



TLT Multi Jurisdictional Guide | Employment Law



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'The team are supportive and really get to know the business and its needs understanding not only the law, but what the business is trying to achieve'.
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Employment law across the UK: A comparative analysis

For organisations whose workforces operate across Northern Ireland, Scotland and England, the employment law framework and Tribunal practice may look very similar at first glance, but there are some key regional variations which might trip up the

unwary. Recently recognised by the Chambers UK guide to the legal profession as National Leaders, TLT's multi-jurisdictional employment law experts outline the major points of difference between each of the UK legal jurisdictions.

Northern Ireland and Great Britain

	Northern Ireland	Great Britain
Unfair Dismissal Qualifying Periods and Awards	<p>1 year</p> <p>Cap on a week's pay currently £547</p> <p>Limit on compensatory award currently £86,614. NI does not operate a limit on awards based on the lower of the statutory cap or one year's pay.</p>	<p>2 years</p> <p>Cap on a week's pay currently £525</p> <p>Statutory cap on compensatory awards currently set at £86,444. Limit on awards is based on the lower of the statutory cap or one year's pay.</p>
Disciplinary and Dismissal Procedures	<p>Statutory dismissal and dispute resolution procedures retained.</p> <p>The statutory procedure applies to almost all dismissals including redundancies and termination of fixed term contracts. Failure to follow any aspect of the statutory procedure in NI can result in uplifts to Tribunal awards by up to 50%, and make the dismissal of an employee automatically unfair.</p>	<p>Statutory dismissal and dispute resolution procedures were repealed in GB in 2009.</p> <p>The ACAS <i>Code of Practice on Disciplinary and Grievance Procedures</i> is non-statutory but if a Tribunal finds that either party has unreasonably failed to comply with the Code of Practice, it can increase or reduce any award by up to 25%.</p>
Discrimination	<p>The <i>Equality Act 2010</i> does not extend to NI. The following legislation (as amended from time to time) remains in force:</p> <ul style="list-style-type: none"> ■ <i>Disability Discrimination Act 1995</i> ■ <i>Race Relations (Northern Ireland) Order 1997</i> ■ <i>Sex Discrimination (Northern Ireland) Order 1976</i> ■ <i>Equal Pay Act (Northern Ireland) 1970</i> ■ <i>Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003</i> ■ <i>Employment Equality (Age) Regulations (Northern Ireland) 2006</i> ■ <i>Fair Employment and Treatment (Northern Ireland) Order 1998.</i> 	<p>The <i>Equality Act 2010</i> harmonised and reformed previous discrimination law in GB.</p>

	Northern Ireland	Great Britain
Equality Duties and Monitoring Requirements	<p>Section 75 of the <i>Northern Ireland Act 1998</i> imposes obligations on public authorities operating in Northern Ireland to monitor and report on equalities data.</p> <p>All employers with 11 or more employees working 16 hours or more per week are required to register with the Equality Commission for Northern Ireland. They are also required to annually monitor the composition of their workforce and conduct periodic reviews every 3 years (also known as Article 55 reviews).</p> <p>Employers with more than 250 employees have increased reporting obligations.</p>	<p>The <i>Equality Act 2010</i> imposes obligations on public authorities operating in GB to promote equality.</p>
Holiday Pay	<p>No 2 year back pay limit on holiday pay claims in NI</p> <p>We understand the <i>PSNI</i> appeal to Supreme Court in respect of backdated holiday pay claims will be heard in 2020. Please click here for more information on this case.</p>	<p>2 year back pay limit on holiday pay claims.</p>
Gender Pay Gap Reporting	<p>Gender pay reporting is not mandatory in NI at present, but is provided for in the <i>Employment (Northern Ireland) Act 2016</i>. The legislation provides for wider reporting obligations than the rest of Great Britain, including ethnicity and disability, as well as establishing sanctions for non-compliance.</p>	<p>Mandatory gender pay gap reporting introduced in 2017 for employers with more than 250 employees.</p>
Protected Conversations and Settlement Agreements	<p>Protected conversations do not extend to NI.</p> <p>Rules around without prejudice conversations will apply where communications act as a means of settling or resolving an existing dispute.</p> <p>Northern Ireland continues to use Compromise Agreements</p>	<p>Protected conversations are covered by s.111A of the <i>Employment Rights Act</i>, allowing for without prejudice discussions to take place in respect of specific claims, even where there is no pre-existing dispute (meaning that the general without prejudice rules would not apply).</p> <p>Compromise Agreements now known as Settlement Agreements.</p>
Collective consultation on redundancy	<p>The minimum consultation period in NI where 100 or more redundancy dismissals are proposed at one establishment remains at 90 days. Where 20 to 99 dismissals are proposed, the period of consultation is 30 days.</p> <p>Persons working under fixed term contracts should be included by employers in the proposed numbers for redundancy dismissal.</p>	<p>The minimum consultation period in UK where 100 or more redundancy dismissals are proposed at one establishment is 45 days. Where 20 to 99 dismissals are proposed, the period of consultation is 30 days.</p> <p>From 2013, workers on fixed term contracts are excluded from collective redundancy obligations where the dismissal will take effect before the fixed-term contract was due to terminate.</p>

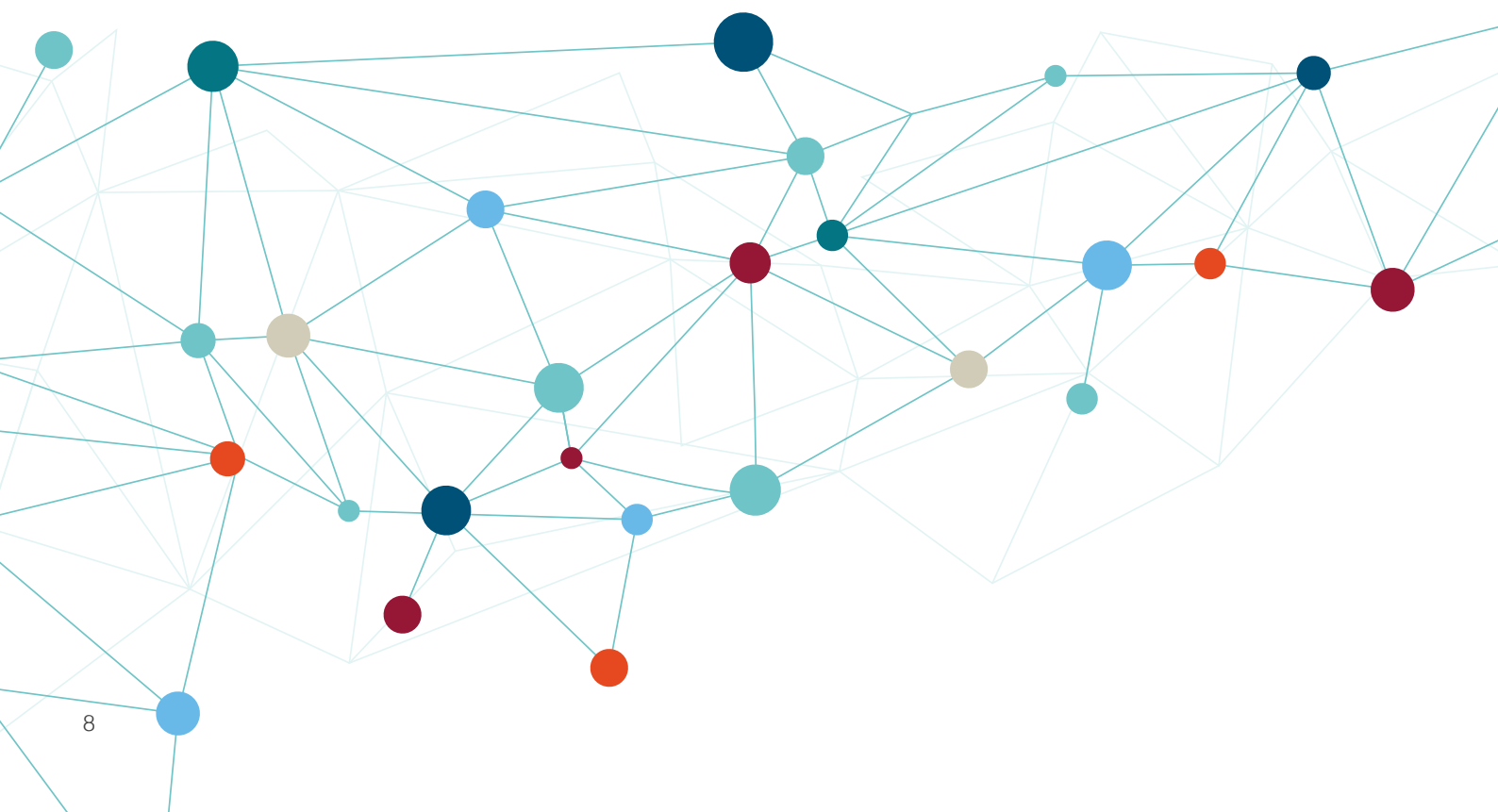
	Northern Ireland	Great Britain
TUPE	<p>The service provision change elements of the <i>Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)</i> apply only in Great Britain. Separate regulations dealing with service provision change, known as the <i>Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006</i> apply in NI.</p> <p>The 2014 amendments to TUPE do not apply in NI. In particular, there is no legal basis for counting any period of pre transfer consultation towards the collective consultation timescales required under the legislation.</p> <p>The time period for exchange of employee liability information remains at 14 days and not 28, and the old rules around the ETO defence will apply.</p>	<p>The <i>TUPE Regulations</i> protect employees when the business or undertaking for which they work transfers to a new employer and apply to any relevant transfer that took place on or after 6 April 2006.</p> <p>Amendment regulations came into force on 31 January 2014.</p>

Northern Ireland, England and Wales and Scotland

	Northern Ireland	England and Wales	Scotland
Constitution and Rules of Procedure	<p>Tribunals in NI governed by the <i>Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005</i> and the <i>Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005</i>:</p> <p>The Fair Employment Tribunal, unique to NI, was constituted specifically to deal with cases involving an element of religious belief/political opinion discrimination</p> <p>All other types of claim are heard by the Industrial Tribunal.</p> <p>All case management and tribunal hearings take place in Belfast.</p>	<p>Regional Employment Tribunals across England and Wales governed by the <i>Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013</i>.</p>	<p>Employment Tribunals in Scotland (Aberdeen, Dundee, Edinburgh, Glasgow and Inverness) governed by the <i>Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013</i>.</p> <p>The vast majority of Scottish Employment Tribunal admin is carried out from Glasgow, however notification of a claim from the Glasgow Tribunal does not necessarily mean that any hearing(s) will take place there.</p>

	Northern Ireland	England and Wales	Scotland
Case Management	Case management discussions, either by way of teleconference or attendance in person, are directed in the majority of cases, including simple unfair dismissal. Note that attendance at Tribunal is required in all cases involving allegations of discrimination or whistleblowing.	Case Management Orders and timetabling for hearing are often directed in writing on notification to the Respondent of a claim. Case Management Preliminary Hearings will be listed in discrimination cases, and may be by way of teleconference or attendance in person.	Previously, Preliminary Hearings for case management purposes were being listed in the vast majority of cases. Now appears to be happening less often for more routine cases.
Disclosure	<p>In NI, all documents relevant to the issues in the claim, which are in a party's possession, custody or control.</p> <p>Relevant documents must be provided regardless of whether it helps or hinders a party's case.</p>	<p>Standard Tribunal direction that all documents relevant to the issues in the claim, which are in a party's possession, custody or control.</p> <p>Relevant documents must be provided regardless of whether it helps or hinders a party's case.</p>	In Scotland, the general rule (unless the Tribunal directs otherwise) is that parties only need to disclose documents on which they seek to rely.
Witness Statements	Directed by an Employment Judge most cases. In more complex cases, the EJ will often direct sequential exchange of statements with the Claimant providing their statements first and the Respondent following, usually 3-4 weeks after.	Usually directed by an Employment Judge and exchanged simultaneously in the majority of cases.	Witness evidence is given orally. Generally no witness statements as a matter of course.
Hearings	<p>All types of case heard by a panel of three, consisting of an Employment Judge and two lay members from differing backgrounds.</p> <p>Decisions are usually reserved and it is common for a separate hearing on remedy to follow depending on case outcome.</p>	<p>Hearings may consist of an Employment Judge and two lay members. However, in simple unfair dismissal and breach of contract cases, the Employment Judge sits alone.</p> <p>Judgments are more often given orally at the end of the hearing, but may be reserved on occasion. If a decision is given orally, written reasons will only be provided if requested by one of the parties.</p>	<p>Hearings may consist of an Employment Judge and two lay members. However, in simple unfair dismissal and breach of contract cases, the Employment Judge sits alone.</p> <p>Separate remedy hearings comparatively rare in Scotland. Tribunals try to deal with liability and remedy at the same hearing if possible.</p>

	Northern Ireland	England and Wales	Scotland
Instructing Counsel	<p>No framework of chambers in NI. Instructions and fees usually confirmed with the barrister directly.</p> <p>In NI barristers must be accompanied to hearings and client consultations by someone from the instructing solicitor's office.</p>	<p>Instruction via clerks at chambers.</p> <p>Counsel will normally attend client consultation and hearings unaccompanied by the instructing solicitor</p>	<p>Instruction via clerks. Chambers referred to as stables. More common for solicitors to conduct litigation as a matter of course in Scotland.</p>
Appeals	<p>No Employment Appeal Tribunal in NI.</p> <p>Parties can apply to the Tribunal for review, or lodge an appeal directly with the NI Court of Appeal.</p>	<p>Parties can apply to the Employment Appeal Tribunal on a point of law.</p> <p>Appeal to higher courts is possible with permission.</p>	<p>Parties can apply to the Employment Appeal Tribunal on a point of law.</p> <p>Further appeals are referred to the Court of Session.</p>
Conciliation and Settlements	<p>Labour Relations Agency (LRA) is the equivalent of ACAS.</p> <p>Mandatory early conciliation will come in to effect in NI on 27 January 2020.</p> <p>Settlements reached through LRA are legally binding on parties.</p>	<p>Mandatory early conciliation applies.</p> <p>Settlements reached through ACAS are binding on parties.</p>	<p>Settlements reached through ACAS are binding on parties.</p>

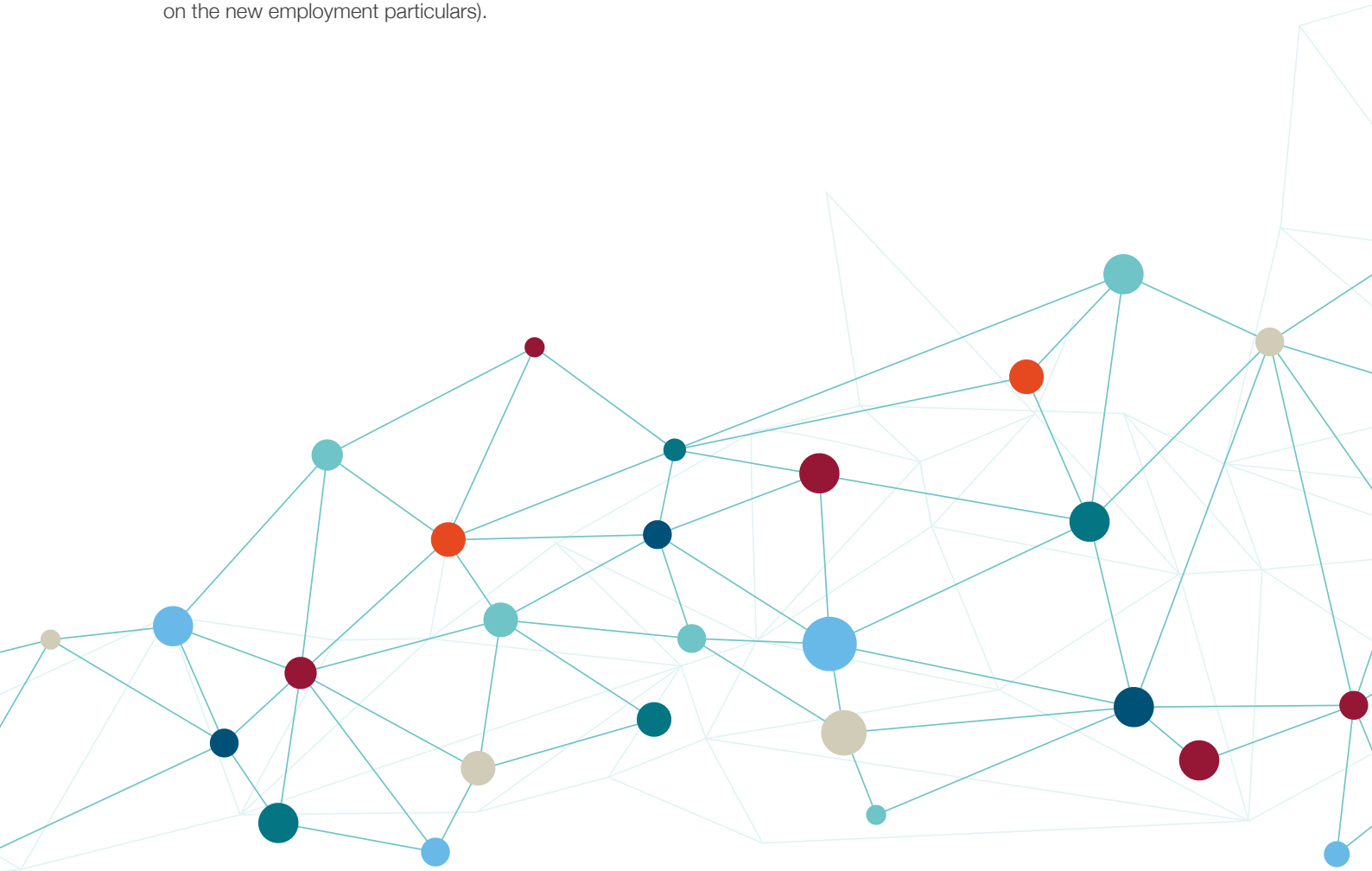


Future developments

Throughout 2020 the gap is set to widen further between Northern Ireland and Great Britain (GB). For example, changes to Agency Worker Regulations in GB are not proposed for Northern Ireland, so the Swedish Derogation, which is due to be repealed in GB April 2020 will continue (this provides an exception to the requirement for pay parity between agency workers and permanent workers after 12 weeks). In addition, the new and expanded rules relating to mandatory minimum written employment particulars which are coming into force in GB on 6 April will not apply to Northern Ireland (please [click here](#) for more information on the new employment particulars).

As the Northern Ireland Assembly has now been restored, we may see some movement in 2020 on a number of employment law changes which have already been implemented in GB but had been stalled locally. For example, gender pay reporting has already been provided for in Northern Irish legislation, and the proposed reporting obligations are more stringent than in the UK currently.

If you require any assistance with employment law advice and / or litigation at your locations across the UK, please do contact a member of our national team.



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