• Review of recent developments in employment law

• Early years – S3

• June 2016
Key issues

• Employment law – devolved in NI (1998)

• 3 options in NI – follow GB on “parity pathway”, do nothing, tailor a solution for NI

• 2011 saw the first major departure from GB – statutory dispute resolution procedure repeal in GB
• Vince Cable announced a series of employment law reforms which would roll out between 2012 and 2015 (and throughout 2016)

• There were many separate consultations and calls for evidence

• Some of the reforms related to domestic employment law and others to European related employment laws
No kneejerk reaction in NI

• As a devolved matter employment law reform in GB was not simply going to be “kareoked” into NI.

• Reforms in GB polarised stakeholders in many ways with one camp looking for GB parity and the other camp looking to keep things as they were.

• DEL are – not bringing in some changes, consulting on others, and waiting to see
Employment Law NI 2014

• Employment Law Review – Summary of responses to consultation – 4/6/14 – Bill introduced in NI 7/12/15

• Work and Families Bill – Royal Assent 8/1/15

• Zero Hours Review (Consultation ended in Oct 2014)
NI and GB comparison

- Unfair dismissal qualification = 1yr (Not part of Employment Bill)
- Unfair dismissal compensation = capped at £79,100
- No financial penalty regime against employers who lose IT

- Unfair dismissal qualification = 2yrs
- Unfair dismissal compensation = 1yr salary / £78,962(lower)
- Financial penalty regime against employers = £5k to the Treasury
NI and GB comparison

- Whistle-blowing law (PIDO) remains as 1999 - part of Employment Bill - Dec 2015

- Employee-shareholders will **not** be introduced

- Collective redundancy consultation 100+ employees = 90 days - not in Employment Bill

- Whistle-blowing law (PIDA) reform started 25/6/13 - rolling from ‘14, ’15, ‘16

- Employee-shareholders passed 24/4/13

- Collective redundancy consultation 100+ employees = 45 days
NI and GB comparison

- Unfair dismissal cases heard by employment judge and two panel members
- Arbitration as alternative to IT applies to nearly all jurisdictions
- There is no fee system for lodging and hearing IT cases in NI

- Unfair dismissal heard by a single Employment Judge only and no panel members
- Arbitration as alternative to ET applies only in two jurisdictions
- There is a two tier fee system for lodging and hearing ET cases in GB
NI and GB comparison

- Tribunal effectiveness and efficiency – NI looking to mirror changes “Underhill” made mid-2016
- Better Regulation – selected NI Regs will be made less bureaucratic

- Tribunal effectiveness and efficiency – GB has series of reforms to implement via “Underhill Review” – CMD, PHR
- Red Tape Challenge in GB will look at 120 Regs to see where bureaucracy can be minimised
NI and GB comparison

- (NI) Industrial Tribunal – no witness expenses, no increase in costs regime (£10k max), deposit cap £500 – part of Employment Bill (NI) Dec 2015

- (GB) Employment Tribunal – witness statements, witness expenses, costs regime (£20k max), deposit cap £1000
Pending reform areas?

- **TUPE** – as yet unknown in NI – Not part of the new Employment Bill (NI) 2015

- Inadmissible negotiations and settlement agreements – no policy decision in NI yet – Not part of Employment Bill 2015

- **TUPE** – 6 areas of reform came into effect in GB on 31/1/14

- Protected conversations in pre-termination negotiations and settlement agreements (UD context) came into operation summer 2013
Pending areas of reform?

- Desk-topping simple employment disputes – **not under discussion in NI**
- Regional mediation pilot scheme for SME’s – **not in operation in NI – may be examined in early 2016**
- Desk-topping simple employment disputes by legal officers – planned but currently “on hold”
- Regional mediation pilot scheme for SME’s – ran until Dec 2013 and other pilots ran throughout 2014
Pending areas of reform

- Mandatory routing of cases through LRA first before getting to IT - core aspect of Employment Bill 2015

- Neutral Assessment is being developed in NI as part of the ADR menu - part of Employment Bill 2015 (Power to LRA)

- Mandatory routing of cases through ACAS first before getting to ET - came into operation 6/4/14 (mandatory May)

- Neutral Assessment is not being developed in GB as part of the ADR menu
Other areas of reform – known and unknown

- Red Tape challenge – consolidating 70_regs
- Zero-Hours contracts - NI consultation ended
- Further reforms to whistle-blowing – annual reporting by prescribed bodies
- Public sector exit payments (£95k cap – will an LCM be brought into effect in NI?)
Relatively new primary legislation 2015

• The Work and Families (NI) Act 2015

• Shared Parental Leave

• Reforms to adoption/foster/surrogacy

• Extension of the right to request flexible working to all employees
Statutory Rules NI in 2015

• 32 Statutory Rules passed in 2015

• 26 related solely to the Work and Families (NI) Act 2015

• Remainder are technical amendments – social security benefits, national minimum wage, compensation limits, fair employment, sex discrimination and local government re-organisation
Case law areas of interest
2015 - 2016

• Calculation of holiday pay – “Bear” and “Lock”
• Collective redundancy trigger - “Nolan”
• Tribunal Fees – “Unison” (16-17th June)
• Unilateral variation – “Sparks”
• Agency workers – “Moran”
• Establishment – “Woolworths”
• Fixed term/redundancy – “UCU”
• Vicarious liability of employer – “Morrisons”
Employment Bill (NI) 2015

- Early Conciliation
- Whistle-blowing reforms
- Career guidance
- Apprentices
- Amendments to aspects of tribunal procedure – Employment Judges
- Misc – rounding up, etc
- Royal assent – (April 2016)
• Trade Unions Bill - GB only

• This Bill sets out to reform trade unions and protect essential public services from disruption caused by strikes, by introducing the following provisions:

• Minimum threshold of 50% of voters to turn out to vote on union ballots (with the requirement for a simple majority of votes in favour).
• For industrial action in the health, education, fire and transport services, the requirement that 40% of all those entitled to vote, vote in favour of striking (in addition to the minimum 50% voting turnout threshold).

• Prevention of intimidation of non-striking workers during a strike (3 consultations)
• Time limits on mandates following a ballot for industrial action.

• Transparent opt-in process for the political fund element of trade union subscriptions (as in practice in Northern Ireland).

• Changes to the role of Certification Officer
Where to next?

• Conservative government looks set to continue areas of reform – industrial action law, more reforms to whistle-blowing, public sector exit pay cap, zero hours (exclusivity only)

• NI Assembly – After May 2016 Assembly elections before reforms on things such as - TUPE, Zero Hours contracts

• Questions and Answers