

### **1. INTRODUCTION**

In the UK, the law governing working relationships between individuals and businesses derives from a mixture of sources, namely common law and UK and European legislation. Employment law in the UK has developed substantially over the past 10 years, primarily due to the influence of European directives, particularly those regarding employment equality. The development of employment law has meant that it is increasingly necessary for clients to take expert advice from specialised employment law practitioners, particularly since the financial consequences for failing to comply can be quite severe.

### **2. DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION**

#### **2.1 THE OPEN-ENDED EMPLOYMENT CONTRACT**

##### **2.1.1 Characteristics**

An open ended contract has no fixed termination date and can be ended by either party on notice (although note that the employer's freedom to terminate the employment contract is restricted as further detailed in this article).

The employee must be given a written statement of terms which includes information on:

- commencement date of employment and commencement date of continuous employment;
- job title;
- place of work;
- salary level and payment intervals;
- hours of work;
- holidays;
- sickness absence policy;
- termination and notice period;
- pensions and pension schemes;
- any collective agreements that directly effect the terms and conditions of the employee;
- details of any requirements to work outside of the UK.

The employee must also be given a copy of the employer's grievance and disciplinary procedures, although these need not form part of the contract.

### 2.1.2 Ability to Terminate

To terminate the contract, the employee must give notice (either statutory or contractual) but need not give a reason for the termination. However, if the employer wishes to terminate the contract they must satisfy various requirements in order for the dismissal to be fair. The dismissal must be for one of 6 fair reasons:

- redundancy
- conduct
- some other substantial reason
- capability
- retirement
- contravention of a statutory obligation

Further, the dismissal must be carried out using a fair procedure (e.g. sufficient notice must be given, the Acas Code on Discipline & Grievances should be followed if the dismissal is not on the grounds of redundancy or retirement, if the dismissal is on the grounds of redundancy the selection must be conducted fairly and a consultation process must be followed, notice of retirement and the right to request to carry on working must be given 6-12 months before retirement etc).

### 2.1.3 Jurisdiction

The legislation surrounding unfair and wrongful dismissal is complex. In most cases, but subject to a number of exceptions, an employee must have 12 months service to bring a claim. Generally, an employee will only be able to make a claim for unfair and/or wrongful dismissal provided that he/she does so within strict time-limits, otherwise a claim will not be accepted.

If a finding of unfair dismissal is made, then it is unlikely that reinstatement will be granted, save in very rare cases. Instead, an award of compensation is made by reference to a statutory formula and by reference to what the employee has “lost” as a result of being unfairly dismissed. If the Acas Code on Discipline & Grievances applies, but is not followed by either the employer or the employee, compensation can be increased / reduced by up to 25%.

If a finding of wrongful dismissal is made, then an award of damages to reflect lost notice period/contractual entitlements is made.

## 2.2 THE FIXED- TERM EMPLOYMENT CONTRACT

### 2.2.1 Characteristics/Duration/Termination

A fixed term contract is a non-permanent contract which includes a provision to terminate the contract on the occurrence of a terminating event which could be the expiry of a fixed term, the performance of a specific task, or the occurrence or non-occurrence of a specific event. Fixed term contracts are generally used when an employer needs maximum flexibility. For instance, when employees are taken on for a limited period of time or when external funding is in place for specific projects.

In June 2002 the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulation 2002 (SI 2002/2034) (the Fixed-term Employees Regulations) came into force. These regulations were brought in to implement the EU Directive 99/70 of June 1999 on the Framework Agreement on Fixed-term Work. Both the Regulations and the Directive were created for the purpose of decreasing the unfair treatment suffered by fixed-term employees.

In order to terminate a fixed-term contract an employer will have to show one of 6 fair reasons required when terminating the employment of an employee on an open-ended contract (e.g. redundancy, capability, conduct, retirement, some other substantial reason, or contravention of a statutory obligation). Often redundancy will be the reason relied upon when fixed term contracts end as the purpose of employing the fixed-term employee will usually have been satisfied. However, employers must be sure to look for suitable alternative employment and to make a redundancy payment if the employee has 2 years service. If a fixed term employee has been employed for 4 years or more, he / she will be considered a permanent employee by any employment tribunal unless continued use of fixed term contracts can be objectively justified.

In addition to protecting fixed-term employees in respect of dismissal, the Regulations also protect against discrimination. Where fixed-term workers receive less favourable treatment than their colleagues who are not employed on fixed-term contracts, the employer must be able to justify this less favourable treatment objectively.

### **2.3 THE TEMPORARY EMPLOYMENT CONTRACT**

Temporary employees are often referred to in the context of English employment law. However, this term is a misnomer and employees generally fall into the categories of fixed term employees, employees working under an open ended contract, or agency workers. Agency employees are employed by an employment agency and are then given a work placement at a separate company (the end user). The law surrounding agency employees is complex and despite the employment contract between the employee and the agency, it is possible in certain situations for the agency employee to become an employee of the end user. Should you have any concerns or queries relating to agency employees, please contact a PLG specialist for detailed advice.

### **2.4 SPECIAL EMPLOYMENT CONTRACTS**

There is no equivalent of a “special employment contract” under UK law.

### **2.5 THE “FURTHER RECRUITMENT CONTRACT”**

Similarly, there is no equivalent of a “further recruitment contract” under UK law.

## **3. SOCIAL CONTRIBUTIONS AND THE DIFFERENT KINDS OF BENEFITS IN THE UNITED KINGDOM**

### **3.1 PRESENTATION OF THE UK SOCIAL SECURITY SYSTEM**

#### **3.1.1 Characteristics**

The UK social security system is funded through various taxes and contributions. These taxes and contributions are not applied or ring-fenced for any specific purpose but are instead aggregated together to form the resources available for the governments spending plans.

Although there are many taxes which contribute to the social security system, the two primary types of taxation in the UK which are relevant to nearly all individuals are income tax and national insurance contributions.

It should be noted that the UK does not have any specific local or state taxes – the closest equivalent to such taxes are council tax and business rates.

### **Income Tax**

There are three main rates of income tax as follows:

- Basic Rate of 20% is chargeable on income between £0 - £37,400;
- Higher Rate of 40% is chargeable on income between £37,401 - £150,000;
- Upper Rate of 50% is chargeable on income over £150,000

There is a special rate of 10% for savings income to the extent such income does not exceed a starting rate limit (£2,440 for 2010/2011). Otherwise savings income is taxed as the highest part of an individual's income.

Different income tax rates apply to dividend income – the specific rates are determined by which income tax band the dividend income falls within. Basic Rate taxpayers are liable at 10%, Higher Rate taxpayers at 32.5% and Upper Rate taxpayers at 42.5%. In calculating the income tax liability due on a dividend a tax credit of one-ninth of the dividend is taken into account.

Various allowances may reduce an individual's taxable income – the principal allowance is the basic annual personal allowance (£6,475 for 2010/11)

### **National Insurance Contributions**

This payable by both employees and employers but the regime is effectively administered by employers on behalf of HM Revenue & Customs.

There are several different rates of National Insurance Contributions, this section deals with the most commonly encountered: Class I.

For the tax year 2010/11 the Class I rates are as follows:

- employees pay 11% on earnings between £110 per week and £844 per week and 1% on earnings in excess of £844 per week;
- employers pay a flat rate of 12.8% on all earnings in excess of £110 per week.

### **Council Tax and Business Rates**

Council tax is paid by the majority of adult UK citizens and the amount payable is dependent on the value of the home they are residing in (either owned or rented). The tax applies to each household and is not dependent upon how many adults live in the house.

Non-domestic, or business, rates are the equivalent to council tax for businesses and other occupiers of non-domestic property.

Council tax and business rates contribute toward the cost of local authority services such as policing, providing support to the elderly and vulnerable, park maintenance, waste disposal and street-cleaning.

## **3.2 THE STATE PENSION SCHEME**

### **3.2.1 Characteristics/General Rule/ Reform**

The state pension scheme is currently made up of two parts:

#### **Basic State Pension**

Everyone who has paid sufficient national insurance contributions (see “The UK Social Security System” above) is entitled to receive the basic state pension on reaching retirement age.

#### **State Second Pension**

The State Earnings Related Pension Scheme (SERPS) was introduced in 1978 and constituted a second earnings related pension. The amount added to the basic state pension is linked to the level of national insurance contributions made throughout an individual’s working life. SERPS was replaced with the State Second Pension in April 2002. It was designed to provide a more generous additional State Pension for low and moderate earners, and to extend access to include certain carers and people with long-term illness or disability. It is possible to contract out of the State Second Pension and join a private pension scheme instead.

The state pension age is currently 65 for men and 60 for women. However, this looks set to change over the next few years as reforms are in the pipeline to increase state retirement age in an attempt to minimise the current deficit in the state pension budget.

## **3.3 THE UNEMPLOYMENT BENEFITS SYSTEM**

### **3.3.1 Characteristics**

Unemployment benefit was abolished in the UK from October 1996 and was replaced by “jobseeker’s allowance”. It comprises two forms of allowance: contribution-based jobseeker’s allowance (the equivalent of the former unemployment benefit, though restricted to the first six months of unemployment) and income-based jobseeker’s allowance.

The system is aimed at encouraging active job seeking. Therefore, in order to claim, an individual must enter a Job Seeker’s Agreement which states the kind of work they are looking for. That individual must then attend regular meetings at the Job Centre to discuss potential positions and review their progress. Other eligibility criteria depend on the nature of the allowance claimed.

### **3.3.2 To be entitled to unemployment benefits**

An individual must fulfil the following general requirements:

- must be under state pension age;
- not usually available if under 18;
- not available to full time students;
- not working, or working on average less than 16 hours a week.

In order to be entitled to contribution-based job seeker’s allowance the following conditions apply:

- the individual must have paid a certain number of National Insurance contributions;

- the individual cannot receive contribution based Job Seeker's Allowance if they have only been paying National Insurance contributions for self-employment.
- it will be calculated on a fixed rate based on age for up to 26 weeks;

In order to be entitled to income-based job seeker's allowance the following conditions ordinarily apply:

- the individual's savings must not exceed £16,000; and
- the individual must not have a partner who works 24 hours or more per week.

### 3.3.3 Supplementary Social Protection

In addition to the social benefits discussed above it is also possible for an individual to obtain private insurance against eventualities such as sickness and redundancy.

## 4. FOREIGNERS WORKING IN UK

### 4.1 General Rules

- British nationals, Swiss nationals and nationals of an EEA country (including the EU countries, Norway, Liechtenstein and Iceland) do not need authorisation to work in the UK;
- Nationals from the following new member states: Poland, Lithuania, Estonia, Latvia, Slovenia, Slovakia, Hungary and the Czech Republic who find a job in the United Kingdom are required to apply to register with the Home Office under the new 'Worker Registration Scheme' as soon as they find work;
- Citizens of Romania and Bulgaria (both of which joined the EU on 1 January 2007) do not have an automatic right to work in the UK and must apply for a work permit and an accession worker card;
- Other non-UK nationals not mentioned above need to apply for leave to work in the UK under the points based immigration system;
- Other provisions allow non-EEA nationals to enter the UK for example as a spouse of someone who has permission to work in the UK.

### 4.2 Authorisation

The UK continues to distinguish between permits for entrance (or visas) and authorisation to work in the UK granted under the points-based immigration system.

#### EEA and Swiss nationals

Swiss nationals and EEA nationals (with the exception of accession state citizens) have a right to live and work in the United Kingdom (or live in the UK without working if they have enough money to support themselves throughout their stay without help from public funds). In order to enter the UK, an individual will have to show his passport or national identity card. Special rules apply to nationals of accession states.

#### Non-EEA / Swiss nationals

Nationals of other countries need authorisation to work in the UK under the points based immigration system.

#### 4.2.1 Points based immigration system

Under the new points-based immigration system there are five tiers of individuals who can come to the UK to work:

*Tier 1:* highly skilled general migrants, entrepreneurs, investors and post-study work. A migrant with Tier 1 permission may work as an employee for the employer of their choice or on a self-employed basis in any role (except as a doctor in training) for the duration of their visa.

*Tier 2:* skilled migrants with job offers who are coming to the UK to fill a gap in the UK labour market (this category came into force on 27 November 2008 and replaces the old work-permit system). A migrant with Tier 2 permission can only work for the employer who has sponsored their application.

*Tier 3:* low skilled migrants who are recruited to fill specific temporary labour shortages (this category is currently on hold).

*Tier 4:* students (only of relevance to educational institutions).

*Tier 5:* youth mobility and temporary migrants, those coming to the UK for primarily non-economic reasons.

#### 4.2.2 Specific Prohibition

The Immigration Asylum and Nationality Act 2006 makes it a criminal offence to knowingly employ someone without permission to work in the UK. An employer that commits the offence will be liable to a custodial sentence of up to two years and/or an unlimited fine. If an employer negligently employs someone without permission to work in the UK a civil penalty applies of a fine of up to £10,000. An employer will have a defence if it obtained and checked certain specified document(s) from the prospective employee before the individual started work. Employers must examine and retain copies of the relevant documents for all employees and if an individual has limited immigration permission, to retain the statutory excuse, an employer must check the documents at least every 12 months to ensure they remain valid.

#### 4.2.3 Foreign Employers assigning Employees to UK

If the employee is a British or Swiss national, or a national of an EEA country, there is no need for authorisation to work in the UK. If not, permission to work in the UK must be sought under the points-based immigration system (see above).

### 5. TRANSFERS OF UNDERTAKINGS

#### 5.1 PRINCIPLE AND PURPOSE

The Transfer of Undertaking (Protection of Employment) Regulations 2006 (“TUPE”) came into force on April 2006 replacing the old 1981 Regulations. These Regulations implemented the EC Acquired Rights Directive 98/50 and Directive 77/187 respectively. For the most part TUPE simply puts onto a statutory footing the ECJ case law that developed over the past 25 years.

The purpose of TUPE is to protect employees from dismissal in the event of a change of employer and to ensure that their rights are protected after that change. The effect is that the rights and obligations of the transferor (the party disposing of its business, or part of it) arising from the contract of employment are transferred to the transferee (the party acquiring the business or part of it).

## **5.2 THE NOTIONS OF “ECONOMIC ENTITY” AND “SERVICE PROVISION CHANGE”**

TUPE applies where there is a transfer of an economic entity retaining its identity and/or where there is a “Service Provision Change” (for example, agreeing with another company that they will clean your offices, commonly referred to as “contracting out”). Both these terms are defined:

- an “economic entity” is an organised grouping of resources (for example, employees and assets) which has the objective of pursuing an economic activity. The test is to whether this set of resources has retained the same identity after the transfer is as it had before. The Employment Tribunal will examine the surrounding circumstances and evaluate relevant factors such as the transfer of assets, staff (both in terms of skills and numbers), goodwill, etc. to determine whether, to all intents and purposes, the same business is being carried out after the transfer.
- “Service Provision Changes” occur where the services are first contracted out or when the contracted out services are provided by subsequent contractors or when the contracted out services are contracted back “in house”.

However, TUPE does not apply where the contractor will carry out activities in connection with a single specific event or a task of short term duration and that consists wholly or mainly of the supply of goods to the undertaking requiring the service.

## **5.3 CONSEQUENCE**

The employees of the transferor transfer to the transferee. Dismissal connected with the transfer will be automatically unfair unless there is an economic, technical or organisational reason entailing a change in the workforce (an “ETO reason”).

Variations to contractual terms can be difficult to make to the contracts of employment, particularly if the reason for the variation is connected with the transfer.

There is an obligation on the transferor to provide “Employee Liability Information” to the transferee two weeks before the transfer. This requires the transferor to provide, amongst other things, the identity and age of those employees who will actually transfer; the information contained in their “statements of employment particulars” (i.e. their terms and conditions of employment); details of grievances and court cases and details of collective agreements.

There is also an obligation of both the transferor and transferee to inform and consult appropriate representatives. Certain information must be provided to the representatives before the consultation including:

- confirmation of the transfer, when it will transfer and the reason for it;
- the legal, economic and social implications for the affected employees;

- whether any action is anticipated regarding the transfer which may affect employees;
- anticipated action that will be taken by the new employer.

The consultation takes place with trade union or employee representatives. It may be that such representatives already exist. However, if they do not then the employer will have to organise elections of employee representatives.

## Authors

### **Melanie Stancliffe**

Pritchard Englefield, London, UK

E-mail [mstancliffe@pe-legal.com](mailto:mstancliffe@pe-legal.com)

Tel. +44 20 7972 9720

### **Jim Lister**

Pannone LLP, Manchester, UK

E-mail [jim.lister@pannone.co.uk](mailto:jim.lister@pannone.co.uk)

Tel. +44 161 909 3000

## To contact PLG

Julienne Laveaux  
PLG Secretariat  
PANNONE LAW GROUP E.E.I.G.  
avenue de Sumatra 41  
1180 Brussels  
Belgium

Tel. +32 2 374 88 46

Fax: +32 2 374 90 61

E-mail [plg@plg.be](mailto:plg@plg.be)

[www.plg.eu.com](http://www.plg.eu.com)

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