

Analysis of measures delivered in
comparison with Adrian Beecroft
report September 2011

SEPTEMBER 2012

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Beecroft recommendations – policy progress/decisions

Beecroft Recommendation (under each separate report heading)	Policy progress/decisions etc.
Unfair Dismissal	
1) Unfair dismissal qualifying period – extend from 1 to 2 years	Government response published on 23 November 2011. Regulations laid and in force on 6 April 2012.
2) No fault dismissal – introduce ‘compensated no fault dismissal’	Call for evidence on NFD for micros and dismissal procedures published on 15 March. Closed on 8 June 2012. Evidence shows majority of businesses do not support. Govt due to issue response as part of Sept package.
Exemptions for Small Businesses	
3) Micro-exemptions – exempt businesses with less than 10 employees from: unfair dismissal; pensions auto-enrolment; flex working; flex parental leave; licensing for employment of children; gangmaster licensing; equal pay audits.	<p>Call for evidence on NFD for micros and dismissal procedures published on 15 March. Closed 8 June 2012. Evidence shows majority of businesses do not support. Response due as part of Sept package.</p> <p>Flexible parental leave and flexible working will comply with current timetable for moratorium, i.e. not commence until 2015.</p> <p><u>DWP pensions auto-enrolment</u> - in the light of economic circumstances, Government decided to give small employers (<50) more breathing space to prepare for auto-enrolment, so no small employer will be affected by the new measure until the next Parliament.</p> <p><u>Defra</u> – refocused role for GLA being pursued.</p> <p><u>GEO</u> published Govt response saying that they will legislate on equal pay audits.</p>

Discrimination Law

4) Repeal third party harassment provisions of Equality Act	GEO consultation closed on 7 August 2012.
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5) Monitor the impact of the removal of the DRA on employers willingness to recruit older workers/ overall workforce - if there is a negative impact then a DRA probably at a higher age than was recently the case should be reintroduced.	<p>We are committed to reviewing the impact of removing the DRA in 2016.</p> <p>No evidence that this has been the case so far.</p> <p>Beecroft’s idea of reintroducing the DRA at a higher age would probably still not be ECHR-compliant.</p>
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Employment Tribunal Process and awards

6) Employment tribunals – implement ‘Resolving Workplace Disputes’ reforms (reducing number of cases going to ET), and review the Acas Code of Practice on Discipline and Grievance	<p>Included in employment announcement on 23 November 2011. Call for evidence on the Acas Code of Discipline and Grievance closed on 8 June 2012. Govt preparing to announce direction of travel on dismissal procedures in Sept package, including clarifying how the procedures can be simpler and shorter for smaller firms and in serious cases.</p> <p>On 6 April 2012, the following came into force: Compromise Agreements section 147 (reassuring employers and employees that they can safely use them in resolving disputes relating to alleged discrimination); judges sitting alone at Unfair Dismissal cases; witness statements taken as read; cost award limits (£20k); deposit orders (£1k).</p> <p>Other measures being implemented through the Enterprise and Regulatory Reform Bill (e.g. Acas conciliation, Settlement Agreements change to unfair dismissal legislation, power to amend unfair dismissal compensation cap, power for Rapid Resolution, EAT judges to sit alone, closing PIDA loophole).</p>
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<p>7) Recommendation of the Employment Tribunal System Steering Board (ETSSB) for improving the consistency of ET findings should be implemented</p>	<p>ETSSB now defunct. Consistency in ETs is being addressed as part of the Underhill Review on Employment Tribunal Rules. Govt preparing to consult on the Underhill recommendations shortly, with a view to making changes by April 2013.</p>
<p>8) Recommendations from the Underhill Review of ET rules to be implemented asap after publication</p>	<p>Govt preparing to consult on the Underhill recommendations shortly, with a view to making changes by April 2013.</p>
<p>9) No win no fee legal services – include as part of broader review</p>	<p><u>MoJ</u> is implementing reforms via the Legal Aid, Sentencing and Punishment of Offenders Act to prohibit the payment of referral fees in personal injury claims and in the way “No Win No Fee” lawyers using conditional fee arrangements can claim success fees in civil courts.</p> <p>But this will not generally affect proceedings in employment tribunals, where costs are not recoverable from the losing side in any event (except in exceptional circumstances). We are aware that damages-based agreements - another type of no win no fee agreement - are used in some employment cases by solicitors and claims managers. These are subject to the Damages Based Agreements Regulations 2010.</p>

<p>10) Legislate to ensure ‘Polkey’ reduction applies to basic award as well as compensatory award</p>	<p>There are already several reasons for which a basic award can be reduced:</p> <ul style="list-style-type: none"> • the employee has unreasonably refused an offer of reinstatement from the employer, or has unreasonably prevented the employer from complying with an order for reinstatement; • the tribunal considers that the employee’s conduct before dismissal justifies a reduction; • the employee has been awarded an amount in respect of the dismissal under a designated dismissal procedures agreement. • the employee has already been awarded or received a redundancy payment <p>We have no plans to add to these.</p>
<p>11) Employment tribunal fees and discrimination awards – introduce fees to tribunals and explore whether possible to cap discrimination awards</p>	<p>Beecroft’s proposal would not be achievable because it would be illegal to introduce a cap on discrimination claims. MoJ consulted on a proposal to charge a higher fee to claimants seeking awards above a specified threshold (£30k) - to encourage employees to consider their claim carefully before making a claim. The MoJ consultation closed on 6 March and the response, published on 13 July 2012. They concluded that this option should not be pursued.</p>
<p>Pensions</p>	
<p>12) Pensions auto-enrolment – exempt micros permanently</p>	<p>In the light of economic circumstances, Government decided to give small employers (<50) more breathing space to prepare for auto-enrolment, so no small employer will be affected by the new measure until the next Parliament.</p>
<p>CRB System</p>	
<p>13) CRB checks – Home Office should address portability issues</p>	<p>Included in employment package announcement on 23 November, and being taken forward through the Freedom Act. Home Office on course for delivering an online portable checking system in spring 2013.</p>
<p>Work Permit Checks</p>	
<p>14) Work permit checks – extend on-line record system</p>	<p>UKBA plans to launch a new commercial service to ensure employers and public service providers are able to make quick and easy real time checks on the</p>

	validity of the permit.
Bringing Workers from Abroad	
15) Workers from abroad – improve online application process for employers and remove requirement to advertise roles in Jobcentre Plus	Jobs paying in excess of £70k are no longer required to be advertised on Job Centre Plus. For jobs requiring PhDs, there are two changes; <ul style="list-style-type: none"> • sponsors can select the best candidates regardless of whether they are a resident worker. The Resident Labour Market Test will be valid for 12 months rather than 6 months
Simplifying the Immigration System	
16) Immigration regulations – simplify the large number of regulations	Home Office have no current plans for immigration legislation due to focus on broader immigration objectives, but will continue to keep this under review.
TUPE	
17) Tupe – allow harmonisation of terms within one year (“introducing this collective agreement option from elsewhere in Europe”) and remove gold-plating on service provision	Launched call for evidence on 23 November. Closed on 31 January 2012. BIS preparing to publish a summary of responses shortly, at the same time indicating that we will launch a consultation later this year.
Collective Redundancies	
18) Collective redundancies – reduce minimum consultation period to 30 days	Call for evidence ran from November 2011 to January 2012. Responses showed a real need for change. BIS consulting on a package of proposals to remove barriers to effective restructuring and good quality consultation. Consultation closes on 19 September.
Equal Pay Audits	
19) Equal Pay Audits – announce that Govt won't proceed	GEO published Govt response saying that they will legislate on equal pay audits.

Gangmasters Licensing Authority	
20) Abolishing the GLA should be seriously considered - repeal GLA and accompanying regulations	Defra lead. Refocused role for GLA being pursued.
Agency Workers Regulations	
21) Agency Workers Regulations – weigh up risk of infraction	Announced on 23 November 2011 that we will review Agency Workers Regulations paperwork in 18 months' time, looking for opportunities to simplify it. No real evidence yet of problems stemming from AWR – though there has been some consolidation in sector.
Employment Agency Regulations	
22) Introduce a non-statutory code of practice and simplify the regs	Announced on 23 November that BIS will consult on reforming how the recruitment sector is regulated during 2012.
Employment Agency Standards Inspectorate	
23) EAS Inspectorate should be closed once non-statutory code of practice in place	Announced on 23 November that BIS will consult on reforming how the recruitment sector is regulated during 2012.

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