



Impact of Brexit on UK legal frameworks to tackle modern slavery

Rights Lab briefing on the findings of a report by Arianne Griffith, June 2020ⁱ

The UK's withdrawal from the EU risks putting labour rights that aid the fight against modern slavery in jeopardy. The current EU-derived provisions that enshrine and protect workers' rights in the UK must be retained and strengthened post-Brexit to ensure the UK remains a global leader in the fight against modern slavery.

Key research findings

By incorporating a number of key EU directives that protect labour rights and promote responsible business practice into domestic law, the UK has taken important steps to protect some of the most vulnerable workers from labour exploitation. These include protections for casual, migrant, seasonal, part-time and agency workers who face additional challenges due to the socio-economic impacts of COVID-19.

The report finds that the UK's current framework for labour rights, has been bolstered by EU law. First, through secondary legislation introduced in the UK to protect workers' rights as required under EU law; and second, through the influence of the Court of Justice of the European Union (CJEU), which through its approach to legal interpretation, has increased human rights protections in the UK (and EU).

As a result of Brexit, the legal framework in the UK will change. Crucially, the EU law requirements for the UK to maintain the current protections for workers' rights will lapse. These are important safeguards against exploitation. Further, the CJEU will not have the same influence on legal interpretation or the protection of rights in national courts.

Why is this important?

While an important legislative milestone in the UK's fight against modern slavery, the Modern Slavery Act 2015 alone is not enough. It is imperative that it exists alongside a robust legal framework for labour rights.ⁱⁱ

Although all applicable EU legislation will be transposed into domestic law through the European Union (Withdrawal) Act, including the directives on labour rights that the UK has implemented, the security of these provisions is not guaranteed. Since most directives are implemented as domestic regulations (a form of secondary legislation), changes to them require simpler parliamentary procedures. Post-Brexit, parliament will have the power to unilaterally amend, repeal and replace existing provisions.

In December 2019, the provisions in the EU (Withdrawal Agreement) Bill that sought to protect workers' rights through procedural safeguards, were removed.

In the context of COVID-19 and its disproportionate impact on the most vulnerable populations, the need to protect workers from exploitation is more urgent. The UK government should therefore commit to preserving and strengthening workers' rights post-Brexit.

Recommendations for Parliamentarians

1. [Maintain and strengthen the UK's provisions to protect workers' rights that derive from the EU directives described overleaf.](#)
2. [Maintain and strengthen all additional protections for the most vulnerable groups of workers including migrant, seasonal, casual, part-time and agency workers.](#)
3. [Adopt the recommendations from the Independent Review of the Modern Slavery Act 2015 to strengthen the domestic legal framework for ensuring corporate accountability for modern slavery in supply chains.](#)ⁱⁱⁱ
4. [Introduce mandatory human rights due diligence requirements for companies to improve corporate action and accountability on modern slavery and human rights in their operations and supply chains.](#)
5. [Integrate and enforce human rights and labour rights standards in public procurement.](#)

Research overview

At the core of the UK's legislative efforts to tackle modern slavery is the Modern Slavery Act (2015) which, among other things, consolidated existing legal provisions on the constituent offences: slavery, forced labour, servitude and human trafficking. However, the UK's legal frameworks for the protection of human rights and, in particular, labour rights, form an important part of the UK's wider anti-slavery efforts as they help safeguard against worse forms of abuse. The report identifies nine key EU directives that protect against labour exploitation and examines the extent to which they have already implemented in domestic UK law. It also considers the potential impact of Brexit on their continued application.

The report differentiates between two types of directive: those that guard against exploitation of workers and those that support responsible business practice. Several in the former category provide minimum guaranteed protections for migrant, seasonal, casual, part-time and agency workers who are among those most at risk.

While the European Union (Withdrawal) Act transfers all applicable EU legislation into domestic law, there may be lasting compounding effects on the UK's legal system. In particular, the UK will no longer be required to maintain current standards which are incorporated into domestic law through regulations. Parliament will have the power to unilaterally amend, repeal and replace existing provisions. Any such steps must not weaken these standards. Further, a changed relationship with the Court of Justice of the European Union (CJEU) may have knock on effects for workers' rights in UK law. This is because the CJEU uses methods of legal interpretation that focus on the purpose for which the provision was introduced. This has had positive impacts for human rights at both the EU and national levels.

The Directives

- 1) Part-Time Workers Time Directive 1997:**^{iv} Protects part-time workers from discrimination and exploitation and is the basis for the pro-rata principle.
- 2) Working Time Directive 2003:** Safeguards against excessive working hours, limits the working week to 48 hours, mandates break periods and extra protections for night workers though in the UK, most employees may opt out of the time cap.^v
- 3) Directive on Temporary Agency Work 2008:** Ensures temporary agency workers receive the same treatment as permanent staff on terms such as holiday pay, leave

entitlements, breaks etc. In the UK the qualifying period is 12 weeks.^{vi}

- 4) Employers Sanctions Directive 2009:** Offers a measure of protection to migrant workers with irregular immigration status including some victims of human trafficking. This directive does *not* create right of stay or access to labour market. The UK has opted out of this directive.^{vii}
- 5) Public Procurement Directive 2014:** Provides a number of principles to inform public procurement procedures. This is important given the scale of government expenditure (in the UK, this amounted to £284 Billion in 2017/18).^{viii}
- 6) Non-Financial Reporting Directive 2014:** Requires large, public interest companies to disclose information on diversity and social issues including human rights.^{ix}
- 7) Seasonal Workers Directive 2014:** Provides certain safeguards for seasonal and migrant workers who are at higher risk of exploitation. The UK has opted out of this directive and operated Seasonal Agricultural Workers Scheme (SAWS) in its stead. This was replaced by a new scheme, currently being piloted.^x
- 8) Directive on Unfair Trading Practices in Agricultural and Food Supply Chains 2019:** Reduces precarity of some agricultural workers by supporting more long-term relationships between buyers and suppliers.^{xi}
- 9) Directive on Transparent and Predictable Working Conditions 2019:** Provides some predictability around working conditions for people working in more flexible or atypical employment relationships including domestic workers, casual workers and those on zero-hour contracts.^{xii}

Looking Forward

Following its withdrawal from the EU on 31 January 2020, the UK has an opportunity to demonstrate its continued commitment to tackling modern slavery. This requires in part, that it maintains and enforces strong human rights protections, including labour rights standards. The impact of the Coronavirus pandemic on already vulnerable populations has made this even more urgent.

Once untethered from the EU directives that they were initially intended to comply with, existing domestic provisions and regulations guarding against labour exploitation should be continuously preserved and strengthened post- Brexit.

Weakening these legal protections leaves workers more vulnerable to exploitation.

ⁱ Arianne Griffith, Brexit and Modern Slavery: Impacts on the UK's legal frameworks for workers in supply chains. Rights Lab, University of Nottingham (2020).

ⁱⁱ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

ⁱⁱⁱ <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>.

^{iv} <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ac10416>.

^v <https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPagelId=205>.

^{vi} <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0104>.

^{vii} <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0052>.

^{viii} <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>.

^{ix} https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en.

^x <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014L0036>.

^{xi} https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2019.111.01.0059.01.ENG (This directive enters into force for Member States in 2021).

^{xii} <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1152&from=en> (This directive enters into force for Member States in 2022).