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Good jobs consultation: good news for employers?

Consultation on the "Good Jobs" Employment Rights Bill closed on 30 September 2024. The consultation proposed a wide range of employment law reforms for Northern Ireland, addressing the four key aspects of a "good job" namely: terms of employment; pay and benefits, voice and representation and work-life balance.

Many of these would bring NI in line with the rest of the UK. However, the new Labour government has started its own consultation on major employment law changes which would cause substantial divergence in employment law between NI and Great Britain.

We've assessed the key proposals in the Good Jobs consultation, their impact on NI employers and how they compare to recent and forthcoming changes in GB, including:

- Written statements of employment particulars
- Swedish derogation
- Zero-hour contracts
- Holiday pay
- TUPE reforms
- Trade unions
- Flexible working
- Right to disconnect
- Labour's proposals in Great Britain

Written statements of employment particulars

Employers would be required to provide these statements on day one of employment rather than after two months. They would be provided to "workers" as well as employees and would include additional information including details of paid leave, benefits and training.

These reforms would mirror those made in April 2020 in GB following the Taylor Review of modern workplace practices.

Our view is that these proposals would have a low impact on employers beyond updating their template employment contracts for new hires.

Most employers already provide an employment contract on or before the beginning of employment. Many, especially those who operate across the UK, have this additional information in their employment contracts already. The right will not apply retrospectively and while employees can request updated terms, our view is that requests will be rare.

Swedish derogation

The so-called "Swedish derogation" is an exception to an agency worker's general right to pay parity with directly hired comparators after completing a 12-week qualifying period during work assignments, if they are paid by their agency between assignments.

This loophole was identified as potentially exploitative by the Taylor Review and was removed in GB since 2020. The Good Jobs consultation proposes taking the same approach in NI.

Our view is that this proposal will have a low impact for most employers, though it may have specific consequences for employment agencies who currently structure their contracts with agency workers to avail of this arrangement.

Zero-hour contracts

The consultation seeks views on whether zero-hour contracts (ZHCs) should be banned or restricted, potentially mirroring the approach in the Republic of Ireland, where they can only be used for casual, emergency or short-term relief work.

Our view is that these proposals could have substantial and unintended consequences for many employers, especially those in the events and hospitality industries. While recognizing the aim of ending exploitative and precarious working arrangements, it is equally true that ZHCs can facilitate a flexible arrangement which benefits both employer and employee.

While banning ZHCs may result in some employees receiving stable employment terms, it may prevent others, such as students or those with care responsibilities, from entering the workforce altogether. It could also present significant resourcing issues for employers with seasonal or short-term fluctuations in their staffing needs.

If ZHCs are permitted for casual, emergency and short-term relief work, the impact should be lower.

In the wider picture, the UK government had passed legislation allowing workers to request a predicable working pattern. This was due to come into force in September 2024 but has been shelved by the new Labour government pending its planned reforms in the forthcoming Employment Rights Bill. The UK government is also consulting separately on the use of zero-hours contracts with agency workers.

It is likely that the forthcoming reforms in GB will inform the final version of these proposals in NI. As a minimum, it is very likely that the NI reforms will include a ban on exclusivity clauses in ZHCs, bringing NI in line with the rest of the UK.

Holiday pay

The reference period used to calculate holiday pay for workers with variable hours would be extended from 12 to 52 weeks. This would bring NI in line with the rest of the UK.

Our view is that this proposal would have a positive overall impact for employers. The 52-week reference period is more practical and should allow a fairer approach to holiday pay which accommodates seasonal fluctuations in work. Having a harmonized approach will be particularly welcome for employers with staff in both NI and GB.

However, the consultation does not cover the introduction of a two-year backstop on holiday pay claims, which has been in force in GB for all claims lodged since July 2015.

The lack of a two-year backstop continues to present a major concern for many employers, given the potential for large historic liability for underpaid holiday pay, often accrued in the period before the decisions in *Bear Scotland* and others established how holiday pay should be calculated.

Legislation was introduced in both GB and NI in January 2024 to amend the Working Time Regulations and clarify what payments should be included in holiday pay. In GB, the changes went further, reintroducing rolled-up holiday pay and setting new leave accrual rules for workers with “part year” or irregular hours.

These changes followed the Supreme Court’s decision in *Harpur Trust v Brazel.* This decision highlighted fundamental issues with the existing rules on how holidays accrue and are paid for these types of workers. They are not addressed in the Good Jobs consultation and equivalent reform is needed to bring NI in line with the rest of the UK.

TUPE reforms

TUPE was amended in GB in 2014 to include the “micro-business” exemption, allowing businesses with under 10 employees to inform and consult directly with impacted employees during TUPE transfers.

This exemption was extended again in 2024, to allow direct information and consultation for businesses with under 50 employees or for transfers involving less than 10 employees.

These changes would be made in NI, bringing it in line with the rest of the UK. TUPE would be amended further to clarify that it only applies to “employees” and not “workers”.

Our view is that these changes would have an immediate positive impact for employers in NI. The obligation to elect employee representatives to inform and consult can be burdensome for small businesses and in practice, employers will often circumvent the requirement by asking employees to act as their own representative.

The clarification on TUPE’s application to employees only, would bring welcome clarification.

The Good Jobs consultation also asks about wider TUPE reforms. The 2014 changes in GB included provision for pre-transfer redundancy consultation and confirmation that a post-transfer change in workforce location will constitute an "ETO" reason. This allows employers to change contractual terms post-transfer or make redundancies based on relocation without the changes being void or the dismissals being automatically unfair. Equivalent reforms would be welcomed by NI employers and would resolve a major divergence with GB employment law.

Trade unions

The consultation seeks views on how the role of trade unions can be increased, particularly in low paying sectors. The consultation encourages proposals on how to best achieve greater access to the workplace for trade union officials, where there is no recognition agreement in place.

It refers to examples of access rights in the Republic of Ireland and New Zealand. In the former, representatives can request reasonable access to support their members. In the latter, this right is automatic, with a further right to request access to workplaces with no membership.

The consultation seeks views on whether micro (<9) or small (10-49) businesses should be exempted from these enhanced access rights.

Currently, trade unions can only apply for statutory recognition in businesses employing 21 or more employees on average in a 13 week period. The consultation seeks views on whether this threshold should be lowered to 11 or more employees, in line with the fair employment monitoring threshold.

Our view is that the obvious consequence of increased access rights is that trade unions will seek access to more workplaces and increased membership. Uptake will naturally depend on how attractive membership is within individual workplaces, especially in sectors without historic trade union involvement, such as software development and cyber security.

Lowering the threshold for statutory recognition, coupled with enhanced access rights, will very likely see a material increase in voluntary union recognition to avoid the statutory process as well as statutory applications.

These reforms are in a similar vein to the UK government's proposals in the Employment Rights Bill, which are currently going through consultation. These proposals would give unions the right to request access, negotiate access agreements or apply for access orders. The thresholds for recognition would be simplified and lowered.

Again, the eventual GB approach may inform the NI proposals to some degree, although the GB reforms will partly focus on repealing the previous Conservative government's reforms to trade union law, which never applied in NI.

Flexible working

The current 26-week qualifying period to request flexible working would be removed and employees would be permitted to make two requests per year. The requirement for employees to explain the impact of their request would be removed.

These changes would bring NI in line with the rest of the UK, which implemented these reforms in April 2024. However, NI would keep its shorter 6-week period to deal with requests, compared to 2 months in GB.

Our view is that this reform could have an immediate impact on NI employers through increased request for flexible working. This reform will likely receive disproportionate media attention which will inevitably increase the rate of requests.

In practice however, many employers offer flexible working from day one already under their own internal policies. Given that the statutory grounds to refuse requests are not changing, employers who do not permit flexible working arrangements for permitted business reasons will not need to change their approach, though they may need to deal with more requests.

This change should not prevent employers requiring in office attendance during an employee's probationary period, so long as they can establish the grounds for refusal.

Right to disconnect

The consultation seeks views on whether the rules on working time contained in the Working Time Regulations, which are largely unchanged since 1996, are still an effective safeguard for employees' work/life balance given developments in technology and home-working.

These proposals follow a wider global trend towards a right to disconnect, with a number of European countries introducing legislation in recent years. Most relevantly, the Republic of Ireland introduced a Code of Practice on the right to disconnect, which although not legally binding would be referred to in employment disputes.

The UK government has pledged to introduce a statutory code of practice, though the finer detail is expected in 2025. Both the Irish and eventual UK approach may inform the final position in NI, and it's too early to say how employers will be impacted.

There are important differences in Irish working time rules – employees cannot opt out from the 48 average weekly hour limit and employers must proactively record working hours – which have reduced the practical impact.

The UK approach may draw from the more recent example of Australia, which legislated for the right to disconnect in August 2024, allowing employees to refuse to reply outside work hours unless it is unreasonable, as well as creating a dispute resolution process and fines for non-compliance.

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Labour's proposals in Great Britain

In some ways, the Good Jobs consultation proposals have been upstaged by the reform package proposed by the UK government as part of the newly published Employment Rights Bill.

These include major reforms to unfair dismissal protection, removing the two year qualifying period and making it a day one right. This would be subject to a streamlined dismissal process during the "initial period of employment" which is currently expected to be nine months.

Other important reforms include:

- Widening the trigger for collective redundancies by removing the requirement for there to be 20+ proposed dismissals at "one establishment".
- Refusing a statutory flexible working request must be reasonable, as well as being based on one of the permitted grounds for refusal.
- Using "firing and rehiring" to change employees' terms and conditions will be automatically unfair except in limited circumstances.
- Removing the three day wait period and minimum earnings threshold for Statutory Sick Pay.

These changes will not apply in NI without equivalent local legislation. The full package of GB reforms is substantial and represents a major overhaul of employment law. In particular, the changes to unfair dismissal protection will fundamentally change the initial employment relationship.

Equivalent reform would be necessary in NI to avoid significant divergence, which could cause particular difficulty for businesses operating in both NI and GB.

However, it will be extremely difficult for NI to keep pace in areas where GB proposals build on previous developments which were never implemented in NI. For example, the introduction of gender action plans builds on gender pay gap reporting, which is still not required in NI.

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