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Brexit Briefing

THOMPSONS SOLICITORS
TRADE UNION LAW GROUP BRIEFING

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Foreword

It is now two years since Thompsons published its first Brexit briefing. Two years in which a lot has happened politically. Two years in which the government has failed to make any significant progress in negotiating the terms on which the UK will leave European Union or the terms of the UK's relationship with the EU following Brexit.

There is no sign that the government is capable of securing a Brexit on terms which will protect UK workers, their jobs, pay and conditions and their families. EU citizens in the UK and UK citizens in other EU member states are left vulnerable and uncertain.

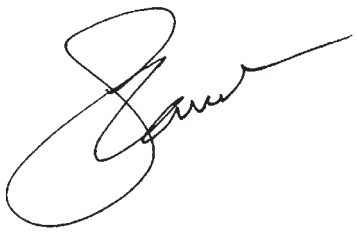
There is a very real risk of a "no Deal Brexit "which is devoutly wished for by the Brexit obsessives in the Tory party. The damage this will do is illustrated by the papers now published by the government setting out the consequences of a "no Deal Brexit". Although those papers are bland and superficial, they cannot disguise the disastrous consequences of a "no Deal Brexit" for UK workers.

The Prime Minister has shown no signs of negotiating a satisfactory deal for a Brexit which protects UK workers. She cannot secure agreement in her own party or even in her own cabinet. There seems no prospect of The Prime Minister being in a position to present proposals which are capable of forming the basis of a deal with the EU, still less of concluding a satisfactory deal.

There is certainly no prospect of a deal which satisfies Labour's six tests nor the criteria set out by the TUC. Workers' rights are at risk.

In this paper, we set out the legislative developments in the last two years and update on the current legal position on EU withdrawal. We look at the issues still to be resolved and we highlight two ongoing issues of significance to UK workers.

These are crucial times for defending the rights of UK workers and I hope that this booklet helps by setting out some of the legal issues involved.



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1. INTRODUCTION

The UK continues on its path to departure from the European Union at 11pm on 29 March 2019. But still nobody knows what the outcome of negotiations with the EU is going to be - or whether there is going to be an agreement on the UK's future relationship with the EU, or a 'no deal' exit.

The Government's flagship Brexit legislation, the European Union (Withdrawal) Act 2018, is now on the statute book. Its main effects are to repeal the European Communities Act 1972, convert and preserve EU law into domestic UK law, and make provision for the implementation of any withdrawal agreement reached with the EU.

But the EU (Withdrawal) Act makes no provision for (i) the transitional period (labelled the 'implementation' period to appease Leave supporters) agreed in principle as part of the draft withdrawal agreement with the EU[1]; or (ii) the content of any withdrawal agreement.

Theresa May manoeuvred her Cabinet into backing what was described as a united approach on the UK's 'vision' for its future relationship with the EU set out in the statement issued from Chequers on 6 July. Then Brexit Secretary David Davis resigned a few days later, followed shortly afterwards by Foreign Secretary Boris Johnson. The Government has now published two White Papers – one on the future relationship between the UK and the EU and the other on implementation of a withdrawal agreement. At the time of writing, the Government has just published 'technical papers' on what is to happen in the event of 'no deal', including in relation to workers' rights.

Assuming that some sort of agreement is reached with the EU (even if only for an 'implementation' period), it is now clear that, however the Government tries to dress it up, EU law is almost certainly going to apply after 29 March 2019 in the UK, essentially in the same way as it does now, until 31 December 2020. That applies equally to UK employment and health and safety laws.

In this briefing, we comment on some of the main effects of the EU (Withdrawal) Act, the Chequers agreement and the two Government White Papers, including what they might mean for trade union, employment and personal injury law in the UK. We also summarise two initiatives on which we have been advising unions and MEPs. At Appendix 1 is a reminder of the key employment rights derived from EU law, and a likely Brexit timeline is at Appendix 2.

[1] see https://www.gov.uk/government/publications/draft-withdrawal-agreement-19-march-2018.

2. THE EU (WITHDRAWAL) ACT

The EU (Withdrawal) Act provides for:

- definition of the 'exit day' as '29 March 2019 at 11.00pm'[2];
- repeal of the European Communities Act from the 'exit day'[3];
- importing, retaining and preserving EU law (and UK law implementing it) as 'retained EU law'[4];
- the modification of retained EU law for limited purposes[5]; and
- the mechanism for approval and implementation of any withdrawal agreement[6].

'Retained EU law'

The European Communities Act is the legal equivalent of a pipe through which EU law flows into the UK legal system. When it is repealed, the tap on the pipe gets turned off. There is mainstream agreement that, whatever changes to EU-derived law are to follow, it is sensible to preserve the EU law that has already flowed into the UK for now.

The various categories of EU-derived law to be preserved are:

- 'EU-derived domestic legislation'[7];
- 'direct EU legislation' (uncommon in labour law)[8];
- other 'directly effective' EU rights (typically under EU Treaties, but sometimes under EU Directives)[9]; and
- 'general principles' of EU law[10].

Much of UK labour and health and safety law falls into the first category of 'EU-derived domestic legislation'. Examples include the '6-pack' of health and safety regulations, the Working Time Regulations, TUPE, collective redundancy rights, insolvency rights, the Agency Workers Regulations and the Part-Time Worker Regulations. These are all rights which are protected in UK statutes or statutory instruments, which were introduced into UK law to comply with the UK's obligations under EU law. Claimants enforcing these rights in the UK rely on the UK statute or statutory instrument, as interpreted in light of the relevant Directives.

However, some UK labour and health and safety law (or principles relevant to it) falls into other categories.

[2] section 20(1) to (5).
[3] section 1.
[4] sections 2 to 7.
[5] section 8.
[6] section 9.
[7] section 2.
[8] section 3.
[9] section 5 and Schedule 1.
[10] section 5 and Schedule 1.

There are 'directly effective' EU rights, the most obvious of which is the right to equal pay. The right to equal pay is protected by Article 157 of the Treaty on the Functioning of the European Union. The Court of Justice of the European Union has held that this EU law right can be relied on directly, without domestic implementing legislation, by Claimants in domestic law proceedings (which is allowed in the UK because of the European Communities Act)[11].

A Claimant in a UK Court or Tribunal can also, in limited circumstances, rely directly on the terms of an EU Directive. However, this can only apply against 'emanations of the State', and then only if the provisions relied on are 'sufficiently clear and precise' as to be capable of having direct effect. An example of this type of direct effect was where Claimants were allowed to rely directly on the Equal Treatment Directive[12].

There are also 'general principles' of EU law relevant to UK labour and health and safety law. These are often principles used in the interpretation of EU law, such as the principles of proportionality, non-retroactivity, equivalence[13] and effectiveness[14]. They also include the protection of fundamental rights[15].

There are three notable categories of EU-derived law that will not be preserved in the UK as 'retained EU law', all relevant to employment and health and safety laws in the UK: (1) obligations under EU Directives (save in certain circumstances)[16]; (2) so-called 'Francovich' claims[17]; and (3) the EU Charter of Fundamental Rights[18].

'Rights arising under an EU Directive' will not form part of 'EU retained law' unless the rights are 'of a kind recognised by the Court of Justice of the European Union or a court or Tribunal in the UK in a case decided before exit day (whether or not an essential part of the decision of the case)'[19]. The logic is that the terms of a Directive are intended to impose obligations on Member States and it is only where the CJEU has found that a Directive confers directly effective rights that those rights are to be preserved in 'retained EU law'.

The net effect of this is that, whilst UK statutory instruments implementing EU Directives into UK law will be preserved as 'retained EU law', the underlying EU Directives will not form part of 'retained EU law' unless the relevant provisions are 'of a kind' which have been found capable of having direct effect. We return to this below.

The 'Francovich rule' allows people to claim damages from a Member State in certain circumstances if that Member State has wrongly implemented or failed to implement an EU Directive or otherwise acted in breach of EU law. There will be no right in UK law on or after exit day to damages in accordance with the 'Francovich' rule.

[11] see Defrenne v Sabena C-43/75 [1976] ICR 547.
[12] see Foster v British Gas plc [1991] IRLR 268.
[13] see Revenue and Customs Commissioners v Stringer [2009] ICR 985.
[14] see Levez v TH Jennings [1999] ICR 521.
[15] see Kucukdeveci v Swedex [2010] IRLR 346.
[16] see section 4(2)(b).
[17] see Francovich v Republic of Italy [1991] C-6/90; and paragraph 4 of Schedule 1.
[18] see section 5(4).
[19] see section 5(4).

EU Charter of Fundamental Rights and 'general principles' of EU law

The EU Charter of Fundamental Rights will not form part of 'retained EU law'. It has been confirmed that the UK does not have an effective opt-out[20], and the Charter's significance has increased in recent years[21]. Rights protected under the EU Charter enjoy a greater protection (and more effective enforcement mechanisms) than comparable rights protected under the European Convention on Human Rights because EU Charter rights carry a legally binding status equivalent to other Treaty rights.

Although fundamental rights or principles which exist irrespective of the Charter are retained, and fundamental rights are intended to fall within the category of 'general principles', the protection of rights under the Charter are downgraded by the Act. It will not be possible to rely on 'general principles' as grounds for invalidating domestic laws or executive actions[22]. And it is only those fundamental rights that are recognised in pre-exit date decisions of the CJEU that will be preserved[23].

There would probably have been complexities in preserving EU Charter rights in domestic law – not least because they only apply to Member States when they are 'acting within the scope of EU law'. But it would have been perfectly possible.

As matters stand, human rights protection in the UK comes via three legal mechanisms: (i) the European Convention on Human Rights, incorporated into domestic law by the Human Rights Act 1998; (ii) the EU Charter; and (iii) domestic common law principles. Each of these provides for different types of remedy.

Following the EU (Withdrawal) Act, and the disengagement of EU Charter rights, it is essential that appropriate and consistent protection mechanisms are in place so that no protections currently provided by the EU Charter are lost.

[20] see NS v Secretary of State for the Home Department Joined cases C-411/10 and C-493/10.
[21] see Benkharbouche v Government of Sudan [2015] ICR 793.
[22] see paragraph 3(1) Schedule 1.
[23] see paragraph 2 Schedule 1.

Supremacy of EU law

A key pre-Brexit principle is that EU law is supreme, which means that it has the status of a superior source of law within the EU's Member States. Domestic laws may be dis-applied if they are found to be inconsistent with EU law[24]. The EU (Withdrawal) Act[25] says that the principle of supremacy of EU law will be maintained after exit, albeit to a limited extent.

The principle of supremacy of EU law will not apply to the dis-application of UK legislation passed on or after exit day[26]. Where, however, a conflict arises between pre-exit domestic legislation and 'retained EU law', the principle of the supremacy of EU law will continue to apply so that the 'retained EU law' will prevail (except for provisions made under the Act, or in preparation for exit).

The principle of supremacy of EU law also means that domestic law must be interpreted, as far as possible, in accordance with EU law[27]. So, for example, domestic law must be interpreted, as far as possible, in light of the wording and purpose of relevant Directives. The duty will not apply to domestic legislation passed or made on or after exit day, but it will continue to apply to domestic law passed or made before exit. The principle of supremacy can continue to apply to pre-exit law which is subsequently modified on or after exit day where that 'is consistent with the intention of the modification'[28].

Interpreting 'retained EU law' and the Court of Justice of the European Union

'Retained EU law' will be interpreted after Brexit in accordance with 'retained EU case law', which means 'principles laid down by, and any decisions of, the CJEU as they have effect in EU law immediately before exit day'[29]. Only the Supreme Court is excluded from the requirement imposed on UK courts to apply pre-exit CJEU decisions to retained EU law[30].

Courts in the UK are not bound by decisions of the CJEU after exit day[31] But they 'may have regard' to those decisions 'so far as relevant to any matter before the court'[32].

[24] see Costa v ENEL [1964] ECR 585.
[25] see section 5(2).
[26] see section 5(1).
[27] see Marleasing v La Comercial [1990] ECR 104153.
[28] see section 5(3).
[29] see section 6(7).
[30] see section 6(4).
[31] see section 6(1).
[32] see section 6(2).

Status of 'retained EU law' and how to amend it

The status of 'retained EU law' is important not least because it determines the mechanism by which it can be amended or repealed after exit day. As we have seen, the three most important categories of 'retained EU law' for the purposes of UK employment and health and safety rights are 'EU-derived domestic legislation', 'directly effective' rights and 'general principles'.

EU-derived law in the form of Acts of Parliament or Statutory Instruments will continue to be legislation of those statuses after exit[33]. However, unlike other sub-categories of 'retained EU law', the Act contains no general right to amend these EU-derived laws. This may be significant given the repeal of section 2(2) of the European Communities Act, a subject we return to below.

Directly effective rights (under EU Treaties and EU Directives) and 'general principles' can be amended, in the broadest terms, by a subsequent Act of Parliament, by secondary legislation made under the Act itself, or by use of existing or future powers which are made more flexible by the Act[34].

'Modifications' to retained EU law and Parliamentary supervision

The EU (Withdrawal) Act gives the Government further, wide-ranging powers, which can be used for up to two years after exit day, to 'modify' 'retained EU law'[35].

These powers can be used where:

- the Government identifies any failure of retained EU law to operate effectively, or any other deficiency of retained EU law; and
- the failure or deficiency arises from the UK's withdrawal from the EU[36].

In principle, the Government would not be able to use these powers to change employment rights preserved as 'retained EU law' as a matter of policy. It would have to identify a failure to operate effectively or other deficiency. The Act provides a list of the circumstance which are to be regarded as 'deficiencies' in 'retained EU law'[37]. Note that 'retained EU law' would not be deficient merely it did not include a change made by the EU to that law after Brexit[38].

[33] see section 7(1).
[34] see section 7.
[35] see section 8.
[36] see section 8(1).
[37] see section 8(2).
[38] see section 8(4).

Where the Government identifies such a failure of 'retained EU law' to operate effectively, or other deficiency, it can 'make such provision as it considers appropriate to prevent, remedy or mitigate' that deficiency[39]. This gives the Government great latitude.

Secondary legislation can be introduced by Ministers using these powers in two ways: either with the positive approval of both Houses of Parliament (the affirmative resolution procedure), or in the absence of Parliament's express disapproval (the negative resolution procedure).

The Act defines when the affirmative procedure must be used. Where there is no requirement to use the affirmative procedure and the Government wishes to use the negative resolution procedure, it must explain why and then allow the sitting committees in both Houses of Parliament ten days in which to make a recommendation as to the appropriate procedure. If the Government does not agree to a recommendation to use the affirmative resolution procedure, it can still use the negative resolution procedure, but will have to explain why it does not agree with Parliament's recommendations[40].

Parliamentary approval of any withdrawal agreement

The Act contains the result of attempts to secure a 'meaningful vote' for Parliament on any agreement negotiated with the EU[41].

A withdrawal agreement can only be ratified if, in broad terms:

- the Government lays before each House of Parliament a copy of the withdrawal agreement and of the 'framework for a future relationship';
- the House of Commons approves the agreement and the framework; and
- an Act has been passed which contains provision for the implementation of the withdrawal agreement[42].

The Government is required, so far as reasonably practicable, to ensure that Parliament votes on the withdrawal agreement before the EU does so[43].

If the withdrawal agreement and the framework for a future relationship are rejected by the House of Commons, the Government must make a statement within 21 days setting out how it proposes to proceed in relation to negotiations on withdrawal with the EU, which must then be debated in Parliament on a 'motion in neutral terms'[44].

If there is no agreement as to the terms of a withdrawal agreement and the framework for a future relationship by 21 January 2019, the Government is required to make a statement to Parliament within five days setting out how it proposes to proceed, and to make arrangements for the statement to be debated on a 'motion in neutral terms'[45].

[39] see section 8(1).
[40] see Schedule 7.
[41] see section 13.
[42] see section 13(1).
[43] see section 13(2).
[44] see section 13(3) to (6).
[45] see section 13(10) to (12).

Devolution

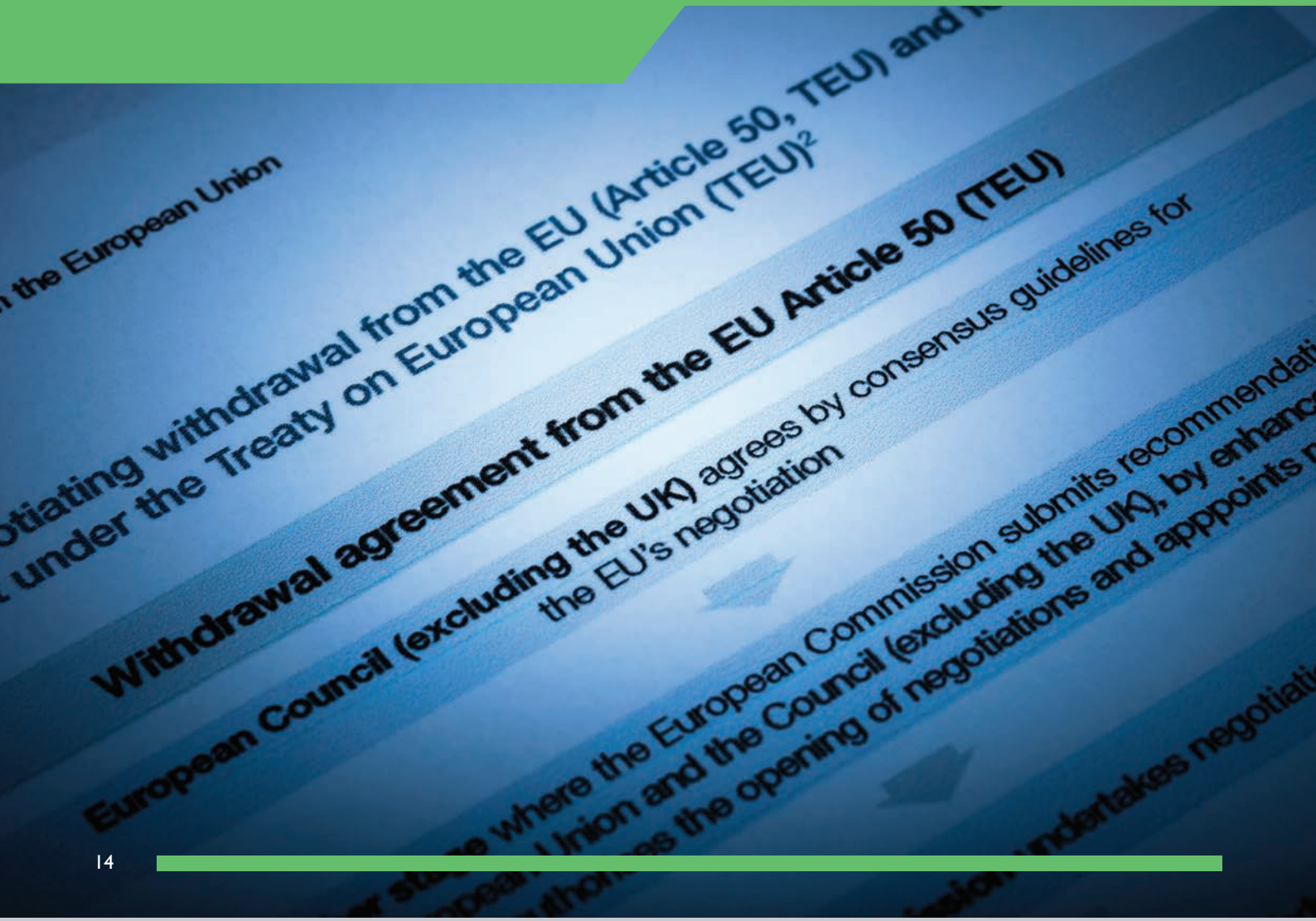
The EU (Withdrawal) Act contains complex provisions concerning devolution, but is expressed to be binding on England, Scotland, Wales and Northern Ireland[46].

EU laws currently limit the extent of the devolved administrations' competencies in various areas, such as agriculture. The Act provides, at least in the first instance, for most of these powers to go to the UK Government. This has been described by the Scottish Government as a 'power grab'[47]. The Welsh Government originally took the same position as Scotland, but it has now reached an accommodation with the UK Government[48].

The Scottish Parliament passed the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which seeks to re-establish in Scotland the powers the Scottish Government considers ought to have returned to Scotland. The Supreme Court has heard a challenge as to whether the Bill is within the powers of the Scottish Parliament, and, at the time of writing, judgment is awaited[49].

[46] see sections 10 to 12 and Schedule 2.
[47] Joint statement of Nicola Sturgeon and Carwyn Jones responding to the EU (Withdrawal) Bill, 13 July 2017
[48] see https://www.gov.uk/Government/publications/interGovernmental-agreement-on-the-european-union-withdrawal-bill
[49] see The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland, Case ID: UKSC 2018/0080.

3. THE CHEQUERS AGREEMENT AND THE WHITE PAPERS ON (1) THE FUTURE RELATIONSHIP WITH THE EU; AND (2) LEGISLATING FOR THE WITHDRAWAL AGREEMENT (IF THERE IS ONE)



The Chequers agreement

Before Theresa May could negotiate meaningfully with the EU on the UK's future relationship with it, she had to seek to arrive at a common position amongst her cabinet members. This took the form of the agreement reached at Chequers on 6 July[50]. It envisages a core proposal of the establishment by the UK and the EU of a free trade area for goods, and four main elements:

- the UK and the EU maintaining a 'common rulebook for all goods including agri-food', with the UK 'making an upfront choice to commit by treaty to ongoing harmonisation with EU rules on goods, covering only those necessary to provide for frictionless trade at the border…'. There would be new arrangements for services;

- the UK and the EU ensuring 'a fair trading environment by incorporating strong reciprocal commitments related to open and fair trade into the legal agreements that define the future relationship…….In keeping with our commitments to uphold international standards, the UK and the EU would also agree to maintain high regulatory standards for the environment, climate change, social and employment , and consumer protection – meaning we will not let standards fall below their current levels';

- the establishment of a joint institutional framework for the 'consistent interpretation and application of UK-EU agreements'. This would be done '….in the UK by UK courts, and in the EU by EU courts – with due regard paid to EU case law in areas where the UK continued to apply a common rulebook'. There would be a dispute resolution procedure, accommodating a joint reference procedure to the CJEU; and

- the UK and the EU would work together on the phased introduction of a 'Facilitated Customs Arrangement' that would remove the need for customs checks and controls between the UK and the EU, and apply the UK's tariffs for goods intended for the UK and the EU's tariffs for goods intended for the EU.

[50] https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/723460/CHEQUERS_STATEMENT_-_FINAL.PDF

White Paper: 'The Future Relationship between the United Kingdom and the European Union'[51]

The contents of the Chequers agreement were then expanded upon in the White Paper, the main features of which are:

- an 'economic partnership', based on a 'common rulebook' for goods, participation by the UK in various EU agencies, the 'Facilitated Customs Arrangement', new arrangements for services, continued cooperation on energy and transport, a 'new framework that respects the UK's control of its borders and a 'fair trading environment';

- a 'security partnership', based on 'maintaining existing capabilities' including information sharing, participation by the UK in EU agencies, 'arrangements for coordination on foreign policy, defence and development, 'joint capability development' 'supporting the operational effectiveness and interoperability of the UK's and EU's militaries and 'wider cooperation' on 'illegal migration'';

- cooperation in other areas such as protection of personal data, 'cooperative accords' for areas such as science and innovation, culture, education, development and international action, defence research and space, including 'through EU programmes, with the UK making an appropriate financial contribution', and fishing; and

- joint institutional arrangements based on a new Governing Body involving heads of State and Ministers, a Joint Committee and exchanges between the UK and European Parliaments; enforcement 'in the UK by UK courts and in the EU by EU courts' with the Joint Committee ensuring consistency between the decisions of UK and EU courts in areas covered by the agreement; and a referral mechanism to the CJEU, but only '…in relation to the interpretation of those EU rules to which the UK had agreed to adhere as a matter of international law'.

The White Paper's references to employment and health and safety rights are minimalist and give no encouragement that the interests of workers will be given due priority in the withdrawal process. There is no suggestion, for example, that employment and health and safety rights should be included in the 'common rulebook'.

In the context of the 'fair trading environment', the UK and EU would agree 'to maintain high standards through non-regression provisions in areas including the environment and employment rules, in keeping with the UK's strong domestic commitments'[52].

[51] see https://www.gov.uk/Government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union
[52] see paragraph 7f.

The section on 'Social and employment' provides as follows:

'121. The UK firmly believes in the importance of strong labour protections while also embracing the opportunities arising from the changing world of work. Existing workers' rights enjoyed under EU law will continue to be available in UK law on the day of withdrawal.

122. The UK already exceeds EU minimum standards in a number of areas, such as parental leave and flexible working arrangements, and is a leader in many others. For example, on health and safety, the UK has one of the strongest records in Europe, and, in 2015, the UK's standardised rate of fatal injury was amongst the lowest in the EU28. The UK is also ensuring employment practices keep pace with rapid technological change in its response to the Taylor Review of Modern Working Practices. On equalities, the UK ranks third in the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) Rainbow Europe index and also ranks above the EU28 average on the European Institute for Gender Equality 2017 Index. The UK has demonstrated its commitment to tackling modern slavery, for example through the introduction of the Modern Slavery Act 2015, and will continue to lead the global fight against it.

123. Given this strong record, and in the context of the UK's vision for the future relationship with the EU, the UK proposes that the UK and EU commit to the non-regression of labour standards. The UK and the EU should also commit to uphold their obligations deriving from their International labour Organisation commitments.'

The White Paper provides that the EU will have to agree as to what should happen in the event of non-compliance with any agreements between them. It envisages two situations: (i) where a dispute was not resolved by the Joint Committee; or (ii) where the UK or the EU considered that either party had not complied with a decision of the Joint Committee. The White Paper envisages that the UK or the EU, as the complaining party, could then take 'measures', of a financial or technical nature, 'to mitigate any harm caused by the breach'.

Although Theresa May's cabinet is supposed to be united around the Chequers agreement and, presumably, the contents of the White Paper, they have so far met with a resounding 'non' from EU negotiators[53], especially when it comes to the single market for goods and the proposed customs arrangements.

[53] see https://www.theguardian.com/politics/2018/jul/20/france-minister-nathalie-loiseau-brexit-concessions-theresa-may-commons.

White paper: 'Legislating for the Withdrawal Agreement between the United Kingdom and the European Union'[54]

This White Paper addresses the future content of what will be the EU Withdrawal Agreement Bill. Any withdrawal agreement itself will take the form of a treaty between the EU and the UK. This Bill will import terms agreed as to the rights of EU citizens into UK law. But, it will also address the implementation period provisionally agreed until 31 December 2020, as well as providing for the financial settlement ultimately negotiated and the procedures for approval and implementation of any withdrawal agreement.

In terms of citizens' rights, the Bill, as a piece of UK legislation, will only legislate for EU citizens lawfully resident in the UK. EU citizens who, by 31 December 2020, have been continuously and lawfully living in the UK for at least five years will be granted 'settled status' and will be able to stay indefinitely[55].

One important principle that has already been provisionally agreed with the EU is that the Bill will enable EU citizens to rely directly on the rights set out in the Withdrawal Agreement[56]. The Bill will also 'reflect the principle that the rights conferred on individuals by the Withdrawal Agreement will take precedence over any inconsistent provision in domestic law'[57]. This may be a useful precedent for ensuring the enforceability by individuals and trade unions of the commitments relating to employment and health and safety rights made by the Government in the White Paper on the future relationship.

'Exit day, as defined in the EU (Withdrawal) Act 2018 will remain 29 March 2019' is a mantra the Government has urged upon us throughout all discussions of the implementation period and in the White Papers this summer. The legal reality is somewhat different.

During the implementation period, EU law will continue to apply in the UK. 'And, crucially for present purposes, this means EU law proper, not a domesticated, frozen-on-28-March-2009 version'[58]. A number of consequences have also been pointed out.

The pipe through which EU law is going to flow into the UK legal system during the implementation period is the European Communities Act. Despite the unequivocal statement in the EU (Withdrawal) Act that the European Communities Act is to be repealed from exit day, which is (immovably) 11.00pm on 29 March 2019, the European Communities Act will continue to apply until 31 December 2020.

[54] see https://www.gov.uk/Government/publications/legislating-for-the-withdrawal-agreement-between-the-united-kingdom-and-the-european-union
[55] see Chapter 2.
[56] see Article 4(1) of the draft withdrawal agreement.
[57] see paragraph 46.
[58] see 'Legislating in the dark: The Government's White Paper on the Withdrawal Agreement Bill', Professor Mark Elliott at https://publiclawforeveryone.com/2018/07/27/legislating-in-the-dark-the-Governments-white-paper-on-the-withdrawal-agreement-bill/.

The Withdrawal Agreement Bill will ensure that, during the implementation period, EU law is given effect in UK law through the European Communities Act almost exactly as it now. The principles of direct effect and supremacy of EU law will continue to apply, and the legal basis for UK law derived from EU law will continue to be the underlying EU law. The UK will also have to implement any EU Directives that come into force during the implementation period.

Although not expressed in these terms, the White Paper effectively concedes these consequences[59]. Whilst it is at pains to point out that the Government will maintain scrutiny of EU law during the implementation period, what it doesn't point out is that the UK will play no part in the formulation of UK law during the implementation period – it will have become a 'rule-taker'.

The White Paper then sets out the sequence of events that will be needed for the approval of the withdrawal agreement:

- Parliament approving the Withdrawal Agreement and the framework for the future relationship, as provided for in the EU (Withdrawal) Act;
- The Government introducing the EU (Withdrawal Agreement) Bill; and
- Before ratification takes place, there will be a final scrutiny under the Constitutional Reform and Governance Act 2010 (which requires that the withdrawal agreement must be laid before both houses of Parliament for a period of 21 sitting days).

The EU will not be able to ratify the treaty relating to the future relationship until after the UK has left the EU on 29 March 2019.

If there is no withdrawal agreement, then there may be no implementation period, and the UK will simply leave the EU on 29 March[60]. If the terms of the withdrawal agreement and the framework for the future relationship are rejected by Parliament, then the processes for the Government to make statements to Parliament as to how it intends to proceed set out in the EU (Withdrawal) Act will apply.

[59] see, for example, paragraphs 57 and 60.
[60] At the time of writing, there is speculation about the prospect of a 'no deal' agreement providing for an implementation period only.

4. WHAT DOES THIS ALL MEAN FOR EU-DERIVED EMPLOYMENT AND HEALTH AND SAFETY LAW IN THE UK?

Provided that a withdrawal agreement (including an implementation period until 31 December 2020) and framework for the future relationship are successfully negotiated between the UK and the EU, and then approved by Parliament and ratified by the Government, the following consequences will, so far as UK labour and health and safety law are concerned, apply:

- the relevant underlying EU law will continue to apply to the UK until 31 December 2020, essentially as it does pre-29 March 2019;
- EU-derived labour and health and safety laws in the UK will continue to apply until 31 December 2020, as they do pre-29 March 2019;
- from 31 December 2020, EU-derived labour and health and safety laws will be retained and preserved in UK law, subject to the Government's ability to make 'modifications' to cater for any failure of the law to operate effectively, or other deficiency, and will be known as 'retained EU law';
- relevant EU Directives (except for directly effective provisions) will cease to apply to the UK from 31 December 2020;
- after 31 December 2020, 'retained EU law' will have supremacy over Acts and other UK laws made before 31 December 2020, and domestic law (including 'retained EU law') made before 31 December 2020 will have to be interpreted consistently with relevant EU Directives and other laws;
- the supremacy of EU law (including the interpretative obligation) may continue to apply to 'retained EU law' which is modified after 31 December 2020, where 'the application of the principle is consistent with the modification';
- the EU Charter of Fundamental Rights will cease to apply to the UK from 31 December 2020, although the fundamental rights protected by it will form part of 'retained EU law' if they have been recognised by the CJEU before 31 December 2020;
- after 31 December 2020, the Government will be able to use the extended powers contained in the EU (Withdrawal) Act to amend or repeal EU-derived employment and health and safety laws in the UK;
- however, the Government' s ability to amend or repeal EU-derived employment and health and safety laws in the UK will be subject to the commitments it proposes for the withdrawal agreement as to: (i) non-regression of current standards; and (ii) compliance with obligations deriving from the International Labour Organisation.

A draft Statutory Instrument has already been published for the purpose of making 'modifications' to numerous health and safety UK Statutory Instruments[61]. This is one of a number of draft Statutory Instruments prepared relying on the modification powers constrained in the EU (Withdrawal) Act. The Government says that 'These Regulations do not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation'[62]. No doubt, further 'modification' Statutory Instruments will follow between now and 31 December 2020.

The Government has separately made available two draft 'illustrative' Statutory Instruments on employment rights. The government says that 'these two draft SIs are being shared as illustrative samples to show how the powers in the bill may be used to correct retained law relating to employment rights'[63].

The first of these draft Statutory Instruments[64], to be made under the negative resolution procedure, would remove powers to make regulations providing for further implementation into UK law of the Directives on the framework agreements on parental leave[65], part-time working[66] and fixed-term work[67] and the Directive on the information and consultation of employees[68]. It would also make further amendments to various pieces of employment legislation 'to remove/amend references that are no longer appropriate once the UK exits the EU'.

The second of these draft Statutory Instruments[69], to be made under the affirmative resolution procedure, would preserve the power contained in section 38(2) of the Employment Relations Act 1999 (see further below)[70]. There are further amendments to the Work and Families Act 2006 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

The government has also published guidance on 'Workplace rights if there's no Brexit deal'[71]. If there is 'no deal', the government says that protections in the event of the insolvency of the employer will continue to apply for UK or EU workers living and working in the UK, but that national guarantees in other EU countries may no longer be available. It also says that the European Works Council Regulations will be amended so that no new requests to set up a European Works Council can be made.

Many of the UK's health and safety laws are in the form of statutory instruments, which are made under the authority of the Health and Safety at Work Act 1974. These regulations implement the UK's obligations imposed by EU law. Whilst these regulations will form part of 'retained EU law', amendments to them can generally be made by statutory instrument using the powers contained in the Health and Safety at Work Act.

[61] The Health and Safety (Amendment) EU Exit) Regulations 2018; see https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-health-and-safety-amendment-eu-exit-regulations-2018
[62] see paragraph 2.1 of the Explanatory Memorandum accompanying the draft Regulations.
[63] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666440/Employment_SIs_Cover_Note_.pdf
[64] The Employment Rights (Amendment) (EU Exit) Regulations 2018 – see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666442/The_Employment_Rights__Amendment___EU_Exit__Regulations_2018_and_The_Employment_Rights_.pdf
[65] Council Directive 96/34/EC.
[66] Council Directive 97/81/EC.
[67] Council Directive 99/70/EC.
[68] Directive 2002/14/EC.
[69] The Employment Rights (Amendment) (EU Exit) (No.2) Regulations 2018 – see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666448/The_Employment_Rights__Amendment___EU_Exit___No._2__Regulations_2018.pdf
[70] The definition of 'main part of the TUPE regulations' in paragraph 1(2)(a) of Part 1 of the Schedule to these regulations should make it clear that the power relates to 'employee representatives' as well as to 'the treatment of employees'.
[71] see https://www.gov.uk/government/publications/workplace-rights-if-theres-no-brexit-deal/workplace-rights-if-theres-no-brexit-deal

The position is more complicated in relation to much EU-derived employment law. TUPE, for example, is a statutory instrument made under the powers contained in section 2(2) of the European Communities Act and section 38(2) of the Employment Relations Act 1999. But the power contained in section 38(2) (which the government says it is going to preserve) is confined to the circumstances in which the protections of TUPE apply, and was exercised to introduce the so-called 'Service Provision Change' category of transfers[72]. The remainder of TUPE is made under the powers contained in the European Communities Act, which won't exist after 30 December 2020. It is therefore unclear how TUPE could be further amended, except by statute.

What the Government says in the White Paper on the future relationship about a belief 'in the importance of strong labour protections' and '… ensuring employment practices keep pace with rapid technological change in its response to the Taylor Review on Modern Working Practices..' does not reflect the experience of ordinary working people in the UK. It is also disingenuous for the Government to say that existing rights enjoyed under EU law 'will continue to be available on the day of withdrawal'. In fact, they will continue to be available until the end of any 'implementation period'. But it's what happens to 'retained EU law' after Brexit that matters, and the extent to which Government seeks to dismantle a system retaining the protections derived from EU law.

But the Government has made two proposals in the White Paper (for labour laws, at least), that it should be required to sustain:

- '…that the UK and EU commit to the non-regression of labour standards'; and
- 'The UK and the EU should also commit to uphold their obligations deriving from their International Labour Organisation commitments'.

These commitments are welcome, but they must be accommodated in the withdrawal agreement, and what will become the EU Withdrawal Agreement Act, in ways which give rise to obligations that can be enforced by trade unions and their members.

The UK does not have a history of compliance with its international law obligations under ILO Conventions. For example, criticisms and concerns have been raised by the supervisory bodies of the ILO over the UK's industrial action legislation including in relation to the notification requirements[73], the narrow definition of a 'trade dispute'[74] and the outright ban on sympathy action[75].

Most recently, the ILO's Committee on the Application of Conventions and Recommendations requested the UK Government '……to provide information on the progress made and the measures taken to facilitate electronic balloting in the context of the new requirements of the Trade Union Act'; and '…..to review section 3 of the Trade Union Act with the social partners concerned and take the necessary measures so that the heightened requirement of support of 40 per cent of all workers for a strike ballot does not apply to education and transport services'[76].

[72] See Regulation 3(1)(b) Transfer of Undertakings (Protection of Employment) Regulations 2006.
[73] Direct Request (Committee on the Application of Conventions and Recommendations), 102nd ILC session (2013).
[74] Direct Request (Committee on the Application of Conventions and Recommendations), 91st ILC session (2003).
[75] Observation (Committee on the Application of Conventions and Recommendations), 100th ILC session (2011)
[76] Observation (Committee on the Application of Conventions and Recommendations), 106th ILC session (2017)

In order to be enforceable by trade unions and their members, these obligations would have to be set out precisely in the withdrawal agreement. The Government should then use the mechanism it is envisaging for citizens' rights to provide that:

- The EU (Withdrawal Agreement) Act will enable trade unions and workers in the UK to rely directly on these principles of non-regression of labour standards and compliance with ILO obligations by the Government set out in the withdrawal agreement; and
- The EU (Withdrawal Agreement) Act should reflect the principle that such rights conferred on trade unions and workers by the Withdrawal Agreement will take precedence over any inconsistent provision in domestic law[77].

There is no suggestion in the Government's most recent presentation paper at the time of writing that it is planning to put forward such protection mechanisms in negotiations with the EU[78].

[77] see paragraph 45 White Paper: Legislating for the Withdrawal Agreement between the United Kingdom and the European Union.
[78] see 'Framework for the UK-EU partnership Open and Fair Competition' at https://www.gov.uk/government/publications/framework-for-the-uk-eu-partnership-open-and-fair-competition.

5.ONGOING 'RULE-MAKING' IN THE EUROPEAN UNION

While Brexit continues to dominate attention in the UK, much of the rest of the EU continues to go about its 'rule-making' work in the field of employment and health and safety law. We describe below two initiatives on which we have been advising unions and MEPs. .

1. Pending EU legislation – Draft Directive on Transparent and Predictable Working Conditions

In December 2017, the European Commission published a draft Directive on Transparent and Predictable Working Conditions in the European Union[79] It was put forward under the EU European Pillar of Social Rights, adopted by all EU Member States, including the UK, in Gothenburg on 17 November 2017.

The proposed Directive would enhance and extend rights for workers across the EU, including the UK, if it is adopted before the end of the current Parliament in the Spring of 2018. If adopted on that timescale, it would also be adopted before the UK Brexit date of 29 March 2019.

The Directive would apply to all workers, although Member States are given the option of excluding from protection those workers whose working hours are 8 hours a month or less. However, that exclusion does not apply where there is no guaranteed amount of paid work – so zero hours contract workers are covered by the Directive.

The Directive would adopt an EU-wide definition of "worker", namely "a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration". This broad and simple definition should apply to a wider category of working people than the current definition in UK labour law. This is reflected in a broad definition of "employer" as "one or more natural or legal persons who is or are directly or indirectly party to an employment relationship, with "employment relationship" being defined as "the work relationship between workers and employers as defined above". These broad definitions would extend protection in the UK.

The first area in which protection would be extended is the right to a written statement of particulars of the employment relationship. This would be extended to all workers, whereas in the UK it is currently applicable only to the narrower category of employees. What is more, the written information would need to be provided by day one of employment, at the latest, whereas at the moment the employer has up to two months from the start date to provide the information.

[79] 2017/0355 (COD).

The required information would also be expanded. Additional information which will now be required includes: the duration and conditions of any probationary period; any training entitlement and the procedure for termination of employment. Most significantly, there would be new requirements for information on hours of work. Where the work schedule is (mostly) not variable, the length of the standard working week and any arrangements for overtime and overtime pay must be stated. Where the work schedule is (mostly) variable, the amount of guaranteed hours must be stated. Remuneration for work in addition to those hours must be stated, along with the hours and days during which the worker may be required to work and the minimum amount of notice a worker must receive before a work assignment. This would provide more information and greater predictability for zero hours contract workers. Additional information must be provided for workers posted or sent abroad.

The Directive would also establish further new protections.

The maximum duration of any probationary period would be limited to six months. Employers would be prohibited from "exclusivity clauses" which prevent workers working for other employers concurrently, unless the employer can show that the restriction is justified by legitimate reasons such as protection of business secrets or the avoidance of conflicts of interest.

There are further provisions aimed at providing greater certainty for those in precarious forms of employment relationship. These apply where a worker's work schedule is entirely or mostly variable and entirely or mostly determined by the employer. The employer can only insist that those workers work during predetermined reference hours and days specified in writing at the start of the employment relationship and only where the employer informs the worker of a work assignment a reasonable period in advance. After six months' employment, the worker may request more predictable and secure working conditions and the employer must reply to that request within one month.

The Directive would also give workers the right to legal redress when these protections are infringed and protection against detriment or dismissal for exercising their rights.

The draft Directive is now being considered by the Employment and Social Affairs Committee of the European Parliament. Various competing amendments have been submitted for consideration by different political groupings in the Parliament, some of which would weaken the Directive and some of which would strengthen it. The final version of the Directive would then be considered by the European Parliament.

The timetable is tight, but the European Commission believes that the Directive will be adopted and come into force before the end of this Parliament. This would mean that it would be adopted before 29 March 2019. That would mean that the Directive would be binding on the UK and become part of 'retained EU law', meaning that the UK (along with other Member States) would have to implement it within the time period stipulated in the Directive, which is likely to be two years from the date the Directive comes into force. As we have seen, it is now likely that the Directives that come into force up to the end of the anticipated implementation period (31 December 2020) will bind the UK.

2. Application by the European Public Services Union ('EPSU') to the EU General Court to annul the decision of the European Commission not to make a proposal for a Directive to the European Council on information and consultation rights in central government administrations

EPSU is a confederation of trade unions representing 8 million public service workers across Europe. Following a consultation initiated by the European Commission, TUNED, a consortium set up by EPSU and the Confederation of Independent Trade Unions, and the European Public Administration Employers (EUPAE) (the two sides of the EU Social Dialogue Committee) concluded an agreement on information and consultation rights for workers in central government administrations.

Article 155(2) of the Treaty on the Functioning of the European Union provides a mechanism, in such circumstances, for agreements reached at the level of EU Social Dialogue Committees, at the joint request of the signatories, to be implemented by a decision from the European Council on a proposal for a Directive from the Commission.

The procedure provided for in Articles 154 and 155(2) TFEU was introduced as a Protocol to the Maastricht Treaty and was intended to enhance social dialogue. It has been used to implement numerous social dialogue agreements through a Council Directive following an agreement between the social partners, such as the Council Directives on parental leave[80], part-time work[81] and fixed-term work[82].

The agreement was reached in the EU Social Dialogue Committee on 21 December 2015. On 1 February 2016, TUNED and EUPAE made a joint request to the Commission for it to make a proposal to the European Council for the implementation of the agreement in the form of a Council Directive.

80 Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.
81 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.
82 Council Directive 1999/70 of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

After saying that it had started to undertake an impact assessment, the Commission eventually communicated its decision that it would not be making a proposal to the European Council on 5 March 2018. It argued that the structure, organisation and functioning of central Government administrations was a matter for Member States, and that a Directive implementing the agreement would result in disparate levels of protection depending on the degree of centralisation of public administrations in different Member States.

No impact assessment had in fact been undertaken. This is the first time that the Commission has declined to put forward a proposal to the Council for implementation of a social partners' agreement under Article 155(2) TFEU.

EPSU has issued proceedings in the EU General Court[83], the sister court of the CJEU, seeking annulment of the Commission's decision not to make a proposal for a Directive to the EU Council under Article 263 TFEU. EPSU argues that the Commission does not have the power under Article 155(2) to decline to make a proposal to the Commission - at least not on grounds other than the representative status of the contracting parties or the legality of the terms of the agreement.

As matters stand, if EPSU is successful and the Commission is required to make a proposal for a Directive to the EU Council, it seems unlikely that any resulting Directive, providing for improved information and consultation rights, will become binding on the UK.

Thompsons Trade Union Law Group
September 2018.

83 EPSU and Jan Willem Goudriaan v Commission Case T-310/18.

Appendix 1: Key EU employment rights

The Acquired Rights Directive 2001/23/EC	Protects employees' rights in the event of a transfer of an undertaking, business or part of one. Includes the provision of information to, and consultation with, employees and their representatives. Also provides unfair dismissal protection. Implemented in the UK by Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Employment Rights Act 1996
The Agency Workers Directive 2008/104/EC	Gives all agency workers equal treatment entitlements in relation to access to facilities and information on vacancies from day 1 and (after a 12 week qualifying period) creates rights to the same basic working and employment conditions in certain areas, including pay and annual leave, as directly recruited employees. Also gives unfair dismissal protection. Implemented in the UK by the Agency Workers Regulations 2010 and the Employment Rights Act 1996
The Collective Redundancies Directive 98/59/EC	Guarantees a minimum standard of treatment for employees in the event of collective redundancy. In particular sets out collective consultation with representatives and the enforcement of protective awards. Implemented in the UK by the Trade Union and Labour Relations (Consolidation) Act 1992
The Employer Insolvency Directive 2008/94/EC	Provides employees dismissed from an insolvent employer a right to State-backed compensation payments for wages and redundancy. Operated in the UK via the Redundancy Payments Office and payments from the National Insurance Fund Implemented in the UK by the Employment Rights Act 1996
The Employment Conditions Directive 91/533/EEC	Requires employers to provide employees with details of the key provisions which govern their employment relationship. Implemented in the UK as the requirement for Statement of Particulars of Employment. Implemented in the UK by the Employment Rights Act 1996

The Employment Framework Directive 89/391/EEC	Provides protection from discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. Also provides for paid time off for health and safety representatives. Implemented in the UK by the Equality Act 2010 and the Health and Safety (Consultation with Employees) Regulations 1996
The Equal Treatment Directive 76/207/EC	Requires Member States to ensure equal treatment in relation to employment and vocational training. Although this measure was adopted under a single market legal base, it was subject to expansive interpretation by the European Court of Justice, resulting in its application to pregnancy and maternity and gender reassignment. Implemented in the UK by the Equality Act 2010
The European Works Council Directive 2006/109/EC	Provides for the establishment of European Works Councils (EWCs) or for a procedure to inform and consult employees on transnational issues affecting the workplace (ie those which concern all the operations of the business in Europe, or which concern undertakings and establishments in at least two different EEA countries). Only larger multi-national employers fall within the scope of the EWC rules and there is no obligation to set up a EWC in the absence of a request from at least 100 employees in two or more countries. Implemented in the UK by the Transnational Information and Consultation of Employees Regulations 1999
The Fixed-term Workers Directive 99/70/EC	Ensures that fixed-term workers may not be treated in a less favourable manner than permanent workers solely because they have a fixed-term contract, unless different treatment is justified on objective grounds. Also provides for the provision of a permanent contract after a set period of time. Implemented in the UK by the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

The Information and Consultation Directive 2002/14/EC	Provides employees in organisations with 50 or more employees the right to be informed and consulted on a regular basis about issues in the organisation for which they work. This includes the provision of information on the organisation's economic situation, to be informed and consulted about developments in the workplace and in particular on anticipatory measures envisaged where there is a threat to employment. Includes right to paid time off and protection from detriment and unfair dismissal. Implemented in the UK by the Information and Consultation of Employees Regulations 2004 and the Employment Rights Act 1996
The Parental Leave Directive 2010/18/EC	Entitles workers to at least four months parental leave on the birth or adoption of a child until a given age, suggested as being up to the age of eight. Also provides unfair dismissal and detriment protection. Implemented in the UK by Maternity and Parental Leave etc Regulations 1999 and the Employment Rights Act 1996
The Part-time Workers Directive 97/81/EC	Requires that, in respect of employment conditions, part-time workers are not treated in a less favourable manner than comparable full-time workers solely because they work part-time. Also unfair dismissal protection. Implemented in the UK by the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Employment Rights Act 1996
The Posted Workers Directive 96/71/EC	A single market measure to ensure a level playing field when businesses or agencies post workers temporarily from one Member State to provide services in another. The Directive entitles posted workers to certain core employment rights available in the country they are posted to, including minimum rates of pay, maximum work periods and equal treatment provisions. Implemented in the UK by the Posted Workers (Enforcement of Employment Rights) Regulations 2016 and the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016
The Pregnant Workers Directive 92/85/EEC	Sets the minimum levels of maternity leave and pay which Member States must provide (14 weeks' maternity leave with an "adequate allowance" paid at least at the rate of statutory sick pay), alongside health and safety at work protections. Also provides for right to suitable alternative work or pay if suspended, a prohibition on detriment due to pregnancy and unfair dismissal protection. Implemented in the UK by the Management of Health and Safety at Work Regulations 1999, the Employment Rights Act 1996 and the Equality Act 2010

The Race Directive 2000/43/EC	Implements the principle of equal treatment between persons irrespective of racial or ethnic origin. This Directive prohibits discrimination on the grounds of race in employment, training, social protection, including social security and healthcare, education, access to and supply of goods and services which are available to the public. Implemented in the UK by the Equality Act 2010
The Recast Gender Directive 2006/54/EC	Implements the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. This recast directive contains provisions to implement the principle of equal treatment in relation to employment, training, working conditions, including equal pay and occupational social security schemes. Implemented in the UK by the Equality Act 2010
The Working Time Directive 2003/88/EC	Contains restrictions on night work, requirements for daily rest, weekly rest, rest breaks, and four weeks paid annual leave. It also sets a 48 hour limit on the working week, which individuals can opt-out of. Also provides protection from detriment. Implemented in the UK by the Working Time Regulations 1998 and the Employment Rights Act 1996
The Young Workers Directive 94/33/EC	Provides various protections for employees aged under 18 in areas such as night work. Implemented in the UK by the Working Time Regulations 1998
Treaty on the Functioning of the European Union 2012/C 326/01	Article 8 imposes an obligation to eliminate inequalities, and to promote equality, between men and women. Article 10 imposes an obligation to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 157 imposes an obligation on the State to ensure measures which provide for equal pay for male and female workers for equal work or work of equal value. Implemented in the UK by the Equality Act 2010

Appendix 2: Brexit timeline

September 2018

Deadline for a report requested by the Government on European migration from the UK's Migration Advisory Council, which is intended to provide evidence for the design of a post-Brexit migration system;

18/19 October

EU summit seen as the most likely opportunity to reach agreement on the terms of a withdrawal agreement and a framework for future relations;

November 2018

Possibly a further EU summit to finalise the withdrawal terms if the deadlock on Ireland continues. (Referred to by David Davis shortly after his resignation);

13/14 December 2018

Last European Council of 2018 – widely regarded as the last date a withdrawal agreement can be reached between the UK and the EU;

January to February 2019 (at the latest)

House of Commons to approve the withdrawal agreement and framework for future relations. Parliament to introduce the EU (Withdrawal Agreement) Bill;

Until 29 March 2019

Final scrutiny under the Constitutional Reform and Governance Act 2010.
A withdrawal agreement must be approved at an EU Summit by a supermajority of leaders of Member States (representing at least 20 of the other 27 EU countries and 65 per cent of their population). Government ratifies the withdrawal agreement;

29 March 2019

The date the UK leaves the EU. The start of the 'implementation period';

After 29 March 2019

Full trade talks between the EU and the UK begin;

31 December 2020

The end of any implementation period; and

31 December 2021

The UK Government says it expects any 'temporary customs arrangements' to end by now.

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