Employment Law – What's on the Horizon? (UK/Northern Ireland)

This is a list of the UK legal risks that we can foresee affecting employers over the next few years & the position as it stands for each development in Northern Ireland.

<table>
<thead>
<tr>
<th>Employment Law Changes</th>
<th>Likely/Actual Implementation Date (in the UK)</th>
<th>Implications</th>
<th>Position &amp; Timescale in Northern Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>New Tribunal Rules of Procedure</strong></td>
<td>29 July 2013</td>
<td>If these reforms achieve the Governments intended aims, cases will be dealt with in a more consistent manner and the tribunal process will be easier for parties to navigate.</td>
<td>NI Tribunal Rules Committee has been asked to review Underhill and produce single set of NI rules. These may well differ from Underhill. No timescale set but draft rules may be produced for consultation fairly soon.</td>
</tr>
<tr>
<td>The Government has confirmed that it intends to implement the new Tribunal Rules of Procedure at the same time as Employment Tribunal fees (which the Government has confirmed will be introduced on 29 July 2013).</td>
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<tr>
<td>The new Rules follow a review of the rules led by Mr Justice Underhill, in 2012.</td>
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<tr>
<td>The changes, which aim to &quot;streamline the tribunal process and make it easier for parties to navigate&quot;, include the following:</td>
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<tr>
<td>- New strike out powers to ensure that weak cases that should not proceed to full hearing are halted at the earliest possible opportunity;</td>
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<tr>
<td>- Guidance from the Employment Tribunal Presidents to help ensure that judges deal with hearings in a consistent manner which ensures parties know what to expect;</td>
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<tr>
<td>- Measures to make it easier to withdraw and dismiss claims by cutting the amount of paper work required; and</td>
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<tr>
<td>- A new procedure for preliminary hearings that combines separate pre-hearing reviews and</td>
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</table>

Last Updated: 26/06/2013
Employment Law – What's on the Horizon? (UK/Northern Ireland)

<table>
<thead>
<tr>
<th>Case management discussions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Important changes to the rules on default judgements; more case management powers for employment judges and changes to cost rules;</td>
</tr>
<tr>
<td>• New rules relating to the treatment of claims presented without the correct issue fee (when the fee system is introduced) or an application for remission.</td>
</tr>
</tbody>
</table>

**Employment Tribunal fees**

The government has confirmed that it will introduce a two-stage fee structure for employment tribunal claims on the 29 July 2013.

The policy intention is to require users of the tribunal system to bear more of the cost burden than they are at present.

A claimant will now be required to pay a fee at the issue of their claim (an issue fee). If the claim will proceed to a full tribunal hearing, the claimant will be required to pay a subsequent fee (a hearing fee).

### Single claimant claims

The level of the fee will depend on the type of claim. There are two types of claim: Level 1 claims and Level 2 claims.

**Level 1 claims** comprise more straightforward and lower value claims, generally for sums due on termination of employment (such as unpaid wages).

**Level 2 claims** are for claimants in receipt of benefits and have the means available to raise litigation, the fees.

**Expected 29 July 2013.**

Whilst the introduction of fees may deter claimants from raising unmeritorious / low value claims and lead to a reduction in litigation, given the intention to means-test such fees (i.e. by waiving or reducing the fees for those in receipt of benefits) it is questionable whether the introduction of such fees will have the deterrent effect that is envisaged.

This could also have a knock-on effect on the number of low level 'nuisance' value settlements under £1,500 as claimants may be less likely to be persuaded to accept such a proposal in circumstances where they have already "invested" financially in their claim.

For certain employees, who are well remunerated and have the means available to raise litigation, the fees

There is no proposal to introduce fees at present. This may form part of a later consultation, but is unlikely to be introduced in 2013.
redundancy payments and payments in lieu of notice), which are less costly to administer and adjudicate.

**Level 2 claims** comprise all other claims, including unfair dismissal, discrimination, equal pay and whistle blowing claims.

The consultation proposed that where a claimant submitted more than one type of jurisdictional complaint, the fee payable would be that which relates to the highest level claim. For example, submitting a claim for unpaid wages (a Level 1 claim) alongside a claim for unfair dismissal (a Level 2 claim) would only attract a Level 2 fee, rather than the sum total of a Level 1 fee and a Level 2 fee. The consultation response does not address this issue, so it could reasonably be presumed that this proposal will be implemented as set out in the consultation.

A full list of claims and their allocated fee levels is contained in Annex C to the consultation response.

The fees are as follows:

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Level 1 Claims</th>
<th>Level 2 claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue fee</td>
<td>£160</td>
<td>£250</td>
</tr>
<tr>
<td>Hearing fee</td>
<td>£230</td>
<td>£950</td>
</tr>
</tbody>
</table>

are not significant enough to act as a deterrent.
Multiple claimants

Where more than one claimant is bringing the same claim, the two-stage fee structure takes into account the number of claimants who are bringing the claim.

- Where there are between two and ten claimants, the issue and hearing fees will be the fees for single claims multiplied by two.
- Where there are between 11 and 200 claimants, the fees will be the single claim fees multiplied by four.
- Where there are 201 or more claimants, the fees will be the single claim fees multiplied by six. (This is different to the proposals in the consultation, which suggested five bands of multiplier rather than three.)

The Level 1 and Level 2 categorisation of claims for single claims will apply to claims brought by multiple claimants.

The fees will therefore be as follows:

<table>
<thead>
<tr>
<th>Level 1 Claims</th>
<th>Number of claimants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2 to 10</td>
</tr>
<tr>
<td>Fee type</td>
<td>Issue fee</td>
</tr>
<tr>
<td></td>
<td>£320</td>
</tr>
</tbody>
</table>
### Level 2 Claims

<table>
<thead>
<tr>
<th>Fee type</th>
<th>2 to 10</th>
<th>11 to 200</th>
<th>201 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue fee</td>
<td>£500</td>
<td>£1000</td>
<td>£1500</td>
</tr>
<tr>
<td>Hearing fee</td>
<td>£1900</td>
<td>£3800</td>
<td>£5700</td>
</tr>
</tbody>
</table>

### Application-specific fees

The government will implement fees for specific separate applications to the tribunal. The consultation put forward six types of application which would attract a fee.

The proposal to charge a fee for the giving of written reasons following the oral giving of reasons has been dropped, as it is considered to be a natural part of the judgment-giving process.

The five types of discrete application which will now attract a separate fee are:
• An application to set aside a default judgment. This will attract a fee of £100, payable by the respondent.

• An application to dismiss a claim following the claim's settlement or withdrawal. This will cost £60. However, Mr Justice Underhill's review of the Employment Tribunal Rules has recommended that when a party withdraws their claim, the other party should not have to apply to get the claim dismissed. If this proposal is implemented in the revised Employment Tribunal Rules, a dismissal notice or order will not be necessary. Unless and until it is implemented however, the application will attract a fee.

• An application for judicial mediation. This will cost £600 and will be payable by the employer. (The fee was initially proposed to be £750 in the consultation).

• A breach of contract counter-claim. This will cost £160, payable by the employer.

• An application for a review of a tribunal's decision or judgment. This will cost £100 for Level 1 claims and £350 for Level 2 claims. The fee will be payable by the party making the application.

Employment Appeal Tribunal fees

As proposed in the consultation, fees in the EAT will mirror the two-stage structure to be implemented in
the employment tribunals.

There will be a fee of £400 to issue an appeal (an appeal fee) and a fee of £1,200 to proceed to a full hearing (a hearing fee).

During the implementation of EAT fees, the government intends to produce guidance to address practical issues such as the kind of interlocutory hearings which will be covered by the appeal fee, whether further fees will be payable when the EAT remits to a tribunal, and when the hearing fee must be paid.

**Remissions and refunds**

**Remissions**

There will be no exemptions to the requirement to pay the tribunal fees. To protect access to justice for claimants who cannot afford to pay any or part of the fees, the current HMCTS civil courts remissions system will be extended to employment tribunals and the EAT.

The Government published a consultation on its proposals to reform the fee remission system for tribunals and courts. The proposed system would have two tests; a 'disposable' capital test and a gross monthly income test. Claimants would have to satisfy both tests to qualify for remission, which may be full or partial, depending on the individual's circumstances. The consultation closed on 16 May 2013.
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<table>
<thead>
<tr>
<th>Refunds</th>
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</thead>
<tbody>
<tr>
<td>If a hearing fee is paid but the case does not proceed to a full hearing, the hearing fee will only be refunded if, within six months of paying a fee, the claimant can prove eligibility for a full or partial fee remission at the time of payment. A fee will also be refunded if it is taken in error. It is only in these limited circumstances that a claimant can have their fees refunded.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>'Settlement agreements' and inadmissible pre-termination negotiations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The ERRA 2013 will rename compromise agreements as 'settlement agreements', which are legally binding contracts which can be used to end an employment relationship on agreed terms. Offers made or related discussions and negotiations with a view to reaching a settlement agreement will not inadmissible in any subsequent ordinary unfair dismissal claim, except where there has been 'improper behaviour'.</td>
</tr>
</tbody>
</table>

Employees will not be prevented from bringing claims in relation to 'automatically unfair' dismissals, such as for whistleblowing, trade union membership or asserting a statutory right, by virtue of having entered into a settlement agreement. The confidentiality provisions will also not apply to grounds other than unfair dismissal, such as claims of discrimination, "Summer 2013" |

Given that employees will be able to reject an offer without it affecting their employment rights and refer to a tribunal if they wish (relying upon the conversation in certain circumstances such as where discrimination is alleged) employers would nevertheless be required to approach such conversations with caution.

This will potentially make it easier for employers to approach an employee to discuss a potential settlement offer, without the fear of this being used against them later in tribunal. The circumstances in which these discussions can take place are relatively limited and will be most likely to happen in NI.

Consultation on protected conversations possible in 2013 but no decisions on this have been taken yet and this is unlikely to be introduced this year.
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<table>
<thead>
<tr>
<th>harassment, victimisation or claims relating to breach of contract.</th>
<th>often used in cases of poor performance or &quot;personality clash&quot; where there is no other risk of a discrimination claim.</th>
</tr>
</thead>
</table>

Following consultation on how 'settlement agreements' will work in practice, the Government asked Acas to produce a Statutory Code of Practice. Acas published a draft Code earlier this year and sought feedback via a consultation, which closed on 9 April 2013.

Acas has now published a revised finalised Code of Practice. The guidance states that, in order to be legally valid, the agreement must be in writing & relate to a "particular complaint or proceedings". The employee must have received advice from a relevant independent advisor, who must be identified as part of the agreement.

The guidance provides a number of non-exhaustive examples of what could constitute improper behaviour by either an employer or employee. These include all forms of harassment, bullying and intimidation; physical assault or the physical assault; victimisation; discrimination; and putting undue pressure on a party, which can include not giving an employee sufficient time to consider an offer.

The revised version of the Code of Practice omits a requirement that an employer must put an initial settlement offer in writing; however, the final agreement will not be valid unless it is in writing. It also increases the length of time an employee should be given to consider any offer from seven to 10 days, often used in cases of poor performance or "personality clash" where there is no other risk of a discrimination claim. Employers should careful not to confuse the new confidentiality provisions with the existing 'without prejudice' rules. Without prejudice is a common law principle which prevents written or oral statement made in a genuine attempt to settle an existing dispute from being put before a court or tribunal as evidence. The circumstances in which without prejudice can apply are broader than those where the new confidentiality agreements can apply; however, they will only take effect where there is an existing dispute between the employer and employee.

The guidance makes it clear that the without prejudice and settlement agreement regimes "run alongside" each other. Where there is an existing dispute between the employer and employee, both the 'without prejudice' and new statutory confidentiality provisions will apply. In these circumstances, negotiations ahead of a settlement agreement will...
and adds an expectation that employees should be allowed to be accompanied at meetings by a colleague or trade union representative.

The Government has confirmed that there will be accompanying guidance to the code, which will include template offer letters and a model settlement agreement.

The Government has decided not to set a guideline tariff to help determine the amount of any severance payment for settlement agreements, but will give guidance on considerations to take into account when negotiating & deciding the level of financial settlement.

The Government is working towards the amended legislation, Statutory Code and guidance being in place by **Summer 2013**.

**Unfair Dismissal Compensatory Award Cap**

On 25 June, the ERRA 2013 gave the Secretary of State the power to order a variation of the statutory limit on the compensatory award for unfair dismissal claims. The Government has confirmed that it intends to introduce a cap of the lower of one year’s pay or the existing compensatory award cap (£74,200). **It is expected that the cap itself will come into force in summer 2013.**

**Summer 2013**

Whilst we anticipate that employers would welcome any proposals to reduce the amount of compensation which can be claimed by employees at tribunal, there is the potential that such limitations could heighten the risk of 'tactical' discrimination / whistleblowing complaints being raised with a view to lifting the compensation cap. The average award for Unfair Dismissal is also much lower than the statutory cap in summer 2013.

not be admissible unless there has been some ‘unambiguous impropriety’ by one of the parties, which is a narrower test than that of ‘improper behavior’.

It will be interesting to see whether we see employees approaching employers to discuss the possibility of a settlement agreement.

The position in NI is unclear as this has not consulted upon. Powers to lower the statutory limit are with ministers in Stormont, and it currently seems unlikely that this would attract sufficient political support.
### Education and Skills Act 2008

The Act changes the Statutory Framework to put a duty on all young people to participate in education or training until the age of 17 (by Summer 2013) and 18 (by 2015).

**Summer 2013 / 2015**

The Act places obligations on employers to release young people for education and training, and requires employers to check whether a young person is participating in education or training before employing them.

Employers should ensure that recruitment practices provide for such checks to be carried out in respect of applicants that are under 17 (and under 18 by 2015) and that line managers are made aware of the requirement to give such employees time off for training or education purposes.

The position in NI is unclear - no consultation as yet.

### Employee-shareholder contracts

Employee-shareholder contracts introduce a new type of employment status under which employees give up certain statutory employment rights in exchange for a minimum grant of £2,000 worth of shares in their employer’s business. This is set to be introduced through the Growth and Infrastructure Bill Act 2013.

Existing employees cannot be forced to take up employee shareholder status – however employers may choose to offer the employee shareholder status.

**1 September 2013**

Employers may wish to consider the appropriateness of the contract for their organisation and employment relationships.

This proposal will NOT apply to NI.

This may create some unclear situations where an employee shareholder moves to NI.
only to new joiners.

Any profit on employee shareholder shares not exceeding £50,000 in value at the time of acquisition will be exempt from capital gains tax when the shares are sold. Further, the first £2,000 of share value that anyone receives under the new status will be free from income tax and national insurance contributions. This will be of particular benefit to anyone receiving the minimum amount of shares, as it will ensure that no tax is due when they receive their shares.

There will be tax relief too for employer companies offering the new employee shareholder status against the acquisition of shares by new employee shareholders.

Having rejected the scheme twice, the House of Lords has now accepted the proposals, following concessions made by the Government. These concessions include:

- A requirement that the individual receives advice from a relevant independent advisor before entering into an agreement to become an employee shareholder (and for the employer to pay reasonable costs of that advice).

- A seven day 'cooling off' period, during which an employee cannot accept an offer of an employee shareholder job.
Jobseekers will not be forced to give up unemployment benefits if they refused to apply for, or turned down offers of, employee shareholder jobs.

Existing staff will be protected from detriment if they refuse to change to an employee-shareholder contact.

The Government has also announced that it will reform share buy-back rules to make it easier for companies that issue shares directly to their employees to buy these back when workers leave the company. Currently, companies that wish to repurchase their own shares can only do so with the approval of three quarters of their shareholders. The Government is set to reduce the approval threshold to an ordinary resolution, or simple majority.

The Employee Shareholder scheme will now become law and it is expected that the Government will implement the scheme in September 2013.

**Executive pay: shareholders binding vote**

The regime for shareholder voting in relation to remuneration is set to change, with a binding vote on forward-looking remuneration policy in addition to an advisory vote on the implementation of that policy. The format of the remuneration report is also set to change.

| 1 October 2013 | Employers' remuneration committees should have regard now to the potential changes in developing future remuneration policy. | The position is currently unclear, but this change may be applied in NI. |
The changes are to be implemented by way of amendments to the ERRB and revised regulations setting out what companies must report on directors' pay.

### New National Minimum Wage rates implemented
The Government has announced that the NMW rates that will come into force on 1 October 2013 are as follows:

- **Standard adult rate (Age 21+)** - £6.31 an hour
- **Development rate (Age 18-20)** - £5.03 an hour
- **Young workers rate (Age 16-17 and not apprentices)** - £3.72
- **Apprentices (under 19 or in first year)** - £2.68
- **Accommodation offset** - £4.91 a day

For the current rates, [click here](#).

| 1 October 2013 | Employers should be aware of the changes in these rates and ensure that eligible workers are paid at the correct rate from 1 October onwards. | These rates will apply in NI. |

### Removal of Third Party Harassment provisions
The Government is set to amend the Equality Act 2010 (EqA 2010) to remove employer liability for harassment by third parties.

| 1 October 2013 | Employers should continue to take a robust approach to identified and suspected instances of third party harassment and not ignore the danger of harassment and discriminatory treatment by third parties bearing in mind the duty of care owed to employees and the | This did not directly apply in NI anyway, as the Equality Act does not apply- but Tribunals will seek to rely on case law where possible. |

Last Updated: 26/06/2013
Reform of TUPE Regulations

In 2011, the Government published a call for evidence on the effectiveness of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations), given concerns that the Regulations 'gold-plate' the EU directive which they implement and are overly bureaucratic. The call for evidence closed in January 2012.

The Government published a consultation on 17 January 2013 seeking views on its detailed proposals to reform the Regulations, which include a striking proposal to abolish the concept of Service Provision Changes.

Another significant proposal is to allow greater freedom for transferee employers to change terms and conditions after a transfer.

The Government also proposed a number of other changes which aim to assist transferees to make business changes more quickly.

The Consultation closed on 11 April 2013 and the Government's response is expected in July 2013. The Government has set out its intention to begin implementing changes in October 2013, with the October 2013 (Except SPC changes – no date set).

These are very significant proposals which, if implemented, would create a much more "light touch" approach to TUPE.

The most dramatic announcement is the proposed abolition of the Service Provision Change rule. For the past 6 years since this test was introduced, the working assumption for contractors has been that TUPE will apply on a change of service provider. The removal of this rule means that the application of TUPE is not as clear.

If the changes occur during the lifetime of existing contracts they will create major risks for incumbent contractors exposing them to unexpected redundancy liabilities if they lose the contract. The other side of the coin is that bidders may be able to pursue non-TUPE approaches, creating an opportunity to save costs.

Such proposals would have a

This is a joint consultation with GB, but the NI government has made no firm decision, so will not necessarily follow any GB decisions.
### Sickness Absence Review

The Department for Work and Pensions (DWP) has announced new proposals for dealing with sickness absence. The most significant proposal was the introduction of a new government-funded health and work assessment and advisory service, to be in operation from 2014.

The service will provide a state-funded occupational health (OH) assessment for employees who are absent for four or more weeks. The Government declined to introduce a new job-brokering service to help long-term sick employees find new work (where appropriate) but instead proposes that the advisory and assessment service will signpost employees in this position to 'Universal Jobmatch', a free internet job-matching service, which was launched in November 2012.

The Government has also announced that health-related benefits, paid for by employers, on the advice

### Spring 2014 (Health & Work Assessment & Advisory Service)

Given that many employers have large workforces, absence management is an important issue and the proposals are likely to be largely welcomed by employers, although many employers already use an OH service to review an employee’s health so this proposal will not necessarily be new to them.

### March 2013 (Revised Fit Note Guidance)

The position is currently unclear in NI.

It is likely the tax exemption will apply in NI.
of the new service, in order to support an employee's return to work, will be exempt from tax, up to £500. (The Government will consult on the exemption later in 2013).

Other proposals include publishing revised fit note guidance, emphasising the importance of assessing the individual's ability to return to work in general and not just to their own specific role. (This was published in March 2013) The Government also plans to abolish the statutory sick pay record-keeping obligations to enable employers to keep records in the way that best suits their organisation. For further details and commentary, click here

**Removal of Discrimination Questionnaires**

The Government is set to amend the Equality Act 2010 (EqA 2010) to abolish the discrimination questionnaire procedure.

<table>
<thead>
<tr>
<th>Date</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 April 2014</td>
<td>Many employers faced with discrimination questionnaires will, no doubt, welcome this reform as they are often long, technical and employees often seek information going back many years. The forms can be used for &quot;fishing expeditions&quot; by employees who do not reasonably have any cause for complaint.</td>
</tr>
<tr>
<td></td>
<td>This will not apply in NI, and no consultation on this as yet. Employers should assume that Questionnaires will remain in NI and failure to reply may be relied on by a Tribunal.</td>
</tr>
</tbody>
</table>

**Mandatory Early ACAS conciliation**

The ERRA 2013 legislates for an early Acas conciliation scheme, which places a mandatory obligation on parties to attempt early conciliation.

Under the Early Conciliation (EC) scheme, employees will be required to contact Acas to request EC **before** 6 April 2014. In most instances, conciliation is likely to involve discussion in relation to financial settlement. This will give employers an opportunity to settle cases that are identified as high risk at an early stage in proceedings before costs are incurred in the defence of the claim. For all other cases, The DEL response to a consultation of November 2012 suggests the need for further detail from LRA and consultation before deciding on this.
their claim is lodged with an employment tribunal. Although it is mandatory to contact Acas prior to lodging a tribunal claim, it is not mandatory to accept the offer of EC. If the offer is not accepted or EC is unsuccessful, the claimant will be able to go ahead and present their claim to the tribunal. If the parties do enter into EC, the conciliator has one month to negotiate a settlement (which is extendable by 2 weeks with the parties' agreement).

The Government has also outlined the limited exemptions to the regime as well as the proposed form that the claimant employee will need to fill in to contact Acas and the certification process under which Acas will certify the claimant's compliance with the duty to contact Acas.

The scheme is set to be introduced in 2014.

**Equal Pay Auditing**

The ERRA 2013 gives the Government power to create new regulations that would allow employment tribunals to order businesses to undertake an equal pay audit if they are found to have breached equal pay laws.

The Government has said that employers will not be required to publish the results of such pay audits and has published a further consultation seeking views on the scope and details of these Regulations and related issues. This closes on 18 July 2013. The Government hopes that the legislation will come into force in 2014.

**2014**

Where such cases are raised, employers will need to be aware of this extra audit requirement. The audit requirement could increase employers’ appetites for settlement in cases that are identified as having poor prospects of a successful defence.

**Does not apply - position uncertain as to whether may be applied in future.**

However, be aware of provisions in Fair Employment and Treatment (Northern Ireland) Order 1997 which give Tribunals a wide discretion.

Also, the Public sector duties in S.75 of the Northern Ireland Act 1998, which is often applied to private sector providers.
**Shared parental leave and flexible working**

The Government will introduce a new system of shared flexible parental leave which will allow parents to choose how they share childcare responsibilities in the first year after a child's birth. These changes, which are expected to take effect from 2015, are intended to allow parents to play a "greater role" in raising children and to help mothers return to work "at a time that's right for them".

The right to request flexible working is also to be extended to all employees from 2014, which the Government said would remove the "cultural expectation" that flexible working only has benefits for parents and carers.

The Government plans to legislate for these changes in 2013, through the Children and Families Bill, and will introduce the changes to flexible working in 2014 and to flexible parental leave in 2015.

Acas published a consultation seeking views on a draft code of practice on the extended right to request flexible working which closed on 20 May 2013. Click [here for consultation](#).

The government published a consultation on the administration of shared parental leave and pay which also closed on 20 May 2013. Click [here for consultation](#).

<table>
<thead>
<tr>
<th><strong>New scheme for tax-free childcare</strong></th>
<th><strong>Autumn 2015</strong></th>
<th><strong>Flexible parental leave</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Employers should carry out some workforce planning around the issue of fathers taking time out of the business either for ante-natal appointments (which is relatively easy to accommodate) and fathers taking shared parental leave (which has far more significant implications for business in terms of planning).</td>
</tr>
<tr>
<td><strong>Flexible working</strong></td>
<td></td>
<td>The Minister is committed to flexible working and is likely to have regard to GB changes when considering proposals.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Many employers already allow flexible working for all employees, not just those with childcare responsibilities, but if this is not the case you may want to consider reviewing existing policies to allow this.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>On a general note, the focus over the next few years will be on flexible, family friendly employment practices and consequently employers should give consideration as to how to make their existing policies more family friendly and flexible.</td>
</tr>
</tbody>
</table>

**The position in NI is unclear.**
The Government has announced that it will introduce a new tax-free childcare system, open to families where all parents are in work, with each earning less than £150,000 a year (and not already receiving support through tax credits and later, Universal Credit which will be launched in 2013).

These families will receive 20% of their yearly childcare costs up to £6,000 a year, for children under 12 years of age.

This new scheme will replace the current system of Employer Supported Childcare (ESC).

<table>
<thead>
<tr>
<th>Financial penalties for losing employers/respondents in tribunals</th>
<th>No date set</th>
<th>Given the low level nature of the fines and the fact that 50% of the fine is discharged if paid within 21 days, this might not have a significant impact upon employers' litigation strategies.</th>
<th>Will not be implemented in NI.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The ERRA 2013 introduces the power for employment tribunals to order financial penalties where an employer is found to have breached a worker's rights and the ET considers that the breach has any &quot;aggravating factor&quot; – the penalties are therefore at the discretion of the Employment Judge and are intended to cover substantial (as opposed to minor/technical) breaches.</td>
<td></td>
<td>However, large employers who tend to have a large number of employment claims should take this into account when budgeting.</td>
<td></td>
</tr>
<tr>
<td>The penalty, payable to the Secretary of State, may be between £100 and £5,000 and if an employer pays 50% of the penalty within 21 days, their liability is discharged.</td>
<td></td>
<td>It is currently unclear as to what an &quot;aggravating factor&quot; is.</td>
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</tbody>
</table>
It is unclear when this will come into force. A recent implementation timetable published by BIS states that there are 'no current plans to use'.

**Reform of Fair Deal Pensions Policy**

HM Treasury plans to reform the Fair Deal Pensions Policy which applies when public sector staff are compulsorily transferred to private sector contractors.

The Treasury proposes to reform the policy to allow transferred employees to remain in public service schemes, even on subsequent transfers between private sector contractors.

A consultation on the draft guidance for the new policy closed in February 2013. It is currently unclear when the new policy is expected to come into force.

| No date set | Contractors who are currently negotiating contracts or submitting tenders should try to anticipate these changes. They may want to press for flexible terms to avoid contracts becoming fixed in the current Fair Deal regime. | May apply in NI but uncertain. |

**Reform of Apprenticeships**

Following an independent review of apprenticeships, the Government has now confirmed that it will reform apprenticeships and published a consultation seeking views on the proposed reforms which include:

- Employers putting recognised and meaningful industry standards at the heart of every Apprenticeship.
- Every Apprenticeship should be targeted at a skilled job, involving substantial new learning that will provide the foundations for a career and a

| No date set | Employers should await further details but be aware that such changes might be on the horizon. | DEL is currently awaiting a major review of apprenticeships, due to report in Autumn 2013 |
Employment Law – What's on the Horizon? (UK/Northern Ireland)

- Training and accreditation of existing workers who are already fully competent in their jobs should be delivered separately.

- Apprenticeships should be focused on the outcome: clearly setting out what Apprentices should know and be able to do at the end of their Apprenticeship.

- Apprenticeships will move to a final holistic test which has the full confidence of employers.

- All apprentices will work towards a level 2 qualification either through GCSEs or functional skills in English and maths, from August 2014, if they have not already achieved this.

The consultation closed on 22 May 2013. The Government will confirm its plans in Autumn 2013.

The Queen's Speech also announced that the Deregulation Bill will include apprenticeship provisions to encourage the greater use of apprenticeships.

<table>
<thead>
<tr>
<th>Annual leave – Working Time Regulations amendments</th>
<th>No date set Government response expected in 2013</th>
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<tbody>
<tr>
<td>The Government has proposed to amend the Working Time Regulations to allow up to 4 weeks of annual leave to be carried forward into future years where a</td>
<td>Employers’ holiday policies will need to be reviewed to ensure that carry over of annual leave is permitted in these circumstances.</td>
</tr>
<tr>
<td>No consultation in NI as of yet.</td>
<td>Changes will need to be</td>
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</table>
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<p>| Worker is ill during the leave year or ill during the period of leave and to amend the prohibition on &quot;buying out&quot; any statutory leave under the WTR to allow employers to buy out the additional 1.6 weeks annual leave entitlement. | communicated to line managers so that they do not inadvertently deny someone the right to carry over their leave entitlement where they are eligible to do so as this could trigger disability discrimination complaints and claims under the WTR. |
| The Consultation on Modern Workplaces sought views on these proposals and the Government's response to this consultation is expected in 2013. | |
| <strong>Removal of Tribunal's powers to make Wider Recommendations</strong> | <strong>No date set</strong> | Employers may welcome this as there are fears that tribunals are making excessive recommendations, although evidence does not necessarily support this being the case. | Will be subject of possible consultation. |
| The Queen's Speech (delivered on 8 May 2013) announced that the Deregulation Bill will, among other things, repeal tribunals' power to make wider recommendations in successful discrimination claims. No anticipated implementation date has been announced. | |
| <strong>Protection from caste discrimination</strong> | <strong>No date set</strong> | Employers should be aware that this change is on the horizon and that employees will be protected from discrimination on the grounds of their caste in the same way as employees are protected from discrimination on the grounds of other characteristics (such as sex, disability, age etc). | No signs as yet that this is to be introduced in NI. |
| A provision in the ERRA 2013 amends the EqA 2010, making it mandatory for the Government to outlaw discrimination on the grounds of caste. | |
| The provision came into force on 25 June but does not provide a date by which the Government must make this order but the Government has indicated an aim to bring such an order into force within 1-2 years. | |</p>
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<th><strong>Employment Law – What's on the Horizon? (UK/Northern Ireland)</strong></th>
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**The Crime and Courts Act**

The Ministry of Justice says that the Act will lead to “swifter, more open and effective courts and tribunals”. Whilst the Act is largely concerned with crime, a number of changes will affect employment tribunals.

The Act facilitates the sharing of information between HMRC and HMCTS to enable means-testing of parties who apply for remission of court and tribunal fees (please see above).

The Crime and Courts Bill receive Royal Assent on **25 April 2013**, becoming the Crime and Courts Act 2013. However, it is not specified when the provisions will come into force.

<table>
<thead>
<tr>
<th><strong>The Crime and Courts Act</strong></th>
<th><strong>No date set</strong></th>
<th>The remissions system itself may decrease the significance of the introduction of Tribunal fees in deterring claims as many claimants may receive fee remissions (particularly as many claimants bringing ET claims will not be in employment).</th>
</tr>
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<td></td>
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<td>The Bill will also introduce “flexible judicial deployment” meaning that Tribunal Judges could sit in a Magistrates Court or Crown Court, Deputy District Judges would be allowed to sit in an Employment Tribunal and District Judges and Circuit Judges could sit in the EAT. <strong>This may mean that employment claims are heard by Judges who are not employment specialists.</strong></td>
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<td>This will NOT apply in NI.</td>
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**Consolidation of National Minimum Wage Rules**

The Government plans to consolidate the current 17 sets of NMW regulations into one single simplified set of regulations.

It was originally thought that the consolidated regulations would be introduced in April 2013. However, Employment Rights Minister, Jo Swinson, has now stated that the Government "will introduce the improved set of regulations, following **No date set**" This simplification of the NMW regulations should make compliance easier and will be welcomed by employers.  

Will apply in NI.
consultation, during this Parliament" and no exact date has been set.

N.B. The legal position in Northern Ireland is dealt with by the Northern Ireland government and assembly, and is diverging significantly from the position in GB. Even where the same changes come into effect, unless driven by EU requirements this will often be considerably later-sometimes, like extension of the 2 year service requirement before claiming unfair dismissal it does not come in at all. Our Belfast team can give you-up-to date advice on the current position.

Contact Adam Brett, Paul Gillen or Leeanne Armstrong.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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