundamentally, in light of the peripheral relevance a CoP on WMT has to the legal issues which a tribunal has to determine (such as in unfair dismissal and discrimination), it is likely that a tribunal declines to determine the question of whether there has been a breach of the CoP. A tribunal will probably consider resolving that issue is disproportionate and will only add to the length and expense of the hearing. The backdoor turns out to be firmly shut.
33. **Question 34. What impact would this have on the adoption and use of WMT by organisations?** No impact.
34. **Question 35. Please explain your answer.** Employers do not adopt WMT by accident. They do so because they believe it will increase productivity, reduce labour costs or serve other goals of management. The principles set out in the Consultation are important ones, based on fundamental matters such as fairness, equality, privacy and dignity, which the Government accepts reflect good practice. But the use of a CoP to give concrete effect to those principles will be toothless in the absence of any legal duties and will have no deterrent effect on employers: see the answer to question 33. Only effective and dissuasive legal sanctions will ensure that the principles are more than mere exhortations, ignored in practice.
35. **Question 36. What benefits, costs, risks or practical challenges could arise from this option?** The IER considers the benefits of a CoP are minimal and the principal risk of using a CoP is that it does nothing to give effect to the principles in the Consultation. To the extent the CoP simply explains the existing law, as the Consultation suggests at p 29, it is not clear why it is considered necessary. There is already a wealth of practical advice on the application of the UK GDPR and Data Protection Act 2018 issued by the

Information Commissioner, some of which is specifically aimed at the employment relationship. Instead of providing a “clearer framework” or improving “clarity about relevant legal protections” (Consultation p 29), the existence of multiple official sources of guidance on the same legal duties is liable to produce confusion and bewilderment.

36. **Question 37. What should be the main purpose of a statutory WMT code of practice?** If a CoP is the means used, its aim should be to reduce or resolve disputes around WMT.
37. **Question 38. Should the code be drafted to qualify for the TULRCA s.207A tribunal compensation adjustment mechanism, where an employer unreasonably fails to follow it.** This is largely dealt with in the response to question 33. Even if s.207A(4) of TULRCA is amended so that the CoP on WMT falls within the definition of “relevant Code of Practice” in s.207A, it is difficult to see how it could “apply” to one of the jurisdictions listed in Schedule A2 owing to its tangential relevance to such proceedings. By the same token, a tribunal is unlikely to get round to determining that there has been a breach of the CoP, viewing such a question as too distant from the legal issues before it.

Option B -Legislative Requirements to Consult and Negotiate

38. The IER supports Option B. It is the only option capable of providing workers with meaningful voice over WMT, for the reasons stated in respect of Option A and Option C. Of the two variants described at p 34 of the Consultation the IER supports the “stronger” model of consultation right. A “light touch” model that merely provides workers and trade unions with the opportunity to comment and have their views recorded would not provide any meaningful voice over WMT and would reproduce many of the defects identified with Option A and Option C.
39. In addition to considerable benefits over the other options presented in the consultation, only the “strong” model of statutory consultation rights supported here delivers the Government’s commitment to introduce consultation and negotiation in the *Plan to Make Work Pay*.
40. **Question 40. Based on the description above, would a requirement to consult and negotiate with trade union or employee representatives before the introduction of WMT better support the responsible adoption and use of WMT and increased worker voice?** Yes.
41. **Question 41. Please explain your answer.** Workers in the UK currently have no meaningful rights to influence employer decisions over the adoption or

implementation of monitoring and management technologies. They therefore have no formal avenue for raising concerns or influencing uses of these technologies which are incompatible with their fundamental rights, or that breach data protection law or the guiding principles set out above. Trade unions can seek to negotiate over the use of WMT, or resist disproportionate uses of WMT through threats of industrial action, but have no automatic right to be consulted or negotiate on these issues, even when recognised under the statutory recognition procedure. Employers have some piecemeal duties to consult workers and their representatives under health and safety legislation, as well as when preparing a Data Protection Impact Assessment. But these fall short of conferring any duty to consult whenever WMT is introduced or providing any meaningful say in its adoption. Introducing non-binding guidance or a statutory code of practice will do little to change this. Creating new statutory rights for unions to bargain and for worker representatives to be consulted is the only way to provide them with meaningful voice over WMT.

42. Worker voice is key for supporting responsible adoption and use of WMT. Workers themselves are best placed to identify uses of WMT that undermine workplace trust, disproportionately interfere with the exercise of their fundamental rights, or are damaging to their health, wellbeing, dignity and working conditions. Giving workers a say over WMT adoption will therefore help employers find ways to introduce them that achieve their legitimate objectives in a responsible manner. The rapid evolution of monitoring and management technologies, particularly those involving machine learning or other advanced AI processes, means that worker voice is a crucial mechanism for protecting workers' rights and decent conditions. Worker voice is also important as it provides an ex ante mechanism for avoiding or mitigating the risks and harms of WMT, in contrast to ex post rights which attempt (and generally fail) to provide adequate redress for their misuse.
43. It also has virtues over rights to individual compensation. Not only does compensation fail to provide full redress for harms to workers' privacy and other fundamental rights that have already occurred, but workers also face significant practical challenges when attempting to enforce rights through complex and time-consuming tribunal claims. The evidence both internationally and domestically demonstrates that worker voice, in particular when exercised collectively through trade unions, can help both employers and workers to benefit from the introduction of new workplace technologies and safeguard workers against irresponsible and harmful uses.¹⁴

¹⁴ Virginia Doellgast et al, 'Negotiating Limits on Algorithmic Management in Digitalised Services: Cases from Germany and Norway' (2023) 29 *Transfer* 105; *OECD Employment Outlook 2023: Artificial Intelligence and the Labour Market* (OECD Publishing 2023) ch 7; Magdalena Soffia, Abigail Gilbert, Joe

44. **Question 42. What impact would this option have on industrial relations?** Somewhat positive.
45. **Question 43. Please explain your answer.** Employers' adoption and use of WMT is often a source of workplace conflict. Having statutory duties to consult and negotiate will provide a channel for addressing and resolving such conflicts, and support both sides in finding solutions that promote good industrial relations. A duty to consult and negotiate will not have a negative impact on industrial relations, because any trade dispute that arises when it is not possible for parties to reach agreement over WMT may well have occurred in the absence of any duty to consult. Further, introducing WMT without appropriate engagement with workers can undermine the relationship of trust and co-operation on which productive workplaces depend, so requiring consultation and negotiation on these issues will help avoid these potential negative impacts on industrial relations.
46. **Question 44. Would impact would this have on the adoption and use of WMT by organisations?** Statutory duties to consult and negotiate are likely to have mixed impacts on the adoption and use of WMT. They may lead to a reduction in the extent of WMT use, as providing workers with meaningful voice on this issue would mean that uses that are inconsistent with workers' rights, or the guiding principles set out above, would be less likely to occur. But they would also give employers confidence that they are introducing WMT in a way that will not cause tension or prompt counterproductive behaviours from workers, and that achieves their legitimate aims in a responsible manner. This may lead some employers to be more proactive in adopting WMT than they would have otherwise been. More important than any impacts on the level of WMT use and adoption, however, is that consultation and negotiation duties would help ensure WMT use is appropriate, responsible, and in line with employers' obligations under employment and data protection law.
47. **Question 45. In your view, what benefits, costs, risks or practical challenges could arise from this a legislative requirement for businesses to consult with staff prior to adopting WMT?** The benefits include those discussed above in respect of productivity, supporting good industrial relations, and ensuring responsible use of WMT that complies with data protection law principles. The costs and risks of introducing a legislative requirement will depend on the statutory design of the duty. The most straightforward and least burdensome means of introducing such rights is to expressly include WMT as matters for collective bargaining, and to model the new consultation

obligations on those that already exist for collective redundancy consultations.¹⁵ Under this approach employers would have a duty to consult worker representatives on certain topics specified in legislation, with a view to reaching agreement on these issues. To ensure worker representatives are capable of effectively engaging in the consultation employers would also have duties to disclose certain information to them as part of the process. Better still, the legislation could introduce more extensive co-determination rights over WMT,¹⁶ which may be a more effective means of preventing irresponsible uses of these technologies but comes with additional challenges due to its conceptual novelty for UK law.

48. Although introducing consultation and negotiation duties in respect of WMT will create some additional legal complexity for employers, steps can be taken to minimise this. The definition of WMT set out in the consultation is workable and appropriately broad to avoid undue complexity, for example. Attempting to define narrower categories that are subject to consultation, such as “surveillance technologies” or “high risk WMT” would be unnecessarily complicated, lead to protracted litigation over the boundaries of these definitions, and incentivise employers to try to adopt technologies which fall just outside the threshold for consultation. Similarly, complexity can be minimised by making the duties apply automatically rather than depending on a request being made by workers (just as under s.188 of TULRCA) .
49. The exclusion of small enterprises from consultation duties is inappropriate, as the harms of disproportionate and irresponsible uses of WMT do not diminish with the size of the employer. Employers should not be adopting technologies if they cannot do so in a responsible manner, which includes consulting and engaging meaningfully with workers. It is possible, however, that what amounts to appropriate consultation will vary with employer size, with smaller employers being expected to undertake less burdensome processes. In addition, placing obligations on the companies developing and supplying WMT to provide employers with the information needed for consultation,¹⁷ would significantly reduce the burden on smaller enterprises.
50. The IER considers it is critical that the duty extends beyond employees and should ideally apply to all those performing work personally who are not genuinely carrying on a business of their own (see response to Q52 below). The IER recognises, however, that it may not make sense to extend the scope of the consultation duty in isolation from the broader employment status

¹⁵ Contained in TULRCA s.188.

¹⁶ As in Germany, where monitoring technologies cannot be introduced without either the works council's agreement or a conciliation committee decision, Betriebsverfassungsgesetz (Works Constitution Act) s.87..

¹⁷ As is the case under the EU AI Act

consultation and reform. Nevertheless, in addition to employees the duty should at the very least cover both (i) “limb (b)” workers and (ii) agency workers. It is often precarious limb (b) workers, such as those in platform work, who are exposed to the most harmful uses of WMT and who are therefore most in need of a voice on WMT. The same logic applies to agency workers. Even if they are probably “workers” of the agency,¹⁸ to avoid any doubt about their position they should be expressly included within the scope of the duty. The definition in new s.27BV of the Employment Rights Act 1996, introduced by the 2025 Act, can be used for this purpose. Since it will typically be the hirer who will be introducing WMT, the duty to consult with representatives of agency workers should be owed by the hirer. Again, the new Schedule A1 of the Employment Rights 1996 Act, inserted by the Employment Rights Act 2025, can provide a model here.

51. Any attempt to restrict consultation rights to employees only would also be open to challenge under Article 11 and 14 of the ECHR, which require that the collective labour rights protected by freedom of association, including the right to bargain collectively, be secured equally for all, with any differentiation between categories of worker needing to be justified as proportionate.¹⁹ The IER does not consider that there is any proportionate justification for the exclusion of workers from these consultation rights.
52. **Question 46. What model for a mandatory duty would be most appropriate to ensure greater worker voice while being proportionate?** A duty to consult and negotiate with a view to agreement before WMT is introduced or changed.
53. **Question 47. Please explain your answer.** A right for workers and unions merely to comment on employers’ proposed use of WMT, as under the “light touch” model described at p.34, cannot provide them with any meaningful say or influence over the use of these technologies. Some additional mechanism is needed to ensure their views and interests are appropriately taken into account. A duty for employers to seek to reach agreement is one way of achieving this, but other more radical options also exist such as requiring express agreement from unions or works councils for the use of WMT. The matters for consultation should be specified in legislation and include: the form of WMT proposed; the employer's reason for introducing it and their justification of why it is a necessary and proportionate means of achieving that aim, including whether less intrusive means could achieve it; the workers who will be subject to it; the categories of data to be collected and

¹⁸ See *Lutz v Ryanair* [2025] ICR 1448.

¹⁹ Joe Atkinson, ‘Employment Status and Human Rights at Work: An Emerging Approach’ (2023) 86 *Modern Law Review* 1166. See, for example, the approach to consultation rights in *Vining v London Borough of Wandsworth* [2017] EWCA Civ 1092.

how these are used; and the steps taken to monitor and mitigate risks to workers' rights, dignity and health and safety.

54. A request-based model should not be adopted. This would replicate the problems that exist with the Information and Consultation of Employees Regulations 2004, where consultation must be requested by a minimum number of employees (the lower of 15 employees or 2% of workforce), which have been ineffective and largely failed to take root in the UK. Placing the burden of triggering consultation on workers is particularly inappropriate given that they will generally be unaware of what technology is being deployed by employers and for which purposes.
55. The IER believes that priority should be given to consultation with trade union representatives where they are present, as the means by which meaningful worker voice and engagement is most likely to be achieved, with consultation taking place with elected workplace technology representatives where there is no trade union presence. As is the case for TULRCA s.188 consultations, employers should be required to arrange the election of a workplace technology representative where no union representative is available, and only if none is elected to consult the affected workers directly. In addition to obligations for employers to provide information required for the consultation to be effective, elected representatives must be protected from detriment and dismissal for carrying out their role, and be entitled to paid time off for training.
56. These consultation duties should operate alongside the amendments to the definition of collective agreements and trade disputes recommended above. Consultation carried out for these purposes should also be specified as meeting the requirements for consultation under UK GDPR Article 35.
57. **Question 48. What should trigger a consultation requirement or right to request consultation?** Consultation should be required prior to the introduction of any new WMT system and where significant changes to existing WMT are proposed. The IER welcomes the broad definition of WMT adopted (pp 10-11), which encompasses algorithmic management technologies as well as those systems used to collect worker data, as no defensible line can be drawn between the two categories of technology for the purposes of consultation. Consultation should not be restricted to certain uses of WMT, such as systems used for assessing performance or dismissal, or to a narrowly defined category of “high risk” WMT. All uses of WMT should be regarded as high risk. Attempts to restrict the scope of the duty will lead to unnecessary legal complications as well as extensive litigation, and will incentivise attempts to avoid or circumvent the duty to consult. The existence of “function creep”, where technologies initially introduced for one purpose

are later repurposed, means that iterative consultation, rather than a single instance, is necessary. Finally, consultation should be required for existing WMT already in place at the time the consultation requirements are introduced, in order to prevent the rapid and likely irresponsible adoption of WMT in the period immediately prior to the duty coming into effect.

58. **Question 49. Should completion of the process be time limited and if yes, what period would be appropriate?** Other: there should be no maximum time limit for the process. Having a maximum period would allow the employer to avoid meaningful consultation by simply running down the clock. The legislation should instead require consultation to begin at least 30 days before the WMT is proposed to be introduced or changed, and provide remedies if employers attempt to introduce the WMT before consultation is completed.
59. **Question 50. Should employers also be legally required to carry out further consult and negotiate processes if “significant” changes are made to WMT’s use and purpose?** Yes. As above, the existence of ‘function creep’ means that consultation only at the initial point of WMT introduction is insufficient. Significant changes which should prompt further consultation include new purposes for which WMT are used, new categories of data or groups of workers who it will be applied to. The burden and legal uncertainty involved in iterative consultation requirements can be reduced through framework agreements which specify in advance what amounts to significant changes.
60. **Question 51. What should happen if trade union or employee representatives object to the introduction of WMT following a consultation and negotiation process?** The consultation duties proposed here do not amount to a veto over the introduction of WMT. Employers will still be able to lawfully adopt these technologies in the face of trade union and worker opposition, providing of course that they are compliant with employment and data protection law. However, employers should only be entitled to proceed where consultation with a view to reaching agreement has been properly completed, for at least the minimum period of 30 days. As part of this, employers must identify and explore alternative proposals in good faith, including those put to them by unions and worker representatives. Employers should not be able to proceed simply by providing a written response to worker concerns; this is a necessary but not sufficient element of consultation. External mediation should be available, but on a voluntary basis where both parties mutually agree rather than being mandated.
61. **Question 52-53. Who should be covered by any legislative consultation requirement? Please explain your answer.** The IER believes that in principle the consultation duty should apply to all those who provide work or services personally who are not genuinely carrying on a business of their own,

including some individuals classed as self-employed who are exposed to WMT. All individuals whose working conditions are overseen or determined by WMT should have a voice on their use, including those who fall outside current scope of limb (b) worker (such as Deliveroo riders, crowd workers, online freelancers). However, the IER recognises that extending the personal scope of consultation rights in isolation from other rights would introduce an undesirable degree of fragmentation and uncertainty at this stage. A more expansive personal scope of the duty should therefore be addressed as part of the Government's wider reforms to employment status.

62. Of the options presented in the consultation, the IER supports eventually providing consultation rights with "All non-self-employed individuals exposed to WMT, regardless of employment status". Consultation duties should not be restricted to employees and at the very least should extend to limb (b) workers and agency workers, for the reasons set out in §50-51 above.
63. In some cases there may be additional practical challenges to undertaking consultation among limb (b) workers due to the fragmented nature of the workforce. This will not always be true, however, and there are many examples of precarious workers seeking and successfully organising. Moreover, it is possible to design mechanisms that support consultation and overcome the issue of fragmentation, such as requiring online platform companies provide secure communication channels for workers.²⁰
64. **Question 54. In which circumstances should enforcement action be available where a WMT consultation process has not been followed?** Enforcement should be available in all of the listed circumstances: where adequate information was not provided before consultation occurred, where no consultation was undertaken, where it did not meet minimum requirements, where it did not provide a genuine opportunity to influence outcomes, and so on. In addition, enforcement action should be available where WMT are introduced before consultation is completed, and where there has been a failure to provide the prescribed information to trade unions or worker representatives. In addition, where consultation is alleged not to have taken place, or to have fallen short of minimum requirements, the burden should lie with the employer to demonstrate compliance. Without the threat of effective enforcement action any new consultation rights will be little improvement on the current position.
65. **Question 55. What remedies should be available in response to the circumstances you selected in the previous answer.** All the listed remedies should be available, although which is most appropriate will vary depending on circumstances. The ability for tribunals to order suspension or delay in use

²⁰ As in the Platform Worker Directive, Art 20.

of WMT, including on an interim basis, to allow time for consultation to be completed is vital. Without this employers will view consultation as optional, with a price (in the form of any penalties) that they can choose to pay in place of undertaking consultation. Tribunals must likewise have the power to order information be provided in order for consultation to be effective.

66. Financial awards should take the form of a penalty along the lines of the protective award in the collective redundancy model, rather than adopting a compensatory model. The privacy and other harms arising from misuse of WMT are hard to quantify, and there may be little if any direct financial losses caused to workers by breach. In contrast, the purpose of protective awards is to provide a sanction for breach rather than compensate. Referral to the Information Commissioner should take place where breaches have been identified, but this should not be regarded as a primary remedy given the limited resources of the ICO and its failure to adopt a proactive approach to enforcement in the context of workplace monitoring.
67. **Question 56. Please explain your answers to the previous two questions. If consultation became a legal requirement, how do you think it should be enforced?** Claims should be available through the Employment Tribunal system, with trade unions and elected representatives entitled to bring claims.²¹ Affected workers should be entitled to bring claims where there are no such representatives. Collective enforcement of this kind is essential, given the barriers and limited incentives for individual workers to bring enforcement action. Given the weakness of existing enforcement through the ICO consideration should be given to making the Fair Work Agency responsible for overseeing compliance with the consultation duty and guiding principles set out above. Where WMT is subject to collective bargaining and agreement with an independent trade union outside of the statutory consultation process then this should be given priority, and could provide employers with a defence to enforcement action.

Option C - Non-statutory WMT Guidance.

68. The IER is opposed to option C, for similar reasons to those set out in relation to Option A.
69. **Question 57. Based on the description above, would non-statutory guidance by itself support the responsible adoption and use of WMT and increased worker voice?** Non-statutory guidance would not by itself support the responsible adoption and use of WMT or increased worker voice. However, the IER considers it would be useful as practical guidance on new legal duties, such as a requirement to inform and consult.

²¹ As is the case for redundancy consultation duties under TULRCA s.189

70. **Question 58. Please explain your answer.** The reasons supporting this view are essentially the same as set out in respect of Option A. In the absence of any effective legal sanctions for not following the guidance, it will do nothing to deter employers and will fail to give concrete effect to the principles which it is intended to reflect.
71. **Question 59. Would impact would this option have on industrial relations?** No impact.
72. **Question 60. Please explain your answer.** While this is an empirical question, it is likely that non-statutory guidance will have no impact on industrial relations. Employers will be well aware that there is no legal sanction for not following the principles in the guidance. Exhortations, even those coming from Government, are very unlikely to operate as a brake on employers - especially on those whose use of WMT is at the worse end of the spectrum of abuse and exploitation.
73. **Question 61. What impact would this option have on the adoption and use of WMT by organisations?** No impact.
74. **Question 62. Please explain your answer.** Non-statutory guidance is likely to have no impact for essentially the same reasons as set out under question 60.
75. **Question 63. What benefits, costs, risks or practical challenges could arise from this option?** The benefits of this option are likely to be zero for workers. Only employers already committed to the responsible use of WMT are likely to comply with the principles set out in the Consultation. Employers who are not committed to those principles, and who wish to use WMT to e.g. intensify the surveillance of their workers, will not be swayed by non-statutory guidance. They will be the principal beneficiaries of such guidance.
76. The costs and risks of non-statutory guidance is that it does nothing to deliver the principles on responsible use of WMT. The costs to workers, above all in workplaces characterised by the intensive use of WMT, are that they are subject to use of WMT which is in breach of the principles of fairness and equality, interferes with their privacy, dignity and well-being, may generate information which is inaccurate or unreliable, and has no effect on increasing worker voice.
77. **Question 64. What content should guidance include to effectively support organisations to adopt and use WMT in a responsible way?** Guidance on the practical application of the legal duties would be welcome; but guidance in the absence of enforceable legal duties is likely to be a waste of time.

78. **Question 65. Who should the guidance be primarily aimed at?** If guidance is issued it should be primarily aimed at employers, workers (though it is doubtful it will be much used by them) and unions.
79. **Question 66. What would make non-statutory guidance more likely to be used in practice?** In the absence of being underpinned by legal duties, non-statutory guidance is not likely to be used in practice, regardless of whether it is endorsed by regulatory bodies, gives clear practical examples or sector-specific material. It is likely to be seen as no more than irrelevant red-tape.

Other Considerations

80. **Question 67. Apart from options A-C should government consider any other options, including do nothing?** The IER strongly believes that taking no action on WMT is not a viable option for the Government to take. The use of these technologies to monitor and manage workers can infringe workers' privacy and have a chilling effect on their other rights and freedoms, often leads to discriminatory decisions, and causes the deterioration of working conditions through the intensification of work and loss of worker dignity. The IER believes that new rights are needed in response to the challenge presented by these technologies. Rights to consultation and negotiation over WMT are crucial as a first step but must be accompanied by sufficient transparency and enforcement mechanisms if they are to be effective in practice.
81. In addition to new legal duties to consult and negotiate, the IER believes that the principles in the Consultation and our response to Question 26 must also be given expression in binding legal duties. This includes: that specific purposes and categories of WMT should be prohibited where they infringe fundamental rights or cannot plausibly be justified as a proportionate means of pursuing a legitimate aim; a requirement of human oversight of significant managerial decisions made or supported by WMT; that individual consent should not be a lawful basis for WMT adoption; and that priority should be given to collectively agreed solutions, including by the law supporting collective agreements over the use of WMT and treating such agreements as permissible basis for its use.
82. **Question 68. Are there any other points you would like to raise regarding the content of this consultation?** The IER believes that the Government should explore new mechanisms to hold the companies developing and marketing WMT accountable for the harms and risks they cause to workers. For instance, by introducing a system of joint liability with employers, or by imposing new transparency and auditing obligations on providers of these systems.

83. The authors and IER are, of course, happy to supplement this Response or provide further information if the Department so wishes.

September 2026