

EMPLOYMENT

Mini Budget introduces mega changes to the employment law landscape

There is certainly nothing “mini” about the anticipated changes to employment law announced in recent weeks.

Most notably, the potential repeal of key EU-derived legislation such as the Working Time Regulations and TUPE by virtue of the Retained EU Law (Revocation and Reform) Bill. However, in another complex twist, Northern Ireland’s legislation is currently excluded from the ‘sunset’ provisions of the Bill.

We have summarised the main points from the Mini-Budget and set out how these will impact Northern Ireland specifically.

4 MIN READ



1 | EU-derived employment law could cease to exist by the end of 2023

What is the Retained EU Law (Revocation and Reform) Bill (the “Bill”)?

The Bill aims to rapidly reform EU-derived employment law. Following the end of the Brexit transition period on 31 December 2020, EU law applicable in the UK at this time was preserved in UK domestic law as “retained EU law”.

It was (wrongly) assumed that reform of retained EU law was low on the UK government’s agenda but the Bill now confirms otherwise.

The Bill provides for a total overhaul of EU-derived employment law in Great Britain by the end of 2023 known as the ‘sunset clause’. Unless positive action is taken to retain EU-derived employment laws, they will be either amended, repealed or replaced.

What is the significance of the Bill for UK law makers?

01

Gives greater powers to reform or amend retained EU law.

02

Repeals the principle of EU law supremacy, which currently means EU law overrides UK domestic legislation where a conflict arises.

03

Facilitates the departure from EU case law precedent by UK courts.

Which employment laws will be impacted?

Pertinent areas of employment law fall under the Bill’s ambit, such as:

- The Working Time Regulations 1998, which deal with maximum weekly working time and paid holiday.
 - The Agency Workers Regulations 2010.
 - TUPE 2006, which deals with the employment implications of business transfers.
- The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations.
 - The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations.
 - The Information and Consultation of Employees Regulations 2004.
 - Article 157 of the TFEU, which forms the basis for equal pay claims.
 - Various pieces of health and safety legislation.

Is the position the same for Northern Ireland?

No. The Bill explicitly excludes EU-derived legislation in NI. This means that NI-specific legislation, such as the Working Time Regulations (Northern Ireland) 2016, regulations dealing with agency workers, part-time workers and fixed term workers, will continue to apply in Northern Ireland despite the GB-equivalents facing amendment, repeal or replacement.

It is also important to note that the Bill only applies to EU-derived regulations and will not apply to purely domestic legislation or acts of parliament. Therefore, the rights and protections under the Employment Rights (Northern Ireland) Order 1996 (and GB equivalent Employment Rights Act 1996) and discrimination legislation will not be impacted.

What could this mean?

- The UK government may decide to retain the above legislation, or certain parts of it.
- New UK domestic legislation could be introduced incorporating the same rights, similar to the UK GDPR which copied the provisions of the EU GDPR into UK law.
- The legislation may be scrapped. For example, there is debate about what may happen to certain provisions of the Working Time Regulations particularly as there have been calls for a “right to disconnect” to be introduced, similar to that in the Republic of Ireland and France.
- As Article 2 of the NI Protocol prevents the diminution of rights, safeguards and equal opportunities in NI, it is unclear whether NI will be able to implement similar legislation to remove retained EU law.
- Employers operating in both GB and NI will need to ensure that they are aware of the employment laws in each jurisdiction as these may diverge substantially at the end of December 2023.



2 | Reversal of IR35 (off-payroll working) reforms

If publishing the Bill wasn't enough potential change for employers to grapple with, the UK Government has also announced that the IR35 reforms introduced in 2017 and 2021, applicable to the public sector and private sector respectively, are to be reversed.

The 2017 and 2021 reforms meant that organisations engaging contractors via an intermediary became responsible, as the end user, for assessing the employment status of the contractors. The assessment was carried out via a HRMC operated online tool called "CEST" (which, by the way - was famously unreliable).

What is the practical impact of the reversal?

From 6 April 2023, the government intends that contractors working for a company via an intermediary will once again be responsible for determining their own employment status and appropriate tax and National Insurance Contributions ("NICs").

While this will provide welcome relief for HR and payroll functions, many of whom found it time-consuming and administratively burdensome carrying out status determination assessments, it will also come at a frustrating time as organisations have spent considerable time and expense putting in place policies and procedures to carry out status determination assessments.

Employers should ensure that they continue to comply with the law as it currently stands until 6 April 2023.

Further, whilst employers will no longer be exposed to penalties for incorrectly determining the status of a contractor for tax purposes, there is still a risk that contractors could attract employment rights depending on the nature of the arrangement. This is something that organisations should be mindful of, particularly when agreeing the role that a contractor is to have and any accompanying contractual documentation.





3 | National Insurance cuts

From 6 November 2022, the 1.25% National Insurance increase that took effect in April 2022 will be abolished.

What is the practical impact of the cut?

This means that employees will receive a cut to their NICs in their November pay, meaning that their pay-slips will look different because the line specifying the 1.25% increase will be removed. Consequently, employees' take-home pay will be different.

It will be prudent for employers to check that their payroll software or provider can manage this change for November and if not, inform employees when it will take effect.

4 | The government’s drive for employment reform continues...

In addition to the changes announced in the Mini-Budget, further employment reforms being mooted are:

- **Increase to the reporting threshold exemption:** organisations with up to 500 employees would become exempt from reporting requirements on matters such as gender pay gap and executive pay ratios.
- **Introduction of “no fault dismissals” for higher earning employees:** the Financial Times reports that the likely threshold for this would be individuals earning £100,000 or more, but £50,000 has also been floated.

While we do not know if these reforms will come to fruition, the last few weeks have certainly shown that we cannot predict with any certainty the direction of travel for employment law. However, it appears that we could see even greater divergence between employment laws in GB and NI.

Top tips for employers

<div>01</div> <div>KEEP CALM!</div> <div>The proposed changes under the Bill will inevitably face significant debate and possible amendments before the legislation is passed.</div>	<div>02</div> <div>KEEP UP-TO-DATE</div> <div>Keep up-to-date with developments, particularly as the UK government begins its review of EU-derived employment legislation.</div>	<div>03</div> <div>CIRCULATE UPDATES</div> <div>Circulate updates to HR teams and managers in relation to any key changes announced.</div>	<div>04</div> <div>COMMUNICATE WITH STAFF</div> <div>Communicate with staff (and contractors) regarding the changes and potential impact they could have.</div>
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For further discussion on this topic and other important developments in employment law, please join us at our next breakfast seminar on 8 December 2022. Contact Gareth, Johanna or Chris for more information (details overleaf).

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