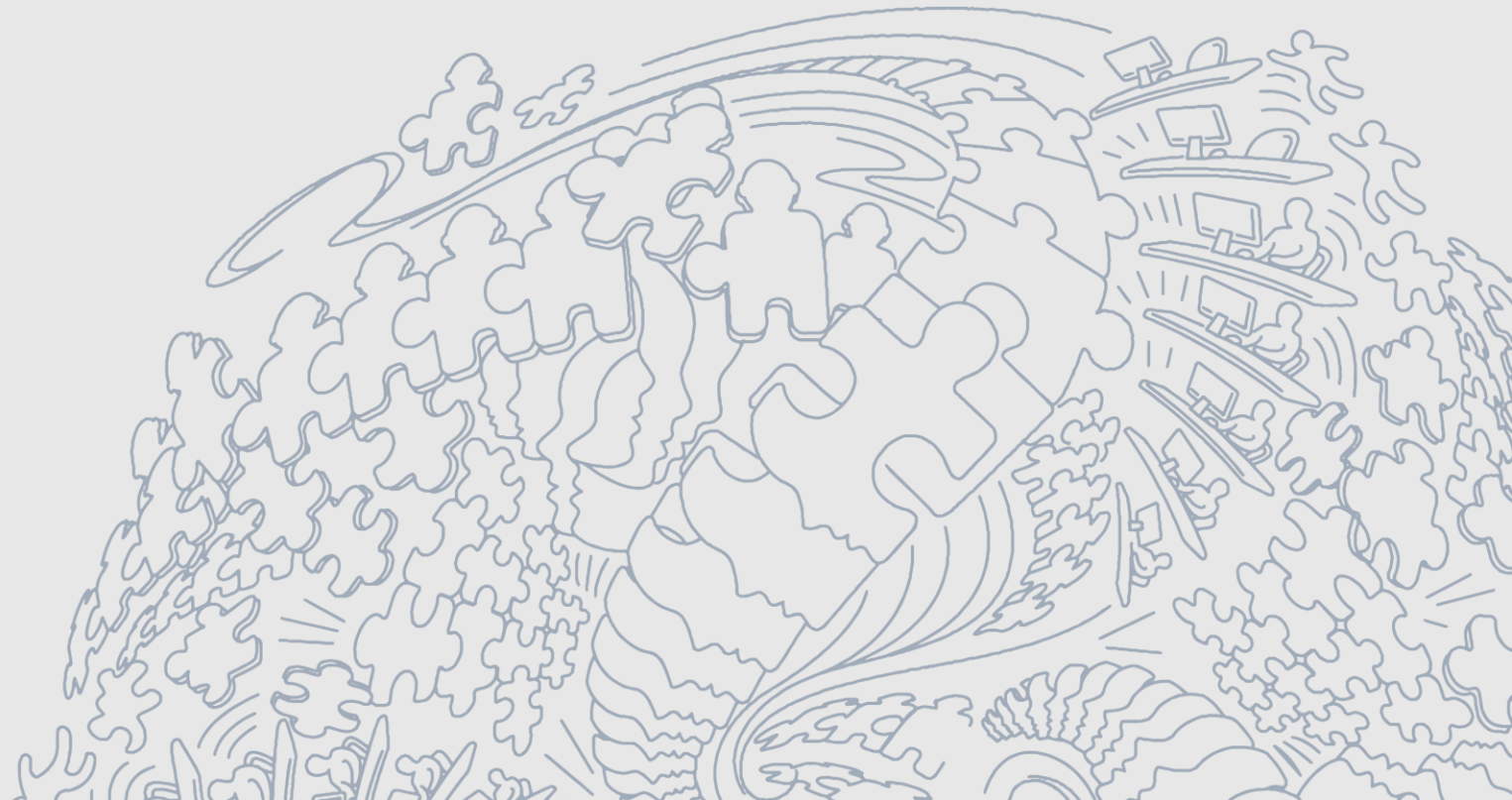


# RAIN OR SHINE? 5 FORECASTS FOR HR IN 2023 AND BEYOND

Wednesday 14 June 2023

**ag** ADDLESHAW  
GODDARD

MORE IMAGINATION **MORE IMPACT**



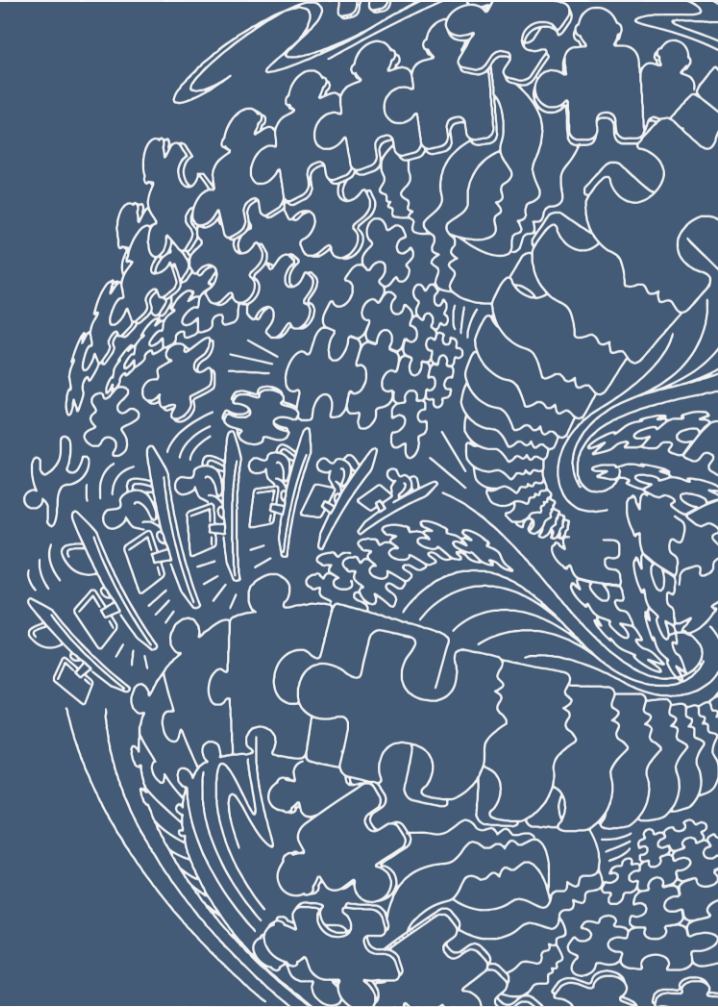
# SPEAKERS



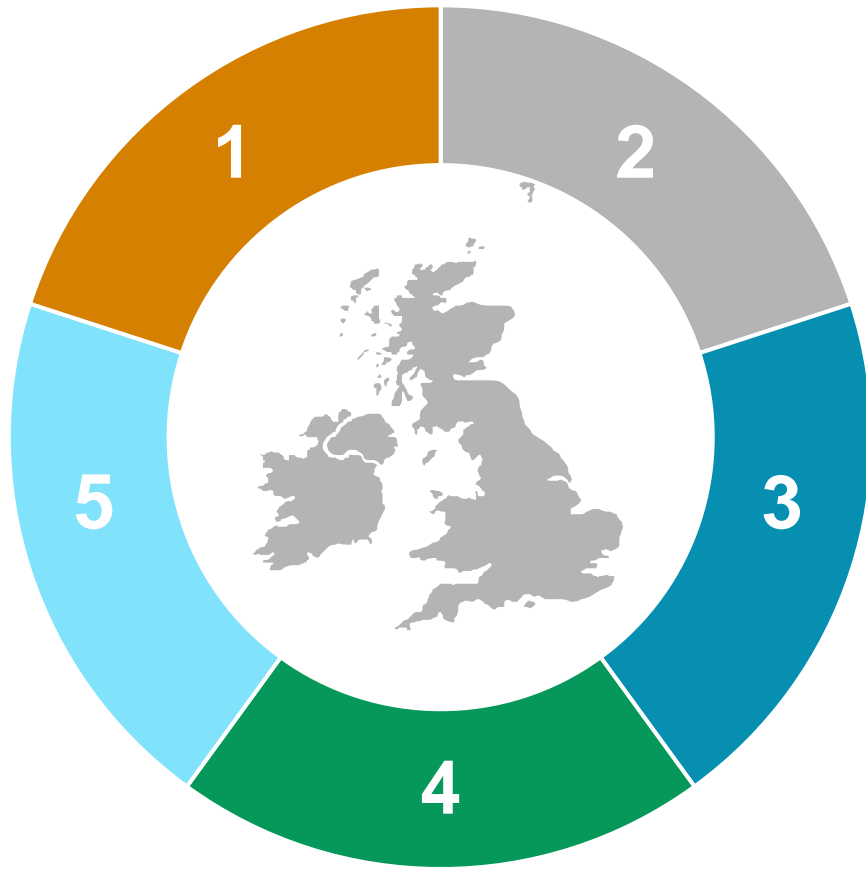
**REBECCA KITSON**  
Partner, Employment



**ANDREW MOORE**  
Partner, Employment



# WHAT'S THE OUTLOOK?



1

**New laws** - temperatures rising

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2

**Contracts** - change in wind direction

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3

**Discrimination** - unsettled picture

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4

**Transparency** - clearer skies ahead?

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5

**Future forecasting** - winter is coming?

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# NEW EMPLOYMENT LAWS TEMPERATURES RISING

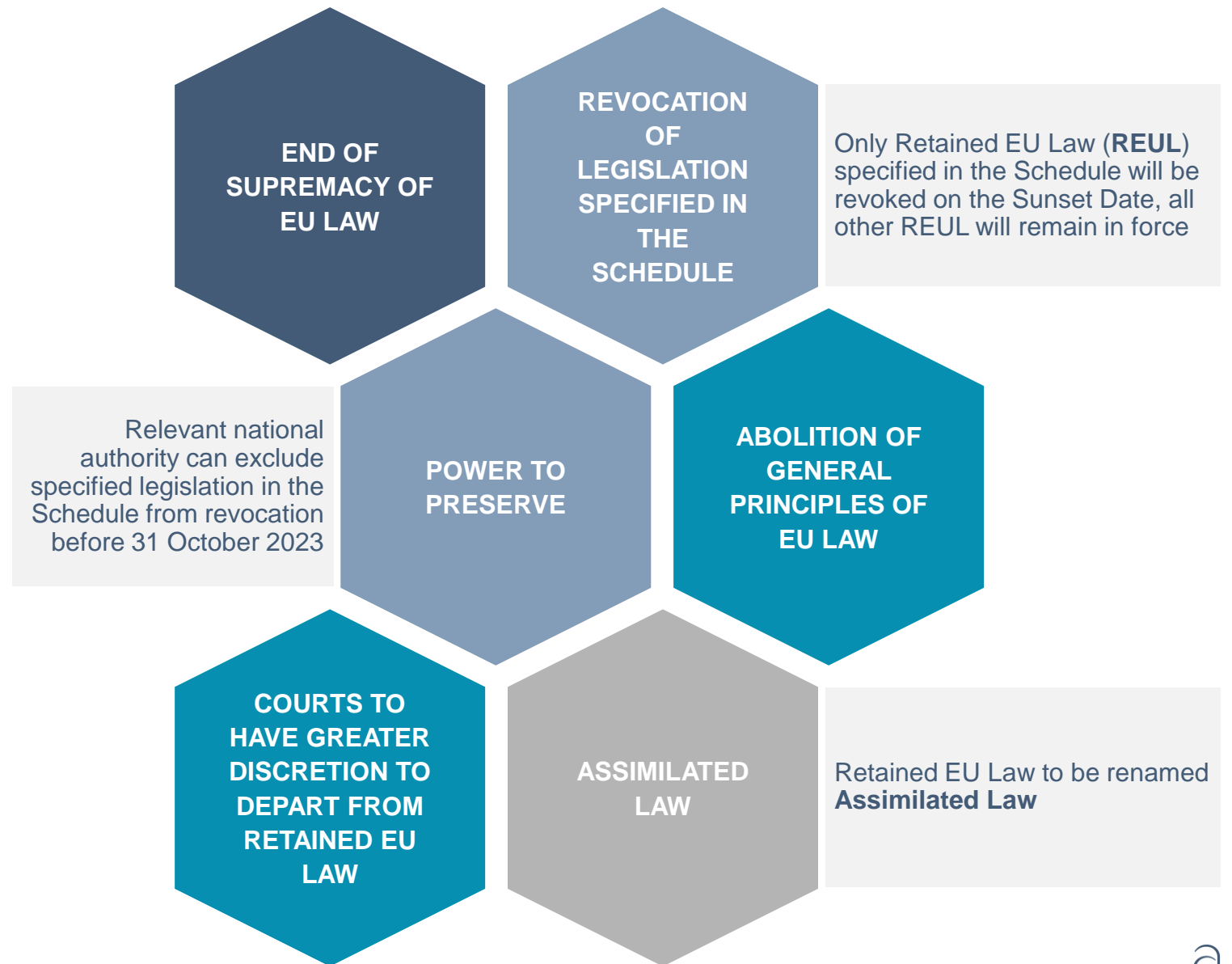


# RETAINED EU LAW (REVOCAATION AND REFORM) BILL HOW DID WE GET HERE?



# RETAINED EU LAW (REVOCATION AND REFORM) BILL

## WHAT DOES IT SAY NOW?



# WHAT CAN WE EXPECT?

## (SOME) CERTAINTY

### Sunset Clause Revocation Schedule:

- Largely defunct and unnecessary
- Posted Workers Regs
- EU Drivers' Hours and Working Time for tanker drivers
- It can be amended
- Power to preserve

## UNCERTAINTY

### End of key principles of EU law:

- Don't know final list of legislation yet
- Removal of key principles of EU law leads to uncertainty for employers

# WORKING TIME AND HOLIDAY PAY: NEW EMPLOYMENT LAW

## HOLIDAY

- Single annual leave entitlement on 5.6 weeks
- What about bank holidays?
- What counts as “normal remuneration”?
- Calculating holiday entitlement in first year
- “Rolled up” holiday pay at 12.07% of worker’s pay

- Removing requirement for recording daily working hours
- What about other regulations?

## WORKING TIME



# HOLIDAY ENTITLEMENT CONSULTATION

## WHAT ARE THE ISSUES?

What do the Working Time Regulations say?

Supreme Court ruling that holiday pay should not be pro-rated for part-year workers

[\*Harpur Trust v Brazel \(2022\)\*](#)

Government proposals set out in consultation in January 2023

## WHAT ARE THE PROPOSALS?

To ensure part-year workers and workers with irregular hours receive holiday entitlement and pay reflecting hours worked

52-week reference period (including weeks when no work done)

“Flat average day” for workers on irregular hours

Agency workers accrue leave at 12.07% of hours worked each month

# TUPE: NEW EMPLOYMENT LAW

## CURRENT POSITION

No direct consultation with employees where no employee representatives in TUPE transfer, save for micro-businesses

Direct consultation only for micro-businesses with fewer than 10 employees

Regardless of number of employees affected

## PROPOSED CHANGE

Allow direct consultation with employees where no employee representatives in TUPE transfer

**EITHER:** Fewer than 50 employees

**OR:** Transfer affects fewer than 10 employees regardless of business size



# NEW EMPLOYMENT LAWS: TIMETABLE

## EXTENDED LEAVE FOR NEONATAL CARE

- Expected April 2025

## A WEEK'S UNPAID LEAVE FOR UNPAID CARERS

- Regulations needed and not expected before April 2024

## EXTENDED REDUNDANCY PROTECTION FOR NEW PARENTS

- Regulations needed to implement new redundancy protections. No expected date. "In due course"

## WORKERS TO RECEIVE TIPS

- Expected May 2024

## MAKING FLEXIBLE WORKING THE DEFAULT

- Currently progressing through Parliament

## MORE PREDICTABLE CONTRACT

- Currently progressing through Parliament

## SINGLE ENFORCEMENT BODY

- Not currently being advanced



# NEW EMPLOYMENT LAWS

## **Protection from Redundancy (Pregnancy and Family Leave) Act 2023**

Redundancy protection for pregnant women and new parents with the extension of existing redundancy protections to cover pregnancy and a period of time after parents return to work. To be implemented by regulations.

## **Carer's Leave Act 2023**

Day 1 right. 1 week's unpaid leave / year for carers to provide / arrange care for a dependent (self-certify). Protection from detriment or dismissal. Regulations needed.

## **Neonatal (Leave and Pay) Act 2023**

Day 1 right. Parents of premature / sick babies can take up to 12 weeks leave in addition to other leave and pay entitlements e.g. maternity/paternity. Protection from detriment or dismissal. Neonatal pay for employees who qualify in the usual way.


## **Employment (Allocation of Tips) Act 2023**

Gratuities, service charges and tips to go to staff in full.

# CONTRACTS: CHANGE IN WIND DIRECTION?



# CONSULTATION ON NON-COMPETE CLAUSES



**INTRODUCE A  
THREE MONTH  
STATUTORY LIMIT  
ON NON-  
COMPETE  
CLAUSES**

- Non-compete clauses only
- Not other restrictive covenants e.g. non-solicitation, non-dealing

- Employment contracts and limb (b) workers' contracts
- Not wider workplace contracts such as partnership agreements, LLP agreements and shareholder agreements

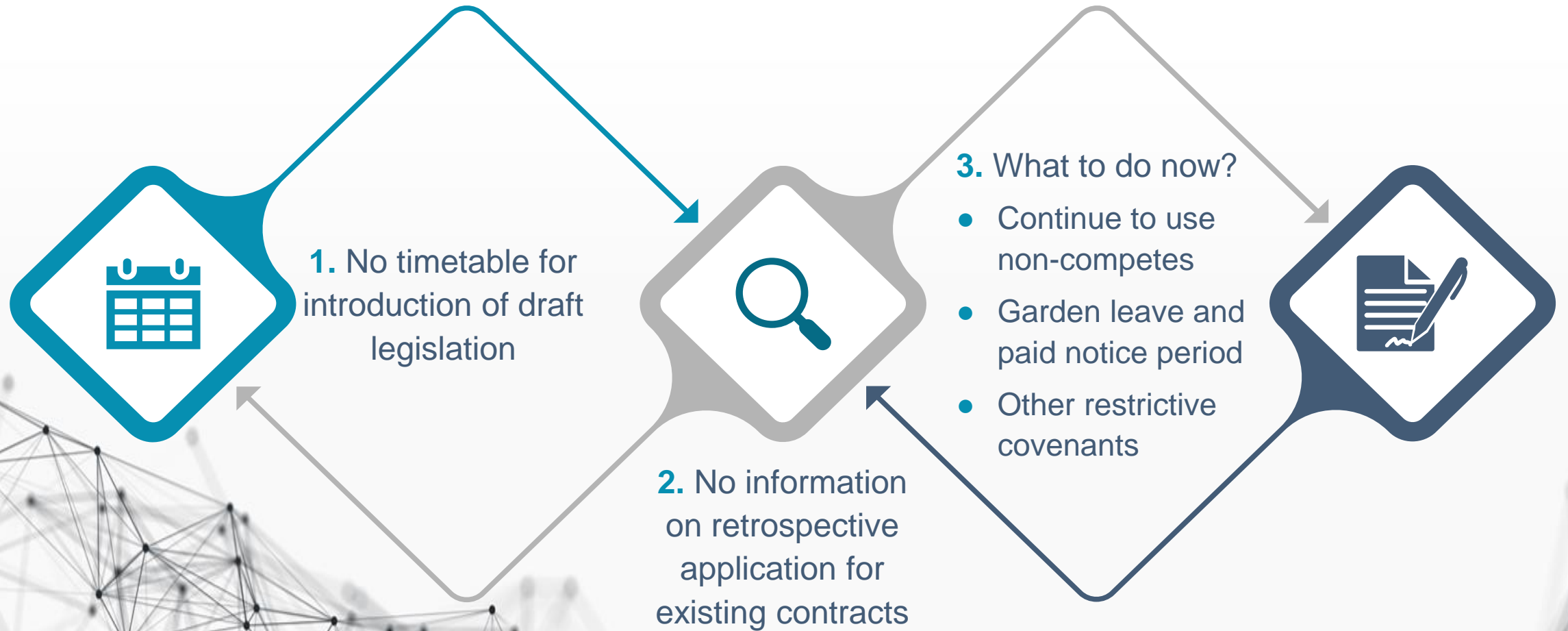
- Common law principles will still apply for non-compete clauses of 3 months or less

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# CONSULTATION ON NON-COMPETE CLAUSES: WHAT NOW?





# CAN EMPLOYERS STILL DISMISS AND RE-ENGAGE?



# DRAFT STATUTORY CODE OF PRACTICE ON DISMISSAL AND RE-ENGAGEMENT: **KEY STEPS**

01

Communicate the wish to change terms and conditions

02

Re-examine the business strategy.  
Keep reviewing throughout process

03

Share information as early as possible

04

Engage in meaningful consultation in good faith with intention of seeking an agreed solution

05

Put agreed changes in writing

06

Unilateral imposition of new terms a last resort

# DRAFT STATUTORY CODE OF PRACTICE ON DISMISSAL AND RE-ENGAGEMENT: **WHAT DOES IT MEAN?**

- Consultation closed 18 April 2023
- Code of Practice will be introduced “when Parliamentary time allows”

- Appropriate standards of reasonableness
- Inaccessibility – length, complexity, language
- Greater clarity on expectations and consequences
- Other considerations – financial disincentives?

Timescale

ACAS  
Response

Likely  
impact

What  
now?

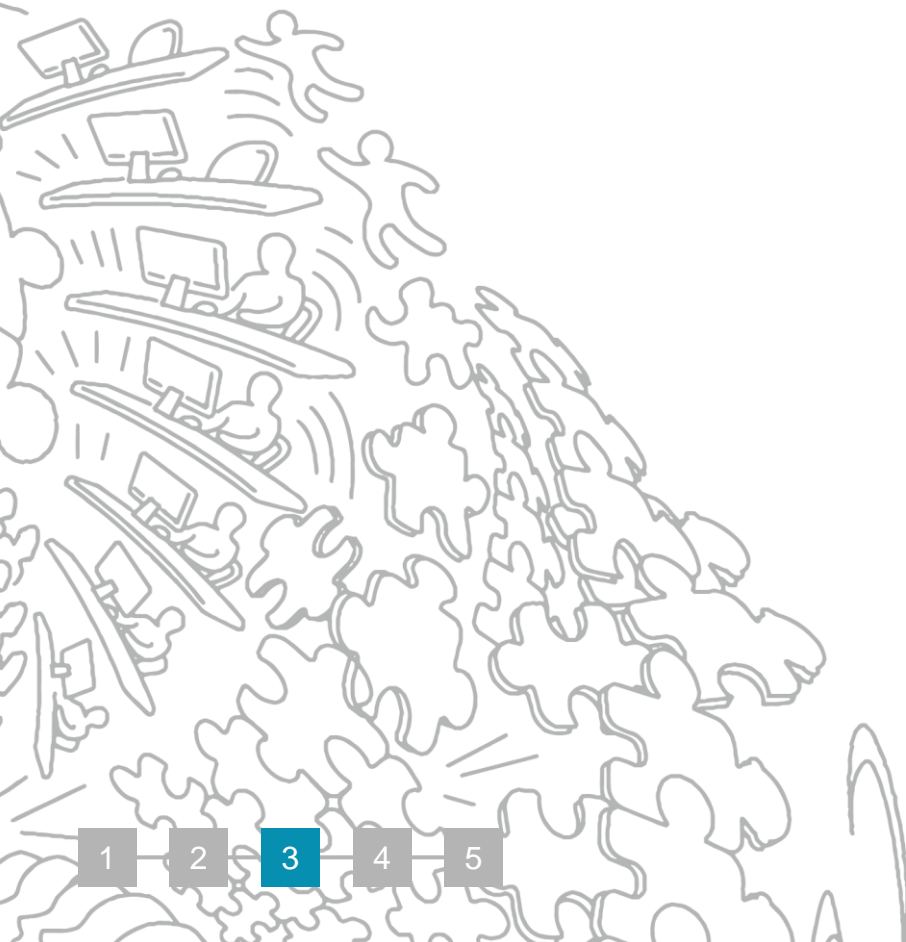
- Dismissal and re-engage not outlawed
- No minimum employees affected
- Other separate legal obligations
- Reasons for change immaterial
- Penalty

- Follow a genuine and open process
- Future restructuring plans
- Reputational risks
- Anticipate pushback

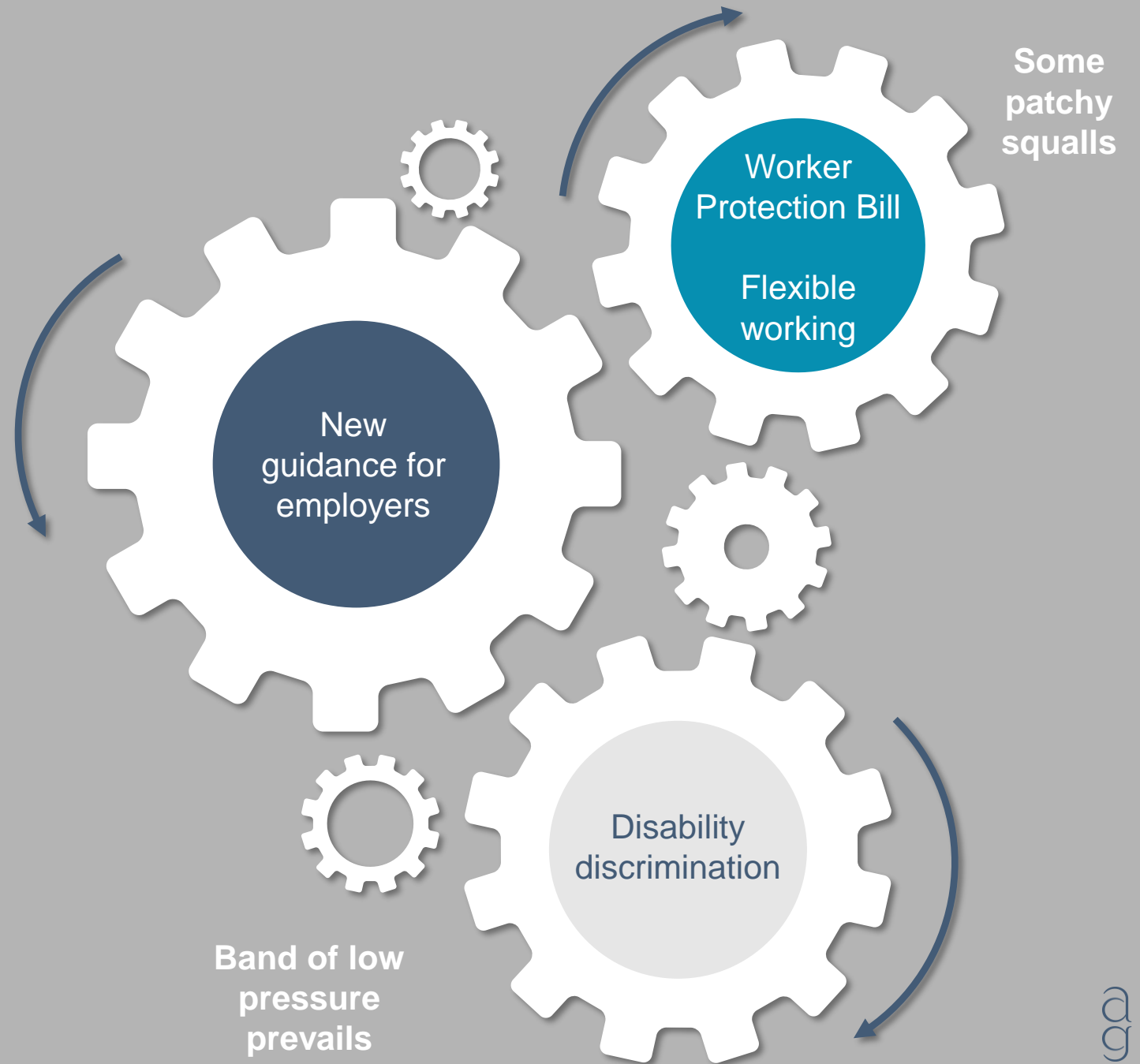
# DISCRIMINATION: AN UNSETTLED PICTURE



# DISCRIMINATION: LOW PRESSURE PREVAILS – SOME PATCHY SQUALLS



- 1
- 2
- 3
- 4
- 5



# DISABILITY DISCRIMINATION

Reason for employee's non-participation in interview was unconnected to disability

*Hilaire v Luton BC  
[2022] EAT*

Employee's 'meltdowns' did not arise from his disability

*McQueen v General Optical  
Council [2022] EAT*

Causation  
remains key

# WORKER PROTECTION BILL: IN THE BALANCE

## Worker Protection Bill 2022-2023

- Liability for 3rd party harassment
- Duty to take all reasonable steps to prevent sexual harassment
- “in the course of employment”

## Could the Bill be dropped?

- April 2023: Telegraph / Guardian report Ministers considering dropping the Bill
- Concerns over free speech / potential costly legal action

## Proposed amendments

- 21 April 2023: Proposed amendments (awaiting HoL Committee Stage)
  - Protecting free speech
  - Only need act against known risks (at least 2 previous occurrences)
  - Only the worst forms of harassment

# FLEXIBLE WORKING REQUESTS



## Take care with final stage flexible-working requests

*Glover v Lacoste UK Ltd (EAT)*

### Determination at flexible working appeal:

- To overturn previous rejection of request
- To offer alternative arrangement requiring G to work on a fully flexible basis on any day of the week (rather than specific days of the week as requested)

### EAT Held: Unlawful indirect discrimination

- Determination = application of PCP and caused G to suffer disadvantage and detriment
- Even though never actually required to work on that basis
- Sent back to ET to assess disadvantage – likely injury to feelings award



# NEW GUIDANCE



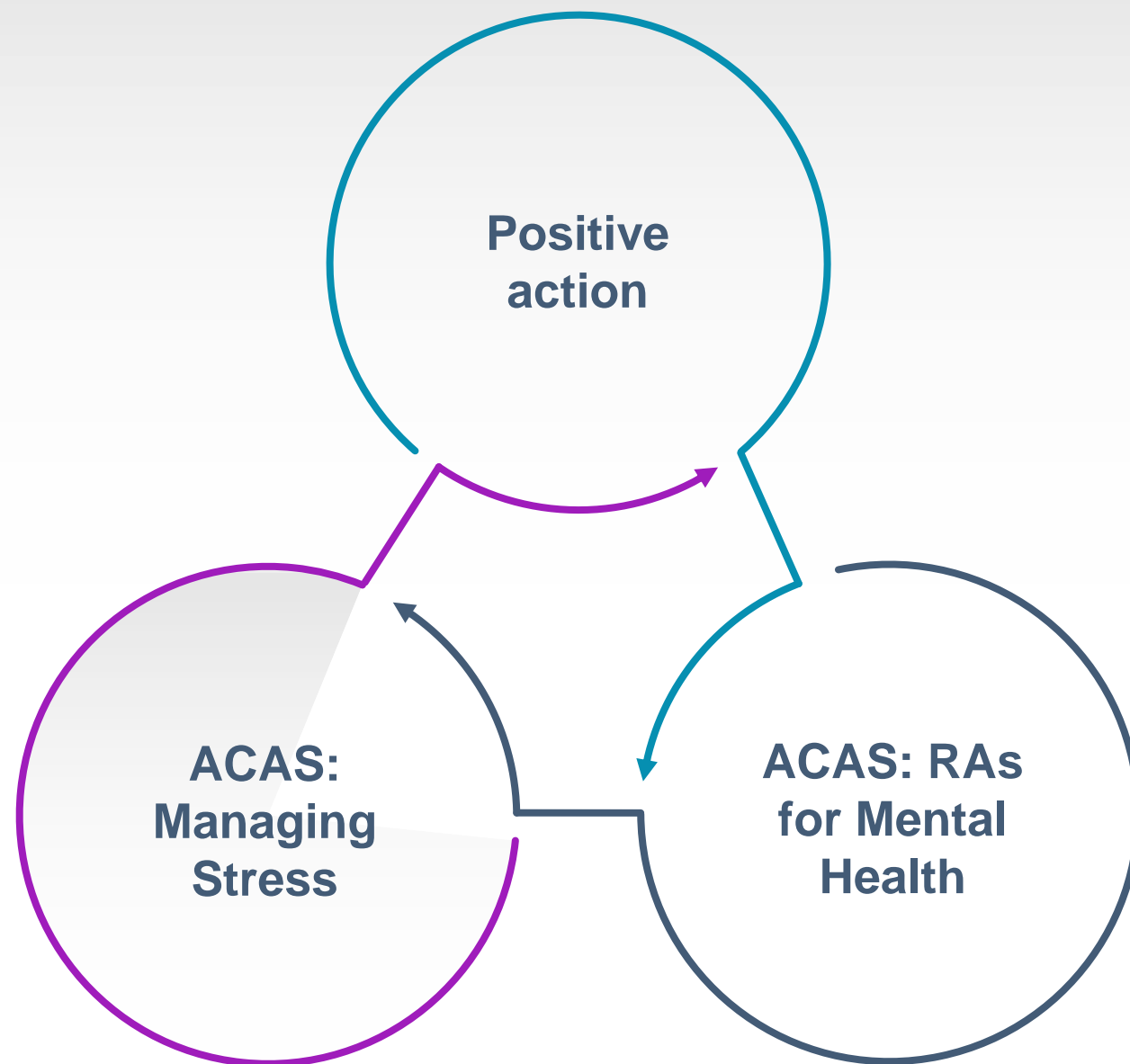
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# TRANSPARENCY: CLEARER SKIES AHEAD



# TRANSPARENCY: CLEARER SKIES AHEAD?



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# ETHNICITY PAY GAP REPORTING: GOVERNMENT GUIDANCE

Collecting ethnicity data

How to consider **data issues**

The **recommended calculations** and step by step instructions on how to do

Further analysis that may be needed to **understand the underlying causes of any disparities**

Reporting the findings

Consider an **employer action plan**

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# EU PAY TRANSPARENCY DIRECTIVE: MORE TEETH?



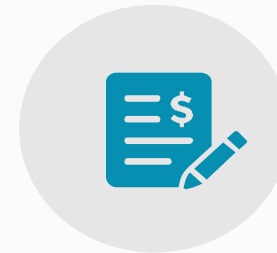
Pay transparency for job applicants



Employees: Right to request pay details of those doing same work



Mandatory reporting if 100+ e'ees (from 2030)



Equal pay audit required if gap of at least 5%



Penalties and compensation



## Challenges

- Harmonisation
- Practical issues
- Ireland

# FUTURE FORECASTING: WINTER IS COMING





# AND FINALLY...

- 1 **Imminent:** New minimum service levels during strikes in key sectors
- 2 **TBC:** ICO guidance for monitoring at work
- 3 **TBC:** ICO guidance on information about workers' health
- 4 **Uncertain future:** New UK Bill of Rights
- 5 **TBC:** Government response to the National Disability Strategy consultation



**QUESTIONS?**





# 5 FORECASTS FOR HR IN 2023 AND BEYOND

Please send any follow up questions to  
[renee.lofthouse@addleshawgoddard.com](mailto:renee.lofthouse@addleshawgoddard.com)

**MORE IMAGINATION MORE IMPACT**

[addleshawgoddard.com](http://addleshawgoddard.com)

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