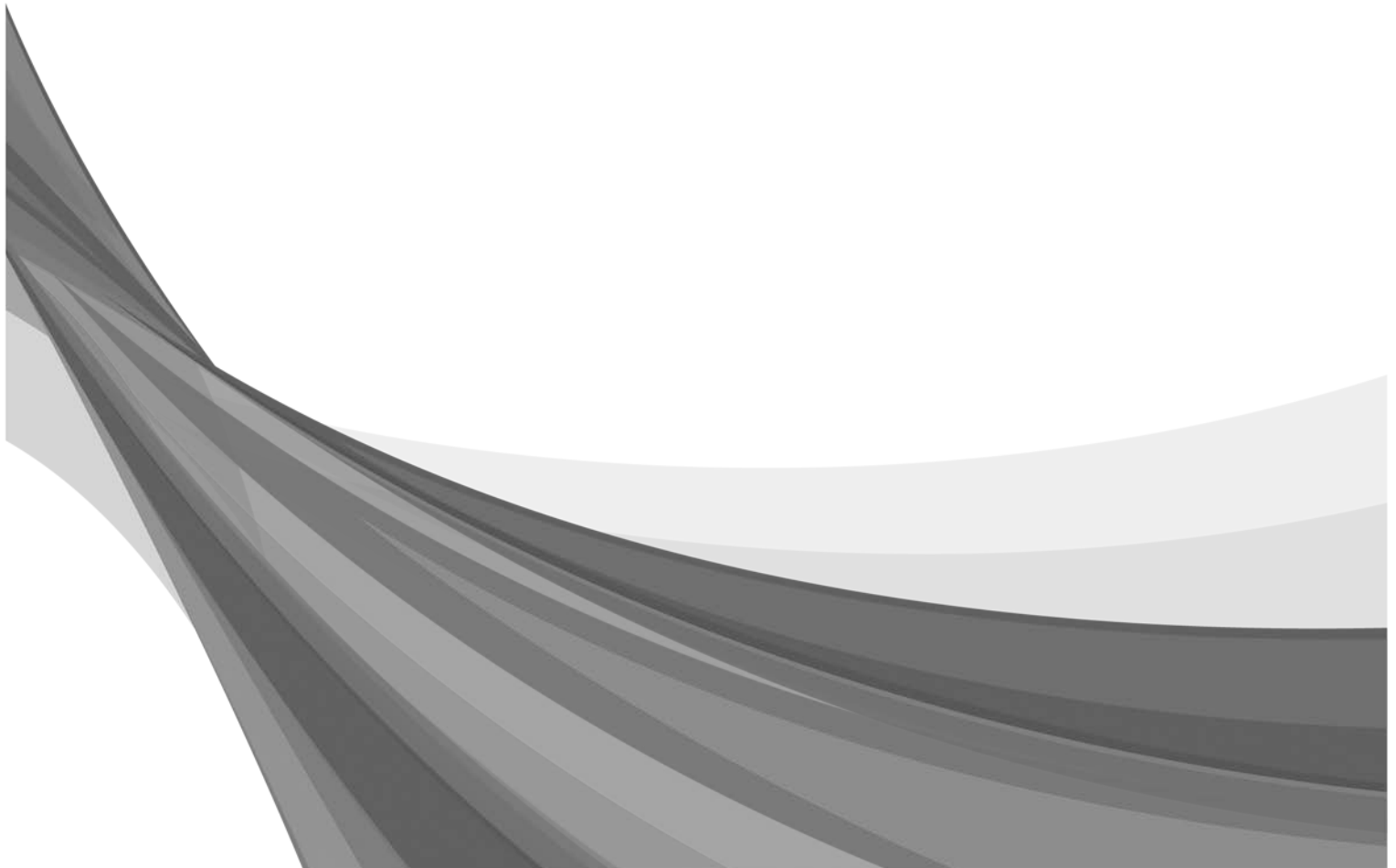




UK employment rights and the EU

**Assessment of the impact of membership of the European
Union on employment rights in the UK**



Executive summary

This paper seeks to provide a comprehensive assessment of the impact of the UK's membership of the European Union on employment rights. It considers in turn each of the areas covered by EU legislation and the threat to workers' rights if these measures were not in place. It also gives consideration to the potential for future EU developments which could bring increased employment protections to UK workers.

Since the mid-1970s, the European Union has played an important role in protecting working people from exploitation and combating discrimination. These EU rights have provided an important counter-balance against pressure for the UK to adopt a US-style hire-and-fire culture where there is an absence of statutory employment rights.

There has been some recent concern that the European Commission's social policy agenda has become increasingly restricted. For example, recent European Court of Justice (ECJ) cases have limited the ability of unions to organise industrial action in cross-border disputes, and in some Eurozone countries the Commission has actively undermined sector-wide collective bargaining agreements.

However, set against these concerns are the significant employment rights gains that continue to accrue to UK workers as a result of our EU membership. These are wide ranging in scope, including access to paid annual holidays, improved health and safety protection, rights to unpaid parental leave, rights to time off work for urgent family reasons, equal treatment rights for part-time, fixed-term and agency workers, rights for outsourced workers, and rights for workers' representatives to receive information and be consulted, particularly in the context of restructuring.

There are also areas where European policy makers are currently considering future positive developments which could bring employment protection gains for UK workers. Measures could include extending the right to a written statement of terms and conditions to all workers (including those on zero-hours contracts), improved work-life balance rights and improved rights for posted workers. UK unions continue to work through European structures with European partners to advance and extend this agenda.

Introduction

Since the mid-1970s, the European Union has played an important role in protecting working people from exploitation and in combating discrimination. These EU employment protections have provided a counter-balance against pressure for the UK to adopt a US-style system of employment relations based a hire-and-fire culture with an absence of statutory employment rights.

The Treaty of the European Union (TEU), adopted in 2008, recognised the role of social and employment policy within the EU. Article 3(1) of the TEU confirms that the EU is a community of values and one of its core objectives is to promote the well-being of its people. Article 3(3), which provides for the establishment of the internal market, notably does not describe it as an end in itself, but rather as a means to achieving different ends including the creation of ‘... a social market economy, aiming at full employment and social progress...It shall combat social exclusion and discrimination, and shall promote social justice and protection...’.

The EU has adopted a diverse range of treaty provisions and directives which provide important employment protections, safeguard health and safety, and promote equality in the workplace. In some areas where the EU has legislated the UK already had laws in place such as equal pay, maternity rights, sex, disability and race discrimination, and health and safety. Even so, EU action in these areas has improved and extended rights and now underpins them, making it more difficult for the UK government to undermine them unilaterally.

In other areas, the UK had to legislate for the first time in response to EU requirements. In some cases laws that resulted directly from EU directives are now well accepted, for example around sexual orientation, age and religion or belief discrimination. But other rights would have been difficult to secure in the UK and would still be particularly vulnerable to attack if the UK were to vote to leave the EU. For example, UK governments strongly resisted equal treatment rights for agency workers, working time limits, and rights for workers to receive information and be consulted on changes in their workplace that could affect their jobs or terms and conditions.

As well as improving standards in EU Member States, EU employment law has sought to create a level playing field so that workers’ rights in one member state are not undermined by lower levels of protection in another. In the absence of these safeguards, it is likely that the single market would have resulted in a ‘race to the bottom’, with countries seeking to compete against each other on the basis of lower pay and reduced employment protections for workers.

Unions have been concerned that in recent years the European Commission’s social policy agenda has however become more restricted, especially in the area of collective rights. Recent controversial decisions from the European Court of Justice (ECJ) have limited the ability of unions to organise industrial action in cross border disputes (Viking and Laval cases) and undermined the ability of unions to negotiate improved pay and conditions for posted and outsourced workers. Following the financial crisis, the Commission has also played an active role through the Troika in dismantling and undermining sector-wide collective bargaining arrangements in some Eurozone countries.

However, within the EU institutions, in social partner forums and through the auspices of the ETUC and sector-wide union federations, UK unions have been able to work closely with colleagues from other EU countries to build alliances in support of existing protections. UK unions are also working at EU level with unions from other member states to oppose these developments and to press for measures that reflect the social policy objectives of the internal market. While there have been recent challenges to the employment rights settlement, there are therefore still significant and substantial gains that accrue to the UK workforce as a result of EU employment protections.

Specific impacts of EU membership for UK employment rights

Written statements of terms and conditions

In the UK, employees do not have a right to a written contract of employment. But, thanks to the EU written statement directive, 'employees' must be given a written statement setting out their pay and working conditions within 28 days of starting work. However, many people on zero hours contracts lose out on this basic workplace right, either because they work for an employer in short stints or their employer treats them as if they are not employees and are therefore not entitled. As a result, those on zero hours contracts get no written information about their working hours or what pay they will take home each week. This makes it very difficult to work out whether they will be able to pay their rent or other household bills.

The EU has decided to review this Directive and could decide to ensure that all workers, including those on zero hours contracts and agency workers must receive a written statement setting out their pay rates and their expected hours of work.

Working time

When the Working Time Directive was implemented in the UK in 1998, it introduced a maximum 48-hour working week (normally averaged over 17 weeks), a daily rest period of 11 consecutive hours, a weekly rest period of 24 consecutive hours and rest breaks during the working day. Although UK workers can opt-out of the maximum working time limit, the introduction of these rights reduced the number of people working excessive hours in the UK. There are now 700,000 fewer employees working more than 48 hours a week compared to 1998.

The Directive also gave UK workers a statutory right to paid annual leave for the first time. This resulted in 6 million workers gaining improved entitlements to paid annual leave, two million of whom previously had no paid annual leave entitlement (many of these were part-time women workers). This amounts to a significant financial transfer (in the form of pay) from employers to predominantly low-paid women workers.

Working time rights have been interpreted sympathetically by the ECJ. For example, it held that time when workers must be present at their employers' premises 'on-call' counts towards the 48-hour limit (SIMAP). In a subsequent trade union-backed case care wardens working for the London Borough of Harrow, were freed from having to be on site for 113 hours a week, including 76 hours a week 'on call'.

On annual leave, the ECJ has ruled that workers who fall ill during a previously scheduled period of leave have the right to reschedule that leave (Pereida). And a recent ECJ judgement has led to the calculation of holiday pay being extended to include commission payments and compulsory overtime (the Lock and Bear Scotland cases).

Working parents and carers

Maternity rights

The EU Pregnant Workers Directive 1992 led to substantial improvements in the health and safety protections for expectant and new mothers in the workplace. It gave women

paid time off for ante-natal appointments and placed duties on employers to assess risks and to adjust working conditions, transfer a pregnant or breastfeeding worker to alternative work or suspend them on paid leave where harm is identified.

While the maternity leave entitlement in the UK already exceeded the EU minimum of 14 weeks when the Directive was implemented, case law from the ECJ has had a positive impact in tackling the disadvantage and discrimination that many women face in the workplace when they become mothers. For example, it made clear that treating a woman unfavourably because of pregnancy or maternity leave was direct sex discrimination and that it was not necessary to identify a non-pregnant comparator in similar circumstances to prove discrimination.¹ This ended years of women potentially being defeated in discrimination claims because the employer argued that they would have treated a man who had to take a substantial period out of the workplace in a similar way. Sex discrimination law in the UK was amended to create a separate category of pregnancy discrimination, which is now defined as unfavourable treatment because of pregnancy or maternity leave in the Equality Act 2010 with no need for any comparison with a non-pregnant employee. This change in UK law was achieved following a case taken against the UK government by the old Equal Opportunities Commission relying on EU law.² ECJ case law has also extended protection from dismissal on grounds of pregnancy or maternity leave to fixed-term workers.³ And, since 2008, women on additional maternity leave have had access to the same contractual rights as women on ordinary maternity leave as a result of ECJ case law. This means, for example, that employers are obliged to make contributions into occupational pension schemes for longer than the first 26 weeks of leave.⁴

Parental leave rights

As a result of the Parental Leave Directive, working parents have the right to take unpaid leave from work to look after a child. The amount of leave was increased from 13 weeks to 18 weeks per child (implemented in the UK in 2013) following the conclusion of successful social partner negotiations at EU level to improve the Directive. In April 2015, the UK government decided to raise the upper age limit for taking the right from 5 to 18 years old. When the right was limited in the UK to parents of pre-school children around 1 in 10 used this right each year. This included 1 in 5 single parents who face particular difficulties managing paid work with their parental responsibilities.⁵ It is likely that with the increase in the upper age limit, more parents will be accessing this right, for example, to help cover school holidays.

The Directive also provides employees with a right to take time off work for urgent family reasons, for example if they have a sick child or dependant that they need to take to the doctors or arrange care for. Almost a fifth of UK employees use this right each year, nearly a quarter of working parents and 3 in 10 working carers.⁶

¹ *Dekker and Webb*

² *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327

³ *Tele Danmark and Jimenez*

⁴ *Sass* and subsequent EOC judicial review case against the UK government.

⁵ Fourth work-life balance employee survey (BIS 2012)

⁶ Fourth work-life balance employee survey (BIS 2012)

Future of reconciliation of work and family life

In July 2015, after seven years of deadlock at EU level between the Parliament and the Council, the European Commission withdrew proposals for an improved Pregnant Workers Directive as part of its fitness check exercise. However, this does not mean that the Commission has completely pulled back from new legislation in this area. In November 2015, it launched a new social partner consultation on how to improve work-life balance and reduce obstacles to women's participation in the labour market.⁷ The identified options for improving the EU legislative framework include: inviting social partners to assess the Parental Leave, Fixed-Term Worker and Part-Time Worker Directives with the objective of achieving a better work-family life balance for parents; new incentives for fathers to take leave, including the possibility of a new EU right to paternity leave; the introduction of a right to carers' leave; and better protections from dismissal for new and expectant mothers and new rights for breastfeeding mothers on return to work. A number of these measures would improve rights for parents and carers in the UK.

Equality

Equal pay

The right to equal pay for equal work between men and women is a fundamental right enshrined in the EU Treaty (now Article 157) which is directly enforceable in UK courts. It was in the founding treaty of the EEC to prevent those member states with equal pay legislation from being undercut by others who underpaid and exploited the weaker labour market position of women workers. Article 157, together with the Equal Pay Directive and the case law of the ECJ have had a significant positive impact on women's pay and pension rights in the UK.

The Equal Pay Act 1970 predated the UK joining the EU but the original Act had a glaring omission because it did not cover equal pay for work of equal value despite the TUC pushing for its inclusion and the ILO Convention on equal pay requiring it. Regulations incorporating equal value into our domestic law were the direct result of enforcement action by the European Commission in 1983. As a result, the law was better able to challenge the undervaluation of women's work in workplaces with high gender segregation. Trade unions have supported many landmark equal value cases based on the EU Treaty right and there have been significant ECJ rulings, among them, the Enderby speech therapists' case, which opened the door to challenges across collective bargaining groups. Negotiations in the public sector on harmonised pay structures followed, including the implementation of single status in local government and Agenda for Change in the NHS. Many low paid women received pay rises as a result and billions of pounds were secured in back pay compensation for women who had suffered historic pay discrimination as well.

Equal pay rulings from the ECJ have tended to be more expansive than the domestic courts. The ECJ first established that paying part-timers who are mainly women a lower hourly rate than full-timers was indirect sex discrimination, as was excluding them from

⁷ <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2380&furtherNews=yes>

an occupational pension scheme.⁸ Part-time women in the UK gained equal access to occupational pension schemes as a result of the Preston group of union-backed cases that went to the ECJ. It was estimated that around 400,000 part-time women could claim an occupational pension for the first time as a result. Agency teachers in the public sector, who were mainly women, also gained equal access to the teachers' statutory occupational pension scheme as a result of the union-backed Allonby case that went to the ECJ. And it was a ruling from the ECJ that helped extend the limit on back pay compensation for women who had suffered unequal pay from two years to six years (Levez).

Ten years ago, at the peak of the 'equal pay crisis' in local government and other parts of the public sector, EU law did restrict some of the options for responding to mass litigation and there were problems for unions and employers in resolving the strong individual right to equal pay with collectively bargained solutions. However, the TUC response was to call for recognition within the domestic and EU legal framework of collective redress mechanisms, not a weakening of individual rights to equal pay.⁹

Anti-discrimination rights

The UK already had sex and race discrimination laws in place when it joined the EU and it introduced the Disability Discrimination Act prior to the EU taking action. However, legislation on age, religion or belief and sexual orientation discrimination was introduced as a direct result of the EU Framework Equal Treatment Directive in 2000 and protection from discrimination on the grounds of gender reassignment resulted from the *P v S* and *Cornwall County Council* case in which the ECJ held that this was a form of sex discrimination.

EU legislation has improved domestic discrimination law in a number of ways. The Burden of Proof Directive requires a reversal of the burden of proof in discrimination cases, recognising how difficult it can be for a worker to prove discrimination. This means once a claimant has provided sufficient evidence to suggest that discrimination could have occurred, the employer has to prove that it did not. Definitions of direct discrimination, indirect discrimination and harassment in the EU anti-discrimination directives have also widened the scope for challenging discriminatory practices and culture. For example, as a result of the ECJ ruling in the *Coleman v Attridge Law* case, it has become clear that direct discrimination covers less favourable treatment because of an association with someone with a protected characteristic. This has enabled carers to gain some protection from discrimination in the workplace.

EU law also requires that there must be no upper limit for compensation in discrimination cases, which recognises the severity of the harm caused by such treatment. Under the previous coalition government the Beecroft report called for discrimination awards to be capped¹⁰ and the main reason this did not happen was because of EU law. The provision in the race and gender equality directives that there

⁸ *Jenkins Kingsgate and Bilka Kaufhaus*

⁹ E.g. Professor Sandra Fredman outlined how a collective redress mechanism could be reintroduced in UK law that would meet the requirements of Article 157 in this article: <http://ilj.oxfordjournals.org/content/37/3/193.abstract>

¹⁰ Adrian Beecroft, 'Report on Employment Law' (24 October 2011)

has to be an equality body in member states to promote and monitor equality rights and to provide independent support to victims of discrimination has also provided some assistance in supporting the Equality and Human Rights Commission.

While the Equality Act 2010 is part of the UK's primary legislative framework, significant proportions of the Act could be repealed were EU rights in this area no longer in place.

Atypical worker rights

During the 1990s and 2000s the EU adopted a trio of equal treatment directives for part-time, fixed-term and agency workers. By offering greater protections, the directives made more diverse employment relationships more acceptable to workers and trade unions, providing safeguards for those employed in more precarious forms of employment while allowing those who wished to work more flexibly to do so in a more protected environment.

These equal treatment rights have created significant benefits for UK workers. For example, it was estimated that around 400,000 employees benefitted from equal treatment rights for part-time workers (around three quarters of whom were women in the UK). The Fixed Term Employee Regulations led to significant improvements in pay and conditions and better access to occupational pensions for many temporary staff in the UK, particularly in the education sector. Temporary staff also gained increased job security, with improved access to permanent employment and rules preventing employers from requiring staff to waive their unfair dismissal rights.

The Agency Workers Regulations in 2011 resulted in some agency workers receiving a pay rise and improved holiday entitlements. However, problems with the implementation of the so-called 'Swedish derogation' (an exemption to the right to equal pay where the agency worker is employed by the agency and is guaranteed pay between assignments) in the UK mean that a significant proportion of agency workers continue to face pay discrimination, with some agency workers being paid up to £135 a week less than directly employed staff doing the exact same job.

On the other hand, the Commission is currently considering new measures which, to provide equal treatment for migrant workers, could thereby improve the conditions of temporary agency workers, given the preponderance of migrant workers on such contracts in the UK (see the section on Posted Workers below.)

Outsourcing and public procurement

TUPE protections

The Transfers of Undertakings (Protection of Employment) Regulations 2006 contain important protections for outsourced workers and those affected by business buy-outs. While the regulations were somewhat weakened in 2013, the EU legislative framework meant they could not be repealed. They provide that employees' contractual entitlements transfer to the new employer, including collectively agreed pay and conditions and that their continuity of employment is preserved. Employees affected by a transfer are also protected from dismissal. The regulations help to ameliorate the detrimental effects of outsourcing, including the erosion of pay and conditions and the

negative impact on health and well-being and staff morale.¹¹ The TUPE regulations also reduce transaction costs and create a level playing field for contractors bidding for service contracts. Tendering decisions are more likely to be based on commercial merit rather than reduced pay and conditions.

There is no evidence that the TUPE Regulations have constrained growth or employment levels. According to Oxford Economics, the UK outsourced sector has a turnover in the region of £199 billion, which is equivalent to approximately 7.5 per cent of total economy wide output. The sector directly supports around 3.3 million jobs, equivalent to 10 per cent of the UK workforce.¹²

Public procurement

EU law has played an increasingly central role in shaping the framework for public procurement arrangements in the UK. Public contracts which exceed the EU threshold must be advertised in the Official Journal of the European Communities, with tenders being invited from companies and service providers across the EU. Critics have highlighted that EU procurement rules have limited the ability of national governments and public authorities to use procurement processes to promote local employment opportunities and to improve pay and conditions. Some have also argued that EU rules have encouraged increased privatisation of public services. The European trade union movement has also expressed concern that the ECJ decision in the Ruffert case meant that foreign contractors could not be required to comply with collectively agreed pay and conditions.

Following pressure from trade unions, environmental and civil society groups, these concerns have been partly addressed by the 2014 Public Procurement Directive which makes it easier for governments and public authorities to use procurement arrangements to promote social and employment policy objectives. The Directive also clearly specifies that contractors must comply with national employment laws and with applicable collective agreements. Regrettably the UK government has taken an overly restrictive approach to the implementation of the Directive, which has limited the benefits that it has brought for the UK; a future government might pursue a different course, with significant benefits to UK workers.

Posted workers

Unlike other migrant workers, workers who are temporarily posted to another EU country by an employer are not guaranteed equal treatment when working in that country. The 1996 Posted Workers Directive has the impact in the UK of seeking to ensure that migrant workers posted on a short term basis are guaranteed minimum rights. The Directive seeks to stem the risk of employers posting workers from other countries to undercut pay and conditions offered by – among others - UK employers.

¹¹ Thomas Kieselbach et al, (2009) *Health in restructuring: Innovation Approaches and Policy Recommendations*. Project supported by DG Employment, Social Affairs and Equal Opportunities, European Commission. University of Bremen.

¹² *UK Outsourcing across the private and public sectors: An updated national, regional and constituency picture*. Report prepared by Oxford Economics for the Business Services Association, November 2012.

The effectiveness of the Posted Workers Directive was significantly weakened by the decisions of the ECJ in the Laval and Ruffert cases, and in the UK by the weakness of sector-wide collective bargaining. The Directive nevertheless contains important protections. When it was implemented in the UK in 1999 the UK government decided that posted workers (as well as migrant workers) should be entitled to the full range of statutory employment rights whilst in the UK. This remains the government's policy. However, in practice and in the absence of union representation, posted workers often find it difficult to enforce their rights in the UK. Following the adoption of the Posted Workers Enforcement Directive in 2014, the UK government has been required to concede the need to introduce joint and several liability provisions in relation to posted workers. Whilst the provisions in the UK are likely to be very limited - only ensuring that the next contractor in the supply chain are liable for any non-payment of the NMW – they nevertheless establish an important precedent.

The EU Commission has committed to revising the 1996 Posted Workers Directive as part of the wider 'mobility package', with a view to strengthening the equal treatment provisions. The ETUC and TUC are awaiting the publication of the Commission's proposals. It is hoped that they might address the issue of equal treatment, as mentioned above, ensuring that posted workers receive the going rate for the job within the host country, providing an opportunity for further progressive policy change.

Collective rights

Human rights

The EU has always been a strong advocate of human rights. The Charter of Fundamental Rights reaffirms that the 'Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law'. It recognises the duty on all member states to comply with the European Convention on Human Rights. The Charter also reaffirms the importance of collective rights.. .

Collective bargaining

Historically, the EU has promoted negotiations between employers and trade unions to determine pay and working conditions, and has respected the different industrial relations systems found in member states. Collective bargaining generally results in better outcomes and a stronger voice for workers. Trade unions and employers have played an important role in negotiating new EU employment standards and in many countries EU standards are implemented using collective agreements.

In recent years, collective bargaining systems have been placed under pressure within the EU. Following the economic crisis, the Commission (working within the Troika) has adopted more negative policies including action to dismantle or weaken sector-wide bargaining arrangements in a number of member states. These developments have undoubtedly had a detrimental impact.

The ECJ has also adopted a series of controversial decisions which have limited the ability of unions to organise industrial action in cross-border disputes (Viking and Laval cases) and to negotiate improvements in pay and conditions (notably the Laval, Ruffert and Alemo-Herron cases). The Court has also restricted the ability of national

governments and public authorities to raise employment standards for migrant workers through national legislation and public procurement arrangements (Luxembourg and Ruffert). These decisions have proved highly controversial. There is some evidence that the Court may be taking a more positive approach to collective bargaining following the recent decision in a Finnish case (Sähköalojen ammattiliitto). However, developments need to be monitored closely.

Despite recent pressures, collective bargaining remains a central feature of the European industrial relations framework and a primary means of setting terms and conditions and of narrowing pay inequalities for millions of workers. By remaining in the EU, UK unions would retain the ability to participate in and shape negotiations at an EU level, including through sector-wide bodies.

Rights to information and consultation

Since the 1970s, the EU has promoted the importance of information sharing and consultation between employers and worker representatives, particularly in the context of restructuring. The Acquired Rights Directive and the Collective Redundancies Directive both recognised that active consultation between the social partners benefit management, employees and the wider economy by ensuring that restructuring takes place in way that is more socially acceptable, avoids disputes and leads to less damaging effects on local and regional economies.

These Directives now form an important cornerstone within the UK industrial relations framework. Unions rely on these rights during redundancy and outsourcing exercises. Effective consultation arrangements yield genuine benefits for union members and the wider workforce. During the 2008/9 recession many private sector employers worked with unions to find ways of avoiding mass redundancies and retaining skilled staff.¹³ Findings from the 2011 WERS Survey revealed that in 40 per cent of workplaces that engaged in consultation on redundancies, managers' original proposals were altered as a result of consultation. In 22 per cent of workplaces the numbers of redundancies were reduced; in 14 per cent strategies for redeployment were identified or changed; in 10 per cent redundancy payments were increased and in 19 per cent additional assistance for individuals facing redundancy was provided.¹⁴

Meaningful consultation assists in maintaining morale amongst 'surviving staff' and supports good employment relations. CIPD¹⁵ research suggests that employees believe that frequent and honest communications (53%), more meaningful consultation (35%) and giving employees greater voice in the workplace (30%) can help to maintain trust with the remaining workforce. Where employers fail to consult unions are able to recover substantial protective awards for members.

During 2013, the Commission carried out an evaluation of these Directives and the Information and Consultation Directive as part of the wider 'fitness check' exercise. Throughout the process employers and trade unions agreed that the Directives continued to be fit for purpose and should be retained. The Commission review report,

¹³ <http://www.acas.org.uk/CHttpHandler.ashx?id=2694&p=0>

¹⁴ Workplace Employment Relations Study (2011)

¹⁵ <http://www.cipd.co.uk/pressoffice/articles/GDPworkaudit250110.htm>

published in July 2013 also found that the Directives were generally relevant, effective, coherent and mutually reinforcing and that the benefits outweighed any costs. However, in October 2013, the Commission changed its position and announced that it was proposing to consolidate the three Directives.

In April 2015, the Commission published a first phase social partner consultation seeking views on whether the Commission should launch an initiative aimed at revising or recasting the three Directives. The TUC understands that BusinessEurope and the ETUC responded expressing concerns at the Commission's proposals and calling for information and consultation rights to be retained. To date, the Commission has not announced any plans to proceed with their proposals.

Companies with 1,000 or more employees, including at least 150 in two or more member states, are required to establish European Works Councils (EWCs) should they receive a request from their employees to do so. EWCs are bodies representing employees of companies operating across borders in different member states. Their purpose is to inform and consult employees on transnational matters. Around ten million workers across the EU have the right to information and consultation on company decisions through their European Works Council members. There are currently 155 EWCs set-up under UK law and there is a UK presence in many other European Works Councils.

Unions in the private sector have been able to make use of such structures in both British and non-British companies operating in Britain, although there are restrictions on using such structures for collective bargaining per se. When unions have been able to ensure effective representation on EWCs, they have been useful forums for obtaining corporate information, venues for unions to engage with their opposite numbers in other countries, and in some cases vehicles for influencing corporate decisions. The TUC is working with the ETUC to secure better representation for workers in corporate decision-making.

Health and safety

Although the basis of the health and safety regime in the UK was established in 1974, it has been underpinned and extended by EU legislation. The main element of the EU legislation is the Health and Safety Framework Directive (89/391/EEC) which establishes broad-based obligations for employers to evaluate, avoid and reduce workplace risks. This is primarily implemented in the UK through previously existing Health and Safety at Work Act, but also by Regulations made under it such as the Safety Representatives and Safety Committees Regulations 1977. However, following the introduction of the Framework Directive, the UK Government did have to make a number of modifications to bring UK legislation in line with its provisions, including the Health and Safety (Consultation with Employees) Regulations 1996 which arose from the threat of infraction proceedings, as did the extension of coverage of health and safety legislation to the police.

A range of related other directives, implemented through national regulations, cover the management of specific workplace risks such as musculoskeletal disorders, noise, work at height or machinery, as well as the protection of specific groups of workers (such as new or expectant mothers, young people and temporary workers). Specific regulations

cover areas such as construction work, asbestos, chemicals, off-shore work, etc. Forty one out of the 65 new health and safety regulations introduced between 1997 and 2009 originated in the EU.

Numerous reviews over the years have concluded that the EU regulatory framework has been a positive vehicle for health and safety standards. These include ones done specifically for the coalition government such as the Lofsted and Archer reviews. However these reviews have been severely limited by what they could propose because of the minimum standards that the European legislative framework provides.

In addition, unions and others have used complaints to the European Commission, or threats to seek infraction proceedings to gain changes in UK legislation. An example was changes to the Management Regulations in 2006 which arose from a trade union challenge over the way that employees may have been deemed liable for actions in a way that was inconsistent with EU regulation. Changes have also been required to be made to the UK regulations on asbestos and construction because they have been inconsistent with EU law.

A Commission review of all the 24 main Directives on health and safety conducted in 2015 concluded that the EU framework is coherent with few overlaps. The regulations have also been transposed into national states with very few problems. Overall the effect is good, especially for workers' health and safety, and there is no evidence of the regulations being a burden. These regulations cover many of the most important sectors or risk factors that lead to death injury and ill-health in the workplace such as chemical safety, carcinogens and musculoskeletal disorders. They also cover machinery safety and personal protective equipment which means that there are minimum and understandable standards that exist across Europe and which have helped prevent the importation and use of substandard or dangerous equipment.

Cross-cutting impacts of EU membership for UK employment rights

EU membership brings with it access for UK citizens to the European Court of Justice (ECJ). Generally, the ECJ has played a pivotal role in improving the employment rights and conditions of working people in the UK, including in areas such as holiday pay, TUPE protections, equal pay, maternity rights and discrimination on grounds of sex, pregnancy, gender reassignment and association with disability (carers' rights).

Individuals and unions are able to request that cases are referred to the ECJ if they believe that UK courts and tribunals have not properly respected their EU employment rights. The Commission has also brought infraction proceedings against the UK government, where domestic law falls short of EU standards; for example, UK workers secured the right to equal pay for work of equal value through this route. The principle of direct effect of some treaty provisions and directives also means that UK courts can apply EU standards, even where there is a conflict with UK law.

EU membership also increases the value of compensation that UK workers are able to claim for employment law breaches. Under UK law, employees are generally only entitled to be compensated for any losses they have incurred. UK legislation also often limits the compensation which can be awarded to an individual. For example, in 2013, the UK government reduced the cap for compensation in unfair dismissal cases based on annual earnings, which penalised low paid, part-time workers. In contrast, EU law generally provides that any sanctions must be 'effective, proportionate and dissuasive' and should have a 'real and deterrent effect on employers'. This resulted in the previous UK cap on compensation for discrimination claims being removed. EU law also requires that remedies for claims involving EU rights should be equivalent to those in similar domestic actions. This led to the limits on back pay compensation in the Equal Pay Act being increased from two to six years.

A formal role for social partners in the formulation of policy provisions also results from our EU membership. The EU has recognised the important role which unions and employers play in improving standards and working conditions. A succession of EU Treaties have provided a role for unions and employers to agree standards and directives in the field of employment at both a sector-wide and EU level. The Parental Leave, Part-time Worker, Fixed-Term Worker and the recast European Works Council Directives were all the product of successful social partner negotiations. In November 2015, the Commission launched a new social partner consultation on the reconciliation of work and family life. This could lead to new negotiations to update and improve the agreements underpinning the Parental Leave, Part-Time and Fixed-Term Worker Directives. Such EU agreements between unions and employers can also be negotiated at sector-wide level, such as the health sector agreement on needlestick hazards.

Whilst directives agreed by the social partners must subsequently be agreed by the European Parliament and European Council, the negotiation process provides scope for employers and unions to agree the text for directives which balance the interests of business with the need for protection for working people. Recently, the ETUC strongly criticised the Commission's decision to reject a social partner agreement within the hairdressing sector and there was concern this decision set a worrying precedent.

Nevertheless, the involvement of unions and employers in EU decision-making is generally significantly better than existing UK practice. The EU framework also permits the implementation of EU standards through collective agreements at a sector-wide or at a national level. This process not only respects the distinctive industrial relations frameworks which exist across the EU, it also affirms the importance of joint determination by unions and employers.

Conclusion

While recent EU-led improvements in employment protection have been more limited than in the past, and some EU activities have served to reduce the existing settlement, the overall contribution of EU employment rights to the UK workforce is substantial. The gains UK workers achieve as a result of our membership of the EU include improved access to paid annual holidays, improved health and safety provision, rights to unpaid parental leave, rights to time off work for urgent family reasons, equal treatment rights for part-time, fixed-term and agency workers, rights for outsourced workers, information and consultation and significant health and safety protection. Given these benefits we conclude that EU membership continues to deliver wide-ranging protections to UK workers. Furthermore, evidence also suggests that in the years ahead, remaining in the European Union may provide significant opportunities to extend employment protections for working people.