

Comparative Employment Law

Table of Principal Changes at 10th November 2021

Great Britain

Northern Ireland

Comparative Employment Law: NI and GB

As part of the Belfast Agreement, employment and discrimination law for Northern Ireland were largely devolved to the new institutions. For the first few years this did not make any material difference to the employment laws being passed by the assembly, which continued to mirror the those in Great Britain. However, during the period from around 2010 the position has diverged considerably. Perhaps the word diverge is not really appropriate because in many ways what has happened is that, with a few exceptions, employment/discrimination law in Northern Ireland has remained static, while there have been continuing significant changes in GB.

One does not have to agree with changes in GB- such as for example the extension of the service requirement to claim unfair dismissal from one to two years, the cap at one year's pay for unfair dismissal, or the maximum two-year time period for holiday pay and other non-payment claims - to see that that there are growing differences.

In more recent years part of the reason for the static position in NI, has been the lack of institutions for a three-year period. Once the institutions were up and running again the combination of Brexit with its uncertainties and COVID has intervened. The overall effect has been one of stasis.

Part of the reason may also be the need to reach consensus between political parties, some of which have very different views about employment and human rights. In Great Britain there is a clear distinction between the Conservative party and the Labour Party. The Labour Party is influenced by trade unions whereas the Conservative Party tends to be more influenced by business. Many of the major changes in employment and discrimination law in GB have come about when there is a Labour government, for example during Tony Blair's time. In practice, and perhaps in part because of the Conservative/ Liberal coalition, the Conservatives have tended not to remove or reduce in a major way the changes that were introduced by Labour. Indeed, the Conservative government has introduced changes such as Shared Parental Leave and Gender Pay Gap Reporting. The much-heralded bonfire of gold-plated EU Regulations has not happened. Indeed, the only significant change was eventually to the TUPE Regulations and even this was frankly tinkering at the edges.

In Northern Ireland in broad terms Sinn Fein policies are aligned with trade unions whereas the DUP would see itself as more aligned with business. This difference of views may have contributed substantially to the fact that although GB passed the Equality Act in 2010 it has not proved possible to reach agreement on an Equality Act for Northern Ireland, even though most legal/HR practitioners believe that this would be helpful in dealing with discrepancies and aligning the different protected characteristics.

Part of the problem may also be that the current Assembly is coming to the end of its term, if it survives until then, so no new legislation is likely until after Assembly elections due in 2022. The Assembly process itself makes it more difficult to put forward legislation where there is not a substantial degree of consensus.

It has perhaps become boring to suggest that COVID and the requirement to work from home for many people has changed the situation. Certainly, so far, our politicians in Northern Ireland have been preoccupied with dealing with COVID and have not, at least publicly, given any consideration to longer term effects on employment and discrimination law. It does however seem likely that regardless of the law there has been a substantial change of attitude towards remote working and working from home. I suggest that there will be increasing pressure for significant change in Northern Ireland. This

represents an opportunity not just for tinkering around the edges but for real and sustained change. Undoubtedly, even under a Conservative government, things will not remain the same in GB, so that for example the whole question of employee status is likely to develop together with further rights on flexible/remote working. Both main parties in GB are actively putting forward ideas. Northern Ireland needs to be acting on this also.

It can in practice be difficult to check the differences between the law in GB and in Northern Ireland. It does not help that, apart from some publications by the Labour Relations Agency, Equality Commission for Northern Ireland and, of course, Legal-Island there is really very little in writing which sets out, let alone explains the differences.

The purpose of this Table is to provide a handy reference guide, complete with links to relevant legislation and other documents in the hope that this will assist you to understand and deal with the differences in employment law developments in the last 3 years between Northern Ireland and Great Britain in this area.

With this in mind we have split the table by subject area, with an Index at the front that we hope will make it easy to find particular comparisons.

We do not pretend that this table is comprehensive - indeed especially as regards to case law it could not possibly be so. We intend to update it at intervals and the authors would appreciate any suggestions for omissions or additions in future.



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Disclaimer: *This table is for guidance only. We regret we are not able to respond to requests for specific legal or HR queries and recommend that professional advice is obtained before relying on information supplied anywhere within this table.*

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SECTION 1: DISMISSAL & OTHER INDIVIDUAL RIGHTS

Qualification Period For Claiming Unfair Dismissal And Max Compensatory Awards

GB	NI
<p>Qualifying period is 2 years' service and maximum Basic Award limited to £16,320 (30 weeks' pay at the maximum weekly rate).</p> <p>Maximum Compensatory Award for Unfair Dismissal from 6th April 2021: £89,493, or 52 weeks' pay, whichever is the lower.</p> <p>Week's Pay for 2021/22: £544 https://bit.ly/2TVc6jY</p>	<p>Qualifying period is 1 year service and a maximum Basic Award limited to £16,980 (30 weeks' pay at the maximum weekly rate).</p> <p>Maximum NI Compensatory Award from 6th April 2021: £89,669. Not subject to the 52 weeks' pay limit as in GB. https://bit.ly/2TVc6jY</p> <p>Week's pay for 2021/22: £566 http://bit.ly/2INLZXu</p>

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Reform of Written Particulars of Employment and Contract of Employment

<p>GB</p>	<p>The Employment Rights (Miscellaneous Amendments) Regulations 2019</p> <p>The regulations came in on the 6th of April 2020 require employers to ensure '<u>workers</u>' are issued with a written statement of particulars of employment and associated enforcement provisions (previously this right applied only to employees).</p> <p>This instrument amends the 1996 Act as follows:</p> <ul style="list-style-type: none"> • the written statement is a 'day 1' right for all individuals who are entitled to a written statement. • the 'principal statement' of the written statement is to be provided no later than the first day of a new job. • there is no qualifying period of employment. <p>Additional information must also be given to the workers as follows:</p> <ul style="list-style-type: none"> • How long a job is expected to last, or the end date of a fixed-term contract. • How much notice an employer and worker are required to give to terminate the agreement. • Details of eligibility for sick leave and pay. • Details of other types of paid leave e.g. maternity leave and paternity leave. • The duration and conditions of any probationary period • All remuneration (not just pay) - contributions in cash or kind e.g. vouchers and lunch • Which specific days and times workers are required to work. <p>https://bit.ly/3z51nCW</p>
<p>NI</p>	<p>No corresponding updates in NI. The position in relation to the provision of a written statement of employment particulars remains the same as per Article 33 of the Employment Rights NI Order 1996 which applies to <u>employees only</u> and requires that a written statement is given with two months of commencement of employment.</p> <p>https://bit.ly/38SOi4d</p>

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Watchdog For Labour Rights

GB	<p>In June 2021 the government announced that a “powerful” new workers’ rights watchdog will be created to act as a “one-stop shop” for enforcement.</p> <p>The new body will combine the roles of the separate bodies that currently enforce the minimum wage, police modern slavery, and protect agency workers.</p> <p>As well as enforcing the existing powers belonging to the separate enforcement bodies, including HMRC’s scheme naming and shaming employers that fail to pay the minimum wage, the new body will extend minimum wage enforcement to workers employed through agencies or gangmasters.</p> <p>It will also remove the need for vulnerable workers to turn to the tribunal system to reclaim holiday or sick pay entitlements.</p> <p>At the time of writing, it was not clear if this new body would be UK-wide, given the devolved aspects of some of the tasks.</p> <p>https://bit.ly/3zmHTcV</p>
NI	<p>It is not clear if this new body would be UK wide. However, tax and some related matters, such as minimum wage enforcement, gangmasters, modern slavery provisions, are not devolved and are UK wide, which could mean that this new body will take over, for example, the HMRC function for adjudicating where statutory sick pay has not been paid.</p>

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Changes to Itemised Pay Statements (pay slips)

GB	<p>The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018</p> <p>The changes cover payslips for pay periods that begin on or after 6th April 2019.</p> <p>The key changes are as follows:</p> <ul style="list-style-type: none">• the right to a payslip is extended to all <u>workers</u> (not just employees).• payslips must include additional information for individuals whose pay varies depending on the number of hours that they have worked. Where an individual's pay varies by reference to time worked, the payslip must set out the number of hours paid for on this variable basis. <p>The legislation can be found here: https://bit.ly/3mC5Ycb</p> <p>Helpful guidance can be found here: https://bit.ly/2USL7Gn</p>
NI	<p>No corresponding updates in NI. The position in relation to the provision of an Itemised Pay Statement remains the same as per Article 40 of the Employment Rights NI Order 1996 which provides <u>employees only</u> with a right to receive an itemised pay statement.</p> <p>https://bit.ly/3ngXSpQ</p>

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Agency Workers

GB	<p>The Agency Workers (Amendment) Regulations 2019</p> <p>From 6th April 2020 amendments came into force which meant that all agency workers are entitled to receive equal pay as their permanent equivalents, once a 12-week employment period has passed, whether or not they are paid between assignments.</p> <p>Essentially this abolishes the use of Swedish derogation - the legal loophole which enabled employers to pay agency workers less than permanent staff. https://bit.ly/2W9Pqh3</p> <p>Explanatory Memorandum to the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019</p> <p>Temporary work agencies must provide agency workers whose existing contracts contain a Swedish derogation provision with a written statement advising that, with effect from 6 April 2020, those provisions no longer apply. https://bit.ly/3mEmUPo</p> <p>Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 (SI 2019/725).</p> <p>Temporary work agencies must provide agency work-seekers with a Key Information document, including information on the type of contract, the minimum expected rate of pay, how they will be paid and by whom. https://bit.ly/3zoCkuH</p>
NI	<p>No corresponding updates for NI – Swedish Derogation still applies as set out in Article 10 of the Agency Workers Regulations (Northern Ireland) 2011. It is unclear how much this is still employed throughout Northern Ireland and there is anecdotal evidence that, in the public sector at least, it is unlikely to be used going forward.</p> <p>NI Direct Guidance: https://bit.ly/3DcfCYb</p> <p>Agency Workers Regulations (Northern Ireland) 2011: https://bit.ly/3hdImau</p>

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Posted Workers Directive

GB	<p>The Posted Workers (Agency Workers) Regulations 2020 (SI 2020/384)</p> <p>The UK was required to implement the revised Posted Workers Directive, which all EU member states had to transpose into their national laws by July 2020.</p> <p>This gives additional rights to workers who are posted from one EU member state to another to carry out their work.</p> <p>The UK government took the position that it was already compliant with the revised Directive, except in respect of an obligation on a hirer to inform a temporary work agency of the posting of an agency worker.</p> <p>The Regulations were enacted to modify the Agency Workers Regulations 2010 in this respect. The Regulations came into force on 30 July 2020 and will automatically expire at the end of the transition period.</p> <p>https://bit.ly/38fentN</p>
NI	<p>The Posted Workers (Agency Workers) Order (Northern Ireland) 2020</p> <p>This Order came into force on 13th November 2020 by way of Statutory Rule.</p> <p>It modifies the Agency Workers Regulations (Northern Ireland) 2011 (the 2011 Regulations), which gives Agency Workers the right to the same basic employment and working conditions as if they had been recruited directly, if/when they complete a qualifying period of 12 weeks in the same job.</p> <p>The Order requires a hirer (a business supplied with an agency worker by an employment agency), which posts an agency worker to an EU Member State where the agency worker does not normally work, to notify the employment agency of the posting and the date at which the posting will commence.</p> <p>https://bit.ly/3kIIXCb</p>

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Reform Of Family Friendly & Parental Rights

GB	<p>From 1st April 2021 Statutory Maternity Pay (SMP), Statutory Paternity (SPP), Adoption and Shared Parental Pay is £151.97 per week. https://bit.ly/3seH2Zb</p> <p>The Parental Bereavement (Leave and Pay) Act 2018</p> <p>From 6th April 2020 the Act provides at least two weeks' leave for employees following the loss of a child under the age of 18 or a stillbirth after 24 weeks of pregnancy.</p> <p>Employees with 26 weeks' continuous service will be entitled to two weeks of paid leave at the statutory rate and other employees will be entitled to unpaid leave.</p> <p>The Parental Bereavement Leave Regulations 2020 (SI 2020/249) introduced parental bereavement leave: https://bit.ly/3syPdZD</p> <p>Statutory Parental Bereavement Pay (General) Regulations 2020 (SI 2020/233) introduced parental bereavement pay: https://bit.ly/3gjns9D</p>
NI	<p>From 1st April 2021 Statutory Maternity Pay (SMP), Statutory Paternity (SPP), Adoption and Shared Parental Pay is £151.97 per week. https://bit.ly/3CJi2hs</p> <p>The Parental Bereavement (Leave and Pay) Bill</p> <p>The Bill was introduced by the Minister for the Economy on 1st June 2021. It aims to provide at least two weeks' leave for employees following the loss of a child under the age of 18 or a stillbirth after 24 weeks of pregnancy.</p> <p>Employees with 26 weeks' continuous service will be entitled to two weeks of paid leave at the statutory rate and other employees will be entitled to unpaid leave.</p> <p>At the time of writing, it is at the Second Stage in the Assembly. However, it has been reported that the NI version of this Bill may include additional rights beyond that introduced in GB, e.g. the right to bereavement leave being extended to all employees who suffer a bereavement, not just parents. https://bit.ly/3820Kye</p>

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Reform Of Carer's Leave

GB	Carer's Leave Consultation The GB government response to their consultation on carer's leave confirms their intention to introduce an entitlement to one week's unpaid carer's leave as a day 1 right for employees. The response outlines the decisions that government has taken on what the leave entitlement will look like. It sets out key details including: <ul style="list-style-type: none">• how eligibility will be defined• how the leave can be taken• what the leave can be used for It also provides a summary of the responses from individuals and stakeholders. Legislation to introduce carer's leave as a day 1 statutory employment right will be brought forward when parliamentary time allows. Carer's Leave Consultation government response: https://bit.ly/3u6KHJH
NI	No corresponding update in NI. Rights in relation to being a carer in NI are governed by existing legislation including flexible working, time off for dependents, time off in an emergency and disability discrimination legalisation. https://bit.ly/3u9rYgu

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Reform Of the Public Interest Disclosure Legislation (Whistleblowing)

GB	<p>One to watch is the Office of the Whistleblower Bill introduced by way of Private Members' Bill in the House of Lords. The Office of the Whistleblower bill will have duties to 'facilitate whistleblowing'. It will have the power to monitor the activities of relevant bodies, act as a point of contact for individuals who wish to blow the whistle and maintain a fund to support whistleblowers.</p> <p>An amendment to the 2021 Office of the Whistleblower Bill includes a new provision giving the Office of the Whistleblower power to consult on amending or replacing the Public Interest Disclosure Act 1998 – the current law giving rights to whistleblowers – and to report on any consultation.</p> <p>As of this date it is at Second Reading in the Lords (where it was introduced). https://bit.ly/3YRfb7 https://bit.ly/3yOyzOU</p> <p>In addition, the Whistleblower Protection Directive passed by the EU on the 16th December 2019 will require the UK to amend domestic legislation to include additional requirements relating to confidentiality and protection of whistle-blowers including penalties for anyone who retaliates against a whistleblower or obstructs the reporting of a disclosure. The UK has 2 years to implement the amendments (so by 17th December 2021) and while the UK has left the EU through Brexit the requirements of the UK-EU Trade and Co-operation Agreement requires that the UK keeps up with EU levels of employment protection. https://bit.ly/3yRZj07</p> <p>In GB the list of Prescribed Organisations for making external public interest disclosures is set out on the Gov.uk website and is available on the link below. While there is some overlap between GB and NI there are some differences, and it is important to be aware of these. https://bit.ly/3vHIJKL</p>
NI	<p>No corresponding updates in NI. Rights and responsibilities in relation to public interest disclosures are contained with The Public Interest Disclosure (Northern Ireland) Order 1998 (PIDO 1998) and Part VA of the Employment Rights NI Order 1996 (ERO 1996). PIDO 1998: https://bit.ly/3DXiBoM ERO 1996: https://bit.ly/3tq0BON</p> <p>In relation to the additional requirements required by the Whistleblowing Directive, as set out above, it is unclear whether due to the NI Protocol that Northern Ireland will be required to align with the EU in this regard.</p> <p>EU Directive: https://bit.ly/3yRZj07</p> <p>In NI the list of Prescribed Organisations for making external public interest disclosures is set out in the Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2014 which is available here: https://bit.ly/3vCquw8</p>

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Reform Of Statutory Sick Pay Arrangements

GB	As at 1 st April 2021 the weekly rate for Statutory Sick Pay (SSP) is £96.35 . It is paid by the employer for up to 28 weeks. https://bit.ly/3seH2Zb
NI	As at 1 st April 2021 the weekly rate for Statutory Sick Pay (SSP) is £96.35 . It is paid by the employer for up to 28 weeks. https://bit.ly/3CJi2hs

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Anti- Discrimination Legislation

GB	<p>Vento Bands</p> <p>For claims presented on or after 6th April 2021, the Vento bands are as follows:</p> <ul style="list-style-type: none">• a lower band of £900 to £9,100 (less serious cases);• a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and• an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600. <p>https://bit.ly/3mhdfhF</p> <p>Pregnancy and Maternity (Redundancy Protection) Bill</p> <p>A Bill to prohibit redundancy during pregnancy and maternity leave, and for six months after the end of the pregnancy or leave, introduced by Private Members' Bill. At time of writing, it is at Second Reading.</p> <p>https://bit.ly/3ysslnK</p> <p>Gender Pay Gap Reporting</p> <p>Organisations with 250 or more employees must report on their gender pay gap figures annually. During Covid-19 COVID-19, reporting was suspended and the Equality and Human Rights Commission (EHRC) has announced that enforcement of gender pay gap reporting will be put back until 5 October 2021 in response to the continued effects of the pandemic on organisations.</p> <p>The legislation for the private and voluntary sector can be found here: https://bit.ly/3jlWhwx</p> <p>The legislation for public bodies can be found here: https://bit.ly/3BfYRKL</p> <p>ACAS Guidance on Non-Disclosure Agreements (NDAs)</p> <p>Arbitration service ACAS has published advice for firms and workers about NDAs, including how to avoid misuse.</p> <p>https://bit.ly/3yqBwEi</p> <p>Consultation On Sexual Harassment In The Workplace: Government Response</p> <p>The consultation response has now been published and the main findings of the consultation include:</p> <ul style="list-style-type: none">• Support for a new duty to prevent harassment and believed that it would prompt employers to take positive steps.• Consultees highlighted the complexity of introducing protections from third-party harassment without the need for an incident to have occurred, but were generally
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	<p>supportive of employers being able to use the defence of having taken all 'reasonable steps', which already exists in the Act.</p> <ul style="list-style-type: none"> • On extending protections for volunteers and interns, while respondents were supportive of the proposal in principle, many raised concerns about the impact this could potentially have on the third sector, particularly the effect of administrative burden on smaller charities. • Finally, on extending time limits, the impact of trauma arising from experiencing sexual harassment was a common theme across responses, as was the potential barrier to justice that the current limit could create, notably in instances of pregnancy and maternity discrimination. <p>https://bit.ly/3jn1XGG</p> <p><i>Forstater v CGD Europe [2021]</i></p> <p>A woman who lost her job after saying that people cannot change their biological sex has won an appeal against an employment tribunal. Maya Forstater, 47, did not have her contract renewed after posting tweets on gender recognition. She lost her original case in 2019, with the judge at that point saying that her approach was "not worthy of respect in a democratic society". An appeal found the tribunal had erred in law and another should take place.</p> <p>https://bit.ly/3jnqI5O</p>
<p>NI</p>	<p>In NI anti-discrimination legislation is comprised of a number of separate pieces of legislation, unlike GB where equality rights are enshrined in the Equality Act 2010. While there have been discussions that NI should also create a similar act there are currently no plans to do so. Current anti-discrimination legislation in NI:</p> <ul style="list-style-type: none"> • Equal Pay Act (NI) 1970 • Sex Discrimination (NI) Order 1976 • Race Relations (NI) Order 1997 • Disability Discrimination Act 1995 • Fair Employment and Treatment (NI) Order 1998 • Section 75 Northern Ireland Act 1998 • Employment Equality (Sexual Orientation) Regulations (NI) 2003, • Employment Equality (Age) Regulations (NI) 2006 <p>Vento Bands</p> <p>There is no equivalent to the Guidance from the President of Employment Tribunals updating the Vento bands in NI. In practice Employment Judges will often use the Vento bands as a starting point, although they are not required to do so.</p> <p>For claims presented on or after 6th April 2021, the Vento bands are as follows:</p> <ul style="list-style-type: none"> • a lower band of £900 to £9,100 (less serious cases); • a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and • an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600. <p>https://bit.ly/3mhdhfF</p>

Gender Pay Gap Reporting

The **Employment Act (Northern Ireland) 2016** contains provisions relating to Gender Pay gap reporting in NI. However, the relevant provisions have not been brought into force as yet. It is likely that implementation will be taken forward in the context of the development of the new Gender Equality Strategy. However, given that there has been no consultation, or anything brought before the Assembly to date, it is not expected that any steps will be taken until after the next election.

<https://bit.ly/3moKNca>

Promoting Equality in Employment for Women Affected by Menopause

Useful guidance from the Equality Commission, Labour Relations Agency and NICICTU was published in 2021.

<https://bit.ly/2XRcpOj>

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Work of Equal Value

GB	<p>The Equality Act 2010 (Equal Pay Audits) Regulations 2014 which came into force in GB on the 1st October 2014 made under the power in section 139A1 of the Equality Act 2010 (“the 2010 Act”) and require employment tribunals to order a respondent who has been found by the tribunal to have committed an equal pay breach to carry out an equal pay audit. The purpose of the requirement to carry out an audit is to identify action to be taken to avoid equal pay breaches from occurring or continuing. An audit will not be required to be carried out if any of four exceptions set out in the Regulations apply, or if the respondent is exempt as a micro- or new business. https://bit.ly/3A6qJ32</p> <p><i>Asda Stores Ltd (Appellant) v Brierley and others (Respondents) UKSC 2019/0039</i></p> <p>The Supreme Court has dismissed the appeal by Asda (from the Court of Appeal) confirming the finding of earlier courts that the Claimants, mostly females employed in the retail part of the business, can compare themselves to the predominately male workforce employed at the distribution depots.</p> <p>The Supreme Court’s dismissal of the appeal does not mean that the claimants’ claims for equal pay succeed. At this stage all that has been determined is that they can use terms and conditions of employment enjoyed by the distribution employees as a valid comparison and can therefore pursue this matter to an Employment Tribunal.</p> <p>Supreme Court judgment: https://bit.ly/3h0wKaB</p> <p>Case Review: https://bit.ly/2YqSFI2</p>
NI	<p>Decisions of the Supreme Court also apply in NI and the above case is therefore also important for employers in NI.</p> <p>No equivalent legislation to the GB Equality Act 2010 (Equal Pay Audits) Regulations 2014 applies in NI.</p>

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Reform Of Rehabilitation of Offenders

GB	<p>The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020</p> <p>This was brought about following the Supreme Court ruling in the 2019 Supreme Court case <i>R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants)</i> https://bit.ly/3gDm69M</p> <p>This Order came into force on the 28th November 2020, implementing important changes to the criminal records disclosure rules in England and Wales.</p> <p>The Order narrows the definition of “relevant matter” for the purposes of the Act, and has the following effects:</p> <ul style="list-style-type: none"> • No Youth Cautions, Youth Conditional Cautions, Reprimands or Warnings received in childhood will be automatically disclosed on standard or enhanced DBS checks. This will be the case regardless of the offence. • The ‘multiple conviction rule’ no longer has effect. That rule previously required the automatic disclosure of all convictions where a person has more than one conviction, regardless of the nature of their offence or sentence. • Under the new regime, convictions can be filtered from standard and enhanced DBS checks after the relevant time period has passed, even if there is more than one conviction or offence on record. This remains subject to the proviso that the offence is eligible and didn’t lead to a suspended or actual prison sentence. • The time periods after which a spent conviction will no longer be disclosed have not changed (11 years unless under 18 when convicted, then it is 5 and a half years). <p>https://bit.ly/2Wngd9W</p>
NI	<p>On 26th March 2020, the Department of Justice in Northern Ireland implemented changes to the AccessNI checks in light of the Supreme Court ruling in January 2019 (see above). https://bit.ly/3gDm69M</p> <p>They removed a restriction in the AccessNI scheme whereby if a person had more than a single conviction on their criminal record, all convictions held on their criminal record were disclosed on a standard or enhanced AccessNI check.</p> <p>In addition, any information about offences committed by persons under 18 which were adjudicated outside a court process (non-court disposals), such as informed warnings, cautions or youth conference plans will be scrutinised by the Department’s Independent Reviewer of criminal record certificates and will only be disclosed where she determines that the offence could undermine the safeguarding or protection of children and vulnerable adults or the protection of the public.</p>

All serious and recent offending will continue to be disclosed on AccessNI checks to ensure that employers have the information they require to make safe recruitment decisions.

<https://bit.ly/3sSSOIU>

The changes were brought in on an administrative basis to ensure compliance with the Supreme Court ruling, enacting legislation has yet to be brought. But a consultation on proposals to reform rehabilitation periods in Northern Ireland has been undertaken, closing in March 2021. At the time of writing no Bill has been tabled to commence the legislative process.

Link to latest primary legislation Bills: <https://bit.ly/2Yslhtz>

Outcome of Consultation: <https://bit.ly/38is2jU>

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Aggravated Breach of Employment Rights

GB	<p>Section 12A (12)(a) of the Tribunals Act 1996</p> <p>This allows the Secretary of State to amend the maximum penalty available for an aggravated breach. The amendment under this instrument increases the maximum penalty to £20,000.</p> <p>The intent is that alongside illustrative guidance on its use the increase in the maximum will act as a stronger deterrent and sanction against aggravated breaches of employment law. This amendment came into force on 6 April 2019 (increasing the previous £5,000 limit).</p> <p>https://bit.ly/39HQGv9</p>
NI	<p>No corresponding financial penalties provisions currently exist within the Industrial Tribunal (Northern Ireland) Order 1996. A consultation took place in 2015 regarding reform of the tribunal rules including provision for financial penalties for aggravated breaches as described above, however no subsequent legislative reform followed.</p> <p>Industrial Tribunal Order: https://bit.ly/3mD1VLa</p> <p>2015 Consultation: https://www.economy-ni.gov.uk/consultations/employment-tribunals-consultation</p>

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Reform of Working Time Legislation

GB	<p>The Supreme Court case of <i>Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad [2021]</i> has settled the issue of minimum wage for ‘sleep-in shifts’ saying that workers should only be paid when they are awake and assisting, not for periods when they are sleeping.</p> <p>Legal Island case review: https://bit.ly/3ABiNYf</p> <p>Supreme Court decision: https://bit.ly/37DoyrR</p> <p>Working Time Regulations 1998 is the key legislation governing matters such as rest breaks, maximum working week, minimum holiday entitlement, etc in GB. https://bit.ly/3EVx98V</p>
NI	<p>Decisions of the Supreme Court also apply in NI and the above case is therefore also important for employers in NI.</p> <p>The Working Time Regulations (Northern Ireland) 2016 consolidate and replace the provisions of the Working Time Regulations (Northern Ireland) 1998 (the ‘1998 Regulations’) and the ten Statutory Rules which amended it from 1998 to 2009. They do not change the substance of the legislation which remains very similar to GB. https://bit.ly/3CWYw0a</p>

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Reform of Holiday Pay Calculation

GB	<p>Section 10 Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018</p> <p>As of 6th April 2020, the reference period for calculating holiday entitlement was extended from 12 to 52 weeks in respect of holiday pay due.</p> <p>This method applies to workers with normal working hours but whose pay varies with the amount of work done (piece workers) or according to the time of the work (shift workers). https://bit.ly/2WpW3vG</p> <p><i>Smith v Pimlico Plumbers Ltd [2021]</i></p> <p>The EAT held that where a worker had been permitted to take annual leave but had not been paid for it, they were not permitted to carry over the right to payment for the holiday to future years.</p> <p>The EAT distinguished the European Court of Justice’s ruling in <i>King v Sash Window Workshop (C-214/16) [2018] ICR 693</i> on the basis that King established that a worker is entitled to carry over annual leave which is untaken because the employer refuses to remunerate it. It did not apply where the leave was in fact permitted.</p> <p>EAT judgment: https://bit.ly/3kOEPAA</p> <p>Article on the implications: https://bit.ly/2YjyWn7</p> <p>Case Review: https://bit.ly/3gX1hq4</p>
NI	<p><i>Chief Constable of PSNI v Agnew & Others [2021]</i></p> <p>The Court of Appeal’s (CA) judgment in this claim, is entirely contrary to the principle established by the EAT in <i>Bear Scotland</i> - that a series of unlawful deductions will be broken by a gap of three months or more. The CA in <i>Agnew</i> concluded that this principle does not correlate with Northern Irish legislation and a series of deductions is not necessarily ended by a gap of three months or more between unlawful deductions. In addition, the Court of Appeal agreed with the Tribunal that the 4 weeks leave provided for by the Working Time Directive were indistinguishable from the additional leave provided for by the Working Time Regulations and contractual annual leave. Practically this creates difficulty in calculating the average pay for the 4 weeks directive leave.</p> <p>The Agnew case also departed from previous case law that suggested a 12-month reference period for calculating ‘normal remuneration’ on the basis that there may be different reference periods for different employees. The Court of Appeal noted that the correct reference period “<i>is a question of fact in an individual case and that we are not in possession of sufficient information to determine whether these facts do or do not apply.</i>”</p>

The PSNI appealed to the Supreme Court, and it was listed for June 2021, but the parties agreed to mediate, leaving the gap between NI and GB, and uncertainty for employers.

A raft of other claims, which were stayed pending the outcome of **Agnew**, may yet set precedent. Watch this space.

The NI Court of Appeal decision: <https://bit.ly/38hRRk1>

Case Review of NI Court of Appeal: <https://bit.ly/3mD33QP>

Case Review of Industrial Tribunal decision: <https://bit.ly/2UQ6YxY>

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Remote, Hybrid and Flexible Working

GB	<p><i>Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021]</i></p> <p>This case stated that in certain circumstances a provision, criterion or practice (PCP) that requires all workers to be ‘flexible’ and work weekend shifts, may be indirect discrimination.</p> <p>The EAT, in examining the PCP (the need to work flexibly, which did not give any flexibility to the employees) stated that the practice did disadvantage women on the basis of their childcare responsibilities. Accordingly, the appeal was allowed, and indirect discrimination was found.</p> <p>Case Review: https://bit.ly/3zml21l</p> <p>Full case: https://bit.ly/2UXq6dG</p> <p>A Bill to introduce flexible working rights from day 1 of employment was introduced to Parliament on the 30th June 2021. The Bill would require employers to offer flexible working arrangements and outline the flexible working options in job advertisements. The Bill is due to have a second reading on the 19th November 2021. https://bit.ly/3tolgTm</p> <p>Scotland has announced that it is to carry out a four-day week trial. A paper has been written showing support for the movement: https://bit.ly/3AeBlhj</p>
NI	<p>There are no legislative developments in this area in NI, nor do there appear to be any proposals to amend existing laws. It is likely however that the evolution of working that has been promoted as a result of Covid-19 will have a lasting impact in NI and we may see some legislative developments in the future in this area.</p> <p>The Labour Relations Agency has produced helpful guidance on hybrid working which includes a sample hybrid working policy. The guidance entitled, ‘A Practical Guide to Hybrid Working’ is available here: https://bit.ly/2WTqx9H</p>

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Covid-19 Employment Related Developments

GB	<p>The Working Time (Coronavirus) (Amendment) Regulations 2020</p> <p>In 2020, the government introduced a law allowing employees and workers to carry over up to 4 weeks' statutory paid holiday into their next 2 holiday leave years. This law applies for any holiday the employee or worker does not take because of COVID-19.</p> <p>They may also be able to carry over holiday if they've been on furlough and cannot reasonably use all their holiday in their holiday year. https://bit.ly/3ohtDiZ</p> <p>ACAS guidance: https://bit.ly/3ohAlpf</p> <p>Up to date Covid-19 Legislation</p> <p>You will find all coronavirus legislation for the UK on legislation.gov.uk.</p> <p>They publish all coronavirus legislation as soon as possible and keep it up to date. They have highlighted some key pieces of coronavirus legislation on this page, and you can search by the four constituent nations of the UK: https://bit.ly/3zpMefz</p>
NI	<p>The Working Time (Coronavirus) (Amendment) Regulations (Northern Ireland) 2020</p> <p>In light of the pandemic, the NI Executive introduced a temporary new law allowing employees and workers to carry over up to 4 weeks' paid holiday into their next 2 holiday leave years. This law applies for any holiday the employee or worker does not take because of coronavirus.</p> <p>They may also be able to carry over holiday if they've been 'furloughed' and cannot reasonably use it in their holiday year. https://bit.ly/3ohtDiZ</p> <p>Labour Relations Agency guidance: https://bit.ly/3igLOSh</p> <p>Up to date Covid-19 Legislation</p> <p>You will find all coronavirus legislation for the UK on legislation.gov.uk.</p> <p>They publish all coronavirus legislation as soon as possible and keep it up to date. They have highlighted some key pieces of coronavirus legislation on this page, and you can search by the four constituent nations of the UK: https://bit.ly/3zpMefz</p> <p>The Assembly has published a Covid Recovery Plan: https://bit.ly/3zn2uOD</p>

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Health & Safety Developments

GB	<p>The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021</p> <p>This Order extends protections against detriment in health and safety cases to workers (at present, these protections cover only employees). It came into operation on 31 May 2021.</p> <p>A High Court Judgment was published which directed that the Health and Safety Framework Directive and the Personal Protection Equipment (PPE) Directive should apply to a wider group of workers, not just employees.</p> <p>https://bit.ly/3jFzbBe</p>
NI	<p>The Employment Rights (Northern Ireland) Order 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order (Northern Ireland) 2021</p> <p>This Order mirrors the position in GB as set out above.</p> <p>The Order must be approved by a resolution of the Assembly within six months of coming into operation. It must therefore be confirmed on or before 31 November 2021.</p> <p>https://bit.ly/3yMhDYu</p>

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Reform of Immigration Rules and Right to Work

GB	Covid-19 Right to Work Check Concessions The following temporary changes were made on 30 March 2020 and remain in place until 5 April 2022 (inclusive): <ul style="list-style-type: none">• checks can currently be carried out over video calls.• job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals.• employers should use the Home Office Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents. It remains an offence to knowingly employ anyone who does not have the right to work in the UK. Checks continue to be necessary, and employers must continue to check the prescribed documents set out in right to work checks: an employer’s guide or use the Home Office right to work online service. https://bit.ly/2XWktxf
NI	Covid-19 Right to Work Check Concessions Immigration is not a devolved matter and so NI mirrors the rules in GB in this regard.

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Employment Status/Gig Economy/Zero Hours Contracts

GB	<p><i>Uber v Aslam & others [2021] UKSC 5</i></p> <p>This long-running case is relevant to many workers in the gig economy and not just taxi drivers.</p> <p>The Supreme Court held that drivers are in a position of subordination and dependency in relation to Uber such that they have little or no ability to improve their economic position through professional or entrepreneurial skill. In practice the only way in which they can increase their earnings is by working longer hours while constantly meeting Uber's measures of performance.</p> <p>Full Supreme Court judgment: https://bit.ly/3gBoQV0</p> <p>A review of the Court of Appeal Decision is available here: https://bit.ly/38jQpxK</p> <p>Employment Appeal Tribunal Decision is available here: https://bit.ly/38fxRyw</p> <p>Employment Tribunal Decision is available here: https://bit.ly/3gDaeEH</p> <p><i>Addison Lee Ltd v Lange [2021]</i></p> <p>This is a very similar case to <i>Uber</i> above with the exception that there was a contractual clause which mitigated against the recognition of worker status. However, the Court of Appeal made it clear that it was the interpretation of statute to the factual situation that the court was concerned with rather than the terms of any contract between the two parties. As a result, it reinforces the extent to which the classification of employment is one that rests on the reality of the situation rather than any contractual term that was agreed between the parties.</p> <p>Full Court of Appeal judgment: https://bit.ly/3jrYIOV</p> <p>Case Review: https://bit.ly/3zmMa0h</p> <p><i>Independent Workers Union of Great Britain v Central Arbitration Committee & Rooffoods Ltd t/a Deliveroo [2021] EWCA Civ 952</i></p> <p>This case demonstrates the inter-relationship between employment status and the protection that is afforded by virtue of Trade Union protection within Article 11 of the ECHR. To this end, the ECtHR and the Court of Appeal have made it clear that the rights are not available to absolutely everyone but rather they are constrained to those who are in employment relationships. Helpfully, the domestic law aligns with the international definitions that have arisen for worker status. On a practical point, it does lead to some curtailment of where Trade Union rights can arise. It will be interesting to see how this develops and whether a distinction continues between Uber drivers and Deliveroo riders.</p>
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	<p>Full Court of Appeal judgment: https://bit.ly/3olHxke</p> <p>Case Review: https://bit.ly/3CUijxi</p> <p><i>National Union of Professional Foster Carers v The Certification Officer [2021] EWCA Civ 548</i></p> <p>This appeal arose from the respondent’s refusal to register the appellant Trade Union as an organisation on the list of Trade Unions. The reason for the refusal was that the members of the Trade Union, namely foster carers, were not wholly or mainly workers within the meaning of Section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.</p> <p>The Court of Appeal went through the features of interference into Article 11 but the important feature from a strictly employment perspective was that the Court of Appeal declared that for the purpose of Section 1 of the 1992 Act the definition of worker was to be extended to those provider services under a foster care agreement. This would have the effect that the respondent would be ‘very likely’ to be obliged to enter the Union onto the maintained list.</p> <p>This follows the Scottish case of <i>Glasgow City Council v Johnstone</i> in demonstrating greater recognition for foster carers in an employment sense. The difficulty that does arise with foster carers which may come down the line is the nature of the work. It is generally seen as a vocation which applies 24/7 and the fee is payable as a result of the commitment that has to be made. It must be asked how far the rights then apply and whether there needs to be minimum wage on a 24/7 basis as well as other rights that may then apply. The decision to find worker status may in fact lead to more questions than answers.</p> <p>Full Court of Appeal judgment: https://bit.ly/3yGaYPx</p> <p>Case Review: https://bit.ly/3kRvhoj</p> <p>The GB Small Business, Enterprise and Employment Act 2015 received Royal Assent on 25.3.15 and included a commitment to remove ‘exclusivity’ clauses in zero hours contracts on a day appointed by a Minister of the Crown. http://bit.ly/1a980Yg</p> <p>The Employment Bill in GB which is at the Second Reading Stage in the House of Commons makes provision for a right for all workers to be able to request a more predictable and stable contract after 26 weeks' service. https://bit.ly/38WA3eA</p>
<p>NI</p>	<p>Decisions of the Supreme Court also apply in NI and the Uber case is therefore also important for employers in NI, however the other cases mentioned above are not binding.</p> <p>There is no corresponding Employment Bill in NI at present.</p> <p>The Employment Act (Northern Ireland) 2016 makes provisions for regulations to be enacted to prevent abuses arising out of or in connection with the use of zero hours</p>

contracts. At the time of writing no such regulations have been enacted.
<https://bit.ly/3uOIKll>

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Off-payroll / IR35 Reforms for Private Sector

GB	<p>From 6 April 2021, medium and large organisations outside of the public sector will need to decide whether the rules apply to an engagement with individuals who work through their own company. All public sector organisations will continue to make determinations as now.</p> <p>Where the rules do apply, the organisation, agency, or other third party paying the worker's company will need to deduct income tax and employee NICs and pay employer NICs.</p> <p>From 6 April 2021, you must:</p> <ul style="list-style-type: none">• tell the worker, agency, or other organisation you contract with of your determination, whether your determination shows that the off-payroll working rules will apply or not;• provide reasons for your determination; and• pass on your determination on the date, or before the date, the contract is entered into. If the work starts later, give your determination before that later date. <p>You'll hold the liability for tax and National Insurance contributions until you tell the worker, and the person you contract with, of your determination and the reasons for it.</p> <p>A status determination statement issued before 6 April 2021 is valid under the new rules. If the working practices of the engagement change or you negotiate a new contract with the worker, you need to make sure that you re-check the rules to see if they still apply.</p> <p>A worker or the agency paying the worker's intermediary may disagree with the employment status determination you reached. If this happens, you'll need to:</p> <ul style="list-style-type: none">• consider the reasons for disagreeing given to you by the worker or agency paying their intermediary;• decide whether to maintain the determination because you feel it is correct and give reasons why, or withdraw the determination because you feel it was wrong; and• keep a record of your determinations and the reasons for them.• provide a response within 45 days of receiving the disagreement. During this time, you should continue to apply the rules in line with your original determination. If you do not respond within 45 days, the responsibility for paying tax and National Insurance contributions will become your responsibility.• Tell the fee-payer and the worker if the determination has changed. <p>Helpful guidance is provided here: https://bit.ly/3mDyzhy And here: https://bit.ly/3ynswj6</p>
NI	The IR35 rules apply in NI as well as GB.

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Termination Payments - Tax and National Insurance Contributions (NIC)

GB	<p>The measure had effect from 6th April 2018.</p> <p>An employer is required to pay NICs on any part of a termination payment that exceeds the £30,000 threshold.</p> <p>In addition, all payments in lieu of notice (PILONs) will be both taxable and subject to Class 1 NICs.</p> <p>The legislation requires the employer to identify the amount of basic pay that the employee would have received if they had worked their notice period, even if the employee leaves the employment part way through their notice period. The amount will be treated as earnings and will not be subject to the £30,000 Income Tax exemption.</p> <p>https://bit.ly/3mAqM43</p>
NI	The above rule also applies in NI.

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SECTION 2: COLLECTIVE AND INDUSTRIAL ISSUES

Industrial Action Ballots

GB	<p>The Trade Union Act received Royal Assent in May 2016 in GB. The Act introduces:</p> <ul style="list-style-type: none">• A 50% threshold for ballot turn-out• An additional threshold of 40% of support to take industrial action from all members eligible to vote in the key health, education, fire, transport, border security and energy sectors – including the Border Force and nuclear decommissioning• A 6-month time limit for industrial action• A requirement for a clear description of the trade dispute and the planned industrial action on the ballot paper• Strict rules on ‘check-off’ arrangements for collecting union dues in public sector: http://bit.ly/1PcbOHg <p>Six Statutory Instruments are in place.</p>
NI	<p>There is no equivalent to the Trade Union Act in NI and no reform of industrial action ballots.</p>

Low Pay Commission and National Minimum Wage

GB	<p>The rates from 1st April 2021 are:</p> <p>National Living Wage age 23+ - <u>£8.91</u> National Minimum Wage age 21-22 - <u>£8.36</u> National Minimum Wage age 18-20 - <u>£6.56</u> National Minimum Wage under 18 - <u>£4.62</u> Apprentice Rate (for apprentices under 19 or 19 or over who are in the first year of apprenticeship) - <u>£4.30</u></p> <p>The 23-24 age category for the National Minimum Wage has been abolished, following the lowering of the age of the eligibility for the National Living Wage to 23 years old. https://bit.ly/3s30tnJ</p> <p>The government issued guidance on the treatment of salaried hours work for NMW purposes, noting that the effect of the amendments to the National Minimum Wage Regulations 2015 (SI 2015/621) is to widen the range of pay arrangements that are compatible with workers being treated as performing salaried hours work under the NMW rules. The instrument also enables employers to specify the ‘calculation year’ (for calculation of minimum wage) for their salaried workers (the reference point to identify when in a year a worker’s basic annual hours, for which they receive their salary, are exceeded). https://bit.ly/3gwyAjm</p>
NI	<p>The National minimum Wage regulations apply across the whole of the UK and in this respect the position in NI remains the same as the rest of the UK.</p>

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Tips and Gratuities

GB	<p>Following a consultation in 2016 regarding tips and gratuities, the Government has indicated in the consultation response that they will bring forward measures to ensure tips, gratuities and service charges go to workers in full as part of an upcoming Employment Bill.</p> <p>These legislative measures will include:</p> <ul style="list-style-type: none"> • Requirements for employers in all sectors to not make any deductions from tips received by their staff, including admin charges, other than those required by tax law. 11 Government response to consultation on tipping, gratuities, cover and service charges • Requirements for employers to distribute tips in a way that is fair and transparent, with a written policy on tips, and a record of how tips have been dealt with. Employers will be able to distribute tips via a tronc, and a tip must be dealt with no later than the end of the month following the month in which it was paid by the customer. • Provisions to allow workers to make a request for information relating to an employer’s tipping record. Employers will have flexibility how to design and communicate a tipping record, but should respond within four weeks. Requirements for employers to have regard to a statutory Code of Practice on Tipping. • Where employers fail to comply with these measures, this will be enabled through Employment Tribunal. <p>Although a draft for a Private Members Bill dealing with tips and gratuities was tabled, no text of the Bill is available for review as yet. https://bit.ly/3BsAry7</p> <p>The consultation response is available here: https://bit.ly/3D7WPgR</p>
NI	<p>It is unclear whether the measures described above will be standalone legislation or will require amendment to existing legislation. If it is introduced by way of an amendment to the Employment Rights Act 1996, for example, it will apply to GB only. If it is by way of amendment to National Minimum Wage Regulations or the income tax regime, these are not devolved matters and therefore any amendments would also apply to NI.</p>

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Reform of Public Sector Pay and Pensions

GB	The government has scrapped a cap of £95,000 on GB public sector redundancy payments, after court action by trade unions. https://bit.ly/3il693B
NI	<p>The above GB cap had a very limited application to some civil servants in NI.</p> <p>The Pensions Increase (Review) Order (Northern Ireland) 2021</p> <p>This Order came into operation on 12th April 2021.</p> <p>Under section 69 of the Social Security Pensions (Northern Ireland) Order 1975 (c.15), the Department of Finance must provide, by Order, for the increase in the rates of public service pensions. The Pensions (Increase) Act (Northern Ireland) 1971 (c.35) defines certain terms and sets out when the pension “begins” (the day after the last day of service in respect of which the pension is payable) and how the increase applies to lump sums.</p> <p>For pensions which began before 6th April 2020 the increase is 0.5 per cent. For pensions which began on or after 6th April 2020 the increases, the increases vary and are set out in the legislation.</p> <p>https://bit.ly/3Dlx2wB</p>

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Reform of Occupational Pensions – General

GB	<p>Government to Legislate in 2022 to Increase Normal Minimum Pension Age</p> <p>Following the recent consultation on its plans to implement the new normal minimum pension age (the age at which most pension savers can access their pensions without incurring an unauthorised payments tax charge) and the proposed protection regime, the government has confirmed that the draft legislation will include:</p> <ul style="list-style-type: none"> • measures to enable an individual to retain a protected pension age following an individual transfer (as well as following a block transfer, as originally proposed); • a joining window to enable individuals who join a pension scheme with a protected pension age before 5 April 2023 to be able to benefit from the protection; and • transitional measures for members who will not benefit from a protected pension age and who will be between age 55 and age 57 on 6 April 2028. <p>https://bit.ly/3BiSiqU</p> <p>The Pension Schemes Act 2021 received Royal Assent in February 2021 and brings in new powers for the Pensions Regulator and creates legislative frameworks for dashboards and collective money purchase schemes. Among the changes include the potential for criminal sanctions for actions which put scheme benefits at risk or appear to be avoidance.</p> <p>https://bit.ly/2YyIGKn</p>
NI	<p>The Pension Schemes (2021 Act) (Commencement No. 1 and Transitional Provisions) Order (Northern Ireland) 2021</p> <p>This is the first commencement and transitional provisions Order made in respect of Part 1 of the Pension Schemes Act (Northern Ireland) 2021 (“the 2021 Act”), similar to the provisions of the Pensions Schemes Act 2021 in GB.</p> <p>Article 2 provides for the coming into operation of paragraph 15 of Schedule 3 to the 2021 Act on 13th September 2021 to enable the Pensions Regulator to issue practical guidance about the exercise of functions under the 2021 Act and the standards of conduct and practice expected from those who exercise those functions.</p> <p>The amendments also require the Pensions Regulator to issue a code of practice in relation to:</p> <ul style="list-style-type: none"> • the process for applying for authorisation of a Master Trust scheme under Part 1 of the 2021 Act; and • the matters that the Pensions Regulator expects to consider in deciding whether it is satisfied that a Master Trust scheme meets the authorisation criteria under that Part. <p>Article 3 makes transitional provision in relation to the coming into operation of Schedule 2 to the 2021 Act (Master Trusts operating before the commencement date). It provides that the commencement of provisions relating to Schedule 2 does not apply in relation to an existing Master Trust scheme which has been authorised by the Pensions Regulator under Part 1 of the Pension Schemes Act 2017.</p>

<https://bit.ly/3BkA2gy>

The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2021

This Order, which corresponds to an Order (S.I. 2021/314) made by the Secretary of State for Work and Pensions under sections 14(2) and 15A(1) of the Pensions Act 2008, substitutes the amounts of the automatic enrolment and re-enrolment qualifying earnings band and specifies rounded figures for certain pay reference periods.

For the purposes of the Pensions (No. 2) Act (Northern Ireland) 2008 (“the Act”), a jobholder who earns qualifying earnings of a specified amount is automatically enrolled or, as the case may be, re-enrolled into a pension scheme. The figures which “trigger” automatic enrolment or re-enrolment for pay reference periods other than 12 months can be found in Article 3 of this Order. Once in the scheme, the pension contributions of such a jobholder are calculated by reference to qualifying earnings.

Section 13 of the Act provides that a person’s qualifying earnings are earnings of more than the amount specified in subsection (1)(a) of that section, but not more than the amount specified in subsection (1)(b) of that section. Article 2 of this Order increases the amount referred to in section 13(1)(b).

The amounts specified in sections 3(1)(c), 5(1)(c) and 13(1) of the Act are in relation to a pay reference period of 12 months. Sections 3(6B), 5(7B) and 13(2) of the Act provide respectively that where a pay reference period is less or more than 12 months, the amounts specified in sections 3(1)(c), 5(1)(c) and 13(1) apply as if they were proportionately less or more. Article 3 of this Order provides rounded figures in respect of specified pay reference periods other than 12 months for the purposes of sections 3(6B), 5(7B) and 13(2). Rounding caters for different types of workers and for pay periods other than 12 months used by employers and enables the pay reference period to be tailored to their specific circumstances.

<https://bit.ly/3zKLp10>

The Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations (Northern Ireland) 2021

These Regulations give effect to a new structure, and to new rates, that will be used to calculate the general levy payable by occupational pension schemes and personal pension schemes. The general levy is payable by eligible pension schemes and the amount payable is calculated on a sliding scale depending on the numbers of scheme members. It is collected annually by the Pensions Regulator on behalf of the Department and the Department for Work and Pensions. It recovers the core running costs of the Pensions Regulator, the Pensions Ombudsman and, for example, the pensions guidance function of the Money and Pensions Service. The general levy rates were last increased in 2008-2009. The rates were then reduced by 13% in 2012-2013 and have remained at the same level for most pension schemes since then.

The general levy rates have not been increased in line with movements in inflation, but are reviewed annually to ensure that an appropriate amount is being raised by the levy to meet the costs that are being incurred.

These Regulations help to achieve this by introducing changes to the structure and rates of the general levy on occupational and personal pension schemes from April 2021, 2022 and 2023.

<https://bit.ly/3yFdky5>

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Reform of the Law on Transfers of Undertakings (TUPE)

<p>GB</p>	<p>The 2006 TUPE Regulations were amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, which come into force on 31 January 2014. The 2014 Regulations introduced:</p> <ul style="list-style-type: none"> • A clarification on the face of the Regulations regarding the test for service provision changes, the activities carried out after the change in provider must be fundamentally the same as those carried out by the person who has ceased to carry them out before it. • Amendments to the provisions which give protection against dismissal and restrict changes to contracts: these protections will apply where the sole or principal reason for the dismissal or variation of employment contract is the transfer. Those protections will not apply in certain circumstances where the sole or principal reason for the dismissal or variation is a economic, technical or organisational reason entailing changes in the workforce. • Amendments so that a change to the place where employees are employed can be within 'changes in the workforce'. This is relevant to the dismissal protection and the protection against variations of contracts. - Exceptions to the general restriction on varying contracts of employment - so that terms incorporated from collective agreements can be varied when more than a year has passed since the transfer, provided that overall, the contract is no less favourable to the employee and - so that employers can make changes permitted by the terms of the contract, but in both cases, this is subject to the rules as to when a contract is effectively varied. • A provision so that in some circumstances, rights to terms and conditions provided for in collective agreements entered into after the date of the transfer are not transferred. • A provision allowing micro businesses to inform and consult employees directly when there are no existing appropriate representatives. • The usual deadline by which the old employer must supply the employee liability information to the new employer is increased from not less than 14 days before the transfer to not less than 28 days before the transfer. • An amendment to the Trade Union and Labour Relations (Consolidation) Act 1992 so that a transferee may elect to consult (or start to consult) representatives of transferring staff about proposed collective redundancies prior to the transfer (to meet the requirements for such consultation under that Act). The transferor must agree to such consultation. <p>https://bit.ly/3Dgs8Gm</p> <p>Guidance on the changes is available here: https://bit.ly/3Fg29R0</p>
<p>NI</p>	<p>The amendments to the 2006 TUPE regulations apply only to GB and do not extend to NI. In NI the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply UK wide with the exception of the part dealing with Service Provision Changes. In NI separate regulations, the Service Provision Change (Protection of Employment) Regulations (NI) 2006 deal with such matters.</p>

Transfer of Undertakings (Protection of Employment) Regulations 2006:
<https://bit.ly/3l9wgSb>

Service Provision Change Regulations: <https://bit.ly/3muJNTX>

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Reform of Information & Consultation of Employees (ICE) Regulations

GB	As of 6 th April 2020, the threshold to request an information and consultation agreement under the ICE Regulations was lowered by the Employment Rights (Miscellaneous Amendments) Regulations 2019 (SI 2019/731) to 2% down from 10%. https://bit.ly/3sPsI9J
NI	No corresponding updates in NI – the position regarding information and consultation remains the same as per Article 7 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 . https://bit.ly/3tlydgQ

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SECTION 3: TRIBUNAL & OTHER LEGAL & DISPUTE RESOLUTION PROCESSES

Tribunal and Dispute Resolution Reform

<p>GB</p>	<p>Tribunal Reform 2020</p> <p>The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 SI 2020/1003 (the 2020 Rules) were laid before Parliament on 17 September 2020 and amend the ET Regulations, ET Rules and also the Early Conciliation (EC) rules set out in Schedule 1 to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI 2014/254. The majority of the changes came into force on 8 October 2020 and include:</p> <ul style="list-style-type: none"> • The deployment of non-employment judges into employment tribunals if certain criteria on suitability are met. • The employment of Legal officers to carry out some tasks currently performed by employment judges, i.e. uncontentious case management decisions such as considering acceptance or rejection of claim forms and giving permission to amend claims and responses when both parties consent. • Change to the timescale for early conciliation to allow a standard six-week early conciliation process in all cases, rather than a default one month with a possible extension of a further two weeks. <p>https://bit.ly/3iTt6jW</p> <p>Road Map for Tribunal Reform</p> <p>A new 'road map' for employment tribunal proceedings in 2021 and 2022 has been published by the Presidents of the Employment Tribunals in England, Wales and Scotland. Reforms include for example the use of video hearings in certain preliminary, interim and short track claims will be the default position and the recruitment of additional Legal Officers who will become more involved in case progression work.</p> <p>https://bit.ly/3sbHhEu</p>
<p>NI</p>	<p>The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020</p> <p>These Regulations and Rules of Procedure establish requirements in relation to proceedings before Industrial Tribunals (ITs) and the Fair Employment Tribunal (FET).</p> <p>They revoke and replace earlier regulations and rules which separately dealt with these tribunals. The 2020 Regulations provide a revised and consolidated text for the rules and procedures of the industrial tribunals and the Fair Employment Tribunal while simplifying language and structure, being consistent with better regulation principles.</p>

The 2020 Regulations also take account of the introduction of Early Conciliation; in particular setting out the implications arising from the adherence, or non-adherence, to the requirements of Early Conciliation.

<https://bit.ly/3sMPdfu>

During the pandemic OITFET employed the use of video hearings to enable hearings to take place remotely. However, there is no equivalent in NI to the GB Roadmap for tribunal reform as described above. In addition, the role of the Legal Officer has not been employed by OITFET in NI.

The current position on remote and hybrid hearings in NI can be found here:

<https://bit.ly/3mNXZht>

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Early Conciliation – Referral To ACAS/LRA For Conciliation Before Claim Can Be Made to Tribunal Or Other Forum

GB	<p>Early Conciliation has been provided by ACAS in GB since 2014 and was introduced via an amendment to the Employment Tribunals Act 1996. The relevant section is Section 18A.</p> <p>https://bit.ly/3umUtqW</p>
NI	<p>From 27th January 2020 anyone who wishes to lodge a claim with the Industrial or Fair Employment Tribunal must first notify the Labour Relations Agency (LRA) and discuss the option of Early Conciliation. Most potential claimants will not be able to proceed to tribunal without at least considering this option.</p> <p>This brings NI into line with GB who have had a similar system, operated by ACAS, since 2014.</p> <p>The Employment Act (Northern Ireland) 2016 (Commencement No. 3) Order (Northern Ireland) 2020</p> <p>This Order brought into operation certain provisions of the Employment Act (Northern Ireland) 2016 on 27th January 2020:</p> <ul style="list-style-type: none"> • Article 2(a) to (e) commence provisions on Early Conciliation of employment disputes. • Article 2(f) commences the provision which places an obligation on the Department to review early conciliation. • Article 2(g) and (h) commences the provisions that permits the Department to make regulations which provide that the members of the panel of chairmen of industrial tribunals and Fair Employment Tribunal may be referred to as employment judges. • Article 2(i) commences the provision which prohibits the Labour Relations Agency, or persons appointed by the Agency, from releasing information relating to a worker, employer of a worker, or a trade union, that they hold in the course of performing their functions. • Article 2(j) corrects a small number of references in the Social Security Contributions and Benefits (Northern Ireland) Act 1992, dealing with statutory shared parental pay, which were introduced by the Work and Families Act (Northern Ireland) 2015. • Article 2(k) updates legislative references in Schedules 2 and 4 to the Employment (Northern Ireland) Order 2003. • Article 2(l) and (o) gives effect to the dispute resolution repeals in Schedule 3 of the Act. • Article 2(m) and (n) gives effect to Schedules 1 and 2, which respectively, make minor and consequential amendments to existing legislation, and set out how the relevant time limits for bringing a claim will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged. <p>Link to legislation: https://bit.ly/3Bi0abU</p>

Link to LRA:

<https://bit.ly/3ABvjgH>

The Industrial Tribunals (1996 Order) (Application of Conciliation Provisions) Order (Northern Ireland) 2020

This Order amended Article 20(1) of the **Industrial Tribunals (Northern Ireland) Order 1996**. Article 20(1) lists the proceedings which are “relevant proceedings” for the purposes of Early Conciliation and other conciliation services provided by the Labour Relations Agency. The amendments made by this Order update the list of jurisdictions in Article 20(1)

<https://bit.ly/3sT1FdJ>

The Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020

The **Employment Act (Northern Ireland) 2016** amended the **Industrial Tribunals (Northern Ireland) Order 1996** and the **Fair Employment and Treatment (Northern Ireland) Order 1998** to introduce a requirement for prospective claimants to contact the Labour Relations Agency before they are able to present a claim to an Industrial Tribunal or the Fair Employment Tribunal. This requirement applies to claims which are relevant proceedings under Article 20(1) of the **Industrial Tribunals Order** or Article 38 of the **Fair Employment and Treatment Order**.

Regulation 3 sets out the circumstances in which a claimant may present a claim dealing with relevant proceedings without complying with the requirement for early conciliation as follows:

- regulation 3(1)(a) relates to claimants who are presenting a claim on the same claim form as other claimants or joining a claim which has already been presented to an industrial tribunal or the Fair Employment Tribunal by another claimant (so called ‘multiples’); in such circumstances, a claimant may rely upon the fact that another claimant has complied with the requirement for early conciliation and has a certificate from the Agency.
- regulation 3(1)(b) means that if a claim for relevant proceedings appears on the same claim form as proceedings which are not relevant proceedings, there is no need for a claimant to satisfy the early conciliation requirement in relation to those relevant proceedings.

<https://bit.ly/3gAA105>

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SECTION 4: BREXIT AND THE NORTHERN IRELAND PROTOCOL

Immigration

GB	<p>Points-based immigration system</p> <p>The UK has introduced a points-based immigration system. Free movement with the European Union (EU) ended on 31 December 2020 and there are new arrangements for EU citizens. Irish citizens can continue to freely enter, live and work in the UK.</p> <p>Changes to employment include:</p> <ul style="list-style-type: none">• Visa application process - new immigration routes have opened for applications to work, live and study in the UK.• Skilled workers - the points-based system includes a route for skilled workers who have a job offer from an approved employer sponsor.• Global talent scheme - the global talent scheme has been opened up to EU, EEA and Swiss citizens. It allows highly-skilled scientists and researchers to come to the UK without a job offer. <p>Government guidance can be found here: https://bit.ly/3aRAAj1</p>
NI	<p>Given NI's unique position, it is likely that equally unique issues will arise.</p> <p>One issue which has already become apparent is organisations based in the Republic of Ireland with specialist EU workers historically could simply drive across the border and carry out work in NI. Now however businesses need to think of the immigration and Right to Work implications of this cross-border work.</p> <p>As there is no regional salary, the Intra-Company Transfer route can be prohibitive as there is a minimum salary level of £41,500. The Skilled Worker route, while more flexible in terms of salary and skill level, requires the candidate to meet the English language requirement which may be either too difficult or too time consuming to complete if timings are tight.</p> <p>Without a physical border force to check documents, businesses may be tempted to take a risk, or some may not even consider the requirements. However, the penalties for illegal working in the UK are quite severe.</p> <p>Some options exist under the Frontier Worker Scheme, the EU Settlement Scheme (including late applications) and certain business activities are permitted under the Visitor Visa route.</p>

EU-UK Trade and Cooperation Agreement (TCA)

GB	<p>Under the EU–UK Trade and Cooperation Agreement (TCA), there is a general UK-wide commitment to keep up with EU levels of employment protection in broad terms as part of the provisions relating to a Level Playing Field for Open and Fair Competition. The TCA allows one Party to impose trade sanctions against the other if there has been ‘significant divergence’ in levels of labour protection that has caused a ‘material impact’ on trade.</p> <p>https://bit.ly/3vc6mR5</p>
NI	<p>As far as the Northern Ireland Protocol is concerned, NI has dynamic alignment with the EU in relation to the 6 anti-discrimination directives in Annex 1 of Article 2:</p> <p>[1] Directive 2004/113 implementing the principle of Equal Treatment between men and women in the Access to and Supply of Goods and Services</p> <p>[2] Directive 2006/54 on the implementation of the principle of equal opportunities and Equal Treatment of Men and Women in matters of Employment and Occupation (Recast)</p> <p>[3] Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin</p> <p>[4] Directive 2000/78 establishing a General Framework for Equal Treatment in Employment and Occupation</p> <p>[5] Directive 2010/41 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity</p> <p>[6] Directive 79/7 on progressive implementation of principle of Equal Treatment for Men and Women in matters of Social Security</p>

End.

CONTRIBUTOR PROFILES



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Adam Brett is a partner in Lewis Silkin (N.I.) LLP, based in Lewis Silkin's Belfast office. Adam has been advising employers and employees for some 40 years. Much of this has included advice on the differences between employment and discrimination law in GB and in NI, and in how employers can navigate this.

Adam is ranked as a leader in the field by both Legal 500 and Chambers. He has been on the committee of the Employment Lawyers Group Northern Ireland for many years.



Rolanda Markey, Learning & Development Services Officer
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Rolanda Markey joined the Learning and Development team at Legal Island in March 2019. Prior to that she worked for the Labour Relations Agency in Belfast for 17 years as an Employment Relations Officer working in both Advisory (good practice) Services and Dispute Resolution. Before joining the Labour Relations Agency, she worked in Human Resources in a range of public and private sector organisations. She is a Chartered Member of the CIPD and has an MSc in Occupational Psychology.



Christine Quinn, Learning & Development Services Officer
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Christine is an employment solicitor with 18 years' experience in the legal and voluntary sectors, as a solicitor and paralegal, in both London and Northern Ireland. She trained at leading London human rights firm Bindmans LLP and qualified into their employment and discrimination department, before joining the BBC's in-house employment law team. Christine subsequently worked at LHS Solicitors representing members of the Federation of Small Businesses (FSB) before taking a career break to run her own small business. Her return to law saw her join the Law Centre (NI) as interim Head of Employment law.