

United Kingdom

On taking office in May 2010, the United Kingdom's Conservative-Liberal Democrat coalition government launched a review of employment law which continued into 2011 and led to a public consultation in October 2011. So far, this review has given rise to the following. First, the 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]). Furthermore, plans to allow workers declaring that they have been 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 for businesses to take reasonable steps to prevent harassment of their staff by third parties. Another part of the plan is to *exempt business 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. Finally, the government publicly announced that it would launch *a drive to revise burdensome EU directives*, such as the Directive on Pregnant Workers (92/85/EEC) and the Directive on Information and Consultation (2002/14/EC).

More recently, the government confirmed the *doubling of the qualification period for unfair dismissal tribunal claims*, from one year to two, as of 1 April 2012. The reform also provides for the charging of a fee for lodging a tribunal case, allegedly in a bid to prevent so-called 'vexatious' claims.

Finally, on 23 November 2010 the United Kingdom 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 includes 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 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 will go from 12 up to 24 months in April 2012.

- In 2012, a new consultation will be 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.
- The government will launch a consultation on two bills affecting dismissal: the first allowing SMEs with 10 employees or fewer to dismiss people even if they are performing their duties properly and the second reducing the consultation period for mass layoffs (more than 100 redundancies), which is currently set at 90 days at a minimum.
- The Ministry of Justice will also publish a consultation on the introduction of a fee for claimants bringing a case before an employment tribunal.
- A new consultation will be launched on measures designed to simplify the agreement by which employees or former employees receive a certain (negotiated) sum of money in return for not suing their employer.

Labour law reforms came into force in April 2012 concerning:

- The period of employment before an employee qualifies for the right to claim unfair dismissal has increased from one to two years. This applies only to employees who start a new job on or after April 6, 2012: employees already in employment on that date retain the one-year qualifying period. The eligibility period opening the right to receive a written document explaining the grounds for the dismissal also goes up from one to two years.
- The employers’ obligation to report industrial accidents to the Health and Safety Executive will be extended to 7 working days (at present 3 days).
- The reform of employment tribunal procedures applies to complaints lodged after 5 April 2012. The amount of the deposit that a tribunal can order a claimant to pay to proceed with a claim (if their case has little reasonable prospect of success) has risen from £500 (€606) to £1,000 (€1,213). Witness statements will be considered as already read, to save time in hearings. The party losing the case is liable for the costs spent on calling witnesses. The maximum amount of costs a tribunal can award goes up from £10,000 (€12,131) up to £20,000 (€24,246). Likewise, the Employment Tribunals Act 1996 (Tribunal Composition) Order 2012, which also comes into force on April 6, stipulates that a judge will sit alone when trying unfair dismissal cases.
- On a more positive note, weekly maternity, paternity or adoption benefits go up from £128.73 (€155.61) up to £135.45 (€164.06), while sickness benefits go up from £81.60 (€98.57) up to £85.85 (€103.46).

On 1 May 2012 a new bill entered into force temporarily suspending the 1994 Sunday Trading Act during the Olympic and Paralympic Games from July 22 to September 9, 2012 for shops with a relevant floor area of more than 280 square meters. This allows large stores in England and Wales to open for more than 6 hours on Sundays.

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 have to prevent harassment at work by a customer or supplier is set to be repealed under a proposal put forward 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 contrary to Community law. As a result, the Equality Act was passed four years later, defining 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 2 consultations launched on 15 May 2012 with a view of abolishing measures contained in the Equality Act related to:

- employers' liability for third-party harassment of their staff
- 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 trial
- the procedure of gathering information from employees who believe that they have been discriminated against, with a view to increasing the number of out-of-court settlements – the efficiency of which has yet to be proven (in the form of a questionnaire for individuals who think they have been discriminated against, as a way of gathering information before a trial)
- reducing the competences of the Equality and Human Rights Committee (EHRC)
- reviewing the equality obligation in the public sector, under which public organizations have to take into consideration the impact their decisions have on the institution’s different groups
- repealing the socio-economic obligation, under which public organizations are legally obliged have to take account of the impact their decisions have on different social categories.

The step-by-step introduction of "auto-enrolment" began on 1 October 2012, initially for the UK’s biggest companies (120,000+ workers). For the others, it will start in June 2015 at the earliest. Taking six years, "auto-enrolment" will mean that some 10 million private sector workers are automatically enrolled into a workplace pension scheme. Anyone aged over 22 and earning more than £9,440 will be automatically enrolled and will contribute a minimum of 0.8% of earnings, a rate gradually increasing to 4% in 2018. Employers will initially pay 1% of earnings, with this rate rising to 3% in 2018. Contributions can either be invested in a professional pension scheme, private insurance, or in the State’s National Employment Savings Trust, created as part of this reform. Employees can decide not to enrol but have to explain why.

As regards implementing the measures foreseen in the context of the Employment Law Review started in 2010 as well as its Red Tape Challenge programme, the government was half way through in early 2013. As a way of boosting the competitiveness of British companies, 10 major social reforms are on the British government’s agenda. The result of long months of consultation in 2012, a bill is expected in early 2013, with a further bout of deregulation expected from April 2013 onwards:

- One of the main reforms, the new bill on Enterprise and Regulatory Reform will provide 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 will create new tribunal award limits, expected to come into force on 1 February 2013. The bill will limit compensatory awards to 12 months' pay and encourage settlement agreements so as to ensure flexibility for businesses. In principle, the bill will amend the existing rule under which compensation for unfair dismissal was subject to a large one-off increase in 1999 and has kept on rising since due to inflation. The bill should also limit the damages judges can award in the event of unfair dismissal, with the median award currently received being around £5,000 (€5,961). Furthermore, a series of new procedures aimed at facilitating the use of settlement agreements between employers and employees has been elaborated, obliging the Acas conciliation/mediation service to publish a statutory Code of Practice defining cases and conditions where settlement agreements may be valid. The Guide is expected to be published by summer 2013.
- Employee shareholder contracts. In April 2013, the government will introduce a new type of contract whereby employees will be given shares in exchange for waiving certain employment rights. With this new “Share for Rights” system, employees would be exempt from capital gains tax and social contributions (up to £50,000) but they will not be able to press charges for unfair dismissal, request time-off for training or flexible hours, and they would lose dismissal benefits. This new type of labour contract, mainly targeting fast-growing start-ups, can also be offered to new employees. Jobseekers turning down such a contract could lose their rights.
- The right to unpaid parental leave increases from 13 weeks to 18 weeks from 8 March 2013. However, compared to other EU 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 two weeks only. They will have to take at least two weeks after the birth but 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 right to request flexible working after 26 weeks spent in the company will be extended to all employees. Currently, the possibility of asking employers for a flexible work schedule, telework, etc. is only open to the parents of children aged 16 or less or disabled children under the age of 18.
- The reform of DBS (Disclosure and Barring Service) checks planned for March 2013 will give prospective employers access to a job applicant's criminal records (for jobs requiring a DBS check).
- Collective consultation period. The 90-day consultation period where 100 or more redundancies are proposed goes down to 45 days from 6 April 2013.
- With the Real-Time Information (RTI) system, employers are required to submit PAYE information to HMRC each time an employee is paid, instead of just once a year at Payroll Year End. The reform comes into force on 6 April 2013
- The standard rates of statutory maternity, paternity and adoption pay increase from £135.45 to £136.78 per week from 7 April 2013. This barely amounts to 50 % of minimum weekly pay, and for the first 6 weeks of maternity leave, the obligation to pay employees at least 90% of their gross earnings remains.

- From April 2013, statutory sick pay will increase to £86.70 per week, up from the previous £85.85.
- The reform introducing fees for bringing employment tribunal claims will be introduced in summer 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 proceedings against unfair dismissal - costs can total up to £1,200 (€1,471). The official goal of the reform is to relieve courts and encourage conciliation between employers and employees.

On January 17 2013, the government launched 3 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 through, is being carried out in conjunction with the Red Tape Challenge programme. The legislative amendments proposed in the consultation will be taken into account in the Enterprise and Regulatory Reform Bill currently being debated in Parliament. Reform is expected to allow early conciliation before court proceedings, meaning that claimants could possibly turn to Acas before pressing charges before an employment tribunal. The reform of the Transfer of Undertakings (Protection of Employments) (TUPE) regulation is still under discussion.

Open between November 2012 and 28 February 2013, the Employer Ownership of Skills pilot was a competitive fund open to employers to invest in their current and future workforce in England. Employers were invited to develop proposals for raising skills, creating jobs, and driving enterprise and economic growth. Government will invest in projects in which employers are also prepared to commit their own funds in order to make better use of combined resources.

References/sources

Electronic newsletters/websites

Planet Labor: <http://www.planetlabor.com>

EIROnline: <http://www.eurofound.europa.eu/eiro/>

Epsucob@NEWS – Collective Bargaining in the Public Services: <http://www.epsu.org/>

ETUI-AIAS Collective Bargaining newsletter:
<http://www.etui.org/E-Newsletters/Collective-bargaining-newsletter>

ETUC website section on economic and social crisis: <http://www.etuc.org/r/1378>

ETUI website section on crisis: <http://www.etui.org/Topics/Crisis>

European Labour Law Network (ELLN) - <http://www.labourlawnetwork.eu>

Periodicals

Liaisons sociales Europe

Social International

Other

Barnard, C. (2012) l'effet de la crise sur le droit du travail au Royaume-Uni : une révolution ou évolution ? in Revue de droit compare du travail et de la sécurité sociale, Crise financière en Europe et droit social, Comptrasec, Université Bordeaux IV, 2 :96-104.

Ewing, K. and Hendy, J. (2012) Unfair Dismissal Law Changes – Unfair?, Industrial Law Journal, Vol. 41, N° 1, March 2012

ILO (2012) World of Work Report 2012: Better jobs for a Better Economy, ILO, Geneva

Laulom, S., Mazuyer, E. Teissier, C., Triomphe, C.E. and Vielle, P. (2012) How has the crisis affected social legislation in Europe? ETUI Policy Brief 2, 2012, Brussels: ETUI.

Available in English and French at: <http://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/How-has-the-crisis-affected-social-legislation-in-Europe>

Muller, A. (2011) Employment protection legislation tested by the economic crisis: A global review of collective dismissals for economic reasons. Dialogue in Brief, No. 3, September 2011, ILO, Geneva.

Available in French, English and Spanish at: http://www.ilo.org/ifpdial/information-resources/publications/WCMS_166754/lang--en/index.htm

Tajgman, D., Saget, C., Elkin, N. and Gravel, E. (2011) Rights at work in times of crisis: Trends at the country level in terms of compliance with international labour standards, Employment Sector, Employment Working Paper N° 101, ILO Geneva.

Available at: http://www.ilo.org/employment/Whatwedo/Publications/working-papers/WCMS_167804/lang--en/index.htm

Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)