

# EMPLOYMENT UPDATE

at the French Chamber of Commerce

Tim Hayes (Legal Director)

FIND US ON



#ThinkTalkLaw



[www.bdbpitmans.com/events](http://www.bdbpitmans.com/events)



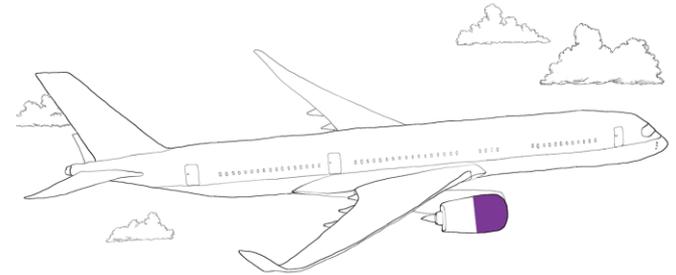
# Brexit and settled and pre-settled status

- 31 October 2019?
- EU Treaties cease to apply



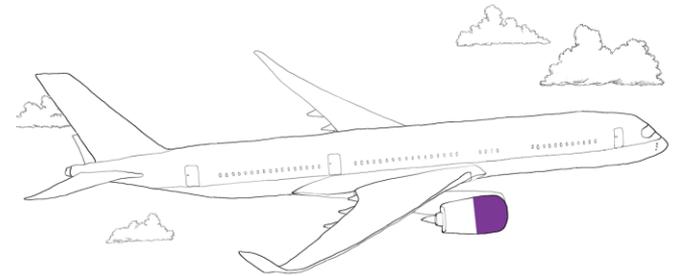
## Deal scenario

- Transition period until 31 December 2020
- During that period UK and EU to agree a future relationship, failing which - ‘backstop’
- Free movement continues during transition
- EEA nationals to apply for settled and pre-settled status during that time



## 'No deal' scenario

- EU law stops applying at 11pm on 31 October
- UK no longer part of single market
- UK's post-Brexit policies come into immediate effect
- Much hangs on reciprocity between UK and EU



## Future immigration policy

- Initial 3-month permission to enter
- Thereafter, European Temporary Leave to Remain
- Lots of problems with the intended scheme:
  - Will EEA nationals be aware of the need to apply?
  - Difficulties for employers
  - Temporary leave is non-renewable
  - Would EEA states reciprocate
- EEA nationals arriving after 31 December 2020 subject to Immigration Rules
- EU Settlement Scheme only open to those living in the UK before 31 October 2019

## Employees should act now!

- Political chaos - uncertainty about what might happen
- Ease and validity of Settlement Scheme applications
- Identify (key) EEA nationals
- Consider support
- Consider communications
- Consider ongoing recruitment and retention strategies
- Consider UK nationals overseas

## Application options

- Easiest via app (only for Android phones)
- Also possible to apply online and then attend a biometric appointment
- Even possible now to apply from overseas by sending documents
- Application process and further checks
- Administrative review
- What to do as an employer

# Good Work Plan

- The Taylor Review and subsequent Government consultations.
- The Good Work Plan: “the biggest package of workplace reforms for over 20 years”?
- In force in April 2020:
  - Written terms for all workers on or before Day 1
  - 52-week reference period for calculating a week’s pay
  - Abolition of the ‘Swedish derogation’
  - Key facts for agency workers
  - Reduction in the information and consultation thresholds
  - Increased Tribunal penalties

# Good Work Plan

- Yet to be determined/subject to further consultation:
  - right to request a more stable contract for all workers with at least 26 weeks' service
  - Higher NMW rate for non-guaranteed hours
  - Employment status
  - Continuity of employment – no break for gaps of up to 4 weeks
  - Shift workers – notice of working hours, compensation for cancellation/curtailment
  - Holiday pay enforcement
  - Ban on taking staff tips
  - Reforming family-related leave and pay
  - Encouraging transparency in relation to flexible working and parent leave and pay policies

# Any questions?

FIND US ON



[www.bdbpitmans.com](http://www.bdbpitmans.com)





# Employment Law Update

Melanie Stancliffe

# Agenda

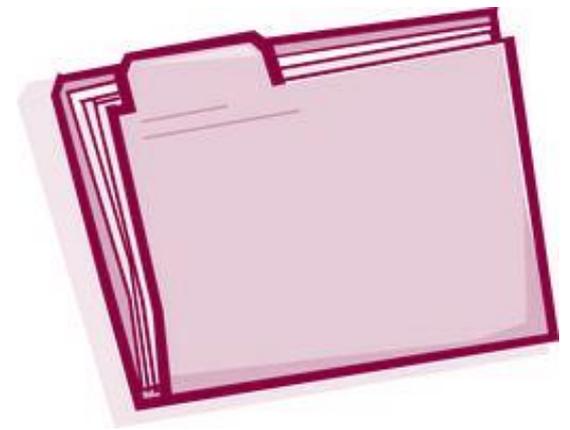
---

1. IR35
2. Dealing with the Employment Tribunal
3. Three key cases on
  1. Covert recording
  2. Suspension
  3. Non-competition clauses

# IR35

---

- Aka rules for off payroll workers
- Extension to private sector
- From 6 April 2020
- Tax collection device
- Excludes “small business”



# Applies to certain engagements

---



The individual must provide personal service



There must be “mutuality of obligation”



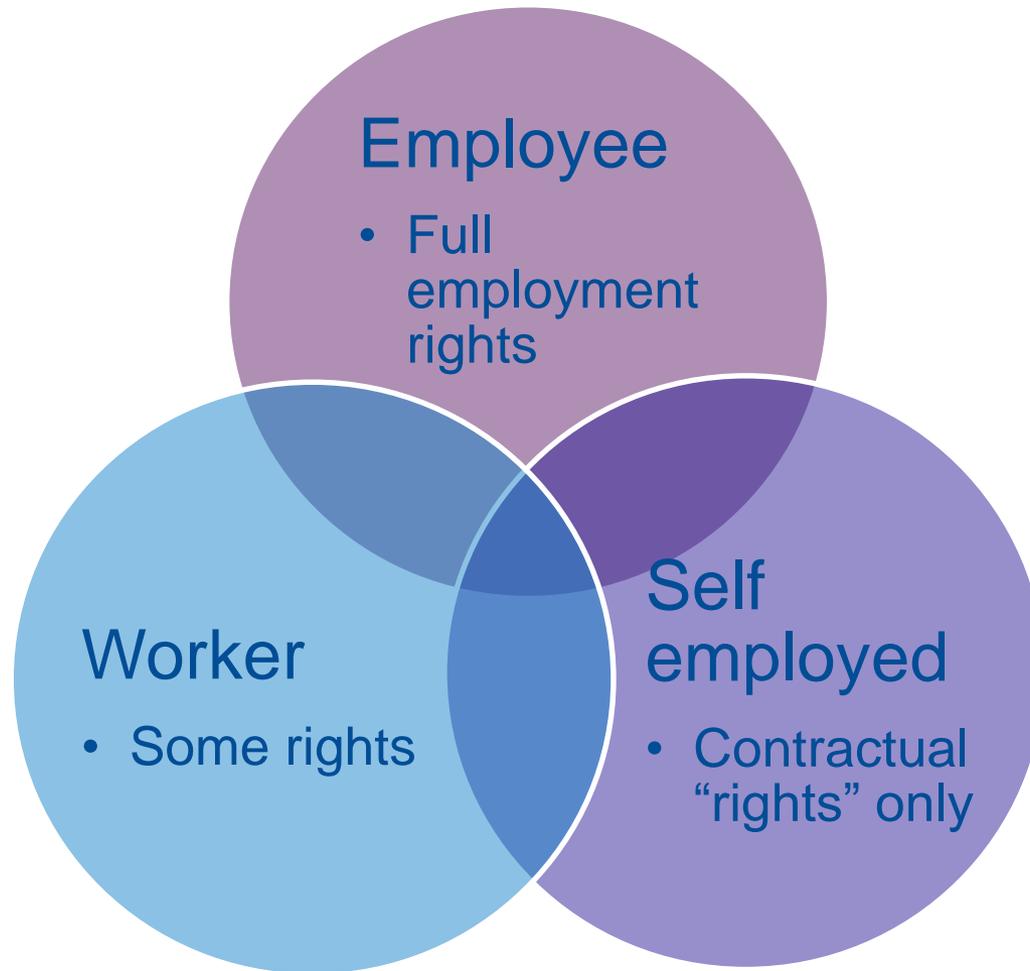
The employer must have control over the employee



Contractual terms must be consistent with employee status

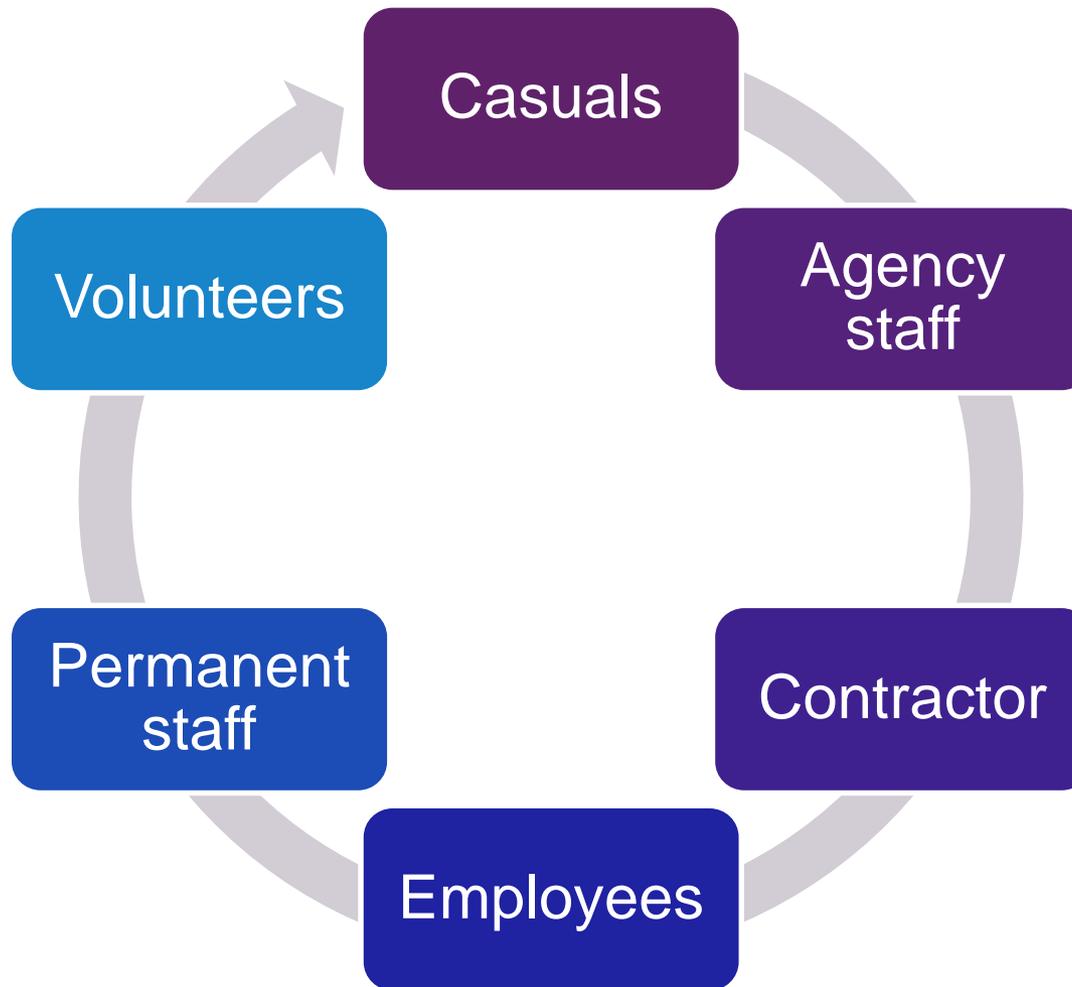
# Employment status v Tax status

---



# Title of “worker” is irrelevant

---



# What are the key changes?

---

1. Determine each worker's status
2. With 'reasonable care'
3. Giving reasons if required
4. Keep records
5. Separate process to deal with disputes
  - maintaining or withdrawing view
  - responding within 45 days

# Rights of employees

---

Unfair dismissal

Right to request flexible working

Family related leave and pay

Right to receive SSP and NMW

Redundancy pay

Minimum notice upon dismissal

Protection from less favourable treatment for fixed term status

Protection from discrimination

Right for paid holiday and rest breaks

Whistleblowing protection

Protection from unauthorised deductions from wages

# Dealing with the Tribunal

---

**DELAYS, DELAYS, DELAYS**

# Covert recording

---

- Gross misconduct?
- Use to attack credibility or reduce compensation?
- Reasons for it and content are key
- Tips:-
  - add to policy
  - state in meetings that not allowed
  - deliberate in another room

# Suspension

---

- Must it be reasonable or necessary?
- Is there “proper cause”?
- Neutral act is crucial



# Non-competition clauses

---

- Good news for employers
- Highest UK court changes otherwise unenforceable restriction **IF** the clause still makes sense
- Tips:-
  - Tailor the protections to the role
  - Make changes when promoted

# If you need a hand.....

---



Melanie Stancliffe, Partner

DDI:0207 650 3965

[Melanie.Stancliffe@irwinmitchell.com](mailto:Melanie.Stancliffe@irwinmitchell.com)