



Labour's employment legislation from 2005 onwards

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This note gives very brief details of the main changes to employment and trade union legislation enacted or expected to be enacted by the Labour Government during the Parliament which started in 2005.

See also:

SN/BT/1016 Labour's Employment Legislation 1997-2001

SN/BT/1986 Labour's Employment Legislation 2001 -2005

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1 *Equality Act 2006*

- The Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC) were dissolved and replaced with a single equality body that will also oversee human rights: The Equality and Human Rights Commission (EHRC).
- Discrimination on the grounds of religion or belief in the provision of goods, facilities and services, premises, education, and the exercise of public functions was made unlawful subject to exceptions.
- There are powers to extend goods and services protection to cover sexual orientation. Regulations came into force in April 2007.
- The Act created a public sector duty to promote gender equality. Sex discrimination in the exercise of public functions will also be prohibited.

2 The Employment Equality (Sex Discrimination) Regulations 2005¹

- Makes changes to the *Sex Discrimination Act 1975* needed to implement the EC Equal Treatment (Amendment) Directive (Directive 2002/73/EC).
- Amongst other things, the directive provides for a new statutory definition of “sexual harassment” and for new definitions of direct and indirect discrimination, consistent with the EC Race and Equal Treatment in Employment Directives.
- Came into force on 1 October 2005.

3 Transfer of Undertakings (Protection of Employment) Regulations 2006²

- Extend coverage of TUPE to service contracting operations, such as cleaning services.
- Introduce a requirement on the old employer to notify the new employer of any employment liabilities.
- Clarify the circumstances in which employers can lawfully make transfer-related dismissals and negotiate transfer-related changes to terms and conditions of employment for 'economic, technical or organisational' reasons.
- Introduce new flexibility into the Regulations' application in relation to the transfer of insolvent businesses
- Come into force on 6 April 2006.

4 Work and Families Act 2006

- The *Work and Families Act* delivers primary legislation for regulations to be made extending statutory leave and pay for parents. There was an increase to the period of Statutory Maternity Pay, Maternity Allowance and Statutory Adoption Pay to 39 weeks from April 2007 as a step toward 52 weeks by the end of the Parliament. Additional unpaid paternity leave will be introduced after further consultation. This leave could be paid if certain conditions are met. The intention is to allow mothers to transfer some of their unused statutory pay entitlement to fathers.
- Powers are also given allowing the scope of the right to request flexible working to be extended. This was used to include those who have caring responsibilities for adults with effect from April 2007.
- The Act contains a limited order making power in relation to one aspect of the calculation of minimum redundancy entitlements.
- A new power will allow workers additional paid annual leave beyond the current entitlements under the *Working Time Regulations*. The holiday entitlement increased

¹ SI No.2467

² SI No.246

to 4.8 weeks (24 days for those who work a five day week) from 1 October 2007 and will further increase to 5.6 weeks (28 days for those who work a five day week) from 1 April 2009, pro-rata for those working part-time. The holiday entitlement is inclusive of bank holidays.

5 Safeguarding Vulnerable Groups Act 2006

- The Act will establish an Independent Barring Board (IBB) to maintain two lists of those barred from carrying out "regulated activity" working with children and vulnerable adults. These two lists will replace the current List 99, the Protection of Children Act List and the Protection of Vulnerable Adults list. "Regulated Activity Providers" will commit an offence if they employ a person without making the relevant checks with the IBB and persons on the lists will commit an offence if they engage or seek to engage in "regulated activity". The IBB is due to open in October 2008.

6 Employment Equality (Age) Regulations 2006

- The *Employment Equality (Age) Regulations 2006 SI No.1031* were made on the 3 April 2006 and came into force on 1 October 2006. The Regulations apply to employment and vocational training. They prohibit unjustified direct and indirect age discrimination, and all harassment and victimisation on grounds of age, of people of any age, young or old.
- They arise out of the need to implement the *EC Directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC)* adopted on 27 November 2000.
- Compulsory retirement ages are unlawful unless they can be objectively justified, subject to a national default retirement age of 65. In addition, employees will have a right to request working beyond the set retirement age.

7 Smoking at Work: The Health Act 2006

- Under the Act a total ban on smoking in the workplace was imposed from 1 July 2007. Prior to this there had been no specific provision requiring or preventing employers from banning or allowing smoking at work.

8 Employment Act 2008

- The *Employment Act 2008* made changes to the enforcement framework for the National Minimum Wage (NMW) and employment agency standards; repealed the statutory dispute resolution procedures to make way for replacement measures to encourage informal resolution of employment disputes; amended trade union membership law in light of the European Court of Human Rights judgment in *Aslef v UK* so that trade unions can expel members on the basis of their membership of a political party.

9 The Working Time (Amendment) Regulations 2007

- Increased the holiday entitlement from 4 weeks (20 days if you worked a 5 day week) to 4.8 weeks (24 days if you work a 5 day week) on 1 October 2007 and (ii) increase to 5.6 weeks (28 days if you work a 5 day week) on 1 April 2009. From 1 April 2009 the minimum entitlement is capped at 28 days.

10 Information and Consultation of Employees Regulations

- On April 2008 the final phasing in of the ICE regulations came into effect. These govern employees' rights to be informed and consulted on a regular basis about issues in the organisation for which they work. From April 2008 they were extended to undertakings with 50 or more employees. The Regulations had applied to undertakings with 150 or more employees since April 2005 and 100 employees or more from 6 April 2007.³

11 Amendment to the Employment Agencies Regulations

These amendments to the *Conduct of Employment Agencies and Employment Business Regulations 2003* are relevant for employees and employment agencies.⁴ The amendments:

- Give all agency workers the right to withdraw from services provided by an agency, such as accommodation and transport without suffering any detriment
- Ease admin burdens on agencies by no longer requiring them to provide written information to workers regarding assignments of less than 5 days
- Ban entertainment and modelling agencies taking fees for including details of a work-seeker in a publication at the time the offer is made (or during a casting session), and for 7 days afterwards.

12 Flexible Working Amendment Regulations 2009

- In May 2008, an independent review chaired by Imelda Walsh into extending the right to request flexible working to parents of older children was published, recommending that the age cut-off be extended to those with parental responsibility for children aged 16 and under. Government accepted these recommendations and the consultation on implementing these recommendations closed on 18 November 2008. Government response to the consultation was published in March 2009. Flexible working regulations amending the 2002 Regulations were laid in March 2009. Regulations came into force on 6 April 2009.⁵

13 Resolving disputes in the workplace

A package of legislation came into force supplementary to the provisions in the *Employment Act 2008* intended to provide a framework for a more efficient system for dispute resolution. The measures were:

³ <http://www.berr.gov.uk/employment/employment-legislation/ice/index.html>

⁴ <http://www.berr.gov.uk/consultations/page37726.html>

⁵ The *Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2009 SI No. 595* & Explanatory memorandum

- The *Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008* making various changes to employment tribunal procedures;
- The *Employment Tribunals Act 1996 (Tribunal Composition) Order 2009*, enabling employment tribunal proceedings, in respect of payments relating to leave entitlement under certain working time regulations to be heard by an employment judge sitting alone;
- The *Employment Code of Practice (Disciplinary and Grievance Procedures) Order 2009*, bringing into effect the revised Acas Code of Practice on Disciplinary and Grievance procedures on 6 April 2009, replacing the previous Acas Code of Practice which came into effect on 1 October 2004.

14 Trade union blacklisting

Concerns have been voiced for some time by trade unions in respect of the practice of blacklisting individuals who are active in trade union activities. Until recently there have been no statutory provisions which address the blacklisting of trade unionists. If there was sufficient evidence of such a practice it would probably amount to a common law tort of “conspiracy”. However, this is a complex area of law.

In July 2009, the Department for Business, Innovation and Skills (BIS) published a consultation on draft Regulations to outlaw the **blacklisting of trade unionists**.⁶ This has followed the publication, on 11 March 2003, of a consultation document following its Review of the *Employment Relations Act 1999*. At the same time as the review of the 1999 Act was published, the DTI published [draft regulations](#) implementing section 3 of the Act which provides for regulations to prohibit the compilation, dissemination and use of trade union blacklists. However, the consultation document stated then that there was no evidence that any such blacklists existed. The draft regulations would only be activated if such evidence emerged. In March 2009, the Information Commissioner uncovered evidence that covert blacklisting of this form had recently occurred in the British construction industry. This prompted the Government to introduce regulations.

The *Employment Relations Act 1999 (Blacklists) Regulations 2010* came into force on 2 March 2010. Background is given in the BIS press release:

1. Under section 3 of the Employment Relations Act 1999, the Government has the power to introduce regulations prohibiting the blacklisting of workers for their union membership or activities.
2. In March the Information Commissioner reported that 40 construction companies had subscribed to a database used to vet construction workers, which has now been closed under data protection law. On 16 July, Mr Ian Kerr, the individual who operated the database, was fined £5,000 at Knutsford Crown Court for committing a criminal offence under data protection law.
3. In response to this new evidence on 11 May 2009, the Government announced that it would seek to bring forward legislation to outlaw blacklisting – the statement to Parliament can be found here –

http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090511/wmstext/90511m0001.htm#column_33WS

⁶ BIS, *The blacklisting of trade unionists: consultation on revised draft regulations*, July 2009

4. A public consultation on revised draft regulations took place between 7 July and 18 August 2009. The Government response to the public consultation can be viewed here: <http://www.berr.gov.uk/files/file53734.pdf>.⁷

These regulations were subject to the affirmative procedure which requires the approval of both houses. Under [regulation 1](#) they come into force the day after they are made. They were:

- Laid before Parliament in January this year. Detailed background is given in the [explanatory memorandum](#) to the draft regulations which also contains an impact assessment.
- Debated in the Commons by a [Delegated Legislation Committee](#) on 8 February 2010.
- Approved by the House of Commons without debate on [9 February 2010](#)
- Debated and approved by the House Lords on [25 February 2010](#)

The trade unions have raised concerns about the draft regulations more generally which are to some extent reflected in a number of recent EDMs.⁸ For example, EDM 487 states:

That this House is disappointed by the Government's response to the public consultation on the blacklisting of trade unionists because it is insufficiently robust; in this context calls for amendments to the draft regulations to recognise that compiling a blacklist of workers is an appalling practice and should be a criminal offence, as should the reprehensible use of such a list by an employer for the purpose of blacklisting, as was proposed in the House on 30 March 1999 by the then Secretary of State for Trade and Industry; further calls for them to include the right to a basic award of compensation for the fact of being blacklisted; and urges the Government to make the necessary amendments to the proposed draft regulations.

15 Agency Workers Directive

In October 2008, after years of negotiation, *Directive 2008/104/EC on temporary agency work* was passed by the European Parliament, then signed into law on 19 November 2008 and now awaits domestic implementation, required by December 2011.⁹

The Government initially announced that it intended to implement this in the 2008-09 session of Parliament:

There will be a detailed consultation in 2009 with interested parties on the options for UK implementation of the Directive and, in the light of responses, a date for entry into force of the regulations. BERR will have particular regard to avoiding unnecessary administrative burdens for business while ensuring agency workers receive the appropriate protections. The Government hopes to introduce the necessary legislation in the current Parliamentary session.¹⁰

⁷ BIS Press Release, *Blacklisting outlawed*, 2 March 2010

⁸ EDM 487 of 2009-10; EDM 2093 of 2009-10; EDM 246 of 2009-10; EDM 1020 of 2009-10;

⁹ *Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work*

¹⁰ BERR, *DIRECTIVE 2008/104/EC ON TEMPORARY AGENCY WORK (The "AGENCY WORKERS DIRECTIVE - AWD")* (retrieved 13 March 2009)

Subsequently, the most recent consultation document published in October 2009 indicated that the regulations will come into force on 1 October 2011.¹¹ Draft regulations were laid on 21 January 2010, coming into force 1 October 2011, and are expected to pass before the end of the current Parliament.¹²

Primary legislation is not required for the implementation of EU directives. The *Agency Workers Directive* will be implemented by regulations under powers conferred by section 2(2) of the *European Communities Act 1972*.

It is important to note that this will not change the *employment status* of agency workers. It remains the case that an agency worker might find themselves excluded from statutory employment protection rights on grounds that they are not classed as an “employee”.

The relevant consultation documents are as follows:

BIS, [DIRECTIVE 2008/104/EC ON TEMPORARY AGENCY WORK \(The “AGENCY WORKERS DIRECTIVE - AWD”\)](#)

BIS, [Employment Agencies: Implementation of the Agency Workers Directive: A Consultation on draft regulations](#)

BIS, [Consultation on implementation of the EU Agency worker directive](#)

BERR, [Employment agencies: Implementation of the Agency Workers Directive: a consultation paper](#), May 2009

[Pat McFadden's Written Statement in Hansard of 8 May 2009 announcing the consultation](#)

BERR Press Release, [Boost for agency workers' rights](#), 8 May 2009

BIS, [Agency Workers Directive consultation: summary of responses to consultation](#), October 2009

BIS, [Implementation of the Agency Workers Directive: consultation on draft regulations](#), October 2009

BIS, [Implementation of the Agency Workers Directive: response to consultation on draft regulations](#), 21 January 2010

They were considered by the House of Lords Merits of Statutory Instruments Committee in its [9th report](#) of this session, but the Committee said that the special attention of the House need not be drawn to them:

AGENCY WORKERS REGULATIONS 2010 (SI 2010/93)

18. This instrument implements an EU Directive on temporary agency work, the aim of which is to ensure the protection of temporary agency workers by applying the principle of equal treatment. The implementation will include a provision based on agreement between the Confederation of British Industry (CBI) and the Trades Union Congress (TUC), that agency workers should receive equal treatment on basic working and employment conditions after 12 weeks in a given job. The Regulations will have a significant impact: the Explanatory Memorandum (EM) says that the agency sector

¹¹ BIS, [Implementation of the Agency Workers Directive: consultation on draft regulations](#), October 2009

¹² BIS press release, [Fairness for Agency Workers, Flexibility for Employers](#), 21 January 2010; Draft [Agency Workers Regulations 2010 SI No.93](#)

includes about 5% of the UK workforce, supplied through about 16,000 agencies (paragraph 7.1), and estimates used by the Department for Business, Innovation and Skills[8] suggest approximately 45% of agency workers will reach the qualifying period. The Regulations include provisions aimed at preventing misuse of the qualifying period by employers. The annual costs to businesses will be up to £1,516 million (see EM paragraph 10.1). The Regulations will not come into force until 1 October 2011 to provide all concerned with time to prepare for the change, and the application of the Directive, including the operation of the 12 week qualifying period, will be reviewed by December 2013. The Committee received a letter from the British Medical Association making a number of points about the Regulations (see [Appendix 4](#)).

The letter from the British Medical Association is mainly critical of the draft regulations as giving too weak protection to agency workers in the health sector. The regulations have yet to be considered by the Commons.

16 Forthcoming legislation

- **Equality Bill 2008-09.** Legislation to outlaw discrimination has existed for over 40 years. Typically, new Acts have had as their focus one area of policy, for example, pay, equal treatment of women, race discrimination etc. Almost inevitably, the body of current law, introduced piece meal over such a long period, has developed inconsistencies of both content and approach. As well as introducing new requirements one of the main aims of this Bill is to harmonise existing law into a more coherent whole.
- On 25 September 2009 a [consultation](#) was published on the government's intention to introduce **Additional Paternity leave** for fathers of children due on or after 3 April 2011. This would give fathers a right to up to six months extra leave which can be taken once the mother has returned to work. Some of the leave may be paid if taken during the mother's maternity pay period. This will be paid at the same standard rate as Statutory Maternity Pay (SMP) currently £123.06. This will be available during the second six months after the birth of the child, allowing parents to share leave entitlements.