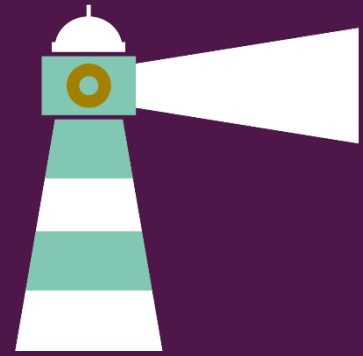


In the Pipeline

A guide to future employment and immigration law

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March 2021

EMPLOYMENT

Legislation

Date	Topic	Practical Impact
November 2020 to December 2021	Kickstart Scheme	<ul style="list-style-type: none"> The Government has announced a new scheme 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. Employers may apply for funding to pay the national minimum wage for up to 25 hours per week, as well as £1,500 for training and set up costs, provided they, either alone or in conjunction with another employer (or other employers), offer at least 30 placements. Placements can start at any time up to the end of December 2021.
9 December 2020 to 31 March 2021	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. 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

Date	Topic	Practical Impact
		has been extended to 31 March 2021 in light of the pandemic.
4 April 2021	Statutory Sick Pay	<ul style="list-style-type: none"> The rate of statutory sick pay will increase from £95.85 to £96.35 per week.
4 April 2021	Statutory Maternity, Paternity, Adoption, and Shared Parental Pay	<ul style="list-style-type: none"> The rates of statutory maternity, paternity, adoption and shared parental pay will increase from £151.20 to £151.97 per week.
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 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
6 April 2021	National Minimum Wage and National Living Wage	<ul style="list-style-type: none"> The hourly rates of the national living wage and the national minimum wage will increase. The national living wage currently applies to workers aged 25 or over, but is to be extended to 23 and 24 year olds. The new hourly rates are follows: <ul style="list-style-type: none"> £8.91 for workers aged 23 or over (currently £8.72) £8.36 for workers aged 21 to 22 (currently £8.20)

Date	Topic	Practical Impact
		<ul style="list-style-type: none"> – £6.56 for workers aged 18 to 20 (currently £6.45) – £4.62 for workers aged under 18 (currently £4.55) – £4.30 for apprentices (currently £4.15)
6 April 2021	Unfair Dismissal and Statutory Redundancy Pay	<ul style="list-style-type: none"> • For dismissals on or after 6 April 2021, the maximum compensatory award for unfair dismissal, will increase to the lower of £89,943 and a year's pay (currently the maximum award is the lower of £88,519 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 £538 to £544.
Until 30 September 2021	Coronavirus Job Retention Scheme	<ul style="list-style-type: none"> • The Coronavirus Job Retention Scheme, introduced in March 2020, originally enabled employers to place employees on furlough and reclaim 80% of their wages (up to £2,500 per month), together with related employer national insurance contributions and auto-enrolment payments. After previous extensions, the scheme was set to end on 30 April 2021 but has been extended again to 30 September 2021. • Currently employers can claim 80% of wages for the unworked hours of furloughed employees, to a maximum of £2,500 per month (but not national insurance or pension contributions). From 1 July the amount employers can claim will reduce to 70% of wages, and then from 1 August will reduce to 60% of wages. Employers will have to top up the shortfall to ensure employees get 80% of wages for unworked hours (so will pay 10% in July and 20% in August and September).
5 October 2021	Gender Pay Gap Reporting	<ul style="list-style-type: none"> • Employers with 250 or more employees are required to publish their gender pay gap report for the period 5 April 2019 to 4 April 2020. (The requirement to report for 2018/2019 in April 2020 was suspended due to the pandemic.) • The deadline for reporting for 2019/20 was originally 4 April 2021 but this has been delayed to 5 October 2021, although employers are encouraged to report earlier if possible.

Date	Topic	Practical Impact
No date	Sexual Harassment	<ul style="list-style-type: none"> • In spring 2018, the Equality and Human Rights Commission (EHRC) published a report, Turning the tables: ending sexual harassment at work, 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 2020 the EHRC published Technical Guidance on harassment at work. The Government has stated that this will form the basis of the new statutory code of practice.
No date	Settlement and Confidentiality	<ul style="list-style-type: none"> • In 2019, 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	Restrictive Covenants	<ul style="list-style-type: none"> • The Government is consulting on proposed changes to non-compete covenants. There are two options under consideration: (i) requiring that the employer pays part of the employee's salary during a non-compete or (ii) banning non-

Date	Topic	Practical Impact
		<p>complete covenants altogether. The consultation closed on 26 February 2021.</p>
No date	<p>Redundancy and Pregnancy/Maternity Leave</p>	<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 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.
No date	<p>Maternity/Adoption/Shared Parental and Parental Leave and flexible working</p>	<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. Separately the Government has indicated it will consult on making flexible working the default position for all roles (i.e. it will be presumed that a role can be carried out flexibly unless the employer is able to demonstrate otherwise).
No date	<p>Neonatal leave and pay</p>	<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	<p>Carers' leave</p>	<ul style="list-style-type: none"> • The Government consulted in 2020 on a new form of unpaid statutory leave, of one week per year, for employees with unpaid caring responsibilities, such as care of an elderly relative. The Government's response to the consultation is awaited.

Date	Topic	Practical Impact
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 Statutory Sick Pay (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.
No date	Employment Status	<ul style="list-style-type: none"> • 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"> – 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). • 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

Date	Topic	Practical Impact
		<p>hours and the right to move onto a fixed hours contract.</p> <ul style="list-style-type: none"> The Government has not given a date for when the above changes are likely to be introduced.

Key Forthcoming Cases

Case	Subject Matter	Issues	Status
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. 	<ul style="list-style-type: none"> Heard in July 2020 – decision awaited
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. 	<ul style="list-style-type: none"> Hearing to take place in May 2021
Flowers v East of England Ambulance Trust	Holiday pay	<ul style="list-style-type: none"> Whether holiday pay calculations should include voluntary overtime payments. 	<ul style="list-style-type: none"> To be heard in June 2021

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

IMMIGRATION

Date	Topic	Practical Impact
1 January 2021 to 30 June 2021	End of EU Free Movement Rules	<ul style="list-style-type: none"> Following Brexit and the end of the Transition Period, European Union (EU), European Economic Area (EEA) and Swiss citizens (referred to here as "EU nationals"), and their family members who were not resident in the UK prior to 31 December 2020 are now subject to UK immigration controls in the same way as non-EU nationals. A 'grace period' is currently in place until 30 June 2021 to allow EU nationals who were resident in the UK by 31 December 2020 and are covered by the EU Settlement Scheme to apply for settled or pre-settled status.
1 January 2021 onwards	New post-Brexit immigration system for work permission	<ul style="list-style-type: none"> EU nationals who move to the UK to take up work on or after 1 January 2021 are now required to hold work permission under the new points-based immigration system. They will be able to apply for employer-sponsored visas under the Skilled Worker and Intra Company

In the Pipeline

Date	Topic	Practical Impact
		<p>Transfer routes if they meet the requirements, including holding a job offer from an employer with a sponsor licence.</p> <ul style="list-style-type: none"> • They can also apply under the Global Talent, Start-up and Innovator visa routes: <ul style="list-style-type: none"> – 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 the designated competent bodies (e.g. Tech Nation, UK Research and Innovation, Royal Academy of Engineering) as a recognised or emerging leader or under the UK Research and Innovation endorsed funder option – 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.
1 January 2021 onwards	New entry requirements for business visitors	<ul style="list-style-type: none"> • Business visitors from the EU and Switzerland will need to qualify for entry under the visitor rules and will not have an automatic right to work in the UK. • Individuals must be prepared to confirm the purpose and duration for their trip as well as accommodation plans together with confirmation of funds available for their trip at border control.
30 June 2021	Deadline for EU Settlement Scheme applications	<ul style="list-style-type: none"> • EU nationals (and their family members) who were living in the UK 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.
1 July 2021	Graduate route – two-year post-study work visa route	<ul style="list-style-type: none"> • The Government will introduce a new post-study work two-year visa for international graduates who complete a course at degree level or above in the UK. • This will allow students on Tier 4 or Student visas who have completed a UK degree course to apply to stay on in the UK for two years after graduating (or three years for PhD graduates). • Eligible applicants will be able to work at any skill level, and will also be able to switch into work routes including the new sponsored Skilled Worker route.

Date	Topic	Practical Impact
1 October 2021	Use of EEA or Swiss national ID cards phased out	<ul style="list-style-type: none"> • EEA or Swiss national ID cards will no longer be valid for entry to the UK from 1 October 2021 and a passport will be required unless certain exceptions apply.
Summer 2021 onwards	Modernisation of immigration sponsorship system; Review and reform of Global Talent and Innovator visa routes	<ul style="list-style-type: none"> • The current immigration sponsorship system will be modernised, with a roadmap for delivery to be published by the Government in the summer of 2021. • The Global Talent visa will be reformed to allow for automatic qualification (without the requirement for an endorsement) for holders of international prizes, individuals who win scholarships as well as those on programmes for early promise. • The Innovator visa will be reformed to make it easier for those with the skills and experience to start an innovative business to obtain a visa.
March 2022 to Spring 2022	Introduction of new Elite points-based visa and new Global Business mobility visa routes	<ul style="list-style-type: none"> • A new 'elite points-based visa' route will be introduced which will include a "scale-up" stream for fast-track visas for individuals with a job offer from a recognised UK scale-up. • A new Global Business Mobility visa will be introduced by spring 2022 to allow overseas businesses to establish a presence or transfer staff to the UK.
Ongoing – phased programme to 2025	Electronic Travel Authorisations and digital immigration system	<ul style="list-style-type: none"> • EEA applicants granted status under the EU settlement scheme, Skilled Worker or Intra Company Transfer visa routes are issued digital status, rather than a physical passport endorsement or a residence permit. • Applicants must 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. • 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, it is intended that visas will be issued electronically. • 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.

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