ADDLESHAW GODDARD

EMPLOYMENT LAW: WHAT'S ON THE HORIZON? (1 JANUARY 2017 ONWARDS)

FUTURE KEY LEGISLATIVE DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	The Trade Union Act 2016 and related regulations	**Trade Union Act 2016: important public services** The Trade Union Act 2016 received Royal Assent on 4 May 2016. The Act is not yet in force; its provisions will require further legislation in the form of regulations before they are implemented. One aspect of the Act is to introduce an additional minimum support threshold of 40% (i.e. that at least 40% of those entitled to vote must vote 'yes') in important public services. Important public services include parts of the fire, health, education, transport, border control and nuclear services and include some private sector workers). The 40% threshold does not cover "ancillary workers" as was initially proposed. Draft regulations have been produced specifying what qualifies as an "important public service". These regulations will come into force on 1 March 2017.	**1 March 2017**
2.	FCA Policy Statement PS16/5 and PRA Policy Statement PS5/16 FCA Policy Statement PS16/22 and Individual Accountability (Regulatory References) Instrument 2016 (FCA 2016/57) PRA Policy Statement PS27/16 and PRA Rulebook (PRA 2016/38) and PRA Rulebook (PRA 2016/39)	**Financial services: regulatory references in the financial services sector** The FCA and PRA published a joint consultation paper on regulatory references within the financial services sector. The proposals would change the way that affected firms and insurers obtain and provide references for candidates for certain roles. The consultation closed on 7 December 2015. On 15 February 2016 the PRA and FCA issued a joint policy statement which contained a "first tranche" of the new rules on regulatory references. These rules broadly reflected the requirements that were in place under the Approved Persons regime.	**7 March 2017** The "first tranche" of the rules came into force on 7 March 2016 The "second tranche" will come

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		On 28 September 2016 the PRA and FCA published separate policy statements outlining their final rules on regulatory references. You can read our article on this subject on Practical Law (£).	into force on 7 March 2017
3.	Regulations will be required	**Personal tax allowance and the higher rate tax threshold to be raised** The Personal Allowance will rise from the current rate of £11,000 to £11,500 in 2017-18. The higher rate income tax threshold will increase from £43,000 this year, to £45,000 in 2017-18.	**6 April 2017**
4.	Regulations will be required	**National Living Wage and National Minimum Wage** There will be a 30 pence rise in the National Living Wage rate from £7.20 to £7.50 per hour from April 2017. The National Minimum Wage (**NMW**) will also increase as follows: • for 21 to 24 year olds – from £6.95 per hour to £7.05 • for 18 to 20 year olds – from £5.55 per hour to £5.60 • for 16 to 17 year olds – from £4.00 per hour to £4.05 • for apprentices – from £3.40 per hour to £3.50 The Government has also committed to invest an additional £4.3 million per year to strengthen enforcement. This will fund new HMRC teams to proactively review those employers considered most at risk of non-compliance with the NMW.	**6 April 2017**
5.	Regulations will be required	**Statutory payments: rate increase** The following statutory payments will be up-rated as follows: • Statutory maternity, paternity, adoption and shared parental pay and maternity allowance – from £139.58 to £140.98 per week	**6 April 2017**

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		• Statutory sick pay – from £88.45 to £89.35 per week	
6.	The Equality Act 2010 (Commencement No. 11) Order 2016 SI/2016.839 Section 78 of the Equality Act 2010 Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (draft)	**Equality: compulsory gender pay gap reporting** Employers with 250 or more employees will be required to publish gender pay information on an annual basis. Employers will be required to report: • The overall gender pay gap within their business calculated by reference to the specified pay period (on a mean and median basis) • The overall bonus gap within their business calculated by reference to a 12-month period (on a mean and median basis) • The proportion of men and women that received a bonus in a 12-month period • The numbers of men and women working across salary quartiles Employers will be required to take their pay snapshot by reference to the pay period within which 5 April 2017 falls and will need to publicly report the results on, or before, 4 April 2018. On 12 February 2016 the Government published a consultation on the draft Equality Act 2010 (Gender Pay Gap Information) Regulations. The Government has yet to respond to that consultation, but it has now published the final draft of the regulations. The regulations are due to come into force on 6 April 2017. For further information about the final draft of the regulations you can read our briefing here.	**6 April 2017** The Equality Act 2010 (Commencement No. 11) Order 2016 SI/2016.839 brought section 78 into force on 22 August 2016. The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 are expected to come into force on 6 April 2017.
7.	The Finance Act 2016	**Apprenticeship levy** The Finance Act 2016 (part 6) includes provisions introducing an annual apprenticeship levy, payable through PAYE alongside income tax and national insurance, with effect from April 2017. The levy will be payable by all private and public sector employers in the UK at the rate of 0.5% of their total pay bill, with an annual allowance of 15% to offset against the levy payment. The result is that the levy will be payable on pay bills of £3 million or more. In this context, "pay bill" means gross pay, excluding benefits in kind.	**6 April 2017**

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		The money generated from the levy will be used to fund 3 million new post-16 apprenticeships. The money will be available to employers to fund the apprenticeships, however, there will be a 2-year period within which to use the funding before it is made available to other employers. On 12 August 2016 the Government published a consultation on: (i) how the levy will be funded; (ii) the support available to employers; and (iii) what type of training can be funded and how. This consultation closed on 5 September 2016. For further information about the apprenticeship levy you can read our briefing here.	
8.	The Finance Bill 2017	**Taxation of salary sacrifice schemes** From April 2017, following the conclusion of the public consultation process, most salary sacrifice schemes will be subject to tax in the same way as cash income. To read our briefing on the consultation proposal to reform the taxation of salary sacrifice schemes, please click here. The Government has also published its response to the consultation here. The reforms will affect types of salary sacrifice schemes differently: • pensions, pensions advice, childcare, cycle-to-work and ultra-low emission cars will be exempt; • all arrangements in place before 6 April 2017 will be protected until 5 April 2018 (or before if the arrangement ends, changes, is modified or due for renewal at an earlier date); and • arrangements in place before 6 April 2017 for cars, accommodation and school fees will be protected until 5 April 2021 (or before if the arrangement ends, changes, is modified or due for renewal at an earlier date).	**6 April 2017**
9.	The Trade Union Act 2016	**Trade Union Act 2016: independent review into the use of e-balloting in industrial disputes** The Trade Union Act 2016 received Royal Assent on 4 May 2016. The Act is not yet in force; its provisions will require further legislation in the form of regulations before they are implemented.	**Review report to be laid before Parliament by December 2017**

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		Under the Act, the Secretary of State was required to commission an independent review on the delivery of secure methods of electronic balloting within six months of the Act being passed (i.e. by no later than 3 November 2016). The Department for Business, Energy and Industrial Strategy has announced that an independent review on the delivery of secure methods of electronic balloting will be chaired by Sir Ken Knight and will report to Parliament by no later than December 2017. The review will address the following issues: • The electronic and physical security of e-balloting methods, including risks of interception, impersonation, hacking, fraud or misleading or irregular practices • If any system can safeguard against the risk of intimidation of union members and protect anonymity of ballot responses • The security and resilience of existing practices of balloting union members • The aims of the Trade Union Act 2016 to ensure strikes and related disruption to the public only happen as a result of a clear, positive decision by those entitled to vote The final report is to be laid before Parliament, together with the Secretary of State's response, by the end of December 2017.	

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
10.	The Small Business, Enterprise and Employment Act 2015 (**SBEEA**) amends the Companies Act 2006 (sections 81, 87 and 89) and the Company Directors Disqualification Act 1986 (sections 104 – 108) Small Business, Enterprise and Employment Act 2015 (Commencement No. 2) Regulations 2015 Small Business, Enterprise and Employment Act 2015 (Commencement No. 3) Regulations 2015	**Company directors** The following changes will be made: • All companies will be obliged to keep a public register of "persons with significant control" over the company (s.81 SBEEA) • All company directors must be natural persons and not corporate entities (s.87 SBEEA) • The general directors' duties in the Companies Act 2006 will apply equally to shadow directors (s.89 SBEEA) • There will be new grounds for a director to be disqualified (s.104 - 106 SBEEA) • The period of time for applying to court for disqualification of an unfit director of an insolvent company will be increased from 2 to 3 years (s.108 SBEEA)	**Some already in force.** **Section 108 in force on date to be confirmed in 2017** The following provisions have already come into force: (i) section 81 came into force on 6 April 2016; (ii) section 89 came into force on 26 May 2015; and (iii) sections 104 and 108 came into force on 1 October 2015. However, section 87 has not yet come into force. It was due to come into force in October 2016 but has been delayed and is now expected to come into force during 2017.
11.	*Cap:* The Enterprise Act 2016 inserts new sections 153A-C into the SBEEA, which will permit the introduction of new regulations Public Sector Exit Payments Regulations 2016 (draft)	**Termination payments: restrictions on public sector exit payments** *Cap:* The Enterprise Act 2016 will introduce a cap on the pre-tax value of public sector exit payments (including voluntary and compulsory redundancy and severance payments) of £95,000. This	**Date to be confirmed in 2017** *Cap:* The Enterprise Act 2016 came into

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
	Repayment: The SBEEA (sections 154-157) permits the introduction of new regulations The Small Business, Enterprise and Employment Act 2015 (Commencement No 3) Regulations 2015 The Repayment of Public Sector Exit Payments Regulations 2016 (draft)	will apply broadly across the public sector as defined by the list of public sector bodies set down by the Office of National Statistics (although some bodies may be exempted). *Repayment:* New regulations will be introduced by way of the SBEEA to require the repayment of exit payments (e.g. redundancy payments) where a high earning public sector employee or office holder (defined as any individual earning above £100,000) is subsequently re-employed in the public sector within 12 months, on a pro rata basis. A consultation on this issue closed on 25 January 2016. Amongst other things, this consultation proposed reducing the minimum earnings threshold to £80,000. The Government has not yet responded to this consultation. *Calculation:* A consultation ran from 5 February 2016 to 3 May 2016 seeking views on proposed restrictions on the calculation of public sector exit payments. The proposals included: (i) introducing a maximum tariff for calculating exit payments at 3 weeks' pay per year of service; (ii) capping the number of months' salary used when calculating redundancy payments at 15 months; and (iii) setting a maximum salary for the calculation of exit payments. The Government responded to this consultation on 26 September 2016 and concluded that whilst reforms were needed, this should not be imposed via a single compensation scheme for all public sector workers. Instead, exit arrangements should be determined at workforce level, including through collective agreements where relevant. This will allow different elements of the public sector to devise exit payment schemes appropriate to its workforce. The Government now expects departments to begin restructuring their exit terms immediately, and produce proposals for reform consistent with the new framework by the end of 2016. Departments must then consult with their respective workforces with a view to agreeing the proposals by no later than June 2017.	force on 4 May 2016. The Public Sector Exit Payments Regulations 2016 are intended to come into force on a date to be confirmed (which will not be before 1 October 2016). *Repayment:* Sections 154-157 of the SBEEA were brought into force on 1 January 2016. This gives the Secretary of State the power to make the relevant regulations. It is not yet known when The Repayment of Public Sector Exit Payments Regulations 2016 will come into force. *Calculation:* New exit arrangements to be agreed at

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
			workforce level by June 2017.
12.	The SBEEA (section 148) permits the introduction of new regulations The Small Business, Enterprise and Employment Act 2015 (Commencement No 3) Regulations 2015 The Prescribed Persons (Report on Disclosure of Information) Regulations 2015 (draft)	**Whistleblowing: requirement for regulators to report annually** There will be a new requirement for regulators (also known as "prescribed persons") who receive whistleblowing disclosures to report annually (and report to Parliament) on the disclosures they receive. The content of such a report has not yet been finalised. However, it is expected that as a minimum, these bodies will be obliged to disclose information such as the number of whistleblowing complaints received and the action taken in response, if any. Regulators will not be required to determine whether or not a disclosure is in the public interest. Also, the reports will not reveal the identity of the whistleblower or the employer.	**Date to be confirmed in 2017** Section 148 was brought into force on 1 January 2016. This gives the Secretary of State the power to make the relevant regulations. It is not yet known when the draft regulations will come into force.
13.	Consultation paper	**Caste discrimination: consultation on introducing express statutory protection against caste discrimination** On 2 September 2016, the Government announced it will undertake a public consultation on the issue of caste and the Equality Act 2010. At the time of writing the consultation paper has not been published. The aim of the consultation will be to obtain the views on whether additional measures are needed to ensure victims of caste discrimination have appropriate legal protection and effective remedies under the 2010 Equality Act. The consultation will run for 12 weeks from its commencement date.	**Date to be confirmed in 2017**

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
14.	Amendments will be made to the Income Tax (Earnings and Pensions) Act 2003	**Termination payments: simplification of the tax and national insurance treatment of termination payments** In July 2015 HM Revenue and Customs and HM Treasury launched a public consultation on the simplification of the tax and national insurance treatment of termination payments. On 10 August 2016, the Government published its response to the consultation, together with a second consultation on the amendments to the law which will be required to implement the planned changes on 6 April 2018. The changes include: • Clarifying the scope of the exemption for termination payments to prevent manipulation, by making the tax and National Insurance contributions (**NICs**) and consequences of all post-employment payments consistent. This will mean that all types of payments in lieu of notice (**PILONs**) will be taxable and subject to Class 1 NICs • Aligning the rules for income tax and employer NICs so that employer NICs will be payable on payments above £30,000 (which are currently only subject to income tax). The first £30,000 of any termination payment will remain exempt from income tax and the entirety of the payment will remain exempt from employee NICs • Removing foreign service relief • Clarifying that the exemption for injury does not apply in cases of injured feelings	**6 April 2018** The second consultation closed on 5 October 2016. The new rules are expected to come into force on 6 April 2018.
15.	Trade Secrets Directive (EU) 2016/943 If the UK is a member of the EU at the relevant time then domestic legislation will need to be introduced to comply with the Directive	**Trade secrets** A new European Directive introducing an EU-wide definition of "trade secret" and setting out rules on the unlawful acquisition, disclosure and use of trade secrets came into force in June 2016. The definition is potentially wider than what is regarded as a "trade secret" under English common law, but somewhat narrower than the types of "confidential information" that may qualify for protection in the domestic courts. The Directive prohibits the acquisition of a trade secret through unlawful access to materials or other conduct which is contrary to "honest commercial practices" (a term that is not defined in the Directive); the use or disclosure of a trade secret where this would breach any contractual or other duty, or where the trade secret was acquired unlawfully; and the exploitation of goods produced using the trade secret	**By June 2018** The Trade Secrets Directive came into force in June 2016. Member States have 2 years from this date to implement the Directive into national legislation, meaning the UK

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		where the user (for example, a subsequent employer) knew or ought to have known that the trade secret was acquired unlawfully. The Directive also includes enforcement measures, procedures and civil remedies, including interim injunctions and precautionary seizure of infringing goods. The proposal also covers the preservation of confidentiality during the litigation process.	must comply by June 2018 (assuming that the UK is still a member of the EU at this point).
16.	Various shared parental leave and pay regulations	**Shared parental leave: extension of leave and pay to working grandparents** The Government has announced that they will extend shared parental leave and pay to working grandparents by 2018. A public consultation on this proposal was due to commence in May 2016, but was postponed until after the EU referendum. It is not yet clear when the consultation will commence.	**During 2018**
17.	New legislation would be required	**Restrictive covenants** On 25 May 2016 the Government published a Call for Evidence seeking views on how non-compete clauses are operating in practice. You can read our report on the Call for Evidence here. The aim is to ensure that when such clauses are used they are: "justified, well-constructed, targeted and reasonable" and fairly balance employer and worker interests. Although the Call for Evidence referred to "non-compete clauses", its scope was not restricted to restrictions preventing workers from working for a competing business. Within the scope of the Call for Evidence are: • Restrictions which prevent an ex-worker from working for, or setting up, a competing business (including area-based restrictions) • Restrictions which prevent an ex-worker from dealing with the employer's customers • Restrictions which prevent an ex-worker from employing employees of the employer The Call for Evidence was silent on whether restrictions which prevent the ex-worker from soliciting clients or employees of the employer are covered, although it is likely that the intention is that they will be addressed as part of this review. Confidentiality clauses and intellectual property provisions were not within scope on the basis that these are considered "separate policy areas". If the evidence	**Unknown** The Call for Evidence closed on 19 July 2016. Further details are awaited from the Government.

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		received suggests that such clauses are operating as a barrier to flexibility, the Government may introduce legislation designed to regulate the use of such restrictions.	
18.	Collective Redundancies Directive 1998/59/EC Acquired Rights Directive 2001/23/EC Information and Consultation of Employees Directive 2002/14/EC	**Collective redundancies and TUPE: potential consolidation of three EU Directives** The European Commission opened a public consultation on 10 April 2015 on the potential consolidation of: (i) Collective Redundancies Directive 1998/59/EC; (ii) Acquired Rights Directive 2001/23/EC; and (iii) Information and Consultation of Employees Directive 2002/14/EC. The aim of the proposal is to strengthen the legislation relating to the information and consultation of employees. The consultation closed on 30 June 2015 and a response is awaited as to whether the proposal will be pursued.	**Unknown** Further details are awaited from the European Commission.
19.	New legislation would be required.	**Immigration measures** At the 2016 Conservative Party Conference, the Home Secretary, Amber Rudd, announced a number of immigration related proposals including some which are of relevance to employers: • Tightening the test for the recruitment of foreign workers (both EEA and non-EEA workers) with the aim of reducing net migration to the UK to the "tens of thousands" • Requiring companies to provide the Government with details of how many foreign workers they employ • Mandatory immigration checks for those applying for a licence to drive a taxi	**Unknown** Some of these measures may come into force prior to Brexit Day (on or after 31 March 2019). Others, such as measures to reduce EEA migrant numbers will only be able to come into effect after Britain has left the EU.

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	DATE JUDGMENT HANDED DOWN / EXPECTED
1.	Aslam and others v Uber	**Worker status: whether Uber taxi drivers were workers** The Employment Tribunal decided that taxi drivers engaged by Uber were workers, rather than self-employed contractors. The consequence is that the drivers will be entitled to certain employment rights such as to be paid in accordance with the National Minimum / Living Wage and protections under the Working Time Regulations (e.g. rest breaks and paid holiday).	The Employment Tribunal's judgment was handed down on 28 October 2016. A Remedies Hearing is to be listed.
2.	First Group plc v Paulley	**Disability discrimination: goods and services** The Court of Appeal held that a bus operator who had a policy of requesting, but not requiring, bus passengers to move out of wheelchair spaces to make room for a wheelchair bound passenger was not in breach of the Equality Act 2010. The duty to make reasonable adjustments did not mean that the bus operator had to *require* passengers to move out of the wheelchair area. The claimant was granted permission to appeal to the Supreme Court. The Supreme Court hearing took place on 15 June 2016 and the decision is awaited.	The Supreme Court hearing took place on 15 June 2016. The judgment was reserved and is expected soon.
3.	R (Gina Miller and Deir Tozetti Dos Santos) v The Secretary of State for Exiting the European Union	**Exiting the European Union** The High Court concluded that the Government was not entitled to trigger the formal process for exiting the European Union by way of prerogative powers. You can read our briefing on the decision here. The Government's appeal to the Supreme Court was heard between 5 and 8 December 2016 and its decision is expected to be handed down in January 2017. If the Supreme Court uphold the High Court's decision, the Government will need Parliamentary approval to trigger the exit negotiations. It is thought this approval will be by way of an Act of Parliament,	The Supreme Court hearing took place between 5 – 8 December 2016. The judgment is expected in January 2017.

NO	CASE	SUMMARY AND IMPACTS	DATE JUDGMENT HANDED DOWN / EXPECTED
		rather than a Parliamentary motion. The Government has indicated that it intends to trigger the exit negotiations by no later than 31 March 2017.	
4.	Brierley v Asda Stores Limited	**Equal pay: large-scale claim against private sector employer** This case concerns whether women working in Asda stores should be paid the same as men working in its distribution warehouse on the grounds that the roles are of equal value. The case is notable as it is the first large-scale equal pay claim brought against a private-sector employer. Earlier this year, Asda applied to have the Employment Tribunal proceedings stayed indefinitely on the basis that the claims should be heard by the High Court. Asda argued that the High Court should hear the claims because of the complexity of the issues, covering points of both EU and domestic law, and because of the potential significance of the outcome of the case for Asda and other private sector retail employers. The application was heard by the Court of Appeal on 26 May 2016, with judgment handed down on 22 June. The Court of Appeal unanimously dismissed Asda's appeal. A Preliminary Hearing was held in June 2016, and judgment delivered in October 2016, where it was decided that the female retail workers were entitled to compare themselves to the male depot workers. You can read our briefing on this decision here. Asda is expected to appeal this Preliminary Judgment. There may be further Preliminary Hearings to consider any statutory defence and the question of equal value.	Preliminary Hearing Judgment handed down on 14 October 2016. An appeal of this decision is expected. Further Preliminary Hearings are expected.
5.	Achbita v G4S Secure Solutions Bougnaoui v Micropole Univers	**Religious discrimination: prohibitions on wearing Islamic headscarves** In Achbita, the Belgian Courts asked the ECJ to rule on whether it was directly discriminatory for an employer to prohibit the wearing of Islamic headscarves on the basis of a strict policy disallowing employees from wearing signs of political, philosophical or religious beliefs at work. The Advocate General gave an Opinion on 31 May 2016, deciding that the dress code policy was not directly discriminatory as the ban affected all employees equally. The Advocate General also said that even if the ban was directly discriminatory, it could be considered a genuine, determining occupational requirement under the Equal Treatment Framework Directive. The Opinion also stated that the ban was potentially indirectly discriminatory, but could be objectively justified.	The ECJ's judgment in both cases is expected soon.

NO	CASE	SUMMARY AND IMPACTS	DATE JUDGMENT HANDED DOWN / EXPECTED
		In Bougnaoui, the French Courts asked to the ECJ to rule on whether an employer's requirement that an individual consultant must not wear an Islamic headscarf amounted to a genuine and determining occupational requirement. The Advocate General gave an Opinion on 13 July 2016 that it did not and the dismissal of the consultant for refusing to comply with the request was directly discriminatory.	
6.	Lock v British Gas Trading Limited	**Holiday pay: can the Working Time Regulations be interpreted to include commission in holiday pay?** The Court of Appeal ruled that the Working Time Regulations can be interpreted to provide that holiday pay must include relevant commission payments. The Court decided that when faced with the question of whether a conforming interpretation can be adopted, the Courts should not confine themselves to the literal meaning of the legislation, but should consider whether such an interpretation is in line with the "grain" of the law. The Court decided that it could be presumed that the UK Government intended to fulfill entirely the obligations arising under the Working Time Directive, including those which were not apparent at the time the Directive was implemented such as the requirement for holiday pay to be "normal pay". You can read our briefing on the decision here. British Gas has applied for permission to appeal to the Supreme Court.	Application for permission to appeal to the Supreme Court was lodged on 31 October 2016.
7.	British Airline Pilots' Association (**BALPA**) v Jet2.com Ltd (**Jet2**)	**Collective bargaining: the scope of collective bargaining and rostering arrangements** The High Court handed down an important decision on the scope of statutory collective bargaining under Schedule A1 of TULRCA, and, in particular, whether it extended to pilots' rostering arrangements The High Court dismissed BALPA's claim, holding that the provisions of the rostering policy were not contractual and did not, therefore, need to be collectively bargained. It was clear from paragraph 3(2) of Schedule A1 of TULRCA that the scope of the statutory collective bargaining regime should be construed narrowly and restricted to the three express provisions in the legislation (i.e. "pay, hours and holidays"). Although some parts of the rostering policy were apt for incorporation as contractual terms (e.g. those dealing with annual leave entitlement), the Court upheld Jet2's argument that outside of these core terms, the provisions of	The Court of Appeal hearing was listed to take place on 9 and 10 November 2016.

NO	CASE	SUMMARY AND IMPACTS	DATE JUDGMENT HANDED DOWN / EXPECTED
		the rostering policy were non-contractual, because of the flexibility expressly provided for within the policy. An appeal of this decision was due to be heard by the Court of Appeal on 9 and 10 November 2016.	
8.	Pimlico Plumbers v Smith	**Employment status: self-employed or employee?** This case concerns whether plumbers engaged by Pimlico Plumbers are employees, workers or neither. The EAT held that an Employment Tribunal was correct to take into account the degree of personal financial risk taken by the plumber and also the fact that the actions of both parties and the contractual documentation indicated that the parties considered that the plumber was self-employed, rather than an employee. The claimant has appealed to the Court of Appeal.	The Court of Appeal hearing is due to take place on 17 January 2017.
9.	Donelien v Liberata UK Ltd	**Disability discrimination: constructive knowledge of disability** The EAT held that an employer was not fixed with constructive knowledge of an employee's disability despite a failure to follow up on a weak occupational health report. Overall, the employer had taken reasonable steps to reach a decision on the employee's disability status. Whilst a different employer may have chosen to revisit the unanswered questions posed to the occupational health advisor, the failure to do so was not fatal. The test was one of reasonableness, not perfection. The claimant has appealed to the Court of Appeal.	The Court of Appeal hearing is due to take place on 19 January 2017.
10.	R v Forsey	**Collective redundancies: criminal prosecution for failing to file an HR1 form** Criminal proceedings were brought against David Forsey, former director of USC in respect of a failure to notify the Secretary of State (via the HR1 form) of proposals to make collective redundancies. Under section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992, an organisation commits an offence if it fails to file the HR1 form within the correct timescale. If the offence is done with the consent or connivance of, or is attributable to neglect on the part of any director (or similar officer), then the individual is subject to an unlimited fine and/or disqualification from acting as a director for up to 15 years.	A further hearing is expected to take place on 1 February 2017.

NO	CASE	SUMMARY AND IMPACTS	DATE JUDGMENT HANDED DOWN / EXPECTED
		A Magistrate's Court hearing was due to take place between 14 and 16 March 2016, however, the case was adjourned to consider the scope of the Carltona Principle. A further hearing is expected to take place in 2017.	
11.	R (UNISON) v Lord Chancellor and another	**Tribunal fees: judicial review challenges to the Tribunal fees system** The public sector union UNISON applied for judicial review of the introduction of the fees system in the Employment Tribunals and EAT. On 7 February 2014 the High Court dismissed the judicial review proceedings. UNISON appealed and the appeal was due to be heard between 10 September 2014 and 10 December 2014. However, in September 2014, UNISON sought to introduce further Tribunal statistics as new evidence. The outcome was that the appeal was stayed and UNISON launched a second judicial review challenge. The High Court dismissed the second judicial review challenge on 17 December 2014 and granted permission to appeal. An appeal of the second High Court decision was heard on 17 June 2015. On 26 August 2015 the Court of Appeal dismissed UNISON's appeal on the grounds that there was a lack of evidence of the actual unaffordability of fees for typical individuals. On 26 February 2016, UNISON was granted permission to appeal to the Supreme Court. The Supreme Court hearing is due to take place on 27 and 28 March 2017. Separately, the Government commenced its own post-implementation review of the fees system. The results of the review have yet to be published. Also, in June 2016, the Justice Committee published the results of its inquiry into the effects of the changes court and tribunal fees. The Committee's report was highly critical of the fees regime and recommended a number of modifications to the existing system to make it less onerous.	The Supreme Court hearing is due to take place on 27 and 28 March 2017.
12.	Chesterton Global Ltd and another v Nurmohamed	**Whistleblowing: meaning of the public interest test** The EAT held that it is not necessary to show that a disclosure was "of interest to the public as a whole" in order to satisfy the public interest test contained within the whistleblowing legislation. A relatively small group (in this case 100) may be sufficient. Further, the test does not require the	The Court of Appeal hearing is due to take place on 8 June 2017.

NO	CASE	SUMMARY AND IMPACTS	DATE JUDGMENT HANDED DOWN / EXPECTED
		disclosure to be objectively in the public interest. Instead, all the worker has to demonstrate is that they "reasonably believed" that the disclosure was in the public interest. For further information about the EAT's decision you can read our briefing here. The employer has appealed to the Court of Appeal.	
13.	Carreras v United First Partners Research	**Disability discrimination: whether expectation of working long hours amounts to a PCP?** The Employment Tribunal decided that an informal expectation that an employee work long hours was capable of amounting to a PCP requiring adjustment for the purposes of a claim for failure to make reasonable adjustments. You can read our briefing on this decision here. The employer has appealed.	The Court of Appeal hearing is due to take place by 28 July 2017.
14.	Morris-Garner v One Step (Support)	**Restrictive covenants: the scope of Wrotham Park damages** The Court of Appeal upheld findings of breaches of non-compete and non-solicitation covenants connected to the sale of a business and made an award of damages on a "Wrotham Park" basis. The Court held that Wrotham Park damages are not restricted to exceptional cases and/or cases where there is no identifiable financial loss. Instead, the test is whether an award on such a basis would be a just response. An appeal of the decision will be heard by the Supreme Court in 2017.	The Supreme Court hearing is due to take place in October 2017.
15.	United States of America v Nolan	**Collective redundancies: what is the trigger point for collective redundancy consultation?** This case concerns the question of whether the obligation to consult collectively about redundancies arises once the employer: (i) is proposing to make a strategic business or operational decision that will foreseeably lead to collective redundancies; or (ii) has already made that strategic decision and is proposing consequential redundancies. A Supreme Court hearing took place on 15 and 16 July 2015, to consider whether foreign sovereign states were exempted from the duty to collectively consult about redundancies with their UK employees. The Supreme Court held that the obligation to consult in relation to collective	The Court of Appeal hearing is yet to be listed.

NO	CASE	SUMMARY AND IMPACTS	DATE JUDGMENT HANDED DOWN / EXPECTED
		redundancies under section 188 of TULRCA applied even in cases where redundancies arose due to the strategic decisions of foreign governments. The key point for most employers, regarding when the obligation to consult collectively about proposed redundancies arises, will now be heard by the Court of Appeal.	

If you would like more information on the above, please contact **Amanda Steadman**, Professional Support Lawyer at amanda.steadman@addleshawgoddard.com or on 020 7160 3310.

You can follow the AG Employment team on Twitter at: **@AGEmployment**