

Legal Briefing

Post-General Election: What's In Store For UK Employment And Immigration Law?

May 2015

Employment

The Conservative manifesto commits to a broad-range of employment measures. Some of these are supported by the SNPs whereas others are likely to face resistance.

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- Exclusivity clauses in zero hours contracts, which seek to prohibit a worker from working for anyone else or doing so without consent, will be unenforceable. The SNP supports tough action to end “exploitative zero hours contracts”.
- The national minimum wage to increase to £6.70 by Autumn 2015, and to over £8.00 by the end of 2020. The SNP supports an increase to £8.70.
- Public sector termination payments to be repayable in certain circumstances (e.g. redundancy, severance and ex-gratia payments would be repaid if the recipient was re-employed or engaged as a contractor in the public sector within one year of their exit).
- Tougher trade union restrictions:
 - requiring at least half of the workforce to have voted for a strike;
 - requiring a minimum turnout of 40% of those entitled to take part in strike ballots, and a majority vote by those who do turn out, before strike action can take place in the health, transport, fire and education sectors;
 - ensuring strikes cannot be called on the basis of ballots conducted years before;
 - tackling the intimidation of non-striking workers; and
 - tightening the rules around facility time for union representatives.

The SNP strongly opposes plans to restrict the right to strike and support unions and seek a safe and secure online voting system to maximise participation.

- Increased apprenticeships, with the creation of an extra 3 million over the next 5 years, coupled with the abolition of employer’s National Insurance contributions for apprentices under the age of 25 in 2016. The SNP is supportive of this policy.
- An employment allowance to help small business take on new workers by removing the first £2k of employer’s National Insurance contributions. The SNP seeks targeted reductions and a phased increase in the employment allowance from £2k to £6k per business year by 2019-20.
- Equal pay reporting, with companies with over 250 employees being required to publish the difference between the average pay of their male and female employees. The SNP backs the equal pay audit proposals.
- Paid volunteering leave of 3 days a year (on full pay) for those working in large companies and the public sector.
- SNP proposals not mirrored by the Conservatives include:
 - 50/50 representation on public and private boards (it should be noted that one outcome of the Smith Commission’s report was the recommendation that the Scottish Parliament should have the power to introduce gender quotas in respect of public bodies in Scotland, which would go beyond the existing positive discrimination provisions of the Equality Act 2010);

- Increased paternity leave & tightened law on maternity discrimination; and
- Restoration of the 90-day consultation period for redundancies affecting 100 or more employees.

- Devolving the management and operation of all reserved tribunals, including Employment Tribunals, to the Scottish Parliament. This was a recommendation of the Smith Commission and is provided for in the draft legislation subsequently prepared by the former coalition Government at the start of 2015. The only exceptions to this would be the Special Immigration Appeals Commission and the Proscribed Organisations Appeal Commission. Many have called upon the Scottish Parliament to abolish or revise the recently introduced Employment Tribunal fees, which have resulted in a marked reduction in the number of employment claims being raised. If responsibility for Employment Tribunals is devolved, the Scottish Parliament would be free to do so. Further, it could introduce new procedural requirements. During its General Election campaign, the SNP certainly indicated it was not in agreement with the fees introduced. If this is implemented it could lead to a resurgence in employment claims, which will not be welcomed by employers. Further, UK-wide businesses headquartered or operating in Scotland may find employees based outside Scotland essentially “forum shopping” and raising claims in Scotland to avoid paying Employment Tribunal fees. Post-General Election, the SNP is now pushing for more devolution than the Smith Commission provides and in particular for all employment policy to be devolved. This could result in a divergence between Scotland and the rest of the UK.

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Immigration

The Conservatives confirmed in their manifesto that they maintain the aim of reducing immigration into the UK to the tens of thousands. Accordingly, the immigration regime is likely to become more restrictive. A key aspect of the Conservative’s proposals is to restrict EU rights of free movement, which will naturally prove controversial and face strong opposition. Immigration is a reserved matter. However, the SNP is supportive of an immigration policy which better suits the Scottish demographic and economic needs. Accordingly, a number of these proposals are likely to face resistance from the SNP.

- Tier 2 General Cap to remain at 20,700 per annum.
- Limiting access to benefits (e.g. child benefit, working tax credits) for EU nationals until they have been earning in the UK for 4 years.
- EU jobseekers to be prohibited from claiming job seeking benefits and limited to 6 months in the UK, after which they will have to leave if they have not found a job.
- New EU member states’ citizens are not to have free movement rights until their economies have converged more closely with existing member states.
- English language classes to be reduced, the introduction of English language tests for family members (e.g. non-EEA family members of EEA nationals) and legislation to ensure every public sector worker in a customer-facing role must speak fluent English.
- “Deport first, appeal later” policy to be extended to all appeals and judicial review applications apart from asylum claims.
- Immigration status checks applicable to private landlords, currently underway as pilot scheme in West Midlands, are to be rolled out across the UK.
- Businesses regularly utilising the shortage occupation list to bring skilled foreign workers into the UK will have to provide long-term plans for training British workers.

- Further reforms are expected to Tier 4 to prevent abuse of the student route and overstaying in the UK, including:
 - A clampdown on satellite campuses opened in London by Universities based elsewhere in the UK; and
 - Targeted sanctions for colleges or businesses that fail to ensure migrants comply with the terms of their visa.
- Tougher regulations to tackle illegal working and exploitation and the use of data from multiple agencies to identify businesses that employ illegal workers.

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Immigration is a reserved matter. However, in their manifesto the SNP committed to pushing for the reintroduction of the post-study work visa, to enable foreign nationals educated in the UK to be able to work for a period of 2 years post-study. The removal of this visa was controversial and there are strong arguments about the damaging impact this has on the economy, businesses and the education sector. Although the Smith Commission's report did not recommend devolution of any immigration powers to the Scottish Parliament, it noted that the parties had agreed to explore the possibility of introducing formal schemes to allow international higher education students graduating in Scotland to remain in Scotland and contribute to economic activity for a defined period of time. However, given the Conservatives commitment to reducing immigration it is hard to see how this proposal will get through.

Human Rights

- An in-out referendum on the UK's membership in the EU by the end of 2017 - perhaps the most controversial aspect of the Conservative manifesto. The SNP oppose the UK's withdrawal from the EU. The SNP manifesto confirms that they intend to seek to amend the legislation to ensure that no constituent part of the UK can be taken out of the EU against its will. They will propose a double majority rule, meaning unless England, Scotland, Wales and NI each vote to leave the EU, the UK will remain a member state.
- Scrapping the Human Rights Act and replacing it with a British Bill of Rights, with the aim of breaking the formal link with the European Court of Human Rights and making the Supreme Court the ultimate arbiter of human rights matters in the UK. As with our membership of the EU, the SNP opposes this proposal.

Both of these proposals, if implemented, would have far-reaching implications for UK employment and immigration law. We will be keeping a watching brief on all of the proposals and considering how they may impact employers.

Contact Us

This briefing note is intended as general guidance on current issues in the law. It is not a substitute for advice in relation to your scheme and its specific circumstances and it may not be relied upon as such.

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