



What might a Brexit mean for employment law in the UK?

*By Anne-Marie Balfour, senior associate,
Charles Russell Speechlys LLP*

23 June 2016 is the date set for a referendum on the UK's membership of the European Union. Much of the UK's employment law currently in force was enacted in response to EU legislative requirements, so what might an 'out' vote mean for employment law?

An 'out' vote could, theoretically, leave the UK free to repeal any or all employment laws which are the result of EU legislative requirements for EU member states. That's quite a startling concept - laws with EU roots include:

- Anti-discrimination laws
- Transfer of Undertakings (Protection of Employment) Regulations, more commonly known as 'TUPE'
- Family-friendly rights, for example maternity leave
- Working time laws. ▶

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Would the UK really repeal EU-based employment laws in the event of a Brexit?

Realistically, the wholesale repeal of all EU-based employment laws is not a likely scenario. It is not a likely scenario because:

- **The UK would still need to trade with the EU** - Even if the UK were to leave, it would still need to ensure a working relationship with the EU. This relationship would be important for many reasons, including trade. In return for an agreement to trade, we could expect the EU to require the UK to put in place a degree of employment protection measures, perhaps to an EU standard.
- **Not all employment law is EU-driven** - Some employment laws existed in the UK before EU obligations arose. Some are the result of relatively recent domestic initiatives. For example, the Equal Pay Act 1970 was enacted prior to the UK's membership of the EU. The 1996 law of unfair dismissal is outside the scope of EU requirements. It is therefore unlikely that these laws would be affected solely as a result of a Brexit.
- **The UK sometimes ‘gold-plates’ the minimum mandatory EU employment protections** - UK employment laws sometimes go further than the minimum required by EU law. Repeal of these laws as a result of a Brexit would be unlikely. For instance, TUPE is rooted

in the EU Acquired Rights Directive but TUPE provisions relating to ‘service provision change’ situations exceed the mandatory protection for workers that the EU legislation requires. The government consulted on repealing this gold plating in 2013 and the outcome was a decision not to do so.

- **Many employers do not like changes to employment law** - Employers become accustomed to their obligations under employment law and may not welcome the confusion and cost of having to familiarise themselves with and adhere to, a new legal regime.
- **Many European labour laws have become cultural norms** - The removal of core rights that are enshrined in EU law and have now become very much integrated into our working lives is likely to be unpopular. This is particularly true of anti-discrimination laws and parental rights. Employees at all levels like the protection of EU employment laws and most employees in the UK are eligible to vote.

Which laws would be the most vulnerable to change?

David Cameron discussed changes to the UK's membership of the EU earlier this year and agreed a package of changes to the UK's membership. Employment law reform was not part of that package.

The UK has strongly opposed certain EU employment laws in the past and it seems that these are the ones most likely to be changed were a Brexit to happen. This would include the Agency Workers Regulations and restrictions on bankers' bonuses (CRD IV).

What about immigration and free movement of workers?

Of more immediate concern to employers in the event of a Brexit would be immigration and maintaining permissions to work. The EU concept of free movement of workers entitles citizens of EU member states to work throughout the EU.

Should the UK cease to be part of the EU:

- Workers who are exercising EU treaty rights to live and work in the UK would need to move into a different immigration category or leave. This would affect a vast number of workers. We do not know what, if anything, would replace EU rights for those who wish to live and work in the UK but, under the UK's current points based system, many EU workers would cease to qualify for the right to live and work in the UK.
- Workers from the UK would no longer have an automatic right to work in other EU member states. What would be likely to happen is that the UK would negotiate new work and travel arrangements for UK citizens, but we cannot assume that this would simply replicate the current freedom of movement. Equally, we cannot assume that any new immigration arrangements would be the same throughout the EU - different member states might impose different regimes. For employers whose employees' roles involve European travel, this will be an issue of particular interest.

If there were an 'out' vote in June and even if the outcome of that were that the UK wanted to repeal EU-based employment laws en masse, it would not happen overnight. For a start, the UK has to give the EU two years' notice of a Brexit, so it would be a long drawn out process.

Realistically, negotiating the detail of the UK's new relationship with the EU would probably take a lot longer than two years. Any changes to employment law are likely to be gradual and, to some extent, shaped by the prevailing political forces at the time. ■



Anne - Marie Balfour, is a senior associate at [*Charles Russell Speechlys LLP*](#). She advises employer and employee clients on all aspects of employment law, including contracts of employment, staff handbooks and staff policies, working time issues, dismissals, discrimination, agency workers and claims in the Employment Tribunals.