

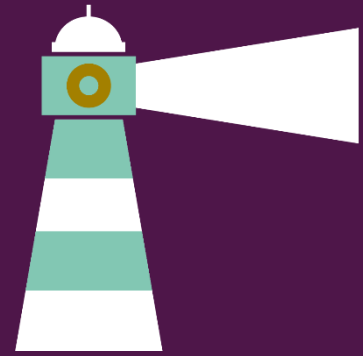
# In the Pipeline

A guide to future employment and immigration law

Follow the Employment team on LinkedIn



September 2020



## EMPLOYMENT

### Legislation

Date	Topic	Practical Impact
Summer 2017 onwards	<b>Employment Status</b>	<ul style="list-style-type: none"> <li>Following the publication of the Independent Review of Employment Practices in the Modern Economy (known as the Taylor Review) in 2017, the Government published the <i>Good Work Plan</i> in 2018, setting out a number of reforms aimed at improving the position of workers including: <ul style="list-style-type: none"> <li>a right for zero-hours workers to request a more stable contract</li> <li>refining the employment status test and developing an online employment status tool</li> <li>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).</li> </ul> </li> <li>The Government has <b>consulted</b> 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.</li> <li>The Government has not given a date for when the above changes are likely to be introduced.</li> </ul>
January 2019 to 2020 onwards	<b>Corporate Governance/Pay</b>	<ul style="list-style-type: none"> <li>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 January 2019, so the first reports have been and will be published in 2020.</li> <li>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</li> </ul>

Date	Topic	Practical Impact
		<p>employees at the 25th, 50th and 75th percentiles of the workforce, and provide an explanation of the ratios.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• The Corporate Governance Code for premium listed companies has been revised and changes include: <ul style="list-style-type: none"> <li>– new measures for employee engagement at board level</li> <li>– a specific requirement for effective whistleblowing procedures and reports to the board</li> <li>– additional measures to promote culture and diversity.</li> </ul> </li> </ul>
1 October 2020	<b>Coronavirus Job Retention Scheme</b>	<ul style="list-style-type: none"> <li>• The Coronavirus Job Retention Scheme (CJRS), introduced in March 2020, enabled employers to place employees on furlough and reclaim 80% of their wages, together with related employer national insurance contributions (NICs) and auto-enrolment payments.</li> <li>• The amounts employers may claim under the CJRS are reducing. From 1 August, employers could no longer claim for NICs and auto-enrolment payments, and from 1 September, employers could only reclaim 70% of the wages of furloughed employees.</li> <li>• From 1 October, employers will only be able to claim 60% of the wages of furloughed employees, and the CJRS is set to close altogether on 31 October.</li> </ul>

Date	Topic	Practical Impact
November 2020	<b>Kickstart Scheme</b>	<ul style="list-style-type: none"> <li>• The Government has announced a new <a href="#">scheme</a> to fund six month job placements for young people (aged 16 to 24) who are on universal credit and at risk of long term unemployment.</li> <li>• Employers may apply for funding to pay the national minimum wage for up to 25 hours per week, as well as £1500 for training and set up costs, provided they, either alone or in conjunction with another employer (or other employers), offer at least 30 placements.</li> <li>• Employers may apply now, and funding is expected to start in November 2020.</li> </ul>
9 December 2020	<b>Financial Services and Insurance Regulation</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The SMCR was extended to all insurers in December 2018 and to all FCA regulated firms on 9 December 2019.</li> <li>• There are transitional rules for employees who were approved under the approved persons regime and will become certified individuals under the SMCR. Firms originally had until 9 December 2020 to certify these employees as fit and proper under the SMCR, but this deadline is being extended to 31 March 2021 in light of the pandemic.</li> </ul>
January 2021	<b>Job Retention Bonus Scheme</b>	<ul style="list-style-type: none"> <li>• The Government has introduced a new job retention bonus <a href="#">scheme</a> for employers who retain previously furloughed employees until 31 January 2021.</li> <li>• The bonus consists of £1,000 per retained employee, provided the employee was paid an average of at least £520 per month between 1 November 2020 and 31 January 2021. The employee must remain employed (and not under notice) at 31 January 2021.</li> </ul>
6 April 2021	<b>Tax and Contractors</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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</li> </ul>

Date	Topic	Practical Impact
		<p>paying the contractor's company) must deduct income tax and national insurance contributions from payments to the contractor's company.</p> <ul style="list-style-type: none"> <li>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 <a href="#">here</a></li> </ul>
April 2021	<b>National Minimum Wage and National Living Wage</b>	<ul style="list-style-type: none"> <li>The hourly rates of the national living wage (which applies to workers aged 25 or over) and the national minimum wage usually increase every April.</li> <li>The current hourly rates are as follows: <ul style="list-style-type: none"> <li>£8.72 (for workers aged 25 or over)</li> <li>£8.20 (for workers aged 21 to 24)</li> <li>£6.45 (for workers aged 18 to 20)</li> <li>£4.35 to £4.55 (for workers aged under 18)</li> <li>£3.90 to £4.15 (for apprentices)</li> </ul> </li> </ul>
April 2021	<b>Statutory Sick Pay</b>	<ul style="list-style-type: none"> <li>The weekly rate of statutory sick pay usually increases in April each year. The current rate is £95.85 per week.</li> </ul>
April 2021	<b>Statutory Maternity, Paternity, Adoption and Shared Parental Pay</b>	<ul style="list-style-type: none"> <li>The weekly rates of statutory maternity, paternity, adoption and shared parental pay usually increase in April each year. The current rate is £151.20 per week.</li> </ul>
April 2021	<b>Unfair Dismissal and Statutory Redundancy Pay</b>	<ul style="list-style-type: none"> <li>The maximum compensatory award for unfair dismissal, and the maximum amount of a week's pay for calculating the unfair dismissal basic award and statutory redundancy pay, usually increase every April.</li> <li>Currently the maximum compensatory award is the lower of £88,519 and a year's pay, and the maximum amount of a week's pay is currently £538.</li> </ul>
No date	<b>Sexual Harassment</b>	<ul style="list-style-type: none"> <li>In spring 2018, the Equality and Human Rights Commission (EHRC) published a report, <a href="#">Turning the tables: ending sexual harassment at work</a>, which made a number of recommendations to strengthen the protection for victims of sexual harassment.</li> <li>The Government responded in December 2018 and has committed to develop a statutory code of practice on sexual harassment. The Government has <a href="#">consulted</a> on further measures to address sexual harassment at work, including: <ul style="list-style-type: none"> <li>introducing a new duty to prevent harassment</li> </ul> </li> </ul>

Date	Topic	Practical Impact
		<ul style="list-style-type: none"> <li>– requiring employers to publish their sexual harassment policies</li> <li>– introducing specific provisions dealing with third party harassment</li> <li>– extending time limits for discrimination and harassment claims from three to six months.</li> <li>• 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.</li> </ul>
No date	<b>Settlement and Confidentiality</b>	<ul style="list-style-type: none"> <li>• Last year, the Government consulted on the use of confidentiality provisions in settlement agreements in discrimination and harassment cases. The Government has now <a href="#">responded</a> to this consultation and stated that it will legislate to: <ul style="list-style-type: none"> <li>– ensure that settlement agreements will not prevent disclosures to the police or healthcare or legal professionals</li> <li>– require confidentiality clauses in employment contracts and settlement agreements to set out their limitations clearly</li> <li>– require individuals to take legal advice on the confidentiality provisions in a settlement agreement.</li> </ul> </li> </ul>
No date	<b>Redundancy and Pregnancy/Maternity Leave</b>	<ul style="list-style-type: none"> <li>• Employees who are made redundant during maternity leave must be offered a suitable alternative vacancy if there is one.</li> <li>• Following a <a href="#">consultation</a> in 2019, the Government confirmed that it will extend this redundancy protection so that it begins when the employee 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.</li> </ul>
No date	<b>Maternity/Adoption/Shared Parental and Parental Leave and flexible working</b>	<ul style="list-style-type: none"> <li>• The Government has <a href="#">consulted</a> on measures to support working families including: <ul style="list-style-type: none"> <li>– how to improve paternity and shared parental leave and pay, including the possibility of dedicated "pots" of leave for each parent</li> <li>– requiring employers with 250 or more employees to publish their family related leave and pay, and flexible working, policies on their website.</li> </ul> </li> </ul>

Date	Topic	Practical Impact
		<ul style="list-style-type: none"> <li>The Government's response to the consultation is awaited.</li> </ul>
No date	Neonatal leave and pay	<ul style="list-style-type: none"> <li>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.</li> </ul>
No date	Carers' leave	<ul style="list-style-type: none"> <li>The Government has <a href="#">consulted</a> on a new form of unpaid statutory leave for employees with unpaid caring responsibilities, such as care of an elderly relative. The Government's response to the consultation is awaited.</li> </ul>
No date	Diversity Reporting	<ul style="list-style-type: none"> <li>In August 2018, the Equality and Human Rights Commission (EHRC) published a <a href="#">report</a> 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.</li> <li>The Government has also <a href="#">consulted</a> on ethnicity pay gap reporting and this is likely to be introduced in the future although no date has been given.</li> </ul>
No date	Sickness and disability	<ul style="list-style-type: none"> <li>The Government has <a href="#">consulted</a> on proposals to increase the employment of disabled people including: <ul style="list-style-type: none"> <li>enabling SSP to be paid during a phased return to work</li> <li>requiring employers to give four weeks' notice that SSP is due to end</li> <li>giving non-disabled employees a right to request alterations to the workplace to accommodate a health condition</li> </ul> </li> <li>The Government's response to the consultation is awaited.</li> </ul>
No date	Whistleblowing	<ul style="list-style-type: none"> <li>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"> <li>employers with 50 or more employees will have to establish internal whistleblowing channels</li> <li>employers should respond in full to reports within three months</li> <li>the whistleblower's identity cannot be disclosed without their consent</li> </ul> </li> <li>Whether the UK decides to implement this Directive may depend on the outcome of EU trade negotiations.</li> </ul>

Date	Topic	Practical Impact
		<ul style="list-style-type: none"><li>• 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 <a href="#">recommendations</a> for change and is working on further reports and recommendations.</li></ul>

## Key Forthcoming Cases

Case	Subject Matter	Issues	Status
<b>Conisbee v Crossley Farms (Employment Appeal Tribunal)</b>	<b>Religion and belief discrimination</b>	<ul style="list-style-type: none"> <li>Whether vegetarianism is a protected belief under religion and belief discrimination laws.</li> </ul>	<ul style="list-style-type: none"> <li>Hearing date not yet set</li> </ul>
<b>Brierly v Asda (Supreme Court)</b>	<b>Equal Pay</b>	<ul style="list-style-type: none"> <li>Whether female supermarket workers in shops could compare themselves with male workers at the supermarket warehouses.</li> </ul>	<ul style="list-style-type: none"> <li>Heard in July 2020 – decision awaited</li> </ul>
<b>Uber v Aslam (Supreme Court)</b>	<b>Employment Status</b>	<ul style="list-style-type: none"> <li>Whether minicab drivers were workers rather than self-employed individuals.</li> </ul>	<ul style="list-style-type: none"> <li>Heard in July 2020 – decision awaited</li> </ul>
<b>Royal Mencap Society v Tomlinson Blake (Supreme Court)</b>	<b>National Minimum Wage</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>Heard in February 2020 – decision awaited</li> </ul>
<b>Kostal UK v Dunkley (Supreme Court)</b>	<b>Trade unions and collective bargaining</b>	<ul style="list-style-type: none"> <li>Whether the employer was entitled to bypass a collective agreement and offer pay rises to employees directly.</li> </ul>	<ul style="list-style-type: none"> <li>Hearing to take place in May 2021</li> </ul>

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

## IMMIGRATION

Date	Topic	Practical Impact
<b>October 2020 – January 2021</b>	<b>Immigration Health Surcharge (IHS) updates</b>	<ul style="list-style-type: none"> <li>Currently visa applicants applying to come to the UK for more than 6 months are required to pay the <b>IHS</b> at the rate of £400 per person application per year of the visa duration.</li> <li>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.</li> <li>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.</li> <li>From January 2021, the IHS will also be extended to cover EEA nationals applying for UK visas under the new points-based immigration system.</li> </ul>
<b>January 2021</b>	<b>Immigration and Social Security Co-ordination (EU Withdrawal) Bill</b>	<ul style="list-style-type: none"> <li>Once enacted, 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.</li> </ul>



Date	Topic	Practical Impact
		<ul style="list-style-type: none"> <li>At the end of the Brexit transition period, EU nationals will become subject to UK immigration controls in the same way as non-EU nationals.</li> </ul>
1 January 2021	UK's points-based immigration system	<ul style="list-style-type: none"> <li>A new post-Brexit <a href="#">points-based immigration system</a> will apply from January 2021, to cover immigration for both EU and non-EU nationals.</li> <li>A new 'Skilled Worker' visa route will be introduced. Based on the existing Tier 2 (General) employer sponsored visa route with certain key changes including: <ul style="list-style-type: none"> <li>the removal of the resident labour market test requirement so employers no longer need to advertise to show there are no suitable settled, EEA or British applicants for the role to be sponsored.</li> <li>the minimum salary threshold will reduce from £30,000 to £25,600 (but employers will still need to pay the job-specific rate set by the Home Office which is often higher), lower salary thresholds for candidates who have a relevant PhD qualification or filling a recognised skills shortage role (e.g. nurses or software engineers).</li> <li>the minimum skill level required will be reduced from RQF6 (broadly, degree level roles) to RQF3 (broadly A-level).</li> <li>the annual limit on visas (currently 20,700) will be suspended.</li> </ul> </li> <li>A new Intra Company Transfer route will also be introduced, which will retain the key features of the existing route Tier 2 (Intra Company Transfer) route, including: <ul style="list-style-type: none"> <li>skill level will remain NQF 6, graduate level and salary level will remain £41,500;</li> <li>no knowledge of English language required;</li> <li>must be employed with sending company for at least 12 months;</li> <li>temporary route which will not lead to settlement</li> </ul> </li> </ul>
1 January 2021	Global Talent, Start-up and Innovator Visas extended to EU nationals	<ul style="list-style-type: none"> <li>The Global Talent Visa route allows individuals to apply for work visas in the UK without needing a job offer or employer sponsorship based on an endorsement by one of one of the designated competent bodies (e.g. Tech Nation, UK Research and Innovation, Royal Academy of Engineering) as: <ul style="list-style-type: none"> <li>a recognised or emerging leader; or</li> <li>under the UK Research and Innovation endorsed funder option.</li> </ul> </li> </ul>

Date	Topic	Practical Impact
		<ul style="list-style-type: none"> <li>• The Start-up and Innovator routes are for those seeking to establish a business in the UK. The business idea must be endorsed by a designated 'Endorsing Body', be innovative, viable and scalable.</li> <li>• These routes will be opened up to EU nationals from January 2021.</li> </ul>
Summer 2021	Graduate route	<ul style="list-style-type: none"> <li>• The government will introduce a new post-study work two-year visa for international graduates.</li> <li>• This will allow students who have completed a UK degree to stay on in the UK for two years after graduating (or three years for PhD graduates).</li> <li>• They will be able to work at any skill level, and to switch into work routes including the new sponsored Skilled worker route.</li> </ul>
30 June 2021	Brexit – Deadline for EU Settlement Scheme applications	<ul style="list-style-type: none"> <li>• EEA nationals (and their family members) who are living in the UK by the end of the transition period (31 December 2020) must apply for UK status under the EU settlement scheme by 30 June 2021.</li> <li>• EEA nationals (and their family members) with at least five years' UK residence will be granted "settled status" and EEA 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.</li> </ul>
Ongoing – phased programme to 2025	Electronic Travel Authorisations and digital immigration system	<ul style="list-style-type: none"> <li>• EEA applicants granted status under the EU settlement scheme are issued digital status, rather than a physical passport endorsement or a residence permit.</li> <li>• Applicants are able to access their UK immigration status online and will be able to share limited access to this portal with prospective employers or landlords as evidence of their right to remain in the UK.</li> <li>• This is part of the streamlining and digitisation of the UK's visa system, with a move towards a digital immigration system.</li> <li>• UK visa applicants currently submit physical passports for endorsement as part of their visa application process, and in future, it is intended that visas will be issued electronically.</li> <li>• The government plans to introduce a universal 'permission to travel' requirement which will require everyone wishing to travel to the UK (except British and Irish citizens) to seek permission in advance. An Electronic Travel Authorisations (similar to the US ESTA) system will be introduced for visitors.</li> </ul>

## FOR FURTHER INFORMATION, PLEASE CONTACT



**Siân Keall**  
Partner  
[sian.keall@traverssmith.com](mailto:sian.keall@traverssmith.com)  
+44 (0)20 7295 3357



**Tim Gilbert**  
Partner  
[tim.gilbert@traverssmith.com](mailto:tim.gilbert@traverssmith.com)  
+44 (0)20 7295 3207



**Ed Mills**  
Partner  
[ed.mills@traverssmith.com](mailto:ed.mills@traverssmith.com)  
+44 (0)20 7295 3424



**Adam Wyman**  
Partner  
[adam.wyman@traverssmith.com](mailto:adam.wyman@traverssmith.com)  
+44 (0)20 7295 3493



**Alex Fisher**  
Partner  
[alex.fisher@traverssmith.com](mailto:alex.fisher@traverssmith.com)  
+44 (0)20 7295 3423



**Ailie Murray**  
Senior Counsel  
[ailie.murray@traverssmith.com](mailto:ailie.murray@traverssmith.com)  
+44 (0)20 7295 3670



**Anna West**  
Knowledge Counsel  
[anna.west@traverssmith.com](mailto:anna.west@traverssmith.com)  
+44 (0)20 7295 3316



**Adam Rice**  
Knowledge Counsel  
[adam.rice@traverssmith.com](mailto:adam.rice@traverssmith.com)  
+44 (0)20 7295 3224



**Moji Oyediran**  
Senior Associate  
[moji.oyediran@traverssmith.com](mailto:moji.oyediran@traverssmith.com)  
+44 (0)20 7295 3797



**Zoë Dearmer**  
Senior Associate  
[zoe.dearmer@traverssmith.com](mailto:zoe.dearmer@traverssmith.com)  
+44 (0)20 7295 3422



**Sarah Baker**  
Associate  
[sarah.baker@traverssmith.com](mailto:sarah.baker@traverssmith.com)  
+44 (0)20 7295 3090



**Elliot Roberts**  
Associate  
[elliott.roberts@traverssmith.com](mailto:elliott.roberts@traverssmith.com)  
+44 (0)20 7295 3354



**Clare Skinner**  
Associate  
[clare.skinner@traverssmith.com](mailto:clare.skinner@traverssmith.com)  
+44 (0)20 7295 3367



**Matt Evans**  
Associate  
[matthew.evans@traverssmith.com](mailto:matthew.evans@traverssmith.com)  
+44 (0)20 7295 3865



**Chris Wilkinson**  
Associate  
[chris.wilkinson@traverssmith.com](mailto:chris.wilkinson@traverssmith.com)  
+44 (0)20 7295 3448



**Hanna Bates-Martens**  
Associate  
[hanna.bates-martens@traverssmith.com](mailto:hanna.bates-martens@traverssmith.com)  
+44 (0)20 7295 3800



**Shani Edwards**  
Associate  
[shani.edwards@traverssmith.com](mailto:shani.edwards@traverssmith.com)  
+44 (0)20 7295 3726



**Tom Hunt**  
Associate  
[thomas.hunt@traverssmith.com](mailto:thomas.hunt@traverssmith.com)  
+44 (0)20 7295 3060

If you have a colleague or a contact in another organisation who would like to receive **In the Pipeline**, please send contact details to [employment@traverssmith.com](mailto:employment@traverssmith.com)

10 Snow Hill | London EC1A 2AL | T: +44 (0)20 7295 3000 | F: +44 (0)20 7295 3500 | [www.traverssmith.com](http://www.traverssmith.com)

The information in this document is intended to be of a general nature and is not a substitute for detailed legal advice. Travers Smith LLP is a limited liability partnership registered in England and Wales under number OC 336962 and is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Travers Smith LLP. A list of the members of Travers Smith LLP is open to inspection at our registered office and principal place of business: 10 Snow Hill London EC1A 2AL. Travers Smith LLP also operates a branch in Paris.