



Comparative Employment Law

Table of Changes

Great Britain

Northern Ireland

Republic of Ireland

Comparative Employment Law: NI, GB and Ireland.

Welcome to our three-jurisdictional comparative employment law table.

As you will see, we have columns on the three employment law jurisdictions of Northern Ireland, the Republic of Ireland and Great Britain (Scotland, Wales and England currently form one single jurisdiction in relation to most employment law changes). The table concentrates on the main recent developments in employment law between the jurisdictions and sets out relevant comparative changes (or lack of change).

The table is NOT a complete record of comparative laws within these islands. We have not set out historical differences – we tried and it became too unwieldy! What you will find in this document is a list of recent developments in the contents pages. Click on any one and you'll be taken to the relevant section, where you will see recent developments in that area between NI, ROI and GB.

Each section has a link to further information on the internet – we have little control over these, so please let us know if any stop working at any time and we'll try to source something else that supports the information in the table.

GB changes are set out in the first column not because it is the largest jurisdiction but rather because it is the one that has introduced most employment law changes. NI is in large part reacting to the GB developments, albeit employment law is a devolved power in NI. ROI, on the other hand, has some very different structures to the other two jurisdictions, although a number of changes, such as those in whistleblowing or employment dispute reforms, have drawn from the UK experiences and legislative language.

Inevitably with a table as ambitious (and limited) as this, there will be some errors or omissions. Please let us know about them and we'll improve the position and let everyone know.

This document would not be possible without the hard work and assistance of a number of people outside Legal-Island. We would, in particular, like to thank Mark McAllister of the Labour Relations Agency, Geraldine Lavery and (previously) her colleague Dr Alan Scott from the Department for the Economy (formerly DEL), and Ciara Fulton from DWF solicitors for their help in compiling and correcting the table. You will find short biographies at the end of this document.

The table will be of most value to those who operate in more than one jurisdiction. However, we hope you find the table helpful, regardless of the jurisdiction(s) in which you operate – it's pretty much a snapshot of what's going on in employment law wherever you are based. Please send any comments or suggested corrections to me at scott@legal-island.com.

Kind regards,



Scott Alexander
Head of Learning and Development
Legal-Island



Disclaimer: This table is for guidance only. We regret we are not able to respond to requests for specific legal or HR queries and recommend that professional advice is obtained before relying on information supplied anywhere within this table.

Click on a title below to view the changes in legislation:

Section 1: Dismissal & Other Individual Rights	Section 2: Collective and Industrial Issues	Section 3: Tribunal & Other Legal & Dispute Resolution Processes
<u>Qualification period for claiming unfair dismissal and max compensatory awards</u>	<u>Reform of registered employment agreements / registered employment orders</u>	<u>Tribunal and dispute resolution reform</u>
<u>Reform of family friendly & parental rights</u>	<u>Collective bargaining rights</u>	<u>Rapid resolution scheme for 'desk-topping decisions' on simple jurisdictions by legal officers</u>
<u>Reform of the public interest disclosure legislation (whistleblowing)</u>	<u>Low pay commission and national minimum wage</u>	<u>Mediation in employment</u>
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<u>Amendments to codes of practice on discipline and grievance</u>	<u>Consultation in collective redundancy context</u>	<u>Early neutral evaluation / neutral assessment</u>
<u>Reform of working time legislation</u>	<u>Introduction of legislation to prohibit the blacklisting of trade union members</u>	<u>Early conciliation</u>
<u>Reform of the law on settlement agreements & introduction of protected conversations</u>	<u>Assured register of members</u>	<u>Data protection</u>
<u>Financial penalties against employers in flagrant breach of employee rights</u>		
<u>New form of contract known as 'employee-shareholder' (shares in return for sacrificing employment rights)</u>		
<u>Zero hours contracts</u>		

Section 1: Dismissal & Other Individual Rights

Qualification period for claiming unfair dismissal and max compensatory awards

GB	NI	ROI
<p>Increase in qualifying period to 2 years implemented on 6th April 2012 and max compensatory award limited to 1 yr's salary or:</p> <p>Max GB Compensatory Award for Unfair Dismissal from 6/4/17: £78,962 to £80,541</p> <p>Week's Pay for 2017/18: £479 to £489 http://bit.ly/2sX7mHw</p>	<p>1 year's qualifying period in NI, with no one year salary cap, as in GB.</p> <p>NOTE: The Employment Act (Northern Ireland) 2016 (Chapter 15) was given Royal Assent on 22.4.16 http://bit.ly/1NYTlgv</p> <p>Week's pay: £490 to £500 for 2016/17 http://bit.ly/1smT9mO</p> <p>Max NI Compensatory Award from 22.3.16: £78,400 to £79,100 http://bit.ly/1smT9mO</p>	<p>Qualification period for unfair dismissal claim is 1 year's continuous service.</p> <p>Maximum compensatory award is 104 weeks remuneration.</p> <p>There are currently no plans to review. http://bit.ly/1H1qAjq</p>

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Reform of family friendly & parental rights

GB	NI	ROI
<p>Children and Families Act 2014 for most applies to parents of children born from April 2015. Key areas are Parts 7, 8 and 9. http://bit.ly/190Yrdg</p> <p>Flexible working requests for all employees under the Flexible Working Regulations 2014 commenced from 30th June 2014 http://bit.ly/1miDzho</p> <p>Acas Code and Guidance: http://bit.ly/V7lwDR</p> <p>The Shared Parental Leave Regulations 2014 came into operation on 1.12.14 and apply to working parents of children due to be born on or after 5.4.15: http://bit.ly/1q6eWQG</p> <p>The Statutory Shared Parental Pay (General) Regulations 2014 http://bit.ly/1C76i3J</p> <p>The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014 came into operation on 1.12.14: http://bit.ly/1BaTKrQ</p> <p>The Paternity and Adoption Leave (Amendment) Regulations 2014 came into force on 1st October 2014: http://bit.ly/1mF5AAF</p> <p>The Statutory Maternity Pay and Statutory Adoption Pay (Curtailed) Regulations 2014 http://bit.ly/1lpjgfi</p> <p>Other relevant legislative changes relate to adoption from overseas and babies born via Human Fertilisation and Embryology techniques. The govt also developed a SPL and SPP online calculator: http://bit.ly/1rgXdTG</p> <p>Plans for late 2017 to allow working grandparents to be added into the Shared Parental Leave regime (18 week period) no more details as yet. http://bit.ly/1kZ36Tj</p>	<p>Work and Families Act (Northern Ireland) 2015 Part 2 (shared rights to pay and leave) and Part 3 (ante-natal and adoption appointments) applies essentially as in GB: http://bit.ly/1HXMHEa</p> <p>Flexible working requests for all employees under the Flexible Working Regulations (Northern Ireland) 2015 from 5th April 2015: http://bit.ly/1HVYiZx</p> <p>The key difference is the <u>retention of the statutory procedures</u> for dealing with flexible working requests; there is no Code of Practice, as in GB.</p> <p>You will find most of the Statutory Rules etc on the LRA website in their employment legislation section: http://bit.ly/20Qqa5R</p> <p>Or on the DfE website: http://bit.ly/1sX8Qlh</p> <p>DEL Technical Guidance: http://bit.ly/1Fcohta</p> <p>The LRA good practice guide: http://bit.ly/1xEFDqB</p> <p>Time Off to Attend Adoption Appointments (Prospective Adopters) Regulations (Northern Ireland) 2015 came into operation on 5th April 2015: http://bit.ly/1PSIQ0m</p> <p>It is uncertain if the policy on extending leave to grandparents will be approved in NI, although equivalent rules were brought in simultaneously in relation to shared parental leave in April 2015.</p>	<p>The Family Leave Bill will consolidate previous provisions for maternity, adoptive, parental, and carer's leave. http://bit.ly/1BHLnua</p> <p>Statutory paternity leave was introduced from 1 September 2010 & gives the relevant parent the right to two weeks paternity leave following the birth or adoption of a child. This is paid at the rate of €235 (from 13 March 2017) per week, subject to a person having the appropriate PRSI contributions.</p> <p>The amendments to the Workplace Relations Act under the Paternity Leave and Benefit Bill 2016 came into effect on 1st September: http://bit.ly/2dTlvzl</p>

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Reform of the Public Interest Disclosure Legislation (Whistleblowing)

GB	NI	ROI
<p>ERR Act received Royal Assent 24/4/13 (clauses 17-20) and reforms came in 25.6.13: http://bit.ly/12S9L4t</p> <p>BIS response to call for evidence published 25 June 2014, including prescribed persons changes and refunding of tribunal costs: http://bit.ly/1lIkwwl</p> <p>BIS published its response to its consultation on "Whistleblowing: prescribed persons - reporting requirements" in September 2014. It explains what should be included in the annual report of whistleblowing disclosures in GB. http://bit.ly/1Eqwww8</p> <p>Whistleblowing: GB guidance for prescribed persons (20.3.15) http://bit.ly/1DOWRxX</p> <p>Whistleblowing: guidance and code of practice for employers (20.3.15) http://bit.ly/1EJiw3u</p> <p>Chesterton v Nurmohamed was first EAT case after inclusion of 'public interest' clause in GB legislation (This case was due to be heard by the Court of Appeal on 9/6/17) http://bit.ly/1O9eu8Z</p> <p>Also see Underwood v Wincanton (2015), public interest can be group contractual dispute: http://bit.ly/1N6tIUv</p> <p>Further changes to whistle-blowing legislation - Protected Disclosures (Extension of Meaning of Worker) Order 2015, the Small Businesses, Enterprise and Employment Act 2015 - Prescribed persons required to produce annual reports of the disclosures of information made to them by whistleblowers on an anonymous basis http://bit.ly/2rZlrgH</p>	<p>Provision to close the loophole; reduce compensation where disclosures not made in good faith; reporting requirements; detrimental treatment by co-worker/agent and extension of meaning of worker included as part of the Employment Act (sections 13 - 17.) Awaiting commencement. http://bit.ly/1NYTlgv</p> <p>Review of Public Interest Disclosure (Prescribed Persons Order) commenced June 2016. Revised Schedule awaiting commencement.</p> <p>Similar reporting provision planned for NI. Section 15 Employment Act 2016. Awaiting commencement: http://bit.ly/1NYTlgv</p>	<p>The Protected Disclosures Act 2014 became law on 15 July 2014.</p> <p>This Act introduced whistle blowing legislation for workers throughout the Republic of Ireland for the first time (previously legislation was piecemeal and sectorial).</p> <p>Max compensation is 5 years' salary for unfair dismissal due to protected disclosure.</p> <p>Public sector duty to have policy and make annual report on whistleblowing claims: http://bit.ly/1AoZdMe</p> <p>A Code of Practice on protected disclosures was published by the WRC in Nov 2015: http://bit.ly/1MbG314</p> <p>DPER has published for public consultation draft Guidance for public bodies on the performance of their functions under the Protected Disclosures Act: http://bit.ly/1H0o7ri</p> <p>The first written Judgement of the Circuit Court on the interim relief provided for in the Protected Disclosures Act was delivered in June 2015. Several have been delivered since.</p>

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Employment Equality amendments

GB	NI	ROI
<p>Changes in GB Equality Act 2010 removal - 3rd party liability, questionnaires and equal pay audits came into effect 1/10/2014. Review of Act announced 1.5.14: http://bit.ly/1nW1iaC</p> <p>'Closing the Gender Pay Gap' is a GB Consultation paper on whether private and voluntary sector employers in England, Scotland and Wales with at least 250 employees should publish gender pay information. Ends 6.9.15: http://bit.ly/1RyqS7E</p> <p>Early plans announced to look at name blind CV's in the public sector in a bid to encourage diversity in the workplace: http://bit.ly/1MwYRpv</p>	<p>Status of NI Equality Bill still uncertain at this juncture. NI has a wide range of equality legislation and consolidation looks unlikely at this stage.</p> <p>No recent movement on this.</p>	<p>Equality in employment is provided for primarily by the Employment Equality Acts 1998 – 2011. The Equal Status Acts 2000 – 2012 provide for equality in the provision of goods or services.</p> <p>The Employment Equality (Amendment) (No. 2) Bill 2013 which was renamed the Equality (Miscellaneous Provisions) Bill 2013 was passed by the Dail on 2 December and signed by the President on 10 December 2015. http://bit.ly/11O0ras</p> <p>The Equality (Miscellaneous Provisions) Act 2015 was commenced in its entirety on 1 January 2016. Its major impact will be on the requirement for all employers with a compulsory retirement policy to objectively justify each retirement. http://bit.ly/2dav6Qf</p> <p>The PMB the Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016 has been given much government support: http://bit.ly/2r9rHYX</p> <p>The Equality Act also amends section 37 of the Employment Equality Acts so that the exclusion for discrimination by religious educational or medical institutions on grounds of religion can only be relied upon by institutions that are maintained in whole or in part by public money, if the more favourable treatment on grounds of religion is a genuine, legitimate and justified occupational requirement having regard to the institution's ethos and the means of achieving that aim are objectively justified and are appropriate and necessary (both terms are narrowly and specifically defined in the new Act in this context).</p> <p>The Act also contains provisions which:</p> <ul style="list-style-type: none"> - clarify that employers may continue to set compulsory retirement ages where they are "objective and reasonably justified by a legitimate aim" and the means of achieving that aim are "appropriate and necessary"; - require employers to objectively justify decision to offer a fixed term contract to a person over compulsory retirement age; - allow persons aggrieved by discriminatory advertisements to make a complaint (rather than just the IHREC); and - are designed to bring the definition of indirect discrimination into line with relevant EU Directives and CJEU case law. <p>The Disability (Miscellaneous Provisions) Bill 2016 was presented to the Dáil for Second Stage on 7 and 8 February 2017 it will allow ratification of the UN Convention on Rights of People with Disabilities and will make further technical amendments to disability and equality legislation and was</p>

		<p>given priority in the autumn 2016 legislative programme: http://bit.ly/2rZtrYS</p> <p>Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016 [No. 107 of 2016] This Private Members Bill, will, if enacted, amend section 34 of the Employment Equality Act to prohibit employers from setting or contracting for a mandatory retirement age (subject to certain exceptions). http://bit.ly/2r9rHYX</p> <p>Employment Equality (Amendment) Bill 2016 [No. 115 of 2016] This Bill seeks to amend section 6 of the Employment Equality Act to abolish mandatory retirement as against an employee where that employee can show as a matter of fact, full fitness to work including the ability to carry out the work and tasks for which they are contracted in a satisfactory manner. http://bit.ly/2srUQTh</p>
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Amendments to Codes of Practice on Discipline and Grievance

GB	NI	ROI
<p>Acas Code of Practice 1 - Disciplinary and Grievance Procedures http://bit.ly/1C76nUM</p>	<p>DfE is engaging with the LRA on this issue. The LRA has consulted on minor reform to Code and an announcement is imminent regarding the right of accompaniment. (Case law in this area has developed post "Toal" – See Stevens v University of Birmingham 2015 EWHC 2300).</p>	<p>The Labour Relations Commission Code of Practice on Grievance and Disciplinary Procedures is not currently under Review. http://bit.ly/1913bzz</p>

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Reform of Working Time Legislation

GB	NI	ROI
<p>The Working Time Regulations 1998 were due to be amended at some time in 2015 to take account of recent superior court decisions.</p> <p>The EU Commission was also consulting on working time until 15.3.15: http://bit.ly/1xgllHH</p> <p>Case law in this area is constantly moving, especially in the area of holiday pay calculation</p>	<p>The consolidated Working Time Regulations (Northern Ireland) 2016 came into operation on 28 February 2016: http://bit.ly/1sGYsNL</p> <p>Guidance: http://bit.ly/1qXeJgc</p>	<p>On 13/11/14 the Minister for Jobs, Enterprise and Innovation announced the intention to introduce legislation to amend the Organisation of Working Time Act 1997 to allow workers to accrue annual leave during periods of sick leave for up to 15</p>

<p>and carrying over leave. See <i>Plumb v Duncan Print Group (EAT) 2015</i>. The EWCA's decision in <i>British Gas Trading v Lock (2016)</i> means that UK workers' remuneration for annual leave periods must include both commission and basic pay, if this is what they are normally paid. Leave to appeal to the Supreme Court was denied in Feb 2017: http://bit.ly/2s7wMWB</p> <p>The European Work Foundation have recently published a research paper on opting out of the Working Time Regulations http://bit.ly/1IRxYKf</p>	<p>Proposals to review the Working Time Regulations in line with EU cases postponed following Brexit referendum vote. The way ahead is under consideration.</p>	<p>months.</p> <p>Those changes were included in S.86 of the Workplace Relations Act 2015, and commenced on 1.8.15. http://bit.ly/1FANqIz</p> <p>Organisation of Working Time Act 1997 (Amendment) Bill seeks to amend the OWTA to remove the blanket exclusion of An Garda Síochána and members of the Defence Forces from scope of the OWTA.</p>
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Reform of the law on settlement agreements & introduction of protected conversations

GB	NI	ROI
<p>Settlement agreements - GB Government response issued on 17/1/13. ACAS code applied from 29th July 2013: http://bit.ly/19xkSp1</p> <p>Protected conversations - The Government decided not to proceed with the broad notion, but rather in pre-termination negotiations only in UD context. New laws applied from 29.7.13: http://bit.ly/11xGAqc</p> <p>The Employment Appeal Tribunal (EAT) has confirmed the privilege that applies to 'protected conversations' under the Employment Rights Act 1996 cannot be waived and extends not only to the content of those protected conversations, but also to the fact of the conversations taking place. http://bit.ly/2dZkqVX</p>	<p>The issue of protected conversations and compromise agreements, their simplification, context, and how they will operate in practice formed part of the employment law review consultation. There was no widespread appetite for protected conversations to be introduced. The Department felt considered that the potential risks to the rights of employees outweighed any benefits to employers. In particular, it was very unclear as to whether protected conversations could reduce satellite litigation. DfE proposes clear guidance for employers and employees as to how to conduct a safe and lawful discussion about ending the employment relationship.</p>	<p>This is not governed by legislation in ROI and is not subject to review.</p> <p>Recent guidance on settlement agreements has been provided by the High Court in <i>Eoin Kerrigan v Smurfit Kappa Ltd, c/o Smurfit Kappa UD 1921/2011</i> http://bit.ly/1Cv71YR</p>

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Financial penalties against employers in flagrant breach of employee rights

GB	NI	ROI
<p>Contained in clause 16 of Employment and Regulatory Reform Act 2013 which received Royal Assent on 24/4/13 http://bit.ly/1O5McNn</p> <p>Only a handful of penalties have been imposed against GB employers for breaching their legal obligations “with aggravating features” since rules were brought in April 14: http://bit.ly/1M5foUi</p>	<p>No corresponding provision in NI, and no plans for introduction.</p>	<p>Not being considered in ROI.</p>

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New form of contract known as ‘employee-shareholder’ (shares in return for sacrificing employment rights)

GB	NI	ROI
<p>Contained within Clause 27 of the Growth and Infrastructure Act which received Royal Assent on 24/4/13. Introduced 1/9/13: http://bit.ly/15m8HF9</p> <p>Current information on numbers/up-take/conversion are as yet unknown</p>	<p>No corresponding provision in NI, and no plans for introduction.</p>	<p>Not being considered in ROI.</p>

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Zero Hours Contracts

GB	NI	ROI
<p>The GB Small Business, Enterprise and Employment Act 2015 received Royal Assent on 25.3.15 and included a commitment to remove ‘exclusivity’ clauses in zero hours contracts on a day appointed by a Minister of the Crown. http://bit.ly/1a980Yg</p> <p>BIS Employment Fact Sheets are a useful guide to the employment changes under Act http://bit.ly/1lvwnhS</p> <p>The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 were made and applied from Jan 16. They provide protection for employees on zero hour contracts unfairly dismissed or subjected to a detriment: http://bit.ly/22mPAL7</p> <p>The government-commissioned Taylor inquiry has called for employees on zero-hours contracts to be given the right to request a move onto fixed hours, similar to the present right to request flexible hours - after having a child for example. The CBI backed the idea. The new "right to request" fixed hours could be used by some of the</p>	<p>The Employment Act established enabling provisions on zero-hours contracts which provide for regulations to be made. Officials are currently considering potential policy options to address abuses. The outcome of the Independent Review of Employment Practices in the Modern Economy which was commissioned by the Prime Minister on 1 October 2016 and is due to report in Summer 2017 may also inform the way forward: http://bit.ly/1NYTlqv</p>	<p>9.2.15 Jed Nash, Jnr. Minister for Business and Employment announced that a major a study of Zero hours contracts in Ireland would be undertaken in conjunction with University Limerick. http://bit.ly/1zcKvTB</p> <p>A report of an expert group examining the extent of zero hours and low-hours work, which was commissioned by Minister for Business and Employment Ged Nash, recommended safeguards be introduced to prevent workers from being called into work or having previously-scheduled work cancelled by employers at very short notice: http://bit.ly/1RTNkUJ</p> <p>The closing date for submissions on the report was 4.1.16</p> <p>Banded Hours Contracts Bills 2016 [No 39 of 2016]</p> <p>Also a Private members Bill has been brought forward and provides that after 6 months of continuous employment, a worker or his or her trade union representative can request to be moved to an increased weekly band of hours where the</p>

900,000 people on zero-hours contracts, a number that has risen from 143,000 in 2008.
<http://bbc.in/2s7zT0L>

requested hours exceeds the average hours worked weekly in the previous six months. Employers are obliged to consider and provide a reasoned response within 21 days. Refusals are only permitted on objectively justified grounds.

The Bill was referred to the Committee on Jobs, Enterprise and Innovation on 31 January 2017.
<http://bit.ly/2t5a8Lv>

Draft Legislation on Casualisation of Employment was brought forward by government in May 2017. Five core terms of employment, including the expected duration of the contract and what the employer reasonably expects the normal length of the employee's working day and week will be, should be issued to employees within 5 days of commencement of employment; a floor payment for low-paid workers who are called into work for a period but not provided with that work; and the right for an employee whose contract of employment does not reflect the reality of the hours worked on a consistent basis over a reference period of 18 months, to be placed in a band of hours that better reflects the actual hours worked over that reference period:
<http://bit.ly/2siK6qG>

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Section 2: Collective and Industrial Issues

Reform of Registered Employment Agreements / Registered Employment Orders

GB	NI	ROI
Do not apply in GB	Do not apply in NI	<p>The Industrial Relations (Amendment) Act 2015 provides a replacement for Registered Employment Agreements in individual enterprises and a new mechanism whereby pay and pension and sick pay provisions in a particular sector can be established, agreed and enforced by Order.</p> <p>http://bit.ly/1MGzJQo</p> <p>Explanatory Memorandum to the Bill:</p> <p>http://bit.ly/1IOC61h</p>

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Collective Bargaining Rights

GB	NI	ROI
<p>The Trade Union Act received Royal Assent in May 2016 in GB. The Act introduces:</p> <ul style="list-style-type: none"> * A 50% threshold for ballot turn-out * An additional threshold of 40% of support to take industrial action from all members eligible to vote in the key health, education, fire, transport, border security and energy sectors – including the Border Force and nuclear decommissioning * A 6 month time limit for industrial action * A requirement for a clear description of the trade dispute and the planned industrial action on the ballot paper * Strict rules on ‘check-off’ arrangements for collecting union dues in public sector: <p>http://bit.ly/1Pcb0Hg</p> <p>Six Statutory Instruments are in place.</p>	No equivalent to Trade Union Act in NI.	<p>No equivalent to Trade Union Bill in ROI.</p> <p>The Industrial Relations (Amendment) Act 2015 provides an improved framework for workers who seek to better their terms and conditions where collective bargaining is not in place. It contains strong anti-victimisation elements to protect workers who pursue such claims and also provides for any collective agreement to be enforced through the Circuit Court, should an employer refuse to do so.</p> <p>http://bit.ly/1MGzJQo</p> <p>Explanatory Memorandum to the Bill:</p> <p>http://bit.ly/1IOC61h</p>

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Low Pay Commission and National Minimum Wage

GB	NI	ROI
<p>The National Minimum Wage (Amendment) Regulations 2017 came into force on 1/4/17. The adult (21-24 yr olds) rate increased from £6.95 to £7.05: http://bit.ly/2sipuPy</p> <p>NMW applies throughout UK and increases every April: http://bit.ly/19zqhyL</p> <p>BIS Guide to calculating NMW: http://bit.ly/1NdXb9K</p> <p>The Small Business, Enterprise and Employment Act 2015 (Commencement No. 1) Regulations 2015 (SI 2015/1329) brought into force the amendment of the maximum penalty for breach of the national minimum wage to £20,000 in respect of each underpaid worker on 26 May 2015 http://bit.ly/1NziG0i</p> <p>Former Chancellor George Osborne announced a 'Living wage' of £7.20 ph which applied to 25s and over from 1st April 2016 throughout the UK. This should rise to over £9 an hour by 2020 and was raised to £7.50 from 1/4/17: http://bit.ly/2sipuPy</p> <p>NOTE: an 'apprenticeship levy' of 0.5% of wage bills in excess of £3m p.a. has applied to employers across the UK from April 2017. Digital accounts, where employers can draw down the levy paid for training purposes, apply in England: http://bit.ly/1QwQbFX</p>	<p>NMW is a reserved matter so the same arrangements apply in NI as in GB.</p>	<p>The National Minimum Wage (Low Pay Commission) Act 2015 amended the National Minimum Wage Act, 2000 to provide for the establishment, on a statutory footing, of the Low Pay Commission to advise on the setting of the national minimum wage. http://bit.ly/1HMVIFe</p> <p>Explanatory Memorandum: http://bit.ly/1cNblZc</p> <p>The Commission is to investigate whether it is appropriate for young people to continue to be paid a lower minimum wage than the rest of the workforce simply because of their age. At present an under-18 worker can legally be paid as little as the equivalent of 70% of the full minimum wage rate per hour. In the Budget 2016, the full minimum wage rate rose from €8.65 per hour to €9.15. This change came into effect on 1.1.16. http://bit.ly/1MQtLld</p> <p>Budget 2017 saw a rise of 10c to €9.25: http://bit.ly/2dubvet</p> <p>National Minimum Wage (Protection of Employee Tips) Bill 2017 [No. 40 of 2017]</p> <p>This Bill was introduced on 21 March 2017 and seeks to amend the National Minimum Wage Act 2000 to provide additional protections to employees in the service sector to ensure that they receive tips or gratuities paid by customers. http://bit.ly/2tq7ek5</p>

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Reform of the Law on Transfers of Undertakings (TUPE)

GB	NI	ROI
<p>Reforms announced 5.9.13 – SPC’s retained, location change can be ETO, employee liability information requirement retained http://bit.ly/16TDCgz Implemented on 31 January 2014. Micro-employers can inform and consult employees on TUPE transfers directly from 31/7/14</p>	<p>Following consultation, in view of the divergent views expressed by stakeholders on a range of issues, further consideration is being given as to how best to proceed in NI.</p>	<p>The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 do not contain any service provision change regulations. The application of the Regulations is determined by CJEU and National case law.</p> <p>Similarly, whether or not location change can amount to an ETO reason would be a matter to be determined by the Courts and is not provided for specifically in the Regulations. http://bit.ly/1BPAHP</p> <p>Employee liability information requirements are contained in section 21 of the Employees (Provision of Information and Consultation) Act 2006. http://bit.ly/1DAzO56</p> <p>There are no provisions permitting micro-employers to inform and consult employees on transfers directly.</p> <p>This is not under review in ROI.</p>

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Consultation in collective redundancy context

GB	NI	ROI
<p>Came into effect on 6th April 2013 consultation period for 100+ collective redundancies will be min 45 days. GB changes also exclude inclusion of expiry of FTCs, unless contracts expire before due end date. GB Order: http://bit.ly/1EMD4bo</p> <p>Acas guidance on managing collective redundancies issued 6.4.13: http://bit.ly/1OvdU6D</p> <p>‘Woolworths’ case at CJEU rules that establishment refers to place workers are assigned to work. 30.4.15: http://bit.ly/1dwL8nR</p> <p>Supreme Court in Oct 2015 has referred USA v Nolan back to the Court of Appeal to decide when the trigger for collective redundancy consultation is pulled (i.e. – at contemplation stage or proposing to dismiss stage) http://bit.ly/1PvGPK5</p>	<p>In Northern Ireland, a minimum period of 90 days consultation is required where 100 or more employees are to be made collectively redundant. Where between 20 and 100 employees are affected, the period is 30 days.</p> <p>‘Woolworths’ case at CJEU rules that establishment refers to place workers are assigned to work. 30.4.15: http://bit.ly/1dwL8nR</p> <p>The position in NI is that employers should include fixed-term employees in the aggregation towards the trigger point to engage in collective redundancy consultation. See UCU v University of Stirling (2015) UKSC; http://bit.ly/1H3yg2z</p>	<p>The consultation period for collective redundancies in Ireland is 30 days. This is not under review. http://bit.ly/1BPB2G7</p> <p>‘Woolworths’ case at CJEU rules that establishment refers to place workers are assigned to work. 30.4.15: http://bit.ly/1dwL8nR</p>

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Introduction of legislation to prohibit the blacklisting of trade union members

GB	NI	ROI
<p>The Employment Relations Act 1999 (Blacklists) Regulations 2010 came into force 02/03/10. http://bit.ly/1O66pmc</p>	<p>The Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014 came into operation on 06/04/14. http://bit.ly/1peP90Y</p>	<p>Not relevant to ROI.</p>

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Assured Register of Members

GB	NI	ROI
<p>From 6 April 2015 trade unions in GB have to provide assurance that their registers of members are up to date under rules which were introduced by Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.</p> <p>BIS has published Guidance on Trade Union Register of Members and Membership Audit Certificate requirements: http://bit.ly/1CvuBvw</p>	<p>Does not apply in NI</p>	<p>Does not apply in ROI</p>

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Section 3: Tribunal & Other Legal & Dispute Resolution Processes

Tribunal and Dispute Resolution Reform

GB	NI	ROI
<p>Procedural reforms, including fees for taking a tribunal or EAT case from 29.7.12, single judge, increased costs cap and deposits, new rules on witness expenses. http://bit.ly/13CMx1t</p> <p>Figures indicated circa 80% drop in tribunal claims a year after fees introduced and they continued to fall: http://bit.ly/1HvC37x</p> <p>UNISON's appeals against the decisions of the High Court refusing its two Judicial Review applications challenging the lawfulness of employment tribunal fees were defeated at the EWCA in Sept 15. The UKSC appeal will be heard in 2016. http://bit.ly/1YtsqD8</p> <p>The government has indicated its intention to introduce financial penalties for failure to pay settlement agreements or sums ordered by a tribunal under S150 of the SBEE Act 2015 : http://bit.ly/1CYCFSt</p> <p>The government announced its intention to review the employment tribunal fees regime on 11/6/15. The review's scope was set out in the terms of reference for the review published by the MoJ: http://bit.ly/1QE5yN3</p>	<p>On 3.7.15 a public consultation on proposed new rules and procedures for industrial tribunals and the Fair Employment Tribunal was launched. The draft statutory rules consolidate and simplify, where possible, the two sets of NI legislation and reflect recently adopted practices. NI will not be taking forward, at this time, the following proposals: a requirement for unfair dismissal cases to be heard, in most instances, by a chairman sitting alone; power for the tribunal to direct a losing party to reimburse a successful party for the cost of the attendance of witnesses; an increase in the maximum level of costs that may be assessed by a tribunal; the introduction of financial penalties payable by employers who have breached employment rights; a requirement to pay fees to access and proceed through the tribunal system. Consultation closed 25.9.15: http://bit.ly/1rpj7Vw</p> <p>The Employment Act (NI) 2016 includes tribunal rules changes: http://bit.ly/1NYTIgv</p>	<p>The Workplace Relations Act 2015 is a huge piece of legislation and was commenced in full by 1 October 2015: http://bit.ly/1FANqlz</p> <p>It introduced the most far reaching reforms of employment rights and industrial relations institutions ever enacted in Ireland.</p> <p>The Act set out the statutory basis for the amalgamation of functions currently fulfilled by the Rights Commissioner Service, Equality Tribunal, Employment Appeals Tribunal (at first instance), NERA and the Labour Relations Commission into a single new body now known as the Workplace Relations Commission (WRC). The WRC deals with all first instance employment complaints.</p> <p>The Act provides that a single Adjudication Officer shall enquire into the complaint or dispute while giving the parties an opportunity to be heard and to present any relevant evidence. Cases are now heard in private. Decisions will be published in anonymised format.</p> <p>It also sets out the basis for the expansion of the Labour Court's jurisdiction to hear all appeals from decisions of Adjudication Officers (except for Equal Status Act cases which will continue to be to the Circuit Court.)</p> <p>Hearings of the Labour Court are in public and decisions continue to be published in full.</p> <p>There is a further right of appeal to the High Court on a point of law.</p> <p>The Act includes an enabling provision which allows the Minister to introduce a fee structure for users of certain services of the WRC and/or Labour Court in the future should this be deemed appropriate. The Minister has indicated that he does not intend to commence this provision yet but may do so in respect of appeals to the Labour Court where parties failed to attend first instance adjudication without good cause. http://bit.ly/1FANqlz</p> <p>The new system was criticised by some lawyers after its first year and challenges are on-going: http://bit.ly/2epa2KO</p>

Rapid Resolution Scheme for ‘desk-topping decisions’ on simple jurisdictions by legal officers

GB	NI	ROI
<p>Contained in Clause 11 of the ERR Act received Royal Assent 24/4/13 and reforms now on hold http://bit.ly/12S9L4t</p>	<p>DEL (now DfE) had asked for feedback on the issue May 2012. Considered as part of the review of tribunal rules.</p>	<p>Section 39 of the Workplace Relations Act permits the WRC to refer cases to mediation without the need for Adjudication. S.41 of the Act provides that an Adjudication Officer shall enquire into the complaint or dispute while giving the parties an opportunity to be heard and to present any relevant evidence.</p> <p>However, S.47 makes provision for the hearing of certain complaints and appeals on the basis of written submissions only without the requirement of an oral hearing.</p> <p>Both parties have the right to object within 42 days and, if they do so, the case will proceed to Adjudication. http://bit.ly/1FANqIz</p>

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Mediation in Employment

GB	NI	ROI
<p>Regional Pilot in SMEs began in Manchester and Cambridge only in summer 2012 for one year. Ran until December 2013. No developments announced since this.</p>	<p>This subject was not part of the then DEL discussion paper in May 2012. DEL commissioned research to identify potential support mechanisms for SMEs. The findings were published at the same time that the employment law consultation issued; relevant questions about this matter were included in the DEL consultation that ended on 5/11/13.</p> <p>DEL evidence to Assembly Committee on 13/5/15 indicated that no legislation is proposed; however DfE is exploring how existing services can be targeted to assist SMEs; and is considering developing ‘at a glance’ documentation. The LRA carries out several dozen mediations per year.</p>	<p>Mediation Bill 2017 [No 20 of 2017]</p> <p>The Mediation Bill proposes to introduce a comprehensive statutory framework to promote the resolution of disputes through mediation as an alternative to court proceeding. While, the Bill expressly excludes disputes arising within an employment context which are referred to statutory dispute-resolution processes such as those provided by the Workplace Relations Commission, it is of relevance to civil proceedings. http://bit.ly/2seBhf4</p> <p>Early resolution and mediation services are provided in employment cases by the WRC. Under section 39 of the Act a complaint or dispute may be referred for early resolution / mediation if the Director General is of the opinion that the matter is capable of resolution by such means. However, if either party objects it will proceed to Adjudication.</p> <p>Both mediation officers and case resolution officers have a high degree of flexibility in how they deal with a particular complaint or dispute (by holding a “mediation conference” or “employ such other means as he or she considers appropriate for the purpose of resolving the complaint or dispute”). If successful, the outcome will be documented and the terms of the agreement will be legally binding. If unsuccessful, the officer will issue a certificate confirming this and the matter</p>

		<p>will be referred for Adjudication.</p> <p>The early resolution service is not dissimilar to conciliation, which is offered in almost all employment tribunal claims in the UK.</p>
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Implementation of Statutory Arbitration Scheme (NI only)

GB	NI	ROI
<p>Statutory arbitration in employment is a private and less formal alternative to employment tribunals, with a single arbitrator appointed by Acas in GB or the LRA in NI. The 'old' ACAS regime still applies (unfair dismissal, flexible working): http://bit.ly/1xexw9U</p>	<p>In NI the LRA arbitration scheme was expanded on 27.9.12 to cover virtually every employment jurisdiction. 20 cases to date. http://bit.ly/1x0zLwT</p>	<p>Not relevant in ROI.</p>

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Early Neutral Evaluation / Neutral Assessment (A form of Alternative Dispute Resolution)

GB	NI	ROI
<p>A concept for dispute resolution where parties might be given an indication by an independent third party of the likely outcomes, should the case proceed to full hearing. Nothing being developed in employment in GB. The Association of Costs Lawyers in GB has launched an ADR panel that includes ENE in disputes regarding legal costs: http://bit.ly/1FpSv73</p>	<p>A discussion of the issue in relation to tribunals is included in consultation on tribunal issues – NI judges essentially use ENE in deposit order hearings. Proposed power for the LRA to provide neutral assessment was included in the Employment Bill in Dec 15 but the power in section 8 of the Employment Act (NI) 2016 was later redrawn in more general terms: http://bit.ly/1Yy8Hx5</p>	<p>Not relevant in ROI.</p>

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Early Conciliation – Referral to Acas/LRA/WRC for conciliation before claim can be made to tribunal or other forum

GB	NI	ROI
<p>Early conciliation allows for all employment tribunal claims to be routed through Acas for conciliation before they may be considered by a tribunal. If conciliation works, the case will be settled and / or withdrawn without the need for a tribunal hearing.</p> <p>Acas' Early Conciliation Services dealt with more than 60,000 cases from 6 April until the end of December 2014. Just over 23% went to ET: http://bit.ly/1N46IC8</p>	<p>The LRA provided model proposals to the then DEL on the re-routing of claims. Part of the DEL consultation that ended on 5/11/13. Early Conciliation is the centrepiece of the Employment Act and was expected to be implemented in 2017 but has been delayed due to uncertainty of Stormont</p>	<p>No mandatory early conciliation but voluntary early resolution / mediation services are provided by the WRC. See above.</p>

A small but growing body of case law is building on Early Conciliation e.g. Science Warehouse Ltd v Mills:
<http://bit.ly/1PiclbJ>

Executive:
<http://bit.ly/1NYTIgv>

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Data Protection

GB	NI	ROI
<p>Section 56 of the Data Protection Act (DPA) 1998 prevents employers from requiring people to use their subject access rights under the DPA to provide certain records, such as police records, as a condition of employment. It was not commenced until 10 March 2015. http://bit.ly/18I104c</p> <p>The General Data Protection Regulation was agreed in 'trilogue' discussions which will include new fines for breaches of EU privacy and data protection law up to €20m or 4% of the company's global annual turnover. Formal approval was made at EU Parliament in spring 2016, and the GDPR must be implemented by all member states by May 25th 2017. http://bit.ly/25w2meh</p> <p>The decision of the CJEU to rule that the 'safe harbour' arrangements for transferring personal data from the EU to the USA are invalid caused problems throughout Europe: http://bit.ly/1HMXGQK</p> <p>In response the EU - U.S. Privacy Shield was agreed in April 2016: http://bit.ly/1OXZOoP</p> <p>In August 2016, ICO said, "If your organisation is still relying on Safe Harbor as the legal basis for transferring personal data to the US, you need to review your position." http://bit.ly/2d5CbX5</p>	<p>S.56 changes apply on a UK-wide basis.</p> <p>New EU Regulations should apply to all Member States when agreed, as per GB section.</p> <p>The decision of the CJEU to rule that the 'safe harbour' arrangements for transferring personal data from the EU to the USA are invalid caused problems throughout Europe: http://bit.ly/1HMXGQK</p> <p>In response the EU - U.S. Privacy Shield was agreed in April 2016: http://bit.ly/1OXZOoP</p>	<p>Section 4 (13) of the Data Protection Act 1988-2003 has now been commenced making it unlawful for employers to require employees or job applicants to make a Data Access request to gain access to their personal data. This means that employers cannot require a candidate to make a Data Access Request from their former employer (s) to gain access to a candidate's personnel file. http://bit.ly/1FCceEf</p> <p>New EU Regulations should apply to all Member States when agreed, as per GB section</p> <p>The decision of the CJEU to rule that the 'safe harbour' arrangements for transferring personal data from the EU to the USA are invalid caused problems throughout Europe: http://bit.ly/1HMXGQK</p> <p>In response the EU - U.S. Privacy Shield was agreed in April 2016: http://bit.ly/1OXZOoP</p> <p>The General Scheme of the Data Protection Bill 2017, which is the draft outline of domestic legislation implementing the GDPR in Ireland, was published in May 2017: http://bit.ly/2sH9bJq</p>

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This table was originally compiled by **Mark McAllister**, Senior Employment Relations Manager, Labour Relations Agency and reviewed by **Dr Alan Scott**, Head of Employment Relations, Policy and Legislation Branch, Department for the Economy (DfE) (formerly DEL), and **Scott Alexander**, Head of Learning & Development Legal-Island. The information relating to recent changes to employment laws in the Republic of Ireland was compiled by **Ciara Fulton**, Partner and Head of Employment Law at DWF solicitors, Belfast.

This table was first developed for use at Legal-Island's Annual Review of Employment Law 2012 and has been updated ever since. **Correct at 14/6/17 Disclaimer:** This table is for guidance only. We regret we are not able to respond to requests for specific legal or HR queries and recommend that professional advice is obtained before relying on information supplied anywhere within this table.

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Scott Alexander joined the CIPD in 1987 and has over 29 years' experience in employment relations and employment law. He worked for the Labour Relations Agency in Northern Ireland for 14 years in a variety of roles, including collective and individual conciliation and enquiry point manager, before joining Legal-Island as its Head of Learning and Development in January 2006. He is a certified member of the Mediators' Institute of Ireland and the Association for Coaching Ireland and a CO3 Mentor.



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Mark McAllister is a Senior Employment Relations Manager with the LRA and part-time lecturer in Law. He specialises in dispute prevention and joint working. Mark is the Northern Ireland Convenor of the Chartered Institute of Arbitrators and is an accredited mediator. He is a member of the Employment Lawyers' Group and the Industrial Law Society and is a regular speaker on the employment law circuit and contributor to employment law publications.



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Ciara Fulton is a Partner and Head of the Employment Belfast and Dublin at DWF (NI) LLP Solicitors, Belfast. Ciara trained and qualified into the employment team of a leading Dublin Law firm in 2002 where she worked until returning home in 2007. Before joining DWF (NI) LLP, Ciara was a Partner in the employment team of another large commercial law firm in Belfast.



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Geraldine Lavery has worked on employment rights and relations policy and legislation issues since December 2013. Prior to this she had 8 years operational HR experience as part of the HR team in the Department for Employment and Learning. Before joining the Northern Ireland Civil Service, she earned an undergraduate degree in Law from the University of Bristol and a Masters in Business Studies from the University of Ulster. She also has a Masters in Humans Resources from Queen's University, Belfast.