

Country report: United Kingdom

1. Introduction

Since the early 2000s successive UK governments have introduced substantial labour market reforms, in particular, deregulation, reduction of social security contributions and the implementation of incentive policies to encourage rapid re-employment among the unemployed. It is in this context that the crisis of 2008 occurred: the ensuing economic contraction was dramatic, with a fall in GDP of 5.3 per cent over against 2008–2009. Structural reforms continued nevertheless, in particular from the end of 2011, with the ‘simplification’ of dismissal protection law and ‘reform’ of labour contracts.

When it took office in May 2010, the Conservative–Liberal Democrat coalition government launched a review of employment law that led to a public consultation in October 2011 on the following main issues:

- (i) measures provide for the *cancellation of foreseen changes in, for example, training leave* (from April 2011 it was planned to extend the right to ask for time to study or train on or off the job to workers in companies with 250 or fewer employees) and for the *extension of the right to request flexible working* to all parents of children under 18 (this right was previously foreseen only for those with children under 17 [or 18 for children with disabilities]);
- (ii) plans to allow workers who declared themselves to be discriminated against because of two ‘protected characteristics’ (for example, gender, disability, age, race and so on) to bring a combined claim were also cancelled, as were obligations on businesses to take reasonable steps to prevent harassment of their staff by third parties;
- (iii) the *exemption of businesses with fewer than 10 employees and certain business start-ups from a large part of all (new) domestic labour legislation for a period of three years;*
- (iv) *a drive to revise allegedly ‘burdensome’ EU directives, such as the Directive on pregnant workers (92/85/EEC) and the Directive on information and consultation (2002/14/EC).*

Among key legislative changes in April 2012 the government confirmed the *doubling of the qualification period for unfair dismissal tribunal claims*, from one year to two. The reform also provided for the charging of new fees for lodging a tribunal case, professedly in a bid to prevent so-called ‘vexatious’ claims.

On 23 November 2010 the government issued a draft labour law reform in response to a consultation on resolving workplace disputes and reviewing labour law, under scrutiny – as already mentioned – since May 2010. This radical reform included the following proposals: introducing more flexible layoffs in SMEs with 10 employees or fewer; reducing the consultation period for mass layoffs; introducing ‘protected conversations’ between employees and employers; doubling the qualification period to object to unfair dismissals; and introducing charges for appealing to employment tribunals. All of these areas have seen the introduction of legislation:

- All workplace disputes have to go through the ACAS conciliation service before being brought to an employment tribunal.

- The qualifying period enabling a person to object to unfair dismissals was raised from 12 to 24 months in April 2012.
- In 2012, a new consultation was instigated on ‘protected conversations’, allowing employers to openly discuss retirement or poor performance with their employees without these conversations being used in court proceedings later on.
- On 6 April 2013 legislation came into force that reduced the minimum consultation period for redundancies of 100 workers or higher from 90 days to 45. However, the 30-day period for 20–99 layoffs remains intact.

A measure levying a fee for claimants wishing to bring a case before an employment tribunal was passed. The introduction of these fees has already led to a drastic reduction in the number of hearings as it has become increasingly difficult for individual workers to defend their rights in the courts.

2. 2012 labour law reforms

Labour law reforms came into force in April 2012 concerning the following:

- Abusive layoffs of workers starting a new job on 6 April 2012 or later. The reform extended the seniority in the company required to be able to sue the employer for abusive layoff from one to two years. The eligibility period conferring the right to receive a written document explaining the grounds for layoff also rose from one to two years.
- The employer’s obligation to report to the Health and Safety Executive any industrial accident will be extended to seven working days instead of three. Likewise, employers will have 15 days instead of 10 to report the accident.
- The reform of employment tribunal procedures applies to complaints lodged after 5 April 2012 so that the maximum bail a court can demand to go on with the trial, if it judges that the concerned party has little chance of winning, was raised from £500 (EUR 606) to £1,000 (EUR 1,213). Witness statements during hearings will be considered as already read, to save time. The party that loses the trial will pay the winner’s costs for calling witnesses. The maximum amount of trial costs employers have to pay if they lose goes from £10,000 (EUR 12,131) to £20,000 (EUR 24,246). Likewise, the Employment Tribunals Act 1996 (Tribunal Composition) Order 2012, which also came into force on 6 April, stipulates that judges will sit alone when trying cases of abusive layoff.
- On a more positive note, weekly maternity, paternity or adoption benefits went from £128.73 (EUR 155.61) to £135.45 (EUR 164.06), while sickness benefits went from £81.60 (EUR 98.57) to £85.85 (EUR 103.46).

On 1 May 2012 a new law entered into force temporarily suspending the Sunday Trading Act of 1994 during the Olympic and Paralympic Games from 22 July to 9 September 2012 for shops with a relevant floor area of more than 280 square meters, thus allowing large stores in England and Wales to open for more than six hours a day, while the right of employees to refuse to work on a Sunday was reduced from three to two months.

As part of a series of measures designed to cut ‘red tape’ for businesses launched in April 2011, one of the provisions of the Equality Act 2010 whereby employers are obliged to prevent harassment at work by a customer or supplier is intended to be repealed, as proposed by the government in May 2012. The Equality Act adopted in October 2010 was the first major UK text to define harassment. Previously, charges were based on the grounds of discrimination via the Sex Discrimination Act 1975. In 2006, the High Court ruled that existing statutory provisions were insufficient and were contrary to Community law. As a result, the Equality Act was passed four years later and defines harassment as ‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating and intimidating, hostile, degrading, humiliating or offensive environment for that individual’. The list of ‘protected characteristics’ is exhaustive: age, disability, sexual orientation, race, religion or belief, sex. This repeal is the outcome of two consultations launched on 15 May 2012 with a view to abolishing measures contained in the Equality Act related to:

- employers’ liability for the harassment of their staff by a third party;

- the extended powers of employment tribunals, which are currently allowed to recommend the introduction or amendment of policies affecting all employees, not simply the employee involved in the case;
- the procedure to gather information from employees who believe that they were discriminated against, in order to increase the number of out-of-court settlements, the efficiency of which has yet to be proved (in a form of questionnaires for individuals who think they have been discriminated against to gather information before a trial);
- to reduce the competences of the Equality and Human Rights Committee (EHRC);
- to review the duty of equality in the public sector, according to which public organisations have to take into consideration the impact of their decisions on the company's different groups and to repeal the socio-economic duty, a legal obligation of public organisations to take into consideration the impact of their decisions on various social categories.

The gradual reform of 'auto-enrolment' entered into force on 1 October 2012 for the biggest firms, with 120,000 or more workers. For the others, it was due to start in June 2015 at the earliest. It was supposed to last for six years in order to automatically enrol about 10 million private sector workers in a workplace pension scheme. Anyone aged over 22 and earning more than £8,105 (EUR 10,135) has been automatically enrolled and should contribute a minimum of 0.8 per cent of earnings until 2018, a rate that will gradually increase to 4 per cent. Employers will have to pay 1 per cent of earnings. This can either be invested in a professional pension scheme or into private insurance or into the state's National Employment Savings Trust, created as part of this reform. Employees can decide not to enrol but have to explain why.

3. 2013 reforms: further deregulation of employment law

In 2013, within the framework of the Employment Law Review started in 2010, the government made significant headway with the Red Tape Challenge programme launched on the pretext of fighting recession and in order to 'boost the competitiveness' of British businesses. Ten major social reforms were on the agenda as a result of long months of consultation in 2012 and a bill was adopted in early 2013, ushering in a further bout of deregulation:

- As one of the main reforms, the new bill on enterprise and regulatory reform provides that all labour disputes will have to go through the ACAS conciliation service before going to court. It also provides that employers may have a 'protected conversation' with an employee with a view to openly discussing compulsory retirement or poor performance, and the employee cannot use that conversation in court.
- This reform created new tribunal award limits, which came into force on 1 February 2013. The bill limits compensatory awards to 12 months' pay and encourages settlement agreements so as to ensure flexibility for businesses. In principle, the bill amends the existing rule according to which compensation for unfair dismissal was subject to a large one-off increase in 1999 and has kept on rising because of inflation. The bill also limits the damages judges can award in the event of unfair dismissal; the median award is around £5,000 (EUR 5,961). Furthermore, a series of novelties to facilitate the use of settlement agreements between employers and employees has been worked out to put the onus on the ACAS conciliation/mediation service to publish a statutory Code of Practice defining cases and conditions where settlement agreements may be valid.
- In April 2013, the government introduced a new type of contract whereby employees will be given shares in exchange for waiving certain employment rights. With this new measure, called 'Share for Rights', employees would be exempt from capital gains tax and social contributions (up to £50,000) but they won't be able to press charges for unfair layoff or request time off for training or flexible hours; they would also lose layoff benefits. This new type of labour contract, mainly targeted at fast-growing start-ups, can also be offered to new employees and jobseekers that turn it down could lose their rights.
- The right to unpaid parental leave increased from 13 weeks to 18 weeks on 8 March 2013, although compared with other member states, such as France (52 weeks), this is a rather moderate reform. The introduction of flexible parental leave will allow mothers to share the 52 weeks of maternity leave with fathers, who used to have only two weeks. They will have to take at least two weeks after the birth but the parents can opt into the flexible parental leave system and decide how to divide the remaining 50 weeks. They can take the leave in turns or together. Furthermore, the new provision will create a new statutory payment for parents on

flexible parental leave, with the same qualifying requirements that currently apply to statutory maternity and paternity pay. The Families Act which stipulates these reforms was passed on 13 March 2014.

- The right to request flexible working after 26 weeks spent in the company was extended to all employees. Previously, the possibility of asking employers for a flexible work schedule, teleworking and so on was only open to the parents of children aged 16 or less or disabled children under the age of 18.
- The reform of DBS checks (Disclosure and Barring Service), planned for March 2013, will give employers access to criminal records, so as to give British businesses – with the consent of the applicant – access to criminal records and to receive information online if nothing has changed since the last time the person was recruited.
- Collective consultation period. On 6 April 2013, the 90-day consultation period for 100 or more redundancies was reduced to 45 days.
- With the real-time information for payroll system employers are required to use real-time information to report payroll deductions before or when they make them (instead of once a year as at present). The reform was to come into force on 6 April 2013.
- The standard rates of statutory maternity, paternity and adoption pay were increased from £135.45 to £136.78 per week from 7 April 2013; they thus barely amount to 50 per cent of minimum weekly pay and for the first six weeks of maternity leave, the obligation to pay employees at least 90 per cent of their gross earnings remains.
- From April 2013, the statutory sick pay will increase to £86.70 per week instead of £85.85 currently.
- The reform that introduced fees for bringing employment tribunal claims was brought into force on 29 July 2013. This reform appears particularly unfair as, in practice, it will prevent many British employees from going to an employment tribunal, as in the case of procedures against unfair dismissals the costs may rise to £1,200 (EUR 1,471). The official goal of the reform is to relieve the courts and encourage conciliation between employers and employees. However, the effects have been dramatic: there has been a sharp decline in labour tribunals. In the third quarter of 2013/14 individual claims were a mere 33 per cent of what they had been the previous year. The reform has seriously altered the access that individuals have to legal recourse against unfair employer practices.

In 2014, a new conciliation system was adopted, introducing a new mandatory step for employees lodging a complaint to turn first to the ACAS arbitration service. This service will check for common grounds to avoid going to court, with a view to relieving employment tribunals. Only if no conciliation is possible will ACAS provide the plaintiff with a certificate asserting that attempts were made to solve the conflict out of court. Only then will the plaintiff be able to lodge a complaint to the employment tribunal.

Two years after the introduction of the mandatory early conciliation system in 2013, a survey commissioned by ACAS showed that in 71 per cent of the cases court claims were avoided; more than half the cases were settled via agreement. If no agreement is reached, 20 per cent do not proceed to court due to the level of legal costs put in place in July 2013. In total, less than 10 per cent of the cases come to an amicable solution, either because the employers refuse to negotiate (in 76 per cent of cases brought by employees) or because the employers' offer is considered insufficient (10 per cent).

From November 2012 to 28 February 2013, the government rolled out the second phase of the 'Employer Ownership of Skills Pilot' project in the form of a competitive fund that allows businesses to bid for funds to invest in their current and future workforce's skills and training.

Temporary agency work

On 17 January 2013, the government launched three more consultations, including one on the relevance of reforming the regulatory framework for employment agencies. The Employment Law Review launched by the coalition government in 2010, now halfway done, was carried out together with the Red Tape Challenge programme. The legislative amendments proposed in the consultation were to be taken into account in the Enterprise and Regulatory Reform Bill being debated in Parliament. Reforms that came into existence on 6 April 2014 created a mandatory

conciliation process before court proceedings, requiring that claimants turn to ACAS before pressing charges with an employment tribunal.

On 31 January 2014 the reform of the Transfer of Undertakings (Protection of Employment) (TUPE) regulation came into force. The amendments affect the 2006 Collective Redundancies and Transfer of Undertakings (Protection of Employment) (CRATUPE) bill which was introduced to comply with the EU Acquired Rights Directive, and also the Trade Union and Labour Relations (Consolidation) Act of 1992 (TULCRA). The legislative changes are subtle, but they significantly undermine existing protective rights.

4. 2015 labour law reforms

New regulation of 'zero-hours contracts'

In spring 2015, the Small Business, Enterprise and Employment Bill was passed. As part of it, the Zero-hours Workers (Exclusivity Terms) Regulations introduced a ban on exclusivity clauses in zero-hour contracts for low paid staff working for a low number of hours per week, using weekly time and income based thresholds. In a nutshell, the employer should guarantee a certain weekly income if they want to be able to impose an exclusivity clause on workers. This level is set by multiplying the agreed number of hours by the adult national minimum wage. An exception to the ban on exclusivity is provided, if the employer provides remuneration of at least 20 pounds per hour. This new legislation is to be coupled with the 2014 new regulation that allows Job Centres to mandate to zero-hour contracts for jobseekers, who will have to accept the offer if they don't want to lose their three months return-to-work payment.

Trade union bill

The first draft of the trade union bill, as part of the Conservative Party Manifesto in the 2015 election, was officially published in July 2015 and adopted in May 2016. It introduces radical changes to strike regulations. The 2016 Trade Union Bill reflects the lobbying of the TUC who joined forces with some in the House of Lords, but also concessions made by the government in exchange for support for the 'remain' vote in the Brexit referendum on European Union membership on 23 June 2016.

The final bill includes the following:

- An obligation that all ballot mandates for strikes and industrial action include a simple majority turnout of eligible balloted members. This provision replaces a previous simple requirement that a majority vote for action. This is expected to make large strikes in the public sector more difficult to organise.
- Thresholds in public services (health care, education, fire, transport and nuclear energy), entailing that at least 40 per cent of all those entitled to vote must vote for action. This means that non-voters are treated as 'no' voters. This is expected to make large strikes in both the public and private sectors more difficult to organise. Both the new thresholds are due to come into effect by the end of 2016.
- Reducing the validity of mandates for action to six months when previously there was no time limit. The initial proposal was to limit the mandate to four months. However, the mandate can remain 'live' for nine months if both unions and employers agree. The consequence, nonetheless, is that more re-balloting will be required unless disputes are settled quickly.
- Increasing notice periods of action from one week to two weeks (unless there is agreement between union and employer to maintain the one week notice period).
- New rules about identifying picket leaders to police (but without necessarily wearing an armband).
- New rules on updating union members' details that potentially increase employers' opportunities to use applications for injunctions to prevent or delay strikes.
- No ban on employers being able to hire agency staff to provide essential cover during strikes.
- No requirement for a detailed explanation of the dispute with only a summary now being required on the ballot paper.

The bill also provides for the following:

- No ceiling on facility time funding, despite the fact that public bodies are compelled to provide information on the extent to which they pay for union representatives to take time off during working time to carry out union duties (called ‘facility time’).
- No ‘opt in’ obligation for existing union members to pay their union’s political levy. Only new union members will be required to ‘opt in’.
- A trial of e-balloting for strike and industrial action ballots will be implemented to complement the existing postal balloting method.
- Maintaining the system of deducting union subscriptions directly from workers’ wages (called ‘check off’) in the public sector so that unions keep their authority over subscriptions directly from members’ bank accounts, but unions will have to pay the cost of administering the ‘check off’ system in the public sector.
- Public sector ancillary workers (cleaners, support staff and the like) will not be covered by the second threshold for strikes and industrial action in essential services
- Measures so that unions will no longer shoulder the majority of the costs of investigations carried out by Certification Officer. Safeguards against politicisation of the role of the union regulator have been put in place.

Apprenticeship

Following a levy put in place in 2015, the 2016 Government Guidance proposed to raise taxation on enterprises to further fund an apprenticeship scheme by 2017 to reach a sum of 3.8 billion by 2020. It further set the conditions of qualifying as an apprentice (at least 20 per cent of the time should be spent in on-the-job training and training should last for at least 12 months).

In April 2016, a new national minimum living wage has been implemented of approximately 9.13 euros per hour before tax. However, workers under the age of 25 are not eligible and will get a lower national minimum living wage. It is to be coupled with a new regulation on restricting skilled migration with a view to reducing economic migration from outside the European Union. In this respect, the so-called package on ‘Protecting job opportunities for UK residents and reducing UK businesses’ reliance on foreign workers’ contains measures to impose higher minimum wage thresholds for foreigners from outside the EEA, while other measures should facilitate the hiring of graduate trainees outside the EEA so that each enterprise could hire 20 of them instead of the current five.

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