



# Department for Business, Innovation & Skills

## Small Business, Enterprise and Employment Act: Employment fact sheets

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## Equal pay

### Aims of the measure:

- To build on the progress made through the voluntary approach to gender equality reporting. This measure will encourage more businesses to take prompt action to achieve gender equality in workplaces across the country.
- With more data in the public domain, we expect companies to pay more attention to their own progress. We expect companies will more regularly review their own pay gap and this will allow them to benchmark themselves against others, utilising and sharing best practice.

### Measure will:

- Require the Government to consult on the detail of regulations under section 78 Equality Act 2010. This will require private and voluntary sector employers in Great Britain with at least 250 employees to publish information about the pay of employees, for the purposes of showing any differences in pay by gender.
- The regulations may specify, among other things, the form and timing of the publication, which must not be more frequent than annually.
- Section 78 provides for the possibility to make non-compliance an offence with a fine to make enforcement a civil matter.

### Specific outcomes and impacts:

- We will consult stakeholders on this and will ensure that the arrangements for reporting are appropriate and not over-burdensome.
- With more data in the public domain, we expect companies to pay more attention to their own progress.
- We expect companies will more regularly review their own pay gap and will allow them to benchmark themselves against others, utilising and sharing best practice.

## Whistleblowing

### Aims of the measure:

- Ensure more systematic processes across all prescribed bodies in the way public interest disclosures are handled.
- Achieve a consistent standard of best practice for handling disclosures.
- Provide greater reassurance to the whistle-blower that action is being taken by the prescribed person and as a result increase the confidence in the actions of the prescribed person.
- Drive behaviour change within organisations to embrace whistleblowing as an effective governance tool and to investigate any issues raised by whistleblowers.

### Measure will:

- Provide the Secretary of State with a power to require certain prescribed persons to report annually on the whistleblowing disclosures they receive.
- Maintain the confidentiality obligations of prescribed persons.

### Specific outcomes and impacts:

- There is currently no legal obligation within the whistleblowing framework for prescribed persons to investigate a disclosure made to them. This measure will ensure all disclosures are at least considered.
- BIS found through its recent call for evidence that the confidentiality duty and lack of legal obligation to investigate a disclosure means that whistleblowers do not have confidence that their reports are investigated. This is cited as a reason for the whistleblowing framework 'failing' to protect whistleblowers.
- The intention of this measure is to increase confidence that reports are looked in to and to reduce the numbers of whistleblowers who say nothing is done about the wrongdoing they report. (Currently 75% of whistleblowers according to University of Greenwich and Public Concern at Work (PCaW) research).

## Protection for applicants for employment etc in the Health Service

### Aims of the measure:

- To improve the culture of the NHS in respect to staff who raise concerns and to encourage NHS organisations to support staff that wish to do so.
- To give the Secretary of State the power to prohibit discriminatory treatment of whistleblowers who are applying for jobs in the NHS.

### Measure will:

- Provide the Secretary of State with a power to make regulations to prohibit defined NHS employers from discriminating against applicants for employment who have previously made protected disclosures (within the meaning given by section 43A of the Employment Rights Act 1996).

### Specific outcomes and impacts:

- Provide reassurance to staff that raise concerns that whistleblowing should not be a barrier to future employment with the NHS.
- Reinforce that raising concerns is a positive act and should be encouraged by employers as it can help identify problems and subsequently improve the quality of services.
- The Secretary of State's power to prohibit discriminatory treatment of job applicants who have made protected disclosures by NHS employers also allows the Secretary of State to confer jurisdiction to provide a right of action through an employment tribunal.
- Sends a clear message to NHS employers that discriminating against whistleblowers is not tolerated.

## Employment Tribunals: failure to pay sums

### Aims of the measure:

- Deter non-compliance by incentivising payment of employment tribunal awards.
- Strong financial consequence of non-payment.
- Address competitive disadvantage that compliant businesses find themselves in at ET compared to businesses that do not defend and do not pay awards owed.

### Measure will:

- Apply a penalty to an employer that fails to pay an ET award.
- Address the position that currently there are no significant consequences for non-payment.
- Tackle rogue employers whether or not a claimant chooses to enforce their award.

### Specific outcomes and impacts:

- More claimants will receive the award owed to them.
- Businesses that do not comply with their obligations will be subject to a penalty.
- Improved confidence in the ability of the ET system to deliver justice. With claimants now having to pay a fee to go to an ET there is a legitimate expectation that their award will be paid.
- Create a level playing field for businesses who engage with the tribunal system in the right way.

## Employment Tribunals: postponements

### Aims of the measure:

- Reducing the delays in Employment Tribunals caused by frequent and short notice postponements, and addressing the costs arising from short notice postponements.

### Measure will:

- Allow Ministers to place a limit on the number of successful applications for the postponement of an Employment Tribunal hearing a claimant or respondent can be granted in a case, with judges able to grant further postponements in exceptional circumstances.
- Ensure Ministers require judges to consider making costs orders (or preparation time orders) where successful applications for postponements are made.

### Specific outcomes and impacts:

- Overall, fewer delays in the Employment Tribunal system caused by postponements.
- Fewer postponements of Employment Tribunal hearing, particularly short notice postponements.
- Greater use of cost orders to compensate parties for the impacts of short notice postponements.

## National Minimum Wage

### Aims of the measure:

- To increase the maximum penalty that can be imposed on an employer that underpays its workers in breach of the national minimum wage legislation by calculating it on a per worker basis rather than a per notice basis. By calculating the maximum penalty on a per worker basis, employers owing high arrears to a number of workers may be issued with a higher penalty on one notice of underpayment.

### Measure will:

- Deter employers from breaking National Minimum Wage law and ensure that workers are correctly paid.

### Specific outcomes and impacts:

- Where an employer has been found to have underpaid its workers following an HMRC investigation that employer is issued with a notice of underpayment. This notice contains a statement of the arrears and a penalty. The penalty is set by the National Minimum Wage Act 1998 and regulations made under it, and is calculated as a percentage of the arrears subject to a minimum and maximum. Since 2014 the penalty which can be imposed by a notice of underpayment has been calculated as 100% of the arrears subject to a maximum penalty of £20,000.
- This measure amends section 19A of the National Minimum Wage Act 1998 so that the maximum penalty which can be imposed by a notice of underpayment is calculated by reference to the arrears owed to each worker up to a maximum of £20,000 per worker. Currently the maximum penalty is £20,000 per notice of underpayment, regardless of the number of workers covered by that notice.
- The increase in the maximum penalty is intended to deter employers from breaking national minimum wage law.
- The amendments to the National Minimum Wage Act 1998 extend to England and Wales, Scotland and Northern Ireland.

## Exclusivity in Zero Hours Contracts

### Aims of the measure:

- Improving flexibility and fairness in the labour market.
- Improving the income potential of individuals on zero hours contracts by giving them the freedom to work more hours, if they wish to.
- Enabling employers and individuals to benefit from the flexibility of zero hours contracts whilst addressing abuse of these contracts.

### Measure will:

- Ensure that exclusivity clauses in zero hours contracts are invalid and unenforceable, so that no one is tied into a zero hours contract without any guarantee of paid work.

### Specific outcomes and impacts:

- Greater flexibility for individuals on zero hours contracts to seek additional work elsewhere if they are not being guaranteed paid work with a particular employer.
- Greater opportunity for individuals on zero hours contracts to boost their income.
- BIS consulted during the passage of the Bill to assess whether more should be done to prevent unscrupulous employers from circumventing the exclusivity ban through simple avoidance techniques.
- Government published draft Regulations on 11 March 2015. The purpose of the proposals is to protect individuals from employers trying to avoid the ban and provide routes of redress.



## Public Sector Exit Payments

### Aims of the measure:

- Ensure a consistent underpin to the recovery of exit payments for high earners leaving a public sector role and then returning to a role in the same part of the public sector after a short period of time.

### Measure will:

- Provide powers for HMT to make regulations (except where Scottish Ministers can regulate – see below) which:
  - require individuals to repay exit payments where they return to the public sector as an employee, contractor, or public sector office holder.
  - taper the amount recoverable based upon the amount of time elapsed between exit and reengagement.
  - place obligations, both consequential and anticipatory, on those individuals that receive exit payments, the authority responsible for the exit payment, and the subsequent authority of which the exit payee becomes an employee, contractor, or which appoints the exit payee to a public office.
  - waive all or part of these arrangements and make exemptions as necessary.
  - define the sub-sector of the public sector, within which return would lead to a requirement to repay the exit payment.
  - Provide identical powers for Scottish Ministers to make regulations on the same issues in relation to exit payments made by public bodies in Scotland and within Scottish devolved competence.

### Specific outcomes and impacts:

- Provide an underpin for the recovery of redundancy and compensation payments across the public sector.
- Ensure a system which is flexible enough to respond to the need to restructure public sector workforces.

## Concessionary Coal

**Aims of the measure:**

To enable the Government to support UK Coal Production Limited, UK Coal Thoresby Limited and UK Coal Kellingley Limited by way of meeting these companies' concessionary fuel obligations to members of their workforce in accordance with the rules on regular and proper expenditure.

**Measure will:**

Provide the Government with an express statutory power under which to provide support to persons with an entitlement to concessionary coal, or cash-in-lieu of concessionary coal arising in connection with employment at UK Coal Production Limited, UK Coal Thoresby Limited and UK Coal Kellingley Limited.

**Specific outcomes and impacts:**

- There is currently no legal provision to take on responsibility for the concessionary fuel entitlements of certain employees of companies in parts of the UK Coal structure.
- Assuming the liability in respect of these employees would benefit around 730 concessionaires who will otherwise lose their entitlement when the remaining deep mines close and the company ceases to trade.



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Contacts us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000  
Email: [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk)

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