

# The Civil Society Brexit Project: *Information*

## KEEPING UP WITH THE EU: SOCIAL RIGHTS DEVELOPMENTS MARCH 2021

### About the Civil Society Brexit Project

The Civil Society Brexit Project is a collaboration between the **Scottish Universities Legal Network on Europe (SULNE)** and the **Human Rights Consortium Scotland**, funded by the **Legal Education Foundation**. We give information, insight and independent advice to make sure that organisations in Scotland are able to influence Brexit as much as possible. The Project will also help organisations to prepare for Brexit consequences for themselves or their beneficiaries.

[www.civilsocietybrexit.scot](http://www.civilsocietybrexit.scot)

### Who is this Civil Society Brexit Project: *Information* for?

This briefing is written for civil society organisations working in Scotland. For more information, contact [civilsocietybrexitscot@gmail.com](mailto:civilsocietybrexitscot@gmail.com)

## Introduction

A key concern of civil society around Brexit was that the UK, whether deliberately or inadvertently, may begin to fall behind its European neighbours on social rights protections. Certain measures to address this concern are being developed or are in place in Scotland. For example, 'keeping pace' powers within the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 are aimed at maintaining and advancing standards relating to areas such as equality, non-discrimination and human rights, and social protection by fast-tracked legislative change.

However, one of the challenges for civil society is that it can be difficult to understand, and to find out about, current and upcoming policy and law

developments in the EU. This briefing provides a horizon scan of some of the current and possible upcoming developments around EU social law and policy:

1. Recent developments
2. What next?
3. Glossary

Other briefings in this series which provide information around current EU developments are available at [www.civilsocietybrexit.scot](http://www.civilsocietybrexit.scot)

# 1. Recent developments

## Directive on Work-Life Balance<sup>1</sup>

The Directive on Work-Life Balance responds to principle 9 of the European Pillar of Social Rights. It must be transposed into the national laws of the Member States by 2 August 2022.

The Directive **strengthens rights to parental leave**: it introduces a minimum of remunerated 10 working days' paternity leave (or leave for the 'second parent'). Remuneration must be at least the level of statutory sick pay. It also strengthens the right of four months' parental leave for each parent, which can be taken before the child reaches a specified age (up to eight years). Two months of that leave will become non-transferable to the other parent. Parental leave will also have to be paid or there has to be an allowance. It is up to the Member States to determine the details, but the financial compensation must be such 'as to facilitate the take-up of parental leave by both parents'.

The Directive further introduces a minimum right of 5 days per year of **carers' leave**. The Directive does not mandate that such leave must be paid. The Directive leaves the details up to the Member States, in particular the precise definition of who counts as a carer. The minimum definition includes relatives or persons living in the same household as the worker, but the preamble of the Directive 'encourages' Member States to extend the right to carers' leave to care for grandparents and siblings.

In addition, the Directive introduces a right to take **leave on grounds of force majeure for urgent family reasons** in the case of illness or accident, which make the immediate attendance of the worker indispensable.

The Directive also introduces a **right to flexible working arrangements** for parents of children (up to the age of at least 8). This means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours.

The Directive also contains provisions that aim to ensure that after the period of leave workers can return to the same job with the same conditions. Furthermore, they do not lose any rights acquired previously, e.g. for length of service.

The Directive must be transposed by 2 August 2022, with the exception of provisions relating to parental leave payments/allowance, which must be transposed by 2 August 2024.

## Directive on transparent and predictable working conditions

The Directive on transparent and predictable working conditions<sup>2</sup> aims to contribute to the achievement of fairer working conditions, which is one of the key goals of the European Pillar of Social Rights. It particularly aims to better protect those in precarious working environments.

The Directive stipulates **minimum transparency obligations**. Employers must inform the employee about basic features of the employment relationship, notably the parties to the contract, the place of work, a description of the work, the commencement date (and if fixed term the end date) of the employment, probationary period, pay, training entitlements, the amount of paid leave, the work pattern, any collective agreements governing the conditions of work.

1. Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

2. Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union

Furthermore, the Directive contains certain **protections for those on ‘on-demand’ contracts (notably: zero hour contracts)**, such as either limiting their use altogether; or the introduction of a rebuttable presumption that an employment contract with minimum hours exists (based on average hours worked in the past); or other equivalent measures that ensure prevention of abusive practices.

The Directive additionally stipulates certain **minimum requirements concerning working conditions**. These are the maximum duration for a probationary period of 6 months; that there shall be no prohibition of parallel employment (i.e. a second job), unless there are reasons why the second job is incompatible with the first job, e.g. for health and safety reasons; and that there shall at least be a minimum predictability of work, such as an employer’s duty to inform the worker of a work assignment within a reasonable period.

The Directive further makes it clear that any mandatory training that an employee must undertake by law or by virtue of a collective agreement, must be provided to them free of charge.

The Directive must be transposed by 1 August 2022.

## EU Accessibility Act

The EU Accessibility Act (which is actually a Directive) is a major attempt at improving the accessibility of certain products and services for disabled people<sup>3</sup>. Even though it is technically an instrument to improve the functioning of the internal market for accessible products and services, by harmonising rules,<sup>4</sup> its **overall purpose is to create a more inclusive society and to facilitate**

**independent living for disabled people.**<sup>5</sup> It aims to do so by eliminating and preventing barriers to the free movement of certain accessible products and services arising from divergent accessibility requirements in the Member States. This would increase the availability of accessible products and services in the internal market and improve the accessibility of relevant information. It thereby contributes to the fulfilment of the EU’s and its Member States’ obligations under the UN Convention on the Rights of Persons with Disabilities.

The Accessibility Act takes the legal form of an EU directive, which means that the Member States will have to transpose it into national law. The transposition period ends on 28 June 2022 and the transposing legislation must apply from 28 June 2025.

The Accessibility Act will result in economic operators, i.e. those marketing products and those offering services, to comply with certain accessibility requirements. As a result, all products within the scope of the Accessibility Act, notably computers including their operating systems, ATMs, self-service machines (for ticketing or check in), smartphones, TVs, and the like will have to be manufactured to a common standard that ensures their accessibility for persons with disabilities. In a similar vein, service providers must provide certain services, notably transport services, banking services, e-books, e-commerce services, in a way that they are accessible. The Accessibility Act contains detailed requirements in its Annex I.

3. Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.

4. It was adopted on the basis of Article 114 TFEU, which is the provision allowing the EU to adopt harmonising measures to improve the functioning of the single market.

5. See Preamble, para. 2.

## Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed

Recent developments also saw a recommendation by the Council on access to social protection.<sup>6</sup> Recommendations are not legally binding, but they send a strong political message, particularly if issued by the Council, which consists of government ministers from each Member State. A main purpose of the recommendation is to implement principle 12 of the European Pillar of Social Rights and notably to improve social protection for the self-employed, who in some Member States fall between the cracks as they are not (fully) covered by social insurance and may thus not be entitled to unemployment benefit, state pensions, healthcare, and the like. This is particularly problematic for those in precarious work relationships, notably non-standard workers (e.g. in the ‘gig-economy’) and those who are technically in self-employment, but in reality work only for one customer (bogus self-employment). The Council recommendation is accompanied by a paper on best practices.

## Commission Recommendation on Energy Poverty

The Commission’s recommendation on energy poverty calls on the Member States to develop policies to tackle energy poverty.<sup>7</sup> The recommendation suggests a number of indicators for determining energy poverty and encourages the Member States to adopt two types of measures: measures to liberalise their domestic energy markets to bring down energy prices through competition; and social policy measures to combat energy poverty.

## 2. What next?

This section gives a summary of some of the current proposals that are being considered by the EU:

### Covid-19 as a game-changer?

In late December the European Parliament, the Council of the European Union and the European Commission published their joint conclusions on Policy Objectives and Priorities for 2020-2024.<sup>8</sup> Social policy measures received two mentions:

1. [...] We will address the lessons from the health crisis and the vulnerabilities it exposed, with more ambitious cooperation on health and civil protection, building a European Health Union, while respecting national competences. [...].
4. [...] The [COVID-19] crisis has increased unemployment, particularly for young people and women working in vulnerable types of employment. This is why we will adopt measures to implement further the European Pillar of Social Rights, notably to safeguard workers’ rights in the digital economy, provide equal opportunities for all, develop a framework for adequate minimum wages, and make pay more transparent. [...]

It remains to be seen in which of these high-level ambitions will result in concrete (legislative) action. The main action being pursued at the moment concerns the European Health Union.

6. Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed [2019] OJ C 387/1.

7. Commission Recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty [2020] OJ L 357/35.

8. Joint Conclusions of the European Parliament, the Council of the European Union and the European Commission on Policy Objectives and Priorities for 2020-2024.

## European Health Union

The EU launched the European Health Union in 2020. The overall aim of the Health Union is to improve health protection in the EU. The European Health Union has three key initiatives: crisis preparedness and response measures; a pharmaceutical strategy; and Europe's Beating Cancer Plan. Each of these initiatives relies on a mix of policy and legislative measures.

As a direct reaction to the Covid-19 crisis, the Commission put forward a proposal for a Regulation on serious cross-border health threats.<sup>9</sup>

A great focus of the Health Union will be on the Beating Cancer Plan. The Commission is likely to use all legislative competences at its disposal to reduce tobacco consumption, alcohol consumption, etc. More concretely, the Commission has published a proposal for a Directive on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.<sup>10</sup> This will improve on existing legislation by changing exposure limits regarding certain cancerogenic substances.

## Directive on Minimum Pay

In October 2020, the European Commission proposed the adoption of an EU Directive on adequate minimum wages.<sup>11</sup> That Directive would not itself set the minimum wage, but it would provide a framework for the setting and updating of the minimum wage either by the state or by social partners (i.e. by way of collective agreement)<sup>12</sup>. Mandatory factors influencing the decision by

Member States when setting or updating the minimum wage would be: the purchasing power of statutory minimum wages, taking into account the cost of living and the contribution of taxes and social benefits; the general level of gross wages and their distribution; the growth rate of gross wages; and labour productivity developments.

The adoption of the Directive would be in pursuit of principle 6 of the European Pillar of Social Rights.

In terms of process, the Directive would be adopted on the basis of Article 153 (1) (b) TFEU, which means that the Council needs to adopt the Directive with a qualified majority and subsequently the European Parliament must consent to it following consultation of the Economic and Social Committee and the Committee of the Regions. At the time of writing (February 2021), the proposal is still being discussed in the Council.

## Ratification of the Violence and Harassment Convention of the International Labour Organisation (ILO)

In 2020 the Commission made a proposal to the Council that the Member States of the EU should ratify the ILO's violence and harassment convention, which will enter into force on 25 June 2021. The Convention aims to protect workers from violence and harassment in the world of work. It places a particular emphasis on protection against gender-based violence and harassment.

The background to the Commission's proposal is that the EU is not itself a party to the ILO and thus

9. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on serious cross-border threats to health and repealing Decision No 1082/2013/EU COM/2020/727 final.

10. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, COM/2020/571 final.

11. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union COM/2020/682 final.

12. Member States' social models differ widely: in some Member States working conditions are the exclusive purview of social partners (hence the mentioning of collective agreements) whereas in others legislation on a minimum wage would have long existed.

the Member States must ratify ILO conventions on behalf of the EU so far as its substance is within the competence of the EU.

The proposal is still under review by the Council. At the time of writing only five states worldwide had ratified the Convention.

### Equality Legislation

Back in 2008 the Commission presented a legislative proposal for extending anti-discrimination legislation in respect of the characteristics of religion or belief, disability, age or sexual orientation. At present, EU law only prohibits discrimination on the basis of these characteristics in relation to employment and occupation, whereas the proposal would extend this to social protection, including social security and health care; social advantages; education; access to and supply of goods and services which are available to the public, including housing.

This Directive has, however, got stuck in the legislative process. It was last discussed by the Council of the EU in June 2019.

### European Unemployment Benefit Reinsurance Scheme

In her speech before the European Parliament as candidate for Commission President, Ursula von der Leyen promised the introduction of a European Unemployment Benefit Reinsurance Scheme, which is currently in the early stages of discussion for adoption by Eurozone members. The groundwork for the scheme was laid in a 2017 report by the Centre for European Policy Studies in a report drafted for the EU Commission. The basic idea behind the scheme is to provide Member States that experience an economic shock and resulting high unemployment with additional funds (as soft loans) so that they to continue to be able to pay unemployment support.

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### WHERE CAN I GET MORE INFORMATION?

If there is any aspect of the briefing or a particular issue around Brexit where you would like more detailed advice or information, we are happy to help! Please get in touch with us at [civilsocietybrexitscot@gmail.com](mailto:civilsocietybrexitscot@gmail.com)

There is also information available online at [www.civilsocietybrexit.scot](http://www.civilsocietybrexit.scot)