

STRATEGIC LABOUR MARKET GROUP – 13TH MARCH 2018

EMPLOYMENT/FURTHER POWERS DISCUSSION

Background

In the 2017-18 Programme for Government the Scottish Government committed to publishing a series of evidence-based papers making the case for securing new powers to the Scottish Parliament. One of those areas was around employment powers (currently being drafted), though, in terms of the Labour Market, it is closely linked to other papers in relation to Migration (already published – follow hyperlink) and Employability and Social Security (also currently being drafted).

In the wake of the Independence referendum, the Smith Commission made various recommendations on the devolution of further powers. In respect of employment law, recommendations were limited to the devolution of employment tribunals, which the UK Government has interpreted to mean the operation and management of employment tribunals. The Scottish Government is currently considering further engagement with the UK Government about a broader interpretation, which whilst a live issue, will nevertheless fall within scope of the further powers paper.

The landscape of employment law is a mixed bag of European derived measures and national law. By and large however, employment law is reserved to the UK Government.

With the impending exit of the United Kingdom from the European Union, the current European framework which underpins much of the legislation in relation to workers' rights will be removed. The UK Government's withdrawal Bill will ensure continuity of the effect of those rules at the point of exit, through a transfer of those powers to the UK Government.

Moving forward, in the absence of any further devolution of powers, the UK Government will have the ability to unilaterally amend existing employment laws (recognising that this power already exists in relation to national provisions such as the national minimum wage). The Scottish Government believes that the particular needs of the Scottish labour market, coupled with our fair work agenda provide a clear rationale for devolving employment powers.

Potential Discussion Points

In relation to employment law, which powers would make the biggest potential difference to the Scottish labour market (and why) in terms of delivering the Labour Market Outcomes of:

- Skilled and Productive Workforce
- Sustainable Working Population
- High Employment and Low Unemployment
- Equal Opportunities
- Fair Work

In relation to employment law, which powers would make the biggest potential difference to the Scottish Labour force (and why) in terms of delivering our fair work agenda and the five dimensions of the fair work framework:

- Effective Voice
- Opportunity
- Security
- Fulfilment
- Respect

Social Security and Employability

Background

The Scotland Act 2016 devolves responsibility for a number of social security benefits and the provision of some employability services to the Scottish Parliament.

These benefits amount to around 15% of current social security spend in Scotland and include DLA/PIP, Carers Allowance, Attendance Allowance and some smaller benefits. The main social security levers to tackle inequalities are missing however – namely Universal Credit (UC) and Child Benefit.

For employability, the Scottish Parliament will be able to make provision for support and services to help people into work, including assisting those at risk of becoming long-term unemployed who are receiving UK benefits such as UC; helping disabled people into work; and supporting schemes which help employers find suitable employees. From April 2018, employability support in Scotland will be provided through the fully devolved Scottish Employability Support Service, Fair Start Scotland (FSS).

Employment will be the best route out of poverty for many people, and employment support services and social security must support those looking for work and making the transition into work.

The social security and employability further powers paper will call for all social security and employability powers to be devolved to Scotland. Our vision for these is that we provide a person-centred, joined-up and coherent approach, founded on the principles of dignity and respect. Priorities for social security would be using powers over Universal Credit and Child benefit to tackle in-work poverty and better support families with children. Priorities for employment support include removing the current punitive approach to sanctions, and creating more joined up in and out of work support aligned with health and other services.

Discussion points

- What works / doesn't work about the current relationship between employability services / social security and employment law?
- What is the best way to reduce in-work poverty and how can employment/employability and social security powers support this?
- How can employability services / social security and employment best support people into jobs that offer fair pay and good skills/progression opportunities?

Potential Examples of Issues which could frame the discussions above

Pregnancy, Maternity and Parental Leave – This is one of the few areas of employment law where current UK legislation goes beyond European minimums, for example in relation to the period of payment for statutory maternity pay and the introduction of a right to paternity leave. That does not however mean that these policies are either protected or sufficiently progressive.

The European Social Pillar – The Scottish Government has indicated strong support for the principles of the Social Pillar, much of which aligns closely with our fair work agenda and inclusive growth ambitions. Although the UK has signed up to the Pillar it is a framework agreement which currently has no associated legislative provisions. The Scottish Government will want to ensure we can continue to engage around the Social Pillar agenda and other issues such as the proposed work-life balance Directive.

The National Minimum Wage – this is currently entirely under the control of the UK Government. The Scottish Government is a strong advocate of payment of the Real Living Wage and would like this to become the Scottish national minimum wage as part of its fair work programme. Clearly there are challenges for business in securing this and it will be necessary to consider ways in which business can be incentivised to deliver this and how any costs would be met.

Universal Credit –this is a single benefit that replaces six existing, means-tested benefitsⁱ. Announced in 2010, UC is intended to simplify the benefits system by providing a single, streamlined payment. It is also intended to support people into work by allowing them to take work without necessarily losing their benefits. As a person moves into work, the amount of UC benefit they receive tapers off as their salary increases, theoretically making it easier for a person to increase the amount of hours they work. UC is currently reserved to the UK Government.

ⁱ Child Tax Credit; Housing Benefit; Income Support; income-based Jobseeker's Allowance (JSA); income-related Employment and Support Allowance (ESA); and Working Tax Credit.