



Schedule of retained or revoked EU Law finally published

The Government has finally published a schedule of retained EU Law that will be revoked or sunset by 31 December 2023. The Retained EU Law (Revocation and Reform) Bill allows the UK to take steps to reassert the sovereignty of Parliament. It ends the special status of retained EU law and will enable it to be more easily amended, revoked, or replaced.

As well as listing the law to be revoked there will also be a reason given. The government has already revoked or reformed over 1,000 EU laws since the UK left the EU and in addition to this list there is a further 600 which are proposed to be revoked directly through the above Bill. The Financial Services and Markets Bill and the Procedure Bill will revoke around 500 further pieces of legislation.

Some areas of employment law affected include:

Working Time Regulations

The government will consult on three proposed changes; reducing record keeping requirements, permitting rolled up holiday pay and

merging the basic and additional elements of annual leave into a single entitlement.

TUPE

The government will also consult on allowing employers to consult about TUPE transfers with employees directly, instead of through elected representatives which will be relevant to employers with fewer than 50 employees and where less than 10 staff are transferred.

Non-Compete Clauses

Non-compete clauses will have a maximum duration of three months which is hoped to boost the UK economy by encouraging innovation.

Employers will be able to prevent employees from competing during notice or garden leave. There will be no restriction on the duration of non-solicitation covenants and the existing rules on what is reasonable to protect legitimate business interests will continue to apply.

These consultations will need to take place and primary legislation will be needed to make the changes to non-compete clauses so there is no timetable as yet for this to take place.

Employers may need to review employment contracts in light of these changes, especially those on non-compete clauses. If you would like to find out more about how your business could be affected, get in touch with our team today.

Starting and ending an employment relationship



Later this year we will be hosting a free seminar on starting and ending an employment relationship and if you are unable to attend, a recording will be available on our website. Visit our events page for more details.

Below are just a few of the key issues when starting and ending an employment relationship.

Starting an employment relationship

A contract of employment is legally binding and can be verbal when agreed through conversations or in writing through a job offer letter or via email. Parts of an employment contract can also be agreed through conduct, where the person's actions show there is an agreement, even if it hasn't yet been spoken about or written down.

By law anyone classed as an employee as the right to a written statement of employment particulars. This includes the main terms of someone's employment, such as pay and working hours.

Those classed as workers do not have a right to a written statement if they started their job before 6 April 2020.

The employment contract begins when the employee starts work, even if the employer has yet to give the employee a written statement or put other parts of the contract in writing.

It is important to get the start of an employment relationship right for it to be successful and to avoid any misunderstanding. It is advisable to seek legal advice before you begin the process of recruitment to avoid any misunderstandings and to prepare you for making the best hire for your business.

Ending an employment relationship

Redundancy

An employer should only make redundancies to a role/roles that are no longer needed for example if the business is closing or has already closed, if the number or roles needed changes or if the location changes.

If the employer has concerns about the employee's conduct or performance, then they should follow their disciplinary or capability policies.

If an employer is making more than 20 employees redundant then they should look at the additional requirements of a Collective Consultation process.

Before starting the redundancy process the employer should consider other options such as offering voluntary redundancy, changes to working hours, moving employees into other roles, letting go temporary or contract workers, limiting overtime and freezing recruitment.

There is much that an employer can get wrong with making employees redundant and it is advisable to take legal advice to consider whether it is the best option.

Dismissal

When an employment relationship ends in dismissal, the employer must believe they have a valid reason for making that decision. They should also follow a full and fair procedure

which should be in line with the ACAS code of practice and follow company procedures. The employer should make a decision which is balanced, consistent and fair.

Firstly, the employer should tell the employee why they have been dismissed, when their employment contract ends, what their notice period is and their right to appeal the decision. This should be put in writing for pregnant employees or those on maternity leave, but it is good practice to do this for all employees.

Employees do have the right to ask their employer for a written statement which gives the reasons for their dismissal if they have employee status and have been employed for two years, this must be done within 14 days of them asking.

An employee can appeal against a dismissal. If the employer does not follow a fair and reasonable procedure then the employee could make a claim against them for unfair dismissal, even if the dismissal reason was ultimately found to be valid.

Employers should also respect the confidentiality of the person who has been dismissed when they tell colleagues or clients and the outcome of any disciplinary procedure against the employee must remain confidential.

It is sometimes useful to use a Settlement Agreement which is where the employer and employee agree to end the employment under written terms and with the benefit of independent legal advice.

If you are dismissing an employee, then it is recommended you take legal advice to ensure you get the process right and minimise the risk to the business from a potential unfair dismissal claim.



Support for separating and divorced employees

Separation and divorce have a big impact on people's lives and they can be very stressful times which last a number of months, even years, and it is inevitable that some of your employees will experience this. What is the best way to support them during this period of their lives and to ensure the business continues to run smoothly?

Earlier this year, a number of large UK businesses gave their backing for an initiative which offers employees time off work or more flexible working arrangements while they deal with a relationship break up.

There is nothing in law to support people experiencing a marriage or relationship break down, so it is down to individual employers to think about how staff may be affected and what might work in their workplace. In a recent survey, many people said they needed to take extra time off during this period, many felt less efficient at work and some people even stopped working altogether.

The Positive Parenting Alliance has been looking at this issue and they have come up with four suggestions for employers to help them to deal with this.

- Employers could recognise separation and divorce as a life event in HR policies which will give people the opportunity to seek support.
- Employers could help parents by giving them access to more flexible working arrangements so that they can better manage school or childcare drop off and pick up.
- Employers could provide access to or signpost emotional counselling to get them through difficult periods.
- Employers could signpost access to separation support services so that employees know where to access support using the employee handbook and internal communications.

Employees might also need additional mental health support and businesses should consider separation and divorce as one of the triggers for it, along with poor performance or increased absence and again build into company policies ways to support people. Employers could offer mental health assistance programmes, flexible working and information about improving work-life balance.

There might be a number of ways life can dramatically change for your employees, so think about how best you can support them during their career with you.

DYSLEXIA

Employment ruling on start times for people with Dyslexia and Asperger's

An employment tribunal has ruled that people with Dyslexia and Asperger's should be accommodated with more flexible working patterns including start times. The ruling is in the case of Raymond Bryce who said he was discriminated against by his former employer, and they had failed to make reasonable adjustments after he told them his dyslexia meant he 'would be late for his own funeral'. He also has Asperger's Syndrome which he claimed makes him stick to 'inflexible routines' and he gets anxious if they are broken.

Mr Bryce's condition meant he was disorganised and frequently misread his alarm clock in the morning. He asked his managers if they would give him some leeway if he was late by 15-20 minutes but after he was frequently late, they stopped offering him shifts.

The employment tribunal upheld Mr Bryce's claims that his dyslexia made it difficult for him to wake up early, plan ahead and read the time, despite his best efforts. It also ruled that reasonable adjustments had not been made to accommodate his disability.

The Judge said: "We conclude that Mr Bryce's disabilities had a number of long-term effects on his normal day to day activities as he was inhibited in his ability to read, write, and understand information. He was impaired in his ability to keep to a timetable and plan for potential factors such as traffic and weather conditions. He found it difficult to wake and get ready for work on time particularly for early shifts and he would suffer significant anxiety if he was late."

The tribunal ruled that the firm could have accommodated Mr Bryce's request for the leeway to arrive a little late on occasion if they had offered him weekend shifts and also work at another site however Mr Bryce's separate claim of direct disability discrimination was rejected.

Employers should therefore give full consideration to their employees who may have disabilities such as Dyslexia or Asperger's Syndrome as they can present very differently in each person but with some reasonable adjustments, a happy and rewarding solution can often be found to overcome most difficulties the employee may have.

Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	April 22	April 23
Apprentices	£4.81	£5.28
16-17	£4.81	£5.28
18-20	£6.83	£7.49
21-22	£9.18	£10.18
National living wage	£9.50	£10.42

Statutory Sick Pay

Per week	£99.35 (from April 2022)
Per week	£109.40 (from April 2023)

Statutory Shared Parental/Maternity/Paternity/Adoption Pay (basic rate)

£156.66 (from April 2022)
£172.48 (from April 2023)

Statutory Holiday

5.6 weeks for a full time employee. This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6th April 2023 at £643.00.



CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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