

YOUR GUIDE TO THE LATEST CHANGES IN

# EMPLOYMENT LAW & HR LEGISLATION (UK & IRELAND)

February / March 2021

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## FOREWORD

Welcome to the February - March edition of the Moorepay employment law & HR legislation guide.

In this month's edition we share the latest updates to the rules governing Statutory Sick Pay (SSP) for COVID-19 and those who are self-isolating.

Plus, we detail the upcoming changes to statutory rates of pay effective 2021/2022, including new rates of National Minimum Wage, Statutory Sick Pay and Statutory Maternity Pay.

In hot topics, we've included recent government proceedings on the impact of Brexit on workers' rights. Further, we cover off some notable case law on collective redundancy, handed down by the European Court of Justice (ECJ).

We hope you find this guide useful. We're always looking for ways to improve it, so if you have any feedback or ideas, please share your thoughts with our Communications Manager, Amy Morrison. You can email her at [amy.morrison@moorepay.co.uk](mailto:amy.morrison@moorepay.co.uk).

All the best.

*Andrew Weir*

**"MEDIA REPORTS OF A 'BONFIRE' OF WORKERS' RIGHTS PROMPTED OBVIOUS CONCERN AND CONSTERNATION AMONG UNIONS..."**

## ABOUT THE AUTHOR



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Andrew has a wealth of experience in advising and representing clients in all aspects of Employment Law. He heads up our Advice Line and Advocacy teams who provide Employment Law advice to our clients 24 hours a day, 365 days a year and support our clients in presenting defences at Employment Tribunals throughout the UK & Ireland.

## KEY UPDATES



**£8.91**

Effective 1 April 2021, the National Living Wage for workers aged 23 and over. Note that the new reference age has reduced from 25 to 23.

## CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

03

Legislation	Due Date	Summary
The Extended Coronavirus Job Retention Scheme	Announced 3 March 2021	<ul style="list-style-type: none"> <li>The Budget confirmed the continuation of the Coronavirus Job Retention Scheme in its current form until the end of June 2021.</li> <li>As the economy reopens and demand returns, the government will introduce employer contributions towards the cost of unworked hours until September 2021.</li> <li>From July, the employer contribution towards the cost of unworked hours will be 10% in July, 20% in August and 20% in September.</li> </ul>
The Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020	24 December 2020	<p>The Department for Work and Pensions confirmed in March 2020 that individuals advised to self-isolate would be entitled to Statutory Sick Pay (SSP) even if they have not presented with symptoms.</p> <p>Further amendments have now been made to ensure that individuals will be eligible for SSP for the full period for which they are required to self-isolate, including where they have tested positive for coronavirus (COVID-19), or where they are in a household with someone who has tested positive in England, Scotland, and Wales.</p> <p>SSP should be paid to qualifying employees from day one.</p>

## CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

Legislation	Due Date	Summary
The Job Support Scheme	Postponed	When it was announced that the Coronavirus Job Retention Scheme (CJRS) would be extended, it was also stated that the previously announced Job Support Scheme, which had been due to come into effect on 1 November 2020, would be postponed.
The Job Retention Scheme Bonus	Withdrawn	<p>The intention of the Coronavirus Job Retention Scheme Bonus (CJRSB) had been to make a one-off payment of £1,000 to employers for every employee claimed for under CJRS and who remained continuously employed through to 31 January 2021.</p> <p>It was announced that with the extension of CJRS, the bonus would be withdrawn and that no payments will be made in February 2021 as planned.</p>
Employers of Workers Required to Self-Isolate	28 September 2020	<p>Under The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, employers are obliged to ensure staff they know have tested positive for COVID-19, or have been in close contact with somebody who has, do not attend their workplace.</p> <ul style="list-style-type: none"> <li>• Employers in England face fines of up to £10,000 if they fail to prevent workers who should be self-isolating from coming to work.</li> <li>• Workers are now also required to inform their employer if they must self-isolate and will be fined £50 if they fail to communicate this with their employer.</li> <li>• Individuals on lower incomes who are self-isolating and are unable to work from home may be eligible for a £500 Test and Trace Support Payment.</li> <li>• Regardless of whether workers are working from home or not, they should be informing their employers that they were instructed to self-isolate.</li> </ul>

## CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

Legislation	Due Date	Summary
Redundancy Payments for Furloughed Employees	31 July 2020	<p>All employees are entitled to receive statutory redundancy pay if they have been working for their current employer continuously for at least two years. The payment is based on length of service, age and pay, up to a statutory maximum.</p> <p>The government has brought in a new law to ensure furloughed employees receive statutory redundancy pay based on their normal wages, not their reduced furlough rate.</p> <p>The changes introduced will also apply to Statutory Notice Pay, which is the notice period employees are given before their employment ends which can range from one week to 12 weeks, depending on length of service. During this notice period, employees must be paid based on their normal wages.</p> <p>Furthermore, new legislation also covers other employment rights that rely on average weekly pay, including unfair dismissal remedies, and short-time working.</p> <p>Note there is no indication this new legislation has a retrospective effect.</p>
Maternity and Parental Leave Pay: Average Weekly Earnings Calculations for Furloughed Employees	25 April 2020	<p>Where an employee was on furlough and paid with the help of the Coronavirus Job Retention Scheme (CJRS), and they started a period of family-related statutory pay on or after 25 April 2020, new rules apply to the calculation of their average weekly earnings (AWE). The earnings used to calculate AWE for that period will be the higher of:</p> <ol style="list-style-type: none"> <li>What they actually receive from their employer; or</li> <li>What they would have received from their employer had they not been on furlough</li> </ol> <p>This is to ensure the statutory rates of pay are not affected if employee's earnings are lower than normal as a result of being furloughed.</p>

# CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

06

Legislation	Due Date	Summary
Carrying Forward Annual Leave	26 March 2020	<p>The government has passed emergency legislation to relax the restrictions on carrying leave between leave years.</p> <ul style="list-style-type: none"><li>• Where it has not been reasonably practicable for a worker to take some or all of their holiday due to the effects of COVID-19, the untaken amount may be carried forward into the following two leave years.</li><li>• This does not apply if workers are still able to take leave; in these circumstances, you still need to facilitate leave being taken in the leave year to which it normally relates.</li><li>• Examples of where it may not be reasonable to take holiday include:<ul style="list-style-type: none"><li>» Where the business has faced an increase in demand due to COVID-19 that would reasonably require the worker to continue to be at work</li><li>» The health of the worker and how soon they need to take a period of rest and relaxation</li></ul></li><li>• You should do everything reasonably practicable to ensure that the worker is able to take as much of their leave as possible to prevent burn out.</li><li>• Note that any leave outside of the 5.6 weeks' statutory entitlement is outside the scope of legislation.</li></ul>

## CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

07

Legislation	Due Date	Summary
The Equality (Amendment and Revocation) (EU Exit) Regulations 2019	31 December 2020	The Regulations amend UK primary and subordinate legislation and revoke retained direct EU legislation in the field of equality in order to ensure that the relevant domestic legislation remains clear, workable and fit on the UK's exit from the European Union.
The Employment Rights (Amendment) (EU Exit) (No 2) Regulations 2019	31 December 2020	The Regulations amend UK primary and subordinate legislation and revoke retained direct EU legislation in the field of employment rights, removing (or amending) references that are no longer appropriate on the UK's exit from the European Union.
The European Union (Future Relationship) Act 2020	30 December 2020	<p>The Act makes provision to implement the EU-UK Trade and Cooperation Agreement (TCA) agreed on 24 December 2020.</p> <p>The UK, under the TCA, has agreed to not reduce the level of protection for workers, or fail to enforce employment rights, below the standards that existed on 31 December 2020.</p> <p>It creates a framework through which the TCA can be implemented by regulations in due course, rather than implementing the agreement directly with immediate effect and allows for provisional application from 1 January 2021 pending ratification.</p>

Legislation	Due Date	Summary
Employment Tribunals Early Conciliation Extension	1 December 2020	<p>The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 (SI2020/1003) have extended the early conciliation period for Acas in order to help the potential claimant and employer reach a settlement in advance of a possible employment tribunal claim.</p> <p>The prescribed period for early conciliation of one month is increased to six weeks. The Regulations also amend the rules on early conciliation to allow:</p> <ul style="list-style-type: none"> <li>• Acas to contact the potential claimant to correct errors or obtain any missing information in the early conciliation notification form at any time during the early conciliation period;</li> <li>• and employment tribunals more discretion over handling errors on claim forms, such as an incorrect early conciliation certificate reference number.</li> </ul>
Amendments to Employment Tribunal Rules of Procedure	8 October 2020	<p>The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 (SI2020/1003) have amended the employment tribunal rules of procedure. The amendments include:</p> <ul style="list-style-type: none"> <li>• allowing legal officers to carry out delegated administrative tasks currently performed by employment judges;</li> <li>• providing the option for non-employment judges with employment law experience to be deployed to employment tribunals;</li> <li>• widening the scope for multiple claimants to submit their claims on the same ET1 form, if their claims give rise to related issues of fact or law, or if it is otherwise reasonable for them to be submitted on a single form;</li> <li>• widening the scope for multiple respondents to submit their responses on the same ET3 form, if their responses give rise to related issues of fact or law, or if it is otherwise reasonable for them to be submitted on a single form; and</li> <li>• relaxing the rules on making witness statements available to the public during a hearing, which can be difficult when it is being conducted remotely.</li> </ul>

# CURRENT LEGISLATION – RECENTLY IMPLEMENTED OR DUE IMMINENTLY

Legislation	Due Date	Summary
Real Living Wage	November 2020	Must be implemented by 1 May 2021 for organisations who have signed up to the Real Living Wage  NLW <ul style="list-style-type: none"><li>• UK Living Wage £9.50</li><li>• London Living Wage £10.85</li></ul>
National Minimum Wage, Sick Pay and Statutory Family Pay	1 April 2020	The rates for National Minimum Wage, Sick Pay and Statutory Family Pay are:  NMW <ul style="list-style-type: none"><li>• £8.72 for 25 year olds and over</li><li>• £8.20 for 21-24 year olds</li><li>• £6.45 for 18-20 year olds</li><li>• £4.55 for under 18 year olds</li><li>• £4.15 for apprentices</li></ul> SSP <ul style="list-style-type: none"><li>• The weekly amount is £95.85</li></ul> SMP, SAP, SPP <ul style="list-style-type: none"><li>• The weekly rate for Statutory Family Pay is £151.20</li></ul>
State Pension	6 April 2020	The new flat rate full state pension is £175.20 per week.

Legislation	Due Date	Summary
Provision of Statement of Main Terms	6 April 2020	<p>Section 1 of the Employment Rights Act 1996 requires employers to provide a Statement of Main Terms of Employment to employees within the first eight weeks of employment. In reality it has always been good practice to do this on or before the start of employment. It ensures there is a clear written record of obligations of both the employer and employee.</p> <p>From April 2020 employees are entitled to this statement from the very first day of their employment. It is also the right of a 'worker' (as opposed to an employee) to receive a statement of main terms which was not previously the case.</p>
Worker's Contracts	6 April 2020	<p>The information that employers need to provide in the Statement of Main Terms (often referred to as an 'SMT') has been expanded and needs to include:</p> <ul style="list-style-type: none"> <li>• How long a job is expected to last</li> <li>• Specific days and times that staff are expected to work</li> <li>• The duration and conditions of any probationary period</li> <li>• The length of the notice period</li> <li>• Details of eligibility for sick leave and pay</li> <li>• Details of other types of paid leave e.g. maternity leave and paternity leave</li> <li>• All remuneration (not just pay) e.g. vouchers, lunch, health insurance</li> <li>• Any training entitlement provided by the employer</li> </ul>
Changes to Holiday Pay Calculations	6 April 2020	<p>Regulation 16 of the Working Time Regulations 1998 is amended to the effect of changing the reference period for calculating annual leave pay from 12 to 52 weeks. The change in reference period applies for workers whose pay varies because either they have no normal working hours, or they have normal working hours but the amount of work or days or times they work each week varies.</p>

Legislation	Due Date	Summary
Off-Payroll Working in the Private Sector	6 April 2021	<p>The changes to off-payroll working rules (IR35) for non-public sector organisations will take effect from 6 April 2021. The Check Employment Status Tax tool (CEST) is already available for organisations and contractors to consider the appropriate employment status for tax for contracts running beyond 6 April 2021.</p> <p>HMRC will stand by the results given by the CEST tool, provided it is used in accordance with our guidance and the information entered is accurate, and remains accurate. This is regardless of when the tool is used ahead of April 2021. This means you can already use the tool for engagements that start in April 2021 onwards.</p>
Hospitality Workers to be Paid all Tips	To be confirmed	<p>Acting on evidence of poor tipping practices, the government has proposed legislation making it mandatory that any tips left in good faith to reward good service is paid directly to workers. The Employment (Allocation of Tips) Bill had initially been referred to in the Queen’s Speech on 14 October 2019. It is now understood that the proposal will form part of the Employment Bill referenced during the Queen’s Speech on 19 December 2019.</p>
Extended Protection and Rights for Employees	To be confirmed	<p>The government proposed an Employment Bill during the Queen’s Speech on 19 December 2019 which would seek to create a single enforcement body, introduce a right for workers to request more predictable contracts, provide further protection for employees who are pregnant or who are on/returning from maternity leave during a redundancy exercise, and to allow parents to take extended leave for neonatal care.</p> <p>Subject to consultation, it had also been proposed to make flexible working the default unless an employer can evidence a good reason not to allow it.</p>

# MEDIUM TERM LEGISLATION – DUE BUSINESS YEAR 2021/22 ONWARDS

Legislation	Due Date	Summary
National Minimum Wage	1 April 2021	<b>April 2021</b>
		The National Living Wage (for workers aged 23 and over) £8.91
		21-22 year olds £8.36
		18-20 year olds £6.56
		Under 18 £4.62
		Apprentices under 19 £4.30
		Apprentices aged 19 and over, but in first year of apprenticeship £4.30
Note that the new reference age has reduced from 25 to 23.		
Statutory Maternity, Paternity, Adoption, Shared Parental and Parental Bereavement Pay	4 April 2021	<b>Type of payment or recovery</b>
		SMP – weekly rate for first 6 weeks
		SMP – weekly rate for remaining weeks
		Statutory Paternity Pay (SPP) – weekly rate
		Statutory Adoption Pay (SAP) – weekly rate for first 6 weeks
		SAP – weekly rate for remaining weeks
		Statutory Shared Parental Pay (ShPP) – weekly rate
		Statutory Parental Bereavement Pay (SPBP) – weekly rate
		SMP, SPP, ShPP, SAP or SPBP – proportion of your payments you can recover from HMRC
<b>2021 to 2022 rate</b>		
90% of the employee's average weekly earnings		
£151.97 or 90% of the employee's average weekly earnings, whichever is lower		
£151.97 or 90% of the employee's average weekly earnings, whichever is lower		
90% of employee's average weekly earnings		
£151.97 or 90% of the employee's average weekly earnings, whichever is lower		
£151.97 or 90% of the employee's average weekly earnings, whichever is lower		
£151.97 or 90% of the employee's average weekly earnings, whichever is lower		
92% if your total Class 1 National Insurance (both employee and employer contributions) is above £45,000 for the previous tax year 103% if your total Class 1 National Insurance for the previous tax year is £45,000 or lower		

Legislation	Due Date	Summary
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Statutory Sick Pay (SSP)	4 April 2021	<b>Unrounded Daily Rates</b>	<b>Number of qualifying days in week</b>	<b>1 day to pay</b>	<b>2 days to pay</b>	<b>3 days to pay</b>	<b>4 days to pay</b>	<b>5 days to pay</b>	<b>6 days to pay</b>	<b>7 days to pay</b>
		13.7642	7	13.77	27.53	41.30	55.06	68.83	82.59	96.35
		16.0583	6	16.06	32.12	48.18	64.24	80.30	96.35	
		19.2700	5	19.27	38.54	57.81	77.08	96.35		
		24.0875	4	24.09	48.18	72.27	96.35			
		32.1166	3	32.12	64.24	96.35				
		48.1750	2	48.18	96.35					
		96.35	1	96.35						

The same weekly SSP rate applies to all employees. However, the amount you must actually pay an employee for each day they're off work due to illness (the daily rate) depends on the number of 'qualifying days' they work each week. Use the SSP calculator to work out your employee's sick pay or use these rates.

Legislation	Due Date	Summary
<p>Reintroduction of Employment Tribunal Fees</p>	<p>To be confirmed</p>	<p>The Ministry of Justice has confirmed it may reintroduce fees for employment tribunal claims, insisting it can find a balance that helps fund the court system while being ‘proportionate and progressive’. Richard Heaton, Secretary at the Ministry of Justice, stated that although nothing is set in stone, he believed a fee system can be found that will ensure access to justice.</p> <p>In July 2017, tribunal fees were abolished following the Supreme Court’s decision.</p> <p>It is possible that a new fees regime, with fees at a lower level and also involving a fee payable by the employer when submitting an ET3 response, may be introduced within the next 18-24 months.</p> <p>It has been confirmed that the Ministry of Justice has asked the Law Commission to provide recommendations for creating a coherent system. The Law Commission is an independent body that revises the law in England and Wales and recommends changes where needed.</p> <p>It has also been reported that the Law Commission is recommending the power of Employment Tribunals increases. The Law Commission is seeking to improve how employment law disputes are decided.</p> <ul style="list-style-type: none"> <li>• Employees should be able to bring claims for breach of contract while they are still employed.</li> <li>• The time limit for bringing all types of employment tribunal claims should increase from three months to six months (currently it is three months for some types of claims).</li> <li>• Employment tribunals should have the power to give damages in breach of contract claims of up to £100,000 (currently the limit is £25,000).</li> <li>• There should be improvements made to the procedures for enforcing employment tribunals’ awards to ensure employees receive the compensation in a timely fashion.</li> </ul> <p>Law Commissioner, Nicholas Paines QC stated: “The reforms that we have recommended will bring real benefits for the courts and tribunals system and its users. The adjustments will improve employment tribunals’ ability to resolve employment disputes as effectively and justly as possible in one place.”</p>

Legislation	Due Date	Summary
Mandatory Employee References	To be confirmed	<p>The government is considering changing the rules on employee references to force employers to provide a reference for any former employee. At present, there is no requirement to provide references unless a business operates within certain regulated sectors or it's in writing that an employer has agreed to provide one. The government proposal was announced by business secretary Andrea Leadsom and forms part of the government's response to a parliamentary inquiry into the use of non-disclosure agreements (NDAs) in discrimination cases.</p> <p>Business secretary Andrea Leadsom said: "The overwhelming majority of businesses comply with the law, treating their employees with respect and fairness. But we cannot tolerate the small minority that use nasty tactics like non-disclosure agreements and withholding references to pressure employees into silence, often in cases of serious wrongdoing. These proposals ensure individuals are protected, striking a fair balance between the interests of employers and workers."</p> <p>When providing a reference, employers should ensure that information provided is accurate and fair to avoid any claims from ex-employees.</p>
Proposals to Reduce Ill Health-Related Job Loss	To be confirmed	<p>The government has introduced 'proposals to reduce ill health-related job loss'. The consultation builds a case for employers to do more to support employees with health conditions. In return the government is committed to providing more help for employers.</p> <p>The plan includes:</p> <ul style="list-style-type: none"> <li>• Changing the legal framework so that employees would be able to request workplace modifications for health reasons without being disabled within the definition of the Equality Act 2010 (employers would be able to refuse such requests for business reasons)</li> <li>• Extending SSP to those below the Lower Earnings Limit by paying it as a proportion of employees' wages, paying a proportion of SSP during a phased return to work, and increasing fines for non-payment of SSP</li> <li>• Increasing market capacity for, and improving the quality and value of, occupational health provision</li> </ul> <p>Employees will be encouraged to raise issues, and employers should accommodate these where possible. This will enable businesses to retain talent and build workplaces that support employee's physical and mental health needs.</p>

Legislation	Due Date	Summary
Courts and Tribunals (Online Procedure) Bill	To be confirmed	<p>The Courts and Tribunals (Online Procedure) Bill has been published and had its first and second reading in the House of Lords. It will create a committee to provide rules of court for online proceedings in Civil and Family Courts and Tribunals. The Bill increases the use of technology which will allow for online and digitised procedures in the Courts and Tribunals system.</p> <p>Around £1bn is being invested in transforming the courts and Tribunal service, making the justice system more accessible and enabling legal disputes to be resolved more efficiently.</p> <p>The new procedure will use a mix of technology, conciliation and judicial resolution to create a quick dispute resolution process.</p> <p>The Bill:</p> <ul style="list-style-type: none"><li>• Creates a new Online Procedure Rules framework</li><li>• States that the Online Procedure Rule Committee will be independent and will be made up of members of the judiciary and members with expertise in the lay advice sector and IT</li><li>• Suggests the process for making Online Procedure Rules</li><li>• Allows the Lord Chancellor or Secretary of State to amend legislation to facilitate the making of Online Procedural Rules</li></ul>

## Legislation

## Summary

### Recent Development in Collective Redundancy - *UQ v Marclean Technologies C-300-19*

It's well known that employers are required to engage in collective consultation and notify the government (with an HR1 form) if it is "proposing to dismiss" as redundant 20 or more employees at one establishment within a 90-day reference period. This is in accordance with Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). The concept of "proposing to dismiss" has generally been understood to refer to future dismissals.

This European Court of Justice (ECJ) decision arose from a referral by a Spanish court which had sought to clarify whether the reference period must be calculated taking into account the period prior to the individual dismissal only, or also the period after the dismissal. It should be noted that the EU Collective Redundancies Directive - which TULRCA implements - allows EU member states discretion as to the relevant reference period used.

UQ (the employee) was dismissed on 31 May 2018. She claimed that Marclean Technologies (the employer) failed in their obligation to consult collectively, highlighting 36 dismissals between 31 May 2018 and 15 August 2018 which, if considered, would've constituted a series of redundancies triggering the obligation to consult collectively.

The ECJ decided it was insufficient to consider only dismissals prior to or following the date of a dismissal when determining whether it forms part of a collective redundancy. The reference period is the period of any 90 consecutive days during which the relevant dismissal occurred and in which the employer dismissed the greatest number of employees as redundant. In effect, this suggests that an employer needs to look at a "rolling" 90-day period and consider dismissals which have taken place and/or all but taken place when ascertaining whether they have reached the threshold at which collective redundancy consultation is required.

This judgment predates the UK's exit from the European Union on 31 December 2020 and will amount to "retained" EU law after 1 January 2021. That said, TULRCA is worded very differently to the relevant Spanish legislation (which looked backwards when assessing) with emphasis on 'proposing to dismiss'. Further, section 188(3) of TULRCA states that, when determining the number of dismissals proposed, no account is taken of employees whose dismissal consultation has already begun (i.e. if there is an initial group of 20 redundancies and employees were consulted collectively, the employer needn't consult collectively about a second group of 10).

The prudent approach would now involve counting all dismissals, including all those recently made, those in respect of which consultation has already begun, and those proposed for the future, within the relevant rolling 90-day period to determine whether collective consultation is required. However, it remains to be seen whether our current statutory wording could be interpreted to conform with this ruling and, indeed, whether there is any appetite to do so following the UK's exit from the European Union.

Legislation	Summary
Republic of Ireland Gender Pay Gap Reporting	The government is looking to pass the Gender Pay Gap Information Bill which will force employers to reveal salaries in the interests of assessing the progress of gender pay equality in the Republic. This bill is ongoing and still in the legislative process.
Republic of Ireland Parental Leave Act	From 1 September 2020, the Parental Leave Act provides the full 26 weeks of parental leave. The phasing in of the increased leave provision is now complete. The qualifying age for children has also increased from 8 to 12 years (16 years for a disabled child).
Republic of Ireland COVID-19 Return to Work	As an interim measure, employers must now obtain a return to work statement from returning employees affected by COVID-19. A model template is available from the Health and Safety Authority website.

Topic	Summary
Workers' Rights Post-Brexit	<p>Following the UK's exit from the EU, Kwasi Kwarteng (Secretary of State for Business, Energy and Industrial Strategy) announced that his department would be carrying out a consultation exercise on workers' rights derived from EU directives and regulations.</p> <p>The announcement followed media reports that the government and business leaders hoped to 'roll back' the Working Time Regulations 1998 specifically to:</p> <ul style="list-style-type: none"><li>• remove the maximum 48-hour working week</li><li>• exclude overtime worked from holiday pay calculations</li><li>• water down rest break safeguards</li><li>• remove a recent requirement to record working hours</li></ul> <p>Other areas that would likely come under similar consideration include the restriction on harmonisation of terms and conditions on/ following a TUPE transfer, obligations to inform and consult employees for collective redundancy consultation, and TUPE purposes and agency workers' rights.</p> <p>The UK agreed it will not reduce the level of protection for workers, or fail to enforce employment rights, below the standards which existed at the end of the EU withdrawal transition period (i.e. 31 December 2020). Whilst the UK can review workers' rights, any divergence from EU directives and regulations mustn't fall below the agreed standards in a manner that affects trade or investment.</p> <p>The EU-UK Trade and Cooperation Agreement (TCA), agreed and finalised on 24 December 2020, confirms the commitments made by the UK and EU and agrees a dispute mechanism.</p> <p>Should the UK choose to diverge significantly on workers' rights in a way which materially impacts trade or investment (for example to obtain a competitive advantage) the EU could seek to impose 'rebalancing' measures in accordance with the TCA, such as tariffs.</p> <p>Media reports of a 'bonfire' of workers' rights prompted obvious concern and consternation among unions, with Labour directing the government back to a key campaign promise to upgrade workers' rights.</p>

Topic	Summary
Workers' Rights Post-Brexit (continued)	<p>However, the Employment Bill, announced as part of the Queen's Speech on 19 December 2019, is yet to be brought forward.</p> <p>The Bill, if progressed, would seek to make the following changes:</p> <ul style="list-style-type: none"><li>• make flexible working the default unless an employer can evidence a good reason not to allow it</li><li>• create a single enforcement body to enforce employment rights (such as adherence to the National Minimum Wage, regulation of employment agencies etc.)</li><li>• introduce a right for workers to request more predictable contracts</li><li>• provide further protection for employees who are pregnant or who are on/returning from maternity leave</li><li>• require employers in hospitality to pass on all tips and service charges to workers and to distribute them fairly and transparently</li><li>• introduce a week's leave for unpaid carers</li></ul> <p>On 27 January 2021 the government announced that the consultation exercise on workers' rights derived from EU directives and regulations would not happen. Kwarteng, perhaps bowing to pressure, was also forced to confirm that there was "no government plan" to roll back on workers' rights.</p> <p>Despite the earlier announcement of the Employment Bill, recent events provide little assurance for employers as to whether the government has a genuine desire to upgrade rights for the benefit of workers - as promised – or, as suspected, a new found appetite to diverge from the EU in this area to the ultimate benefit of business leaders.</p>

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## WHAT NEXT?

For further information or guidance on how this legislation affects your business, call us now on **0345 184 4615**