Brexit: EU Social Policy and the British Employment Model

Abstract

Big claims that are often unsubstantiated are made about the likely impact of Brexit on the UK labour market. This paper seeks to go beyond the rhetoric and present a careful assessment of the employment relations consequences of Brexit for the UK. It addresses four key questions in particular: will Brexit end UK engagement in the EU's free movement of labour regime and if so what will be the labour market consequences for the UK?; to what extent will Brexit weaken employment rights in the UK?; what impact will Brexit have on the behaviour of trade unions and on the functioning of collective bargaining in the UK?; and finally what will be the effect of Brexit on the interactions between London and Brussels on wider employment policy questions. The paper argues that Brexit poses acute policy dilemmas for the UK Government that are likely to generate considerable political and economic uncertainty. The fallout from this uncertainty is hard to predict in advance. It could either open the door to a Corbyn-led Labour Government or alternatively to an even more thorough-going deregulation of the UK labour market.

Introduction

In June 2016, the UK voted by a small majority to leave the European Union. So-called "Brexiteers" rejoiced, proclaiming that UK citizens had won back control of their country. In contrast, "Remainers" portrayed the vote as calamitous, arguing that it represented a momentous act of national self-harm. Whether the UK is on the edge of the abyss or nirvana has framed nearly all assessments about the consequences of Brexit, not least discussions about the implications for workers' rights and wider employment relations issues. A prominent and sustained argument made by leading Brexit supporters, before and after the referendum, is that leaving the EU will bring to an end the unwanted intrusion of Brussels into how the UK labour market is regulated. On this account, EU membership has resulted in too much labour market regulation, leading to a loss of economic competitiveness for UK businesses. Most Remain supporters put forward a very different case, arguing that EU social policy has led to the strengthening of workers' rights in areas such as equality, and health and safety and that employment protection will be diminished even further as a result of Brexit.

A feature of these sharply contrasting accounts of the employment relations consequences of Brexit is that very often they are articulated in a superficial manner. Strong claims are set out in the absence of any supporting in-depth assessments, although it has to be said that Brexiteers are guiltier of this shortcoming. As a result, an important need exists for assessments to go beyond the rhetoric and present more careful accounts of what Brexit means for a series of interconnected issues related to the organization of the UK labour market. The purpose of this paper is to provide such an account by examining the challenges Brexit poses for those features of the UK labour market that have been affected by EU social policy. At the outset, it is worth stating that European integration involves both market-making and institution-building processes. Thus, the paper focuses on the extent to which the market and institutional pressures released by Brexit will challenge the British employment model.

In particular, we focus on whether Brexit will lead to the end of the free movement of labour and if so what will be the labour market consequences for the UK?; to what extent will Brexit weaken employment rights in the UK?; what impact will Brexit have on the behaviour of trade unions and collective bargaining in the UK?; and finally what will be the effect of Brexit on the interactions between London and Brussels on wider employment policy questions. The paper argues that the most immediate effect of Brexit is market-related as it endangers one of the main engines of the UK employment model during the past decade or more – the free movement of labour. Cutting off UK business from a huge supply of cheap labour from other EU member states is likely to have a profound effect on the UK employment system. Adjusting to such a situation not only poses acute policy dilemmas for the UK Government, it also has the potential to create considerable political and economic uncertainty. The fallout from this uncertainty is hard to predict in advance. It could open the door to a Corbyn-led Labour Government or to an even more thorough-going deregulation of the UK labour market or even conceivably to some haphazard muddling-through option.

Brexit, the free movement of labour and UK's liberal employment model.

Free movement of labour, an integral feature of the European internal market, provided UK businesses access to a large untapped pool of workers, both low and high skilled. Up until the early 2000s, free movement of workers remained a promise inside the EU: only meagre numbers of people moved across member states to work. From 2004, however, this situation radically changed. The decisive factor precipitating this change was the accession of what was known at the time as the A8 countries – east European countries - to the EU (Donaghey and Teague 2006). Figure 1 shows that until eastern enlargement in 2004 only paltry numbers of citizens from other EU member states moved to the UK. Then the picture changed completely, with a huge increase occurring in the numbers of EU citizens, consisting mostly of people from east European member states, living and working in the UK.

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It has been argued that the influx of east European migrants has greatly facilitated the near uninterrupted expansion of the low-wage/low productivity non-tradable sector in the UK (Portes 2016). For sure a massive increase has occurred in these sectors: estimates suggest that the number of workers in precarious jobs in the UK has grown by almost 2 million in the past decade largely as a result of businesses insisting on using more self-employed workers and recruiting staff on temporary and zero-hours contracts (ONS 2017). Government statistics suggest that 800,000 workers are now on zero-hours contracts whereas there are now 5 million self-employed workers. The growth of low wage, precarious jobs is seen as reflecting the enlarged role played by low-skilled non-tradeable sectors in the UK economy (Warhurst, 2016). The UK's low-wage sectors consist mostly of retail, hospitality, food and administrative services that employ a third of all workers and produce 23% of the UK's gross value-added. But on average these sectors are 29% less productive than the economy as a whole.

From the early 2000s until the Referendum, successive governments appeared relaxed about, if not openly supportive of the rapid increase in immigration, not least because of the positive contribution it was making to economic growth. On the whole, immigration was viewed in an entirely positive light as people from different walks of life were seen as looking at things in distinctive ways, which would allow new ideas and economic creativity to flourish: the equation was that immigration leads to greater diversity which in turn leads to richer intellectual capital in an economy. This was the cosmopolitan view of globalization that prevailed at the time: nation states and national identities were almost seen obsolete (Collier 2014). To a large extent, this view of immigration was supported by the assessment of most professional economists that large-scale migrant flows, particularly from other parts of the EU, was not having a negative impact either on jobs or wages (Wadsworth 2017). Nickell and Salaheen (2015) did find a small negative effect of migration on the wages of locals in semi-

skilled and unskilled service sectors, such as care workers, shop assistants, restaurant and bar workers, but other studies found no such effect. Work done at the LSE's Centre of Economic Performance concluded that the areas of the UK with large increases in EU immigration did not suffer greater falls in the jobs and pay of UK-born workers and that changes in wages and joblessness for less educated UK-born workers show little correlation with changes in EU immigration (Dhingra et al 2016). Other research conducted by Dustmann and Frattini (2014) found that the macro-economic impact of EU migrants flows was actually positive: in particular they suggest that between 2001 and 2011, the net fiscal contribution of migrants from the ten central and eastern European countries that joined the EU in 2004 or 2007 was almost £5 billion.

But this benign view of migration was not the consensus. Outside of London, in large swathes of England, particularly in those areas devastated by deindustrialization, concern was increasing that immigration was getting out of control. The mounting social backlash against the free movement of workers is widely seen as the decisive factor behind the No vote in the Referendum. There is no doubt that concerns about the free movement of workers was at times articulated in xenophobic terms: much of the tabloid press fermented this view by continuously cultivating images of hordes of migrants arriving from eastern Europe either to 'steal' UK jobs or 'scrounge' unscrupulously on benefits. During the Referendum campaign, many politicians campaigning for a Leave vote did little to distance themselves from this xenophobic discourse while some, shamefully, actively promoted it. At the same time, it would be foolhardy to write off the backlash against the free movement of labour as some type of media inspired conspiracy. From about 2004, the hike in the number of migrants entering the UK labour market, particularly from the EU, was unprecedented in historical terms. At the time of the Referendum *flows* of EU and non-EU citizens into the UK were broadly similar, which traditionally was never the case. Overall, EU countries account for one third of the total

immigrant *stock* in the UK, which represents a near doubling in size during the past decade. These concerns gave rise to a less xenophobic, more dispassionate view that the unprecedented scale of immigration was not only atrophying historical communities in the UK, but also leading to a rapid and sustained growth in population with negative consequences in the form of overcrowding, congestion, pressure on housing and public services, and a loss of environmental amenities. (Rowthorn 2015).

The referendum result and subsequent pronouncements of the British Conservative Government and opposition Labour Party suggests that Brexit will result in the UK leaving the EU's regime of free movement of labour. If this were to happen, the implications for the UK would be far reaching. Cutting off UK businesses in low value business sectors access to a seemingly limitless and relatively low paid pool of labour would amount to a huge supply-side shock. The result is likely to be widespread employment shortages and a significant increase in labour costs. Hardly anyone disputes that the end of free movement labour will have a profound impact on the functioning of the bottom end of the labour market. Much less appreciated is the impact on skilled labour markets. Free movement of labour not only facilitated the expansion of low skilled employment in the UK, it also made available skilled labour to organizations with underdeveloped training and skills programmes. Organizations recruited from outside the UK as compensation for underinvesting in training.

Consider the case of the nursing profession. In England, there were 361,000 nurses working in the NHS in 2015. But in the UK as a whole – the NHS plus the care and independent health sectors – over 600,000 nurses are employed. The OECD put the proportion of foreign-born nurses in the UK in total employment at 22% in 2011, up from 15% in 2001: in 2014/15, 8,000 foreign-born nurses were recruited to the UK, mainly from the EEA. Research commissioned by the UK's Migration Advisory Committee concluded that the big increase in the recruitment of foreign-born nurses reflects a structural undersupply of UK trained nurses that has arisen

due to poor workforce planning, a reduction in the number of training places due to financial constraints and inept efforts at retaining nurses by reducing turnover rates (Marangozov et al 2016). The Committee's research also suggested that migrant nurses were recruited to save costs: in most other graduate occupations, migrants earn on average more than UK workers in the same job yet migrant nurses usually earn less than UK nurses doing the same job. Migrant nurses are typically recruited at the minimum point on the nurses' pay scale and their pay tends not rise to with age. It is difficult not to see this as pay undercutting. The upshot is that the Migration Advisory Committee has been obliged to place nurses on its 'shortage occupation list' to avoid putting the country's health at risk (Metcalf 2016). Thus, free movement of labour allowed employers both in the public and private sector to underinvest in training and skills development while providing them access to the skills and expertise that they required.

This argument suggests that Brexit is likely to pose formidable challenges for UK employment policy at all tiers of the labour market. One view is that any newly designed administrative system to manage immigration after Brexit is unlikely to disrupt too much migration flows from the EU and elsewhere (Portes 2016). On this account, if immigration levels were to fall sharply, vast swathe of economic sectors, particular jobs and occupations, as well as certain regions and cities could be adversely effected, some seriously so. Consider London, almost 40% of all immigrants now live in the capitol and it is hard to envisage how a radical scaling back of immigration flows would not lead to severe labour shortages across a variety of business sectors, but particularly in retail, restaurant and hotels. Thus, because the UK economy has become so dependent on migrants a post-Brexit restrictive immigration policy regime is considered a non-starter. If this turns out to be case then Brexit, at least in terms of labour migration, could very well be an instance of *plus ça change, plus c'est la même chose*.

But if any sort of restrictive immigration regime were to be put in place then almost inevitably significant changes would have to occur to at least to some aspects of existing EU employment

policy. One argument that has been made, particularly by the anti-EU populist party the UK Independence Party (UKIP), is that UK workers who are unemployed, low skilled or have fallen out of the labour market altogether could fill any emerging labour shortages brought about by reducing immigration into the UK. On paper, it is reasonable to assume that migrant and UK-born unskilled workers could be easily substituted for each other. But in practice this would be difficult to achieve as there is a huge matching problem. A disproportionate number of vacancies that are likely to arise from a fall-off in immigration is likely to be in the south-east of England, yet the disproportionate number of available UK-born workers are in the economically depressed part of northern England and parts of Northern Ireland, Scotland and Wales. Convincing these workers to move to take up the labour market slack in the south is likely to be a difficult task.

Huge barriers stand in the way of large-scale internal labour flows in the UK. In addition to the significantly higher property rental and purchasing costs in the South, recent changes to the benefits systems, particularly to housing benefits, make it prohibitively expensive for unskilled workers, particularly if they have families, to move from other areas to southern England. Addressing this matching problem can only be done by the present government overhauling its welfare and employment policies. Either it has to abandon its welfare-to-work policy as well as its cap on housing benefits to make it more attractive for people to move from the north to the south of the UK, which would be tantamount to abandoning its austerity macro-economic stance. Or it has to introduce even more draconian welfare benefits so that labour mobility is encouraged through disciplining the poor, a policy that would represent a decisive move to the 'Singapore scenario' so ably discussed by Woolfson (2017) in this journal recently. Thus if the present Government wants to reduce the number of migrants coming to work in the UK it faces an acute policy dilemma: it either has to increase or lower the social safety net and also rethink its entire housing policy.

But the awkward policy choices do not end there. If the Government seeks to restrict labour migration to the UK while simultaneously making readily available to organizations domestic skilled employees of sufficient quantity and quality then massive investment will be required in education and training. Something akin to an institutional revolution would be required to reverse the chronic problems of delivering skills and training programmes at all tiers of the labour market – witness the current problems that are bedevilling the current apprenticeship training regime, notably the high drop-out rates and the relatively poor levels of training provided (Kuczera and Field (2018). Government would not only have to abandon its tight macro-economic policy – austerity – but key pillars of its wider neo-liberal economic stance as firms are likely to require closer regulation so that they actively participate, and not free ride, in a new economy wide skills policy. The key point is that leaving the EU's free movement of labour regime is likely to create an acute trilemma for the UK Government. It is extremely unlikely that the UK Government can simultaneously end the free movement of labour, maintain the expansion of low wage business sectors as well as provide skilled labour to firms through migration and continue with its restrictive macro-economic policy stance. It cannot do all these three things at the same time. It can perhaps do two out of the three things – it can end free movement of labour, but it will have to overhaul key pillars of its economic policy, from abandoning its benefits and skills policies to loosening its fiscal stance, if it wants existing performance levels in the non-tradeable sector to continue. Alternatively, if it chose to stay with its current economic policy stance, it will have to maintain high levels of immigration to sustain the non-tradeable sector. The only possible way the three things could be pursued simultaneously is to mimic Singapore and turn the UK into some type of tax haven in which employment rights would be reduced drastically and the welfare and benefits systems effectively shredded. This is why the Singapore scenario cannot be fully ruled out.

Brexit and EU Employment Legislation

The EU is not simply an open trade area, but a hard-to-define political structure standing above the member states that influences European economic and social life in various ways and to varying degrees (Teague 2001). One way is through the adoption of legislation that that has an impact on the governance of the employment relationship. Over the years, the EU has built up a body of employment legislation, in the form of Directives that established a plinth of employment rights for citizens of member states. It was not envisaged that the EU would acquire this influence when it was first established in 1957. The Treaty of Rome, which established the EU, was not particularly coherent on employment-related matters. The opening section of the Treaty contained some broad declaratory statements hinting that economic and social integration should evolve in tandem. Yet, the body of the Treaty contained only a few explicit clauses on social policy, in areas such as holiday entitlements, health and safety and equal pay in employment (Teague 1989a).

In terms of employment legislation, the EU did little until the publication of the 1974 Social Action Programme, which proclaimed that equal importance should be attached to social and economic matters in European construction. It set out a menu of 30 measures that needed to be adopted in three broad areas: (1) the attainment of full and better employment in the EU (2) the improvement of living and working conditions; (3) and the increased involvement of workers in company-level decisions. At the time, the Social Action Programme, which set out the 30 measures, was commonly viewed as an attempt to give the EU a human face (Brewster and Teague 1989). Since the adoption of the Social Action Programme, the EU has adopted a considerable body of employment Directives.

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Apart from the area of health and safety, Table 1 sets out the EU Employment Directives that have been adopted. The table shows that a wide range of employment relations matters are

covered by these Directives, including equality, employment protection, information and consultation and working time arrangements. These Directives cover a range of collective and individual employment rights. Despite a large number of employment Directives being placed on the EU statute book, it would be misleading to say that the EU has adopted an integrated body of supranational employment legislation that places significant regulatory constraints on national labour markets (Grahl and Teague 2013). In adopting Europe-wide employment legislation, the EU has never sought to harmonise employment relations institutions or rules across the member states. From the very start, there was recognition that the institutional diversity of national employment relations systems placed enormous constraints on the EU adopting one-size-fits-all legislation. Most EU employment legislation takes the form of framework Directives, which only set down general principles and rules which the member states are able to implement in line with national employment relations custom and practice. The Directives on parental leave, information and consultation, and fixed-term work are examples of this type of legislation. Deakin and Ragowski (2011) label EU employment Directives as reflexive law that do not mandate prescriptive institutional models and encourage member states almost to self-regulate on the matter-at-hand, subject to various default penalties and derogations.

Thus, EU employment Directives amount to a patchwork of statutes, with some legislation having greater impact on the member states than others (Barnard 2014). For example, in relation to the UK, legal rules governing industrial action, trade union recognition, unfair dismissal, minimum wages, redundancy payments and shared parental leave have not been touched by EU legal influences and stem from the UK alone. In addition, some EU employment legislation only paralleled existing UK employment law or required a modicum of reform to existing employment existing domestic law. Thus, it is inaccurate to portray EU employment

legislation as an integrated and comprehensive body of legislation that constrained member-states to follow the labour market model of their choosing.

Apart from adopting legislation, EU legal influences on employment matters also stem from the activities of the European Court of Justice (ECJ), the judicial arm of the EU. Although not a legislative body in itself, the ECJ has played an important role in extending the competence of EU employment law through what Weiler (1991) called 'judicial activism'. For the most part, this process involved the ECJ making rulings that significantly extended the reach of existing employment Directives or EU Treaty clauses in a particular way. Until recently, judicial activism on the part of the ECJ was seen as strengthening EU employment standard setting. For example, judicial activism was viewed as encouraging trade unions and equal opportunity groups in various member states to try and strengthen existing domestic equality legislation by taking test cases to the ECJ in the anticipation of a favourable ruling. Of course, once the ECJ established case law on a particular employment topic, national courts would invariably take this thinking into account when considering a similar case, further entrenching the domestic influence of the ECJ on employment matters. Thus, during the 1980s and 1990s, the legal dimension to EU social policy was extended as much by national interest groups using the ECJ as an opportunity structure to extend EU legal competence on particular employment matters as by the member states adopting EU employment Directives through the formal decision-making process.

Although the ECJ can be considered an institutional locomotive pushing forward EU influences on domestic employment standards, it is important to recognize that this has not always led to an expansion of deepening an EU plinth of employment rights (Brewster and Teague 1989). More recently, the ECJ has made rulings that have been widely interpreted as weakening national systems of labour market regulation, most notably in the Viking and Laval cases

(Woolfson et al 2010 and Bosch and Weinkopf 2013). In these cases, the ECJ used judicial activism to weaken national employment rights systems in favour of strengthening the European internal market. In particular, the Court in its rulings opened the legal door for the aggressive use of posted workers by cross-border service providers inside the EU (Barnard 2013), which trade unions lambasted as creating a license for widespread social dumping. But concerns that the ECJ was now using judicial activism to compromise national employment standards have proven short-lived as in its ruling ECJ Case C-396/13 (Sähköalojen ammattiliitto), the Court stated that the terms and conditions of employment, including minimum rates of pay, of posted workers would be determined by the law of the host Member State and/or by collective agreements which have been declared 'universally applicable' in the host Member State**:** in other words, national employment standards would not play second fiddle to the dynamics of the internal market. On the whole, the ECJ has used judicial activism to strengthen employment standards in the EU.

During the EU Referendum campaign trade unions and others strongly argued that a Leave would put established employment rights in the UK in jeopardy. However, amongst legal experts, the consensus view appears to be that Brexit will not lead to a 'bonfire of regulations' and that existing employment rights will remain more or less intact. A variety of arguments are made in support of this view. First of all, many EU employment Directives have been transferred into UK law in a manner that exceeds the minimum standards, with holiday entitlements and maternity leave amongst the most notable examples. As a result, to repudiate some EU employment Directives would be, in effect, repudiating domestic choices made by previous UK Governments. Secondly, a great deal of EU employment legislation is in areas where there is a wide consensus that regulations and standards are needed. In countries beyond the EU like Australia, Canada and New Zealand – countries that broadly share the Anglo-

American employment relations model that prevails in the UK – individual employment rights in areas such as equality, health and safety and employee rights in cases of business restructuring have been strengthened. Thus, although some UK employment laws have their origins in Brussels, in real terms these reflect a type of regulatory convergence – with the possible notable exception of the USA - across advanced economies in relation to employment standard-setting (Currie and Teague 2016).

A third reason why the UK Government may be reluctant to repeal EU-inspired employment legislation is that very soon it will be ramping up efforts to conclude new trade agreements with a wide range of countries. Many countries are likely to be reluctant to sign any trade deal if the UK government has deregulated even further its labour market due to concerns that their domestic employment conditions may be exposed to excessive cost pressures. In other words, sticking with its established body of employment laws may make it easier for the UK government to conclude new trade deals with both the EU and other countries. Finally, the UK Government may calculate that to use the opportunity presented by Brexit to recast existing employment legislation would cause too much political controversy. Much of EU employment law has been brought into effect by UK legislation, which can only be amended by Parliament and a significant political furore is likely to ensue if Government were to introduce legislative proposals with the intent of weakening employee rights. This is particularly so in the context of the 2017 UK General election which returned a minority Conservative government. Current pronouncements by the UK Government that it is eager to secure Brexit in a manner that protects employee rights suggests that it wants to avoid big political clashes on the matter. In particular, the UK Conservative Government announced in the Autumn of 2016 that it intended to pass a "Great Repeal Bill" which would in effect translate all existing EU based legislation into UK domestic law but with the UK's Supreme Court as the final arbiter rather than the ECJ.

It would then be up to governments of the day to repeal individually specific pieces of legislation on an ad hoc basis. This legislative tool means the default position will be the retention of existing rights.

Thus, the consensus view is that Brexit will not trigger any immediate radical adjustment to employment regulation. At the same time, there are some who consider this view to be an overly benign reading of the situation (TUC 2016). It is argued that the opportunity will not be forgone to make business-friendly changes to EU-inspired employment legislation. Two areas in particular are seen as susceptible for downward reform. One is the transfer of undertaking regulations (TUPE) where changes may be made to make it less burdensome on employers to harmonize employment terms of conditions following a TUPE condition. The other is annual leave regulations: here reform may be introduced to soften a relatively recent ECJ ruling that made the calculation of holiday pay more generous for employees. These deregulation moves may be attempted, but on balance it is unlikely that existing EU-inspired employment legislation will be dismantled in any systematic manner. After all, the UK has been able to construct unimpeded the most flexible labour market in Europe with these pieces of legislation on the statute book. Thus, the body of employment legislation prevailing in the UK is what would be expected in a modern advanced economy and the incentives to deviate from this norm do not appear to be strong.

British Trade Unions and Brexit

British trade unions have had a roller coaster relationship with the EU. From the early moves towards deeper European integration in the 1950s until the mid-eighties, the TUC, the umbrella body for British trade unions, opposed UK membership to the EU. The Common Market was seen as a capitalist club that undermined the sovereignty of Parliament and other democratic

processes in the UK. A handful of trade unions did support the UK joining the European integration project, but these invariably found themselves in the minority (Teague 1989b). Although hostile to UK engagement in the EU, British trade unions played an active and positive role in reshaping the organizational structures of European trade union bodies. After the 2nd World War, bitter rivalry had existed between communist, social democratic and Christian democratic international trade union bodies, which weakened international trade union solidarity. British trade unions played a leading role in ending these rivalries, which led to new unity and cooperation within European trade unions. The clearest sign that the old animosities were being left behind was the creation of the European Trade Union Confederation in 1973. In addition, a variety of other industry or sector-wide trade union federations, such as the European Metal Workers Federations, were set up not only to foster trade union solidarity, but also to ensure that the trade union voice was being articulated inside the EU's institutional system in Brussels. Thus, despite being anti-EU, British trade unions played a constructive role in organizationally revamping European trade union governance (Teague 1989c).

When the UK finally joined the EU in 1973, the approach of British trade unions to EU-level policy making can best be described as naïve Keynesianism. Little strategic thinking occurred about how the EU could be used as an extra-national institutional resource to advance the economic and social interests of British workers. For most British trade unions, the nation-state remained the key site for implementing programmes for the UK economy as witnessed by the near universal appeal of the version of the alternative economic strategy that endorsed widespread import controls. This policy vision strongly influenced trade union action on EU-related matters. When seeking to influence the character of EU policy, the first port of call was not Brussels to lobby the Commission or to develop a common European trade union position,

but Whitehall to badger the relevant minister in the Labour Government at the time to adopt a trade union friendly policy in their deliberations in EU institutions. Invariably, the litmus test used to assess the merits of EU policies was the potential impact on the established voluntarist system of employment relations in Britain.

On a number of occasions, this policy stance got British trade unions into awkward positions in relation to some EU social policy proposals. In 1978, the EU Commission made a proposal to introduce a Directive to oblige multinationals to set up information and consultation arrangements with their trade unions. A year later, the Commission also signalled that it was seeking to legislate to reduce the working week. On the surface, these two pieces of legislation favoured trade unions and employees more generally. Yet British trade unions were uncomfortable with both proposals as they were seen as contravening British voluntarism by proposing to use legislation rather than free collective bargaining to set employment terms and conditions. As a result, rather than working hard to ensure the adoption of the two proposed Directives, British trade unions spent more time lobbying for the proposals to be revised to accommodate the British tradition of free collective bargaining (Grahl and Teague 1991). These episodes highlight the near absence of strategic thinking on how EU action could complement, if not strengthen, national policies that favoured trade unions.

A remarkable transformation occurred in the British trade union approach to the EU in the 1980s. Buffetted by years of Thatcherism, British trade unions flipped their previous anti-EU policy and embraced the EU as a possible saviour from their precarious domestic situation. Unions hoped that the promise of a Social Europe would roll back the excesses of Conservative Government social and economic policies (Rosamond 1993). Jacques Delors, the architect of the idea of Social Europe, who did little to quell this idea, was given a rapturous welcome at

the 1988 TUC Congress. But the idea that Social Europe would rescue the British labour movement from its plight was fanciful from the very start as EU did not have competence to make direct legislative interventions in areas such as collective bargaining, the rights of trade unions to organise, the right to strike and other forms of industrial action. Without these policy levers it hard to see how the EU could have engineered the step change in British employment relations sought by British trade unions. Unsurprisingly Social Europe turned out to be a false dawn. Holding out such optimism about the potential of Social Europe once again reflected the absence of careful thinking, albeit of a different kind than hitherto, amongst British trade unions about how the EU could be leveraged to advance the interests of trade unions and their members (Wendon 1994).. British trade unions had shredded naïve Keynesianism to become naïve Europeanists.

Since the mid-nineties, a lot of work has been done within British trade unions to develop a more nuanced policy approach towards the EU (Strange 2002). While some unions have maintained a strongly anti-EU approach, they are considerably in the minority, with only two, the rail workers' and the bakers' union, strongly supporting Brexit. Most individual trade unions have generally left behind political driven debates about whether or not the UK should be a member of the EU. The TUC Congress in September 2012 voted overwhelmingly against a motion proposed by the Rail, Maritime and Transport Union to support leaving the European Union. However, the opposition speeches were not framed in terms of viewing the EU as a bulwark against deregulation, arguing instead that a realistic and pragmatic approach should be adopted towards the EU. In the referendum campaign itself, the large unions affiliated to the Labour Party, such as Unite, Unison and the GMB, were unequivocally calling for a Remain vote. However, rather than seeing EU social policy as some type of extra-national institutional White Knight riding to their rescue, the position adopted was based on a recognition that the mobilising efforts of unions will to a large extent determine the extent to which EU

employment legislation has real influence in UK workplaces. Developing strategic interventions with the aim of using EU employment legislation and policies to improve the lot of British workers has become the *modus operandi* of British trade unions on EU matters.

British trade unions attitudes to the EU have shifted radically during the past 30 years. Adopting a more pragmatic outlook towards the EU has been an integral part of the wider modernization process launched by trade unions to remain relevant and stave off declining numbers. British trade unions are less committed now to the traditional 'voluntarist' model of industrial relations, which puts a premium on free collective bargaining and minimal state intervention in trade union-employer relationships. There is now greater recognition of the need for employment regulation to advance fairness and equity in the labour market. Adversarial 'arms-length' relationships with employers, which so often seemed to go hand-in-glove with free collective bargaining, are less favoured than more collaborative relationships at the workplace. This makeover to trade union identity in Britain has been both facilitated and reflected in its engagement within the EU. Interacting with their counterparts from other member states as well as working inside EU bodies made British trade unions realize that alternatives existed to voluntarist employment relations. Being pro-European became part of the identity-kit of modern trade unionism in Britain, which explains why almost all of them were ardent supporters of the Remain side in the Referendum campaign. Brexit is unlikely to alter to any great degree British trade union engagement with European trade union structures: the TUC and national trade unions are key players in the ETUC and trade unions across want this to remain the case. At the same time, a key element of the modernization programme of British trade unions has been dealt a hefty blow, which will require a good deal of new thinking internally. A key aspect of this thinking will be to ensure that the trade union movement remains outward looking and supportive of having close links with other European countries even if the UK is not a member of the EU.

Collective Representation and Brexit

At the same time, it needs pointing out that in terms of EU institutional influence on day-to-day collective representation activity in the UK, Brexit is unlikely to have a strong influence. Longstanding efforts have been made by the EU Commission to encourage trade unions and employer organizations to conclude Europe-wide collective bargaining agreements that would impact on national collective bargaining systems, but without much success (Welz 2008). As a result, domestic collective representation in the UK has remained relatively unencumbered by EU institutional influences. This is a point worth further explanation. Attempts at creating some form of European collective representation, commonly referred to as the European social dialogue, have proceeded along vertical and horizontal dimensions (Grahl and Teague 1991). Whereas the vertical dimension relates to efforts at encouraging trade unions and employers to conclude collective agreements inside the institutional framework of the EU in Brussels, the horizontal dimension has been mostly concerned with promoting trade union/employer agreements and cooperation at organizational level. Over the years, an elaborate institutional structure has been constructed at the EU-level to encourage social dialogue between employers and trade unions – the social partners.

Just what the core purpose of this dialogue should be has been the source of on-going, deep disputes between trade unions and employers (Marginson and Sisson 2005). For the ETUC, the European social dialogue structure should be mainly focused on the conclusion of collective agreements that would commit employers and trade unions at national or even company level to particular employment policies and practices. In other words, they wanted a form of 'vertical' European collective bargaining to be conducted in Brussels that would stand above yet connected to national systems of collective bargaining. Employers have consistently opposed the emergence of this type of European collective bargaining: Brussels is not considered an appropriate, even legitimate site, for any type of collective negotiations that

could produce agreements that bind employers to particular actions (Keller and Weber 2011). They envisage EU-level employer organizations performing mostly a lobbying role to ensure that the interests of employers are incorporated into any policy proposal made by the European Commission. For its part, the Commission has consistently adopted an open definition of social dialogue: in 2000 it said that the social dialogue was a 'process of continuous interaction between the social partners with the aim of reaching agreements on the control of certain economic and social variables, at both macro and micro levels' (European Commission, 2000, p. 8).

These competing visions of the purpose of the European social dialogue have prevented the adoption of any meaningful EU-wide collective agreements. In Brussels, employer and trade union bodies have only been able to agree non-binding Joint Opinions on such things as information and consultation, employment strategies, and education and training, which did not make commit or oblige either side to any significant action either at the European or national levels. The EU social dialogue was only rescued from descending into an institutional process without meaning by the Maastricht Treaty (Marginson and Sisson 2005). This Treaty gave the EU social dialogue a formal legal base as it integrated the process into formal EU decision-making (this legal base has been revised and upgraded by subsequent Treaties). The result is that the Commission is formally required to consult European social partners prior to presenting any legislative proposal in the social field. The social partners can issue a 'Joint Opinion' on the proposal, which will be formally considered in the EU decision-making process. However, the social partners can bring to a halt a Commission's proposal for an employment Directive by signalling that they are prepared to negotiate a collective agreement on the topic, which itself could subsequently be introduced as EU legislation in the form of Directives. Additionally, the social partners have the option to implement any EU employment legislation through national collective bargaining structures rather than through national law.

Incorporating the social dialogue into the formal EU decision-making process has resulted in the social partners concluding four collective agreements that have been made legally binding through EU Directives on Parental Leave (1995, revised in 2009), Part-Time Work (1997), and Fixed-Term Work (1999) (Pochet et al 2009). But overall no meaningful form of 'vertical' European collective bargaining has emerged inside the EU. As a result, by definition Brexit is not going to have end big EU institutional influences on UK collective bargaining, because there were none in the first place.

Alongside efforts at fostering a 'vertical' social dialogue in Brussels, initiatives have been made to develop some form of 'horizontal' social dialogue, particularly within multinational companies. The origins of these efforts date back to the 1970s when a strong trade union demand was for EU-level legislation to oblige multinational companies to engage in 'horizontal' collective bargaining. Legislation of this type was deemed necessary as multinationals were refusing point blank to engage in any form of international collective bargaining with trade unions (Grahl and Teague 1991). The European trade union position got a shot-in-the-arm when the European Commission produced the draft Vredeling Directive in 1980, a proposal for harmonized information and consultation rights in what was termed 'complex organizations' operating in the EU, but which mostly related to multinationals and their subsidiaries. The Draft Directive was quite prescriptive as it set out in detail the financial, economic and employment information that multinationals should provide to their employees on a regular basis. The publication of the draft Directive was greeted with a storm of protest from European employers and some member states, led by the new UK prime minister at the time Mrs Thatcher. As a result, the adoption of the draft as EU law was blocked in the Council of Minsters (Brewster and Teague 1989).

Over the next 15 years, the original draft went through several revisions and consultation procedures until it proved acceptable to the member states in 1994 (Marginson et al 1998).

Renamed the European Works Council Directive, this piece of legislation applies to all companies with 1,000 or more workers, and with at least 150 employees in each of two or more EU member states. The Directive is a pale shadow of the original draft as the main intent is to promote voluntary agreements on information and consultation in multinational companies: individual MNCs companies were permitted to determine the shape and content of their European works council provided they secured an agreement with their employee representatives. Nevertheless, the Directive was widely seen as a significant development as it obliged multinationals to establish European Works Councils to bring together employee representatives (usually trade unionists) from all the EU member states in which the company operates to meet with management to receive information and give their views on current strategies and decisions affecting the enterprise and its workforce (Hyman and Gumbrell-McCormick 2010).

Estimates suggest that of the 2,264 companies covered by the legislation, some 828 (34%) have EWCs in operation. A number of studies have been completed on how EWCs have operated in practice in relation to UK multinationals (Müller et al 2013). The consensus view seems to be that most EWCs are only 'symbolic' in nature (Eurofound 2013*).* The trend is for management and employee representatives to meet once a year, with management providing a comprehensive overview of the current state of play in the multinationals. A common complaint of employee representatives is that consultation rarely occurs in time to affect business decisions, and at best only manner in which transnational business decisions are implemented can be influenced (Waddington 2011). In relation to UK multinationals no EWC is considered to have launched any meaningful initiative. No EWC has been recorded as concluding a collective agreement on pay. A few have concluded some type of protocol or agreement on a particular working condition such as equality and health and safety, but these for the most part are insubstantial (Jagodzinski 2015). Perhaps, the most optimistic assessment

that can be made of EWCs is that they have facilitated the development of new transnational networks between British trade unions and their counterparts in other member states and have created new institutions for management and employees to share information with employees.

While the importance of EWCs should not be overstated, Brexit nevertheless presents two main challenges with regard to how they operate. One is what will happen to EWCs that MNCs have established through UK law. On paper, the choice appears to be between a MNC legally re-constituting the EWC in another member state or using the opportunity offered by Brexit to discard the arrangement entirely. It is difficult to know in advance what option the majority of MNCs will elect to follow, but for sure it would cause uproar amongst trade unions in other member states if the EWC in which they had been participating were to be abolished due to Brexit. Some suggest that it would be an administrative nightmare if a MNC sought to reconstitute the EWC, particularly in terms of establishing the role to be played by the representatives of UK employees in the new arrangement (Gumbrell-McCormick and Hyman 2017). But it is far from certain this will be the case: MNCs have sufficient internal resources to address such potential problems without too much disruption.

The other (related) challenge is whether Brexit will lead to UK employees in subsidiaries of MNCs being excluded from EWCs. On this question, it is useful to remember that before 1998 when the UK had an opt out of some EU employment legislation, including the EWC Directive, multinationals establishing EWCs included employees in their UK subsidiaries on the basis that if they were going to establish such an arrangement it should be inclusive of all employees. Thus, it is reasonable to assume that the majority of UK employees involved in a EWC which has been legally set up in another member state will continues to participate in the arrangement after Brexit. Overall, it is likely that the involvement of UK employees in EWCs will not be

disrupted in any far reaching way when the UK finally withdraws from the EU. If for some reason UK employees and unions were to be excluded from EWCs then the already weak 'horizontal' links between trade unions in different EU member states could be diluted even further, placing even more emphasis on the TUC and big UK unions maintaining their strong input into the 'vertical' European trade union structure

Brexit and EU Employment Policy

A persistent theme of Brexiteers is that leaving the EU is the only effective way of thwarting the efforts of the Brussels bureaucracy to impose unwarranted employment rules on the UK. On this account, the European Commission is hell bent on heavily regulating the European labour market. But this is an extremely partial assessment of the current direction of EU social policy as it harks back to the 1980s and 1990s when British Conservative Governments were engaged in a near permanent confrontation with the EU Commission (and other member states) on such things as the EU Social Charter. It takes little or no account of how the traditional EU social policy agenda of developing employment regulation on the one hand and promoting social dialogue initiatives on the other hand has been substantially revised since the early 2000s, with the Labour Government playing an active role decisive role in the shift (Coulter 2014). The Labour Government wanted EU social policy to focus less on workers' rights and more on wider employment policy, particularly in the context of promoting the competitiveness of the European economy. Indicative of its approach was a pronouncement by Peter Mandelson, the then Secretary of State for Trade and Industry, on the eve of the 2001 TUC Congress that he intended blocking a proposed EU Directive which would force all companies employing more than 20 people to "inform and consult" their workers about major decisions affecting them, arguing that the EU should not be seen as a back-door means of winning rights through Europe upon which the UK Government was not willing to legislate Other British

Government ministers toured member states trumpeting the virtues of the British model of labour market flexibility, portraying the workers' rights agenda as part of 'Old Europe'. But the key point is that at the turn of the millennium the UK government was setting the agenda for EU social policy agenda, not having to ward off unwarranted attempts by the EU Commission to impose employment regulation of the country.

The first result of this policy shift was the European employment strategy (EES), first emerging in what was known as the Luxembourg process in 1998 and then more emphatically as the Lisbon strategy in 2001. The emphasis of the EES was very much on policy coordination across the member states on four key themes, employability, entrepreneurship, adaptability and equality. At the centre of this effort was the open method of coordination (OMC), which required each member state to submit a national action plan (NAP) on how they intended realizing the four policy priorities of the EES. These NAPs were then reviewed by the Commission to benchmark performance across the member states and to identify best practice. The intention of the OMC was to establish cycles of information exchange and forums for policy debate in the hope that policy convergence could be secure across the institutionally diverse labour markets of the member states. Supporters of this process enthused that Europe was beginning to learn from Europe (Zeitlin and Sabel 2010).

Overall, the literature on the OMC process is less sanguine. One view is that it has led to little meaningful policy coordination or innovation as most member states assigned low priority to the development of national action plans. As a result, the OMC was seen as lacking focus and giving rise to a multiplicity of targets that were never properly implemented (Keune and Serrano 2006). In the early mid-late 200s the European Commission in its efforts to upgrade its employment strategy encouraged member states to learn from each other on the theme of flexicurity – an employment policy invented in Denmark and the Netherlands that combined

the flexible use of labour with economic security for workers. However, the European Commission adopted an *á la carte* definition of the concept, which opened the way for member states to adopt the flexibility aspects of the policy and discard the security components. Thus, the EU flexicurity agenda threatened to mimic straightforward labour market flexibility programmes of some member states, thereby weakening standard employment contracts so that these would confer fewer social rights and offer less employment protection (Keune and Jepsen 2014).

In what was tacit acceptance of these criticisms, the Lisbon strategy was revised and relaunched. The main changes introduced were a sharper focus on job creation, poverty reduction and social exclusion and the introduction of a new 'bilateral in-depth dialogue' between the Commission and member states on a national action programme to complement the iterative benchmarking OMC process (European Commission 2005). This new strategy was getting into full swing when the economic crisis started. Although the impact of the crisis varied significantly across the member states, it had far reaching implications for EU economic and social policy-making, particularly for the Euroland. In Brussels, one of the lessons to be taken from the crisis was that there needed to be greater EU-level surveillance of macro-economic policies of the member-states to ensure the survival of the Euro and to create a stable European economy in the future. But as the UK was outside the Eurozone it remained untouched by these efforts at macro-economic level surveillance.

Thus, UK Governments since the late 1990s have been instrumental in orchestrating the radical reshaping of EU social policy away from employment rights and social dialogue towards wider employment policy. It is doubtful whether Whitehall has been much influenced by EU efforts at promoting a more coordinated pan-European approach to employment policy. Certainly the new employment policy agenda unfolding in Brussels paralleled the agenda being adopted in London, but minimal resources have been allocated to engaging in a meaningful cross-member

state benchmarking exercise on employment policy. But the really important point is that far from being under the tutelage of the so-called Brussels bureaucracy to regulate heavily the UK labour market, successive UK Governments have enjoyed the freedom to maintain and advance labour market flexibility domestically. The massive growth in the UK of zero-hours employment contacts, self-employment, part-time and temporary has not been constrained by EU social policy.

Conclusions

During and after the Referendum the view that seemed to have held sway was that the freedom of the UK government to pursue the employment model of its choosing was being heavily constrained by EU-inspired labour market regulations. A quite contrasting perspective is developed in this paper. It is argued that the EU's institutional influences on the UK labour market has been uneven to the extent that it has not seriously impeded any UK government from pursuing its own domestic employment policy agenda. To some extent this argument should not be surprising as EU social policy cannot be seen as an integrated institutional structure that comprehensively governs the European labour market. For sure, the character of some UK employment legislation, particularly in the area of individual employment rights, has been shaped by EU Directive and ECJ rulings. At the same time, it is likely that the enactment of a lot of these individual employment rights would have occurred in any event if UK were outside the EU – witness the growth of individual employment rights regime in other Anglo-American countries. Moreover, there are large areas where EU employment legislation has virtually no influence, wage-setting, trade union rights, laws governing strikes for example.

EU influences on day-to-day collective bargaining in the UK has been marginal so it is hard to envisage how Brexit will provide new found freedom in this area. Yet, the EU has had an important 'socializing' effect on British trade unions; interactions in the European integration

process have had an 'internalizing' effect on British trade unions as predicted by Deutsch (1953) so many years ago. These have contributed to the changed outlook and behaviour of British trade unions – the move away from voluntarism and the greater acceptance of legal regulation, in particular. Europeanization was of a piece of the wider modernization of British trade unions and as a result Brexit is likely to have an impact on British trade union identity. These socializing effects are likely to be as significant as any institutional effects of Brexit on UK employment relations.

Ending participation in the EU's free movement of labour regime is likely to be the biggest impact Brexit has on the UK labour market. For more than a decade, the UK employment model of generating precarious employment in low wage business sectors would not have been possible without employers having access to abundant numbers of cheap labour from other EU member states. Brexit puts this employment model in jeopardy and as the paper highlights rescuing the situation creates huge policy challenges for this Conservative Government. The potential for massive economic and political instability is high. The outcome from this kind of turbulence is hard to predict in advance. It could pave the way to the election of a Corbyn-led Labour Government on the promise to enact radical economic and social measures. Even a left-wing Government will find the social and economic challenges thrown up by Brexit such is the engrained nature of the UK employment model. However, a Corbyn government is far from assured and the triumph of a right-wing Conservative Government cannot be discounted. Under this scenario, a decisive shift to the 'Singapore' option of large scale labour market deregulation is a real possibility. Ironically, continuing with free of movement of labour, the thing portrayed by Brexiteers during the referendum as the country's nadir, could prevent the UK sliding into massive economic and social disruption.

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Figure 1: Migration Flows in and out of the UK

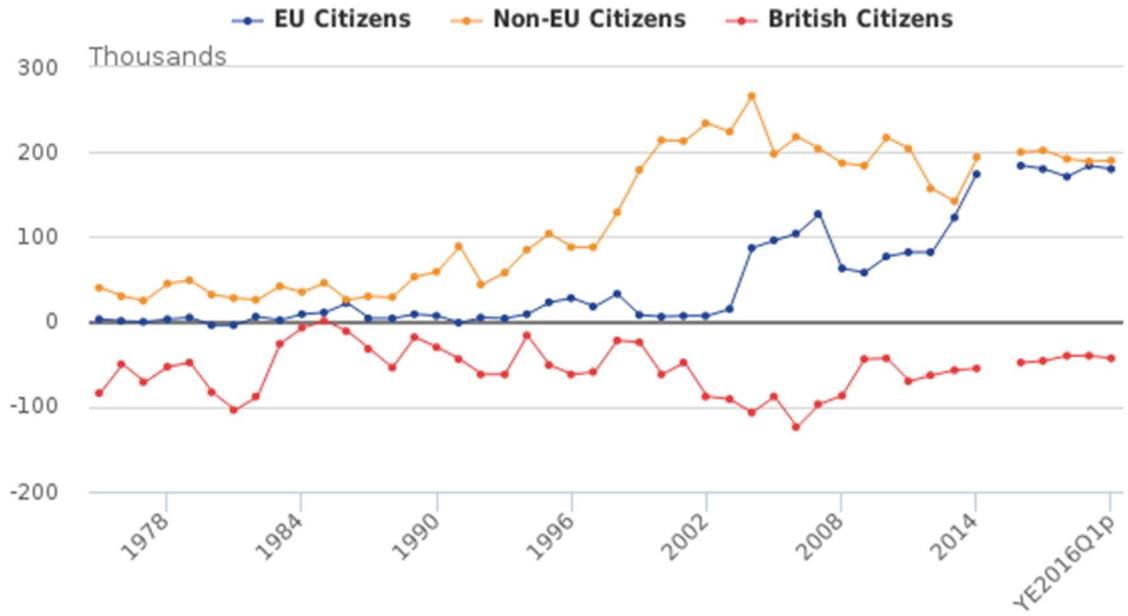

Table 1: EU Employment Directives

Directive	Summary of Directive
Information on Individual Employment Conditions Directive (Directive 91/533)	Employers must notify new employees of essential aspects of employment contract within two months of starting.
Collective Redundancies Directive (Directive 98/59). Repealed Directives 75/129and 92/56.	Employers making 20+redundancies must inform and consult employee representatives, and notify Government authorities.
Transfer of Undertakings or Acquired Rights (Directive 2001/23: Repealed Directives 77/187 and 98/50.)	Protects employees where their employer changes as a result of a transfer of the undertaking or business in which they work. Employees automatically transfer to the new employer; terms and conditions of employment must be maintained; employees may not be dismissed on the grounds of the transfer itself; employee reps must be informed and consulted.
European Works Councils (Directive 2009/38)	Employers with 1000+ employees in the European Economic Area to set up a European Works Council on request, to inform and consult employee representatives about "transnational issues".
Information and Consultation of Employees (Directive 2002/14)	Employers with 50+ employees to set up arrangements for informing and consulting employees or their representatives about the business
Equal Opportunities and Treatment of Men and Women Directive ("recast") (Directive 2006/54).	Prohibits discrimination on grounds of sex with regard to pay, social security schemes, recruitment, employment and working conditions, promotion, dismissal and training. Also gives the right to return to the

	same or an equivalent job after maternity leave.
Equal treatment irrespective of racial or ethnic origin Council (Directive 2000/43)	Prohibits discrimination on grounds of race or ethnic origin with regard to recruitment, employment and working conditions, promotion, training, pay, dismissal, social protection and more
Framework for equal treatment in employment and occupation (Directive 2000/78)	Prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation with regard to recruitment, employment and working conditions, promotion, training, pay, and dismissal. Also requires employers to make reasonable accommodation for disabled employees unless it would impose a disproportionate burden on the employer.
Parental Leave (Directive 2010/18)	A right to 4 months' unpaid time off for each parent of a child aged up to 8 (actual age to be determined by each Member States – UK says 5, to be extended to 18). A right to unpaid time off for urgent family reasons in cases of sickness or accident. A right to return to the same or an equivalent job, and to request changes to working hours or patterns.
Part Time Work (Directive 97/81)	Prohibits less favourable treatment of part-time workers compared to fulltime workers. Requires employers to consider requests to transfer from part-time to full-time work and vice versa, to give all workers information on part- and full-time job opportunities, and to facilitate part-time workers' access to training
Fixed Term Work (Directive 99/70)	Prohibits less favourable treatment of fixed-term workers compared to permanent workers. Restricts the use of successive fixed-term contracts. Requires employers to give fixed-term workers information on

	permanent job opportunities and access to training
Temporary agency workers (Directive 2008/104)	Requires equal treatment of agency workers in respect of pay, working time and annual leave, plus access to collective facilities and permanent job opportunities at the hirer.
Posting of Workers (Directive 96/71)	Minimum terms and conditions laid down by law must apply to employees temporarily posted from another Member State. Applies Legislation on relevant employment rights (for example working time, paid annual leave, minimum pay, health & safety)
Pregnant Workers (Directive 92/85)	Protects women who are pregnant, have recently given birth or are breast-feeding – at least 14 weeks' maternity leave (paid at least at sick pay rates), a right to paid time off to attend ante-natal examinations, a prohibition on night work, protection against discriminatory dismissal, and protection against health and safety risks.
Working Time (Directive 2003/88).	Regulates working hours, night work, rest breaks and annual leave.