

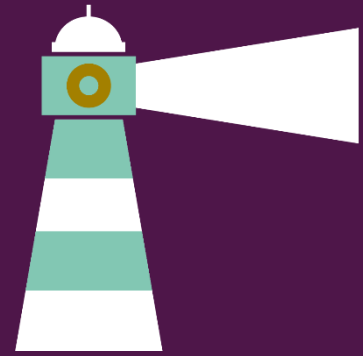
In the Pipeline

A guide to future employment and immigration law

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April 2020



EMPLOYMENT

Legislation

Date	Topic	Practical Impact
Summer 2017 onwards	Employment Status	<ul style="list-style-type: none"> The Government commissioned the Independent Review of Employment Practices in the Modern Economy (known as the Taylor Review) in 2016. The report was published in July 2017 and made various recommendations in relation to worker rights. The Government carried out a number of consultations on proposed reforms during 2018. In December 2018, the Government published a policy paper, the <i>Good Work Plan</i>, setting out a number of reforms aimed at improving the position of workers including: <ul style="list-style-type: none"> a right for zero-hours workers to request a more stable contract refining the employment status test and developing an online employment status tool making it easier for casual workers to establish continuity of employment (by increasing the gap required between contracts for breaking continuity from one week to four weeks). Some of the changes do not yet have an implementation date, but those which do are detailed below. The Government has consulted on specific measures to improve protection for zero hours workers including proposals for compensation for cancelled shifts, minimum notice of working hours and the right to move onto a fixed hours contract.
January 2019 to 2020 onwards	Corporate Governance/Pay	<ul style="list-style-type: none"> A number of measures to reform corporate governance and pay took effect in 2019. The changes apply to financial years beginning on or after 1

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		<p>January 2019, so the first reports have been and will be published in 2020.</p> <ul style="list-style-type: none"> • Quoted companies with more than 250 UK employees are required to report pay ratio information in their annual directors' remuneration reports. The pay ratio information needs to compare the total remuneration of the company's CEO with the remuneration of employees at the 25th, 50th and 75th percentiles of the workforce, and provide an explanation of the ratios. • Large private companies are required to include a statement about their approach to corporate governance in their directors' reports, including which corporate governance code the company has applied (if any), how it did so and the reasons for any departure from that code. The Financial Reporting Council has published corporate governance principles for large private companies which can be used for this purpose (known as the Wates Principles). The requirement applies to companies that have either more than 2,000 employees or a turnover of more than £200 million and a balance sheet of more than £2 billion. • All companies with at least 250 UK employees are required to report on employee engagement as part of their annual directors' reports. The report needs to describe what measures were taken during the financial year to introduce or develop arrangements for providing information to employees and consulting with them about decisions likely to affect them. Directors also have to explain how they engaged with employees and had regard to their interests, and how this has impacted on key decisions of the company. • The Corporate Governance Code for premium listed companies has been revised and changes include: <ul style="list-style-type: none"> – new measures for employee engagement at board level – a specific requirement for effective whistleblowing procedures and reports to the board – additional measures to promote culture and diversity.
1 April 2020	National Minimum Wage and National Living Wage	<ul style="list-style-type: none"> • The hourly rate of the national living wage, which applies to workers aged 25 or over, will increase from £8.21 to £8.72. • The hourly rates of the national minimum wage will increase as follows: <ul style="list-style-type: none"> – from £7.70 to £8.20 (for workers aged 21 to 24)

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		<ul style="list-style-type: none"> – from £6.15 to £6.45 (for workers aged 18 to 20) – from £4.35 to £4.55 (for workers aged under 18) – from £3.90 to £4.15 (for apprentices)
5 April 2020	Statutory Sick Pay	<ul style="list-style-type: none"> • The weekly rate of statutory sick pay will increase from £94.25 per week to £95.85 per week.
5 April 2020	Statutory Maternity, Paternity, Adoption and Shared Parental Pay	<ul style="list-style-type: none"> • The weekly rates of statutory maternity, paternity, adoption and shared parental pay will increase from £148.68 per week to £151.20 per week.
6 April 2020	Information and Consultation	<ul style="list-style-type: none"> • Currently, employers (with 50 or more employees) are required to set up a national works council for informing and consulting employees, if at least 10% of employees request this (subject to a minimum of 15 employees). This threshold is to be reduced to 2% from 6 April 2020, as part of the <i>Good Work Plan</i> (see above).
6 April 2020	Employment terms	<ul style="list-style-type: none"> • All workers will have the right to a written statement of terms on the first day of employment. Currently a statement of terms need only be provided to employees (and not workers) within two months of employment starting. This change is being introduced as part of the <i>Good Work Plan</i> (see above).
6 April 2020	Holiday Pay	<ul style="list-style-type: none"> • Currently holiday pay for workers with variable hours or pay is calculated by taking an average of pay over the previous 12 weeks. This lookback period will be increased to 52 weeks, from 6 April 2020, as part of the <i>Good Work Plan</i> (see above).
6 April 2020	Agency Workers	<ul style="list-style-type: none"> • Agency workers have the right to receive the same pay as comparable permanent employees after 12 weeks. There is an exception to this right, known as the "Swedish derogation", where the agency worker's contract provides for minimum pay between assignments. The Government has committed to abolish the "Swedish derogation" as part of the <i>Good Work Plan</i> (see above), and will do so on 6 April 2020. • Also from 6 April 2020, agencies will be required to provide agency workers with a Key Information Document detailing the type of contract and minimum pay rates.
6 April 2020	National Insurance Contributions and Termination Payments	<ul style="list-style-type: none"> • Where an ex gratia termination payment is made (on top of notice pay) the first £30,000 can be paid free of income tax and any amount above this is taxable. However, the entire ex gratia payment is exempt from National Insurance Contributions (NICs). • From 6 April 2020, the first £30,000 of any ex gratia termination payment will still be payable free of

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		income tax and NICs, but any amount above this will be subject not just to income tax but to NICs as well.
6 April 2020	Unfair Dismissal and Statutory Redundancy Pay	<ul style="list-style-type: none"> For dismissals on or after 6 April 2020, the maximum compensatory award for unfair dismissal will increase to the lower of £88,519 and a year's pay (currently the maximum award is the lower of £86,444 and a year's pay). The maximum amount of a week's pay for calculating the unfair dismissal basic award and statutory redundancy pay will increase from £525 to £538.
6 April 2020	Parental Bereavement Leave	<ul style="list-style-type: none"> Parents who lose a child under the age of 18 will be entitled to two weeks' statutory leave. If the employee has 26 weeks' service or more, the leave will be paid at the statutory rate of £151.20 per week.
6 April 2020	Sexual Harassment	<ul style="list-style-type: none"> In spring 2018, the Equality and Human Rights Commission (EHRC) published a report, <i>Turning the tables: ending sexual harassment at work</i>, which made a number of recommendations to strengthen the protection for victims of sexual harassment. The Government responded in December 2018 and has committed to develop a statutory code of practice on sexual harassment. The Government has consulted on further measures to address sexual harassment at work, including: <ul style="list-style-type: none"> introducing a new duty to prevent harassment requiring employers to publish their sexual harassment policies introducing specific provisions dealing with third party harassment extending time limits for discrimination and harassment claims from three to six months. In January this year the Equality and Human Rights Commission published Technical Guidance on harassment at work. The Government has stated that this will form the basis of the new statutory code of practice.
9 December 2020	Financial Services and Insurance Regulation	<ul style="list-style-type: none"> In March 2016, the Senior Managers and Certification Regime (SMCR) replaced the approved persons regime for employees in banks, building societies and other financial services organisations jointly regulated by the FCA and PCA. An equivalent regime was brought in for large insurers. The SMCR was extended to all insurers in December 2018 and to all FCA regulated firms on 9 December 2019.

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		<ul style="list-style-type: none"> • There are transitional rules for employees who were approved under the approved persons regime and will become certified individuals under the SMCR. Firms have until 9 December 2020 to certify these employees as fit and proper under the SMCR.
6 April 2021	Tax and Contractors	<ul style="list-style-type: none"> • The Government is extending rules on taxing contractors, which already apply in the public sector, to the private sector. The so-called "off-payroll working rules" were introduced in the public sector in April 2017. • Under the rules, where an individual contractor or consultant supplies their services to a public sector client via a personal services company, the client must decide whether the "IR35 legislation" applies. This broadly involves the client asking whether, without the personal services company, the individual would be regarded as an employee of the client for tax purposes. If so, the client (or the body responsible for paying the contractor's company) must deduct income tax and national insurance contributions from payments to the contractor's company. • The rules are designed to ensure that those who work through a personal services company, who would be employees if they were engaged directly, pay broadly the same tax as employees. The rules were originally due to take effect on 6 April 2020 but have now been postponed to 6 April 2021. Our note on the implications of the postponement is available here
No date	Settlement and Confidentiality	<ul style="list-style-type: none"> • Last year, the Government consulted on the use of confidentiality provisions in settlement agreements in discrimination and harassment cases. The Government has now responded to this consultation and stated that it will legislate to: <ul style="list-style-type: none"> – ensure that settlement agreements will not prevent disclosures to the police or healthcare or legal professionals – require confidentiality clauses in employment contracts and settlement agreements to set out their limitations clearly – require individuals to take legal advice on the confidentiality provisions in a settlement agreement.
No date	Redundancy and Pregnancy/Maternity Leave	<ul style="list-style-type: none"> • Employees who are made redundant during maternity leave must be offered a suitable alternative vacancy if there is one. • Following a consultation last year, the Government has now confirmed that it will extend this redundancy protection so that it begins when the employee

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		<p>notifies the employer of the pregnancy and ends six months after the end of the maternity leave. The equivalent redundancy protection for adoption leave will be extended until six months following the end of adoption leave, and similar extensions will apply in relation to shared parental leave.</p>
No date	Maternity/Adoption/Shared Parental and Parental Leave	<ul style="list-style-type: none"> • The Government has consulted on measures to support working families including: <ul style="list-style-type: none"> – how to improve paternity and shared parental leave and pay, including the possibility of dedicated "pots" of leave for each parent – requiring employers with 250 or more employees to publish their family related leave and pay, and flexible working, policies on their website. • The Government's response to the consultation is awaited.
No date	Neonatal leave and pay	<ul style="list-style-type: none"> • The Government is to introduce a new entitlement to up to 12 weeks' neonatal leave and pay for parents of premature babies. No date has yet been given for when this will come into effect.
No date	Carers' leave	<ul style="list-style-type: none"> • The Government is consulting on a new form of unpaid statutory leave for employees with unpaid caring responsibilities, such as care of an elderly relative. The consultation closes on 8 June 2020.
No date	Diversity Reporting	<ul style="list-style-type: none"> • In August 2018, the Equality and Human Rights Commission (EHRC) published a report on disability and ethnicity pay gaps and progression. The EHRC plans to produce guidance for employers on collecting, using and reporting data on employee ethnicity and disability. • The Government has also consulted on ethnicity pay gap reporting and this is likely to be introduced in the future although no date has been given.
No date	Sickness and disability	<ul style="list-style-type: none"> • The Government has consulted on proposals to increase the employment of disabled people including: <ul style="list-style-type: none"> – enabling SSP to be paid during a phased return to work – requiring employers to give four weeks' notice that SSP is due to end – giving non-disabled employees a right to request alterations to the workplace to accommodate a health condition • The Government's response to the consultation is awaited.

Date	Topic	Practical Impact
No date	Whistleblowing	<ul style="list-style-type: none"> • A new Directive on whistleblowing has been adopted in Europe to be implemented by EU member states in 2021. The key requirements include: <ul style="list-style-type: none"> – employers with 50 or more employees will have to establish internal whistleblowing channels – employers should respond in full to reports within three months – the whistleblower's identity cannot be disclosed without their consent • Whether the UK decides to implement this Directive may depend on the outcome of EU trade negotiations. • Separately, a review of whistleblower protection in the UK is currently being carried out by the All Party Parliamentary Group for Whistleblowing, which has already made a number of recommendations for change and is working on further reports and recommendations.

Key Cases

Case	Subject Matter	Issues
Brierly v Asda (Supreme Court)	Equal Pay	<ul style="list-style-type: none"> Whether female supermarket workers in shops could compare themselves with male workers at the supermarket warehouses.
Uber v Aslam (Supreme Court)	Employment Status	<ul style="list-style-type: none"> Whether minicab drivers were workers rather than self-employed individuals.
Royal Mencap Society v Tomlinson Blake (Supreme Court)	National Minimum Wage	<ul style="list-style-type: none"> Whether employees who "sleep-in" (e.g. care workers) are entitled to the national minimum wage throughout the sleep-in time or only whilst working.
Kostal UK v Dunkley (Supreme Court)	Trade unions and collective bargaining	<ul style="list-style-type: none"> Whether the employer was entitled to bypass a collective agreement and offer pay rises to employees directly.

We will report on these cases in **Employment Update** once the decisions are published

IMMIGRATION

Date	Topic	Practical Impact
October 2020 – January 2021	Increase to Immigration Health Surcharge (IHS)	<ul style="list-style-type: none"> Currently visa applicants applying to come to the UK for more than 6 months are required to pay the IHS at the rate of £400 per person application per year of the visa duration. From October 2020, the IHS will increase to £624 per person per year of the visa, with a discounted rate of £470 for children under the age of 18. There is currently a £300 discounted rate available for visa applicants under the Tier 4 (i.e. students) and Tier 5 Youth Mobility Scheme visa routes, and this will increase to £470. From January 2021, the IHS will also be extended to cover EEA nationals applying for UK visas under the new post-Brexit points-based system.
1 January 2021	UK's points-based immigration system	<ul style="list-style-type: none"> The Immigration and Social Security Co-ordination (EU Withdrawal) Bill currently making its way through parliament will end the application of EU free movement rules in the UK. Once the Brexit transition period ends, EU nationals will be subject to UK immigration controls in the same way as non-EU nationals A new post-Brexit points-based immigration system will apply from January 2021, to cover immigration for both EU and non-EU nationals

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		<ul style="list-style-type: none"> • The existing Tier 2 employer sponsored visa route will essentially be replicated and extended to EU nationals but with certain changes including: <ul style="list-style-type: none"> – the resident labour market test will be removed (meaning employers will no longer have to show they cannot find a suitably qualified British candidate) – the minimum salary threshold will be reduced from £30,000 to £25,600 (but employers will still need to pay the higher job-specific rate for a role set by the Home Office), lower salary thresholds will apply to candidates who have a relevant PhD qualification or are filling an occupation where there is a recognised skills shortage (eg nurses) – the minimum skill level required will be reduced from RQF6 (broadly, degree level roles) to RQF3 (broadly, roles requiring an A-level qualification) – the annual limit on visas (currently 20,700) will be suspended.
1 January 2021	Global Talent Visa extended to EU nationals	<ul style="list-style-type: none"> • The Global Talent Visa route allows individuals to apply for work visas in the UK without a job offer or employer sponsorship, based on an endorsement by one of the designated competent bodies as a: <ul style="list-style-type: none"> – recognised leader (exceptional talent); – an emerging leader (exceptional promise); or – under the UK Research and Innovation endorsed funder option. • The route will be extended to EU nationals from January 2021.
30 June 2021	Brexit – Deadline for EU Settlement Scheme applications	<ul style="list-style-type: none"> • EU nationals (and their family members) who are living in the UK by the end of the transition period (ie by 31 December 2020) must apply for UK status under the EU settlement scheme by 30 June 2021. • EU nationals (and their family members) with at least five years' UK residence will be granted "settled status" and EU nationals (and their family members) with less than five years residence will be granted "pre-settled status" to enable them to complete the five years required to qualify for settled status.
Ongoing	Electronic Travel Authorisations and digital immigration system	<ul style="list-style-type: none"> • EU national applicants granted status under the new EU settlement scheme are issued digital status, rather than a physical passport endorsement or a residence permit. • Applicants can access their UK immigration status online and will be able to share limited access to this

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		<p>portal with prospective employers or landlords as evidence of their right to remain in the UK.</p> <ul style="list-style-type: none"> • This is part of the streamlining and digitisation of the UK's visa system, with a move towards a digital immigration system. • UK visa applicants currently submit physical passports for endorsement as part of their visa application process, and in future, visas will be issued electronically, and sent to applicants in electronic format. • The government intends to introduce Electronic Travel Authorisations (similar to the US ESTA system) although no date has yet been announced for this to be implemented.

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