



Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union

Presented to Parliament
by the Secretary of State for Business, Energy and Industrial Strategy
by Command of Her Majesty

6 March 2019



© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available on our website at: www.gov.uk/government/publications.

Any enquiries regarding this publication should be sent to us at Department for Business, Energy and Industrial Strategy.

ISBN: 978-1-5286-1098-8

CCS: CCS0319732480

Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union

Foreword

Since the EU Exit referendum in 2016 this Government has been resolute in its commitment not to undermine workers' rights when we leave the EU. Governments of all colours have over the years introduced reforms that have improved and enhanced the working lives of citizens. From the Labour Party first establishing the National Minimum Wage to this Conservative Government delivering the National Living Wage we have together built on this proud tradition. The decision to leave the EU does not change this. This Government has a strong track record of ensuring workers in this country are entitled to strong protections at work – from family leave rights, to protection from discrimination, and health and safety. In December 2018, the Government published the Good Work Plan, the biggest upgrade to workers' rights in a generation.

We are absolutely committed to protecting and enhancing the protections workers enjoy. Fulfilling the result of the referendum and leaving the EU with this Government's deal will not come at the expense of workers' rights. This document sets out the draft legislation that will give effect to these commitments.

In order to protect common UK-EU workers' rights provided for in EU law, which have been transposed into UK law, the Government will legislate such that where a Bill could affect employment or workplace health and safety standards, a Minister of the Crown in charge of that Bill must, before its Second Reading:

- a) Make a Statement of Compatibility of the Bill with the commitment to non-regression; and
- b) Provide explanatory information to Parliament in support of the statement.

The UK already exceeds EU standards in many aspects of workers' rights and, in that context, the Government believes that, after the UK's withdrawal from the EU, it should be for Parliament to determine what rules are most appropriate, rather than automatically accepting EU changes.

However, the Government also believes that Parliament should have the opportunity to consider any future changes to EU law after the Implementation Period which strengthen employment or workplace health and safety standards. For this reason, the draft clauses also provide for a process to enable Parliament to consider whether the UK should align with EU employment and health and safety rules on a case-by-case basis.

The Government has been unwavering in its commitment to not only protect but to enhance workers' rights as we leave the EU. That is why we are implementing the most significant employment reforms for a generation. Through our modern Industrial Strategy and the Good Work Plan we are ensuring that workers in every region and nation of the country have the right protections and opportunities to thrive and succeed.

The Government believes that the approach set out in these draft clauses will provide a robust framework for the maintenance and strengthening of employment and health and safety standards as we leave the EU.

A handwritten signature in black ink that reads "Greg Clark". The signature is written in a cursive style with a large, sweeping initial "G".

THE RT HON GREG CLARK MP
Secretary of State for Business, Energy & Industrial Strategy

1 Acts of Parliament: statements of non-regression

- (1) A Minister of the Crown in charge of a relevant Bill in either House of Parliament must, before Second Reading of the Bill –
 - (a) make a statement to the effect that in the Minister's view the provisions of the Bill will not result in the law of the relevant part or parts of the United Kingdom failing to confer any pre-exit EU workers' right (a "statement of non-regression"), or
 - (b) make a statement to the effect that although the Minister is unable to make a statement of non-regression the government nevertheless wishes the House to proceed with the Bill.
- (2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate.
- (3) Before making a statement under subsection (1)(a) or (b) in relation to a Bill, a Minister of the Crown must consult –
 - (a) persons representative of workers,
 - (b) persons representative of employers, and
 - (c) any other persons whom that Minister considers it appropriate to consult.
- (4) But that duty does not apply to a statement made in relation to a Bill if –
 - (a) it is not reasonably practicable for the consultation to take place in relation to that statement by reason of urgency, or
 - (b) the statement is being made before Second Reading of the Bill in the second House of Parliament and the Bill was not amended in the first House of Parliament.
- (5) In this section –
 - "first House of Parliament", in relation to a Bill, means the House of Parliament in which the Bill is introduced;
 - "relevant Bill" means a Bill which contains provision that –
 - (a) extends to England and Wales or Scotland (or both), and
 - (b) relates to any of the pre-exit EU workers' rights;
 - "relevant part of the United Kingdom", in relation to a Bill, means –
 - (a) England and Wales, if the Bill extends there;
 - (b) Scotland, if the Bill extends there;
 - "second House of Parliament", in relation to a Bill, means the House of Parliament to which the Bill moves after completing its passage through the first House of Parliament.

2 Reports on new EU workers' rights

- (1) As soon as practicable after each reporting period, the Secretary of State must –

- (a) produce a report under subsection (2) or (3) relating to that period (the “relevant reporting period”),
 - (b) publish the report in such manner as the Secretary of State considers appropriate, and
 - (c) lay copies of the report before Parliament.
- (2) A report under this subsection is one that contains a statement that no new EU workers’ rights have been published by the EU during the relevant reporting period.
- (3) A report under this subsection is one that contains –
 - (a) a statement that one or more new EU workers’ rights have been published by the EU during the relevant reporting period, and
 - (b) as respects each new EU workers’ right published during that period, either –
 - (i) a statement to the effect that in the Secretary of State’s view the law of England and Wales and the law of Scotland confer a workers’ right of the same kind as that new EU workers’ right (a “statement of non-divergence”), or
 - (ii) a statement to the effect that the Secretary of State is unable to make a statement of non-divergence.
- (4) If a report under subsection (3) contains a statement under subsection (3)(b)(ii) as respects a new EU workers’ right, the report must also contain –
 - (a) a statement of whether or not the government intends to take any action in respect of that new EU workers’ right, and
 - (b) if it does, a statement describing the action which it is intending to take.
- (5) In relation to each report under subsection (3), a Minister of the Crown must make arrangements for –
 - (a) a motion, to the effect that the House of Commons has approved the report, to be moved in that House by a Minister of the Crown within the period of 28 Commons sitting days beginning with the day on which a copy of the report is laid before that House, and
 - (b) a motion for the House of Lords to approve the report to be moved in that House by a Minister of the Crown within the period of 28 Lords sitting days beginning with the day on which a copy of the report is laid before that House.
- (6) When producing a report under subsection (3), the Secretary of State must consult –
 - (a) persons representative of workers,
 - (b) persons representative of employers, and
 - (c) any other persons whom the Secretary of State considers it appropriate to consult.
- (7) In this section “reporting period” means –
 - (a) the period of six months beginning with the relevant day, and
 - (b) subsequently, each period that –
 - (i) begins with the day (the “start day”) that comes immediately after the end of the preceding reporting period, and
 - (ii) ends with the end day.
- (8) The “end day” for that purpose is determined as follows –

- (a) if any new EU workers' rights are published by the EU during the period of six months beginning with the start day, the end day is the day which falls six months after –
 - (i) the day on which those rights are published by the EU, or
 - (ii) if they are published by the EU on different days, the earliest of those days;
 - (b) if no new EU workers' rights are published by the EU during the period of six months beginning with the start day, the end day is the day which falls twelve months after the start day.
- (9) A reference in this section –
- (a) to a new EU workers' right being published by the EU is a reference to the EU directive or EU regulation which provides for its conferral being published in the Official Journal of the European Union;
 - (b) to the law of England and Wales or the law of Scotland includes legislation forming part of that law which is not in force.
- (10) In this section –
- “Commons sitting day” means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);
 - “Lords sitting day” means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day).

3 Interpretation

- (1) An expression set out in the first column of an entry in this table has the meaning given in the second column of that entry –

<i>expression</i>	<i>meaning</i>
“EU directive”	The same meaning as in the European Union (Withdrawal) Act 2018 (see section 20(1) of that Act).
“EU regulation”	The same meaning as in the European Union (Withdrawal) Act 2018 (see section 20(1) of that Act).
“new EU workers' rights”	Any workers' rights – (a) which member States are obliged to confer by an EU directive published in the Official Journal of the European Union on or after the relevant day, or (b) that are conferred by an EU regulation published in the Official Journal of the European Union on or after the relevant day.
“Minister of the Crown”	The same meaning as in the Ministers of the Crown Act 1975.

<i>expression</i>	<i>meaning</i>
"pre-exit EU workers' rights"	Workers' rights of the kinds which – (a) immediately before the relevant day, the United Kingdom was obliged to confer by virtue of the EU directives listed in the Schedule, and (b) on the relevant day, continued to have effect (by virtue of the European Union (Withdrawal) Act 2018 and as modified by any provision made by or under that Act) in the law of England and Wales or the law of Scotland.
"relevant day"	The day after the day on which the implementation period ends.
"workers' rights"	Rights of individuals, and classes of individuals, in the area of labour protection as regards – (a) fundamental rights at work, (b) fair working conditions and employment standards, (c) information and consultation rights at company level, (d) restructuring of undertakings, and (e) health and safety at work.

- (2) The reference in the definition of "pre-exit EU workers' rights" to rights which continued to have effect by virtue of the European Union (Withdrawal) Act 2018 includes a reference to rights which form part of retained EU law by virtue of section 2 of that Act but which would have continued to have effect irrespective of that section.
- (3) References to rights being of the same kind as new EU workers' rights are to be read as references to rights being of the same kind so far as that is possible within the different legal framework established by the European Union (Withdrawal) Act 2018 on and after the relevant day.

4 Commencement and extent

- (1) Commencement:
section 3, this section and the Schedule – the day on which the sections and Schedule are passed;
other provisions – by regulations made by the Secretary of State.
- (2) Extent: England and Wales and Scotland.

SCHEDULE

Section 3

PRE-EXIT EU WORKERS' RIGHTS: THE EU DIRECTIVES

Council Directive 89/391/EEC (of 12 June 1989) on the introduction of measures to encourage improvements in the safety and health of workers at work.

Council Directive (92/85/EEC) of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Council Directive (98/23/EC) of 7 April 1998 on the extension of Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland.

Council Directive (98/59/EC) of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

Council Directive (99/70/EC) of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

Council Directive (2000/43/EC) of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive (2000/78/EC) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Council Directive (2001/23/EC) of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Directive (2003/88/EC) of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

Directive (2006/54/EC) of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

Directive (2008/104/EC) of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

Directive (2009/38/EC) of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community- scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

Council Directive (2010/18/EU) of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.

[List to be completed]

CCS: CCS0319732480
ISBN: 978-1-5286-1098-8