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UK: Employment law reviewed binned

UK Business Secretary Kwasi Kwarteng has said that a review into how EU employment rights protections could be changed after Brexit has been dropped.

The review had been widely reported in the press, with the *Financial Times* saying that aspects of the UK's working time legislation such as the inclusion of overtime earnings in holiday pay and the need to record daily working time were to be scrapped.

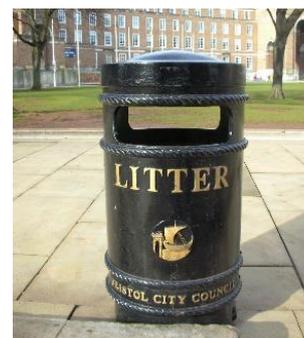
In an interview with ITV, Kwarteng said:

"The review is no longer happening within the Department for Business, Energy and Industrial Strategy (BEIS). I made it very very clear to officials in the department that we're not interested in watering down workers' rights."

He added:

"I can't have been more clear about this on a number of occasions. I've said repeatedly that Brexit gives us the opportunity to have higher standards and a higher growth economy and that's what officials in the department are 100% focused on."

So, no immediate changes in labour and employment law in the UK as a result of Brexit. It remains to be seen what happens in the longer-term.



EU: MEPs want action on Supply Chains



MEPs on the European Parliament's legal affairs committee have called on the European Commission to urgently propose a new law that holds companies accountable for human rights or environmental abuses that happen across their supply chains.

"Now is the right time to set the gold standard for doing business," said MEP Lara Wolters from the Socialists and Democrats. "In the EU we buy clothes, food and phones in the knowledge that they are safe to use, but we do not know if they were produced without any harm to the environment or human rights."

MEPs believe that that voluntary, corporate social responsibility (CSR) schemes are insufficient. They want all companies operating in the EU internal market, including those established outside the EU, to identify and solve potential issues that can violate human rights (such as trade union and labour rights) or contribute to climate change across their whole value chain - while providing access to legal remedies for victims. They also want a ban on all imports linked to severe human rights violations - such as forced or child labour.

The [report](#), which was approved on Wednesday (27 January) with strong cross-party support, will be voted on in the March plenary.

BusinessEurope, the EU's leading employers' organisation, is uncomfortable with what is being demanded by the legal affairs committee. In [a letter](#), they argue that "it is impossible to manage all the risks related to a company's business relationship along the whole value chain".

The letter also points out that many of the concepts being put forward in the report, such as "adverse impact" are legally vague and open to multiple interpretations. It further argues that multinational companies cannot be expected to do the job of government. At best, they can be supportive of governments.

The commission is expected to put forward a legislative proposal on corporate, supply-chain due diligence later this year.

In next week's issue we will look at how the trade unions are positioning themselves on this issue.

MEANWHILE, in the UK Dame Sara Thornton, the independent anti-slavery commissioner, says firms should be named and shamed if slavery or criminal labour exploitation is uncovered at any stage in their supply chain.

Dame Sara and Matthew Taylor, former director of the UK's labour market enforcement strategy, have called for legislation that would enable the exposure of British businesses that benefit from exploitation of the vulnerable. They argue that identifying such companies would serve as a deterrent and say issues should be made public even if the firms in question were unaware of mistreatment.



This, they say, would drive companies to ensure they monitor practices at every stage of the supply chain. Dame Sara said: "The upcoming Employment Bill provides a timely opportunity for parliament to consider how to incentivise business to do the right thing."

France: Man held for shooting HR personnel dead



A man held for the murders of a job centre adviser and a human resources manager in south-eastern France is being linked to earlier attacks on HR managers elsewhere. All the victims of the suspect, Gabriel Fortin an unemployed engineer from Nancy, worked in similar roles and were linked to former positions he had held or to his search for employment.

[Yahoo News](#) reports that the killings are held by some observers to be indicative of underlying tensions in French workplaces, "whereby union representatives confront HR bosses in an atmosphere of frequent job cuts, company reforms and forced redundancy packages."

Our deepest sympathies go to the family and friends of our dead HR colleagues.

Spain: 4-day work week to be trialled



Spain is planning to trial a four-day week in response to the Covid pandemic in a move to help keep millions of people employed. Under plans backed by the country's finance ministry, firms who cut their week to 32 hours with no loss of pay will get financial backing from the government. The pilot, which is set to cost the country €50million (£44million), could be rolled out further if successful.

Íñigo Errejón, the leader of, Más País, said that the country's finance ministry had accepted the plan. Critics said the eight-hour working day was unrealistic a century ago," he argued, responding to arguments that the plan was unrealistic. Maria Alvarez, a businesswoman and founder of the *4 Day Week Campaign* in Spain, said the pilot represented "a sensible idea that should be in every government's toolbox coming out of this crisis. What this pilot reveals is that the four-day week has never been a moon-shot. Quite the opposite," she said.

Joe Ryle, a campaigner with the 4 Day Week UK Campaign, said: "This could pave the way for Spain to become the first country in the world to move towards a four-day working week. We know from history that shorter working hours are the best way of spreading existing work more equally across the economy in times of economic recession and crisis. The UK government and the rest of the world should learn from the Spanish example and embrace shorter working hours in response to the Covid pandemic."

UK based think-tank Autonomy drew up a [roadmap](#) on how Britain could shift to shorter week to protect jobs last year.

Schrems II: EU Parl motion urges SCC action, warns on UK & US Adequacy



[Derek Mooney writes:](#) Today Thursday (Fri Feb 4th) the European Parliament's LIBE (Civil Liberties & Justice) Committee is due to consider a [draft resolution](#) on the European Court of Justice's Schrems II ruling. The motion is in the name of Spanish socialist MEP, Juan Fernando López Aguilar.

The resolution describes the ruling as having significant implications for adequacy decisions concerning third countries. It has 21 specific points across a number of key areas, including: *Standard Contractual Clauses, Privacy Shield, Mass Surveillance, Legal Framework* and *Adequacy*

Decisions. It is **critical** of the Irish Data Protection Commission, expressing “concern” that the IDPC has yet to make final determinations in the original Facebook complaints.

On SCCs, the Resolution urges the EU Commission to “publish further guidance on international data transfers for companies, in particular for SMEs, including on the additional safeguards required for transfers using SCCs”.

On adequacy, the Resolution encourages the Commission to continue monitoring the use of mass surveillance technologies in the United Kingdom and suggests that further movement will be needed from the US to restore the Privacy Shield arrangement saying that, in its opinion, neither “the California Consumer Privacy Act (CCPA) in the US nor any of the federal proposals so far meet the requirements of the GDPR for an adequate level of protection”.

Covid-19: How and where to work Guide for International Employers

IUS Laboris has produced a detailed and comprehensive new guide. They say:

COVID-19 is not going away any time soon, but there is now hope in the form of vaccination. We take a look at how this changes the picture and look at whether you can mandate testing for coronavirus or require vaccination, how to handle a refusal or inability for someone to be vaccinated -and in all this, what data privacy issues arise.



We also think about the growing questions around remote working and take a special look at what an employer’s responsibilities are if, for example, someone works from another country. This can potentially throw up a raft of issues, including tax, social security, immigration, local employment law, data privacy, health and safety measures—and even the possibility of inadvertently creating a permanent establishment for the business in the country concerned, with all the hurdles and liabilities that could lead to.

The guide can be download from the Ius Laboris website [here](#).

EWCs: Can UK experts still be involved?



As we reported in last week’s issue of the BEERG newsletter, the EU Commission has now confirmed that its [notice](#) to stakeholders of April 2020 still stands, and EWCs can no longer be legally based in the UK and UK employees do not now have the legal right to be represented on EWCs, though they can participate if management and SNB/EWC members so agree.

In the UK, TICER (*Transnational Information and Consultation of Employees Regulations*), which governed the operation of EWCs that were based under UK law, is still on the statute books although in a very significantly amended form since 1 January 2021. TICER primarily continues to protect the rights of UK representatives who are still involved in EWCs because the terms of EWC agreements allow for this, or because management and the EWC members are both happy to allow their continued involvement at least for now.

There are currently a number of cases before the CAC in the UK which may lead to decisions on how some of the newly amended provisions of *TICER* are to be interpreted. In particular, the CAC may have to decide on the idea of “UK law EWCs” and whether UK employees can force their way onto “EU law EWCs”. But as is the way with all national laws, the scope and reach of *TICER* stops at the newly created UK border with the EU and so it is difficult to see how *TICER* could impose obligations on any employers situated in EU Member States, such as to allow UK attendees on “EU law EWCs” or to release EU employees to attend “UK law EWCs”, when the EU now describes the UK as a “third country”.

Any decisions that the CAC come to that do arrive at those conclusions are appealable to the Employment Appeal Tribunal (EAT) and, in addition, the UK government might take an interest and even apply to intervene in the proceedings.

An unsettled question

One unsettled issue arising from the legal exclusion of the UK from the scope of the EWC Directive touches on the continued involvement of UK-based advisors as “experts” to EU law EWCs or SNBs.

Some of these experts have been involved with EWCs for a considerable period of time and have been helpful to their successful operations. Naturally, the ending of their involvement would be a wrench and could be unsettling for both EWC members and management.

In the longer-term, EWCs will stop using UK-based experts for the simple reason that it makes no sense for European Work Councils to be advised by people from a country, the UK, that has actually left the EU and is now outside the framework of EU law. “We left the EU because we did not like being subject to EU law, but we are here to tell you what EU law means for you, the members of the EWC” will not be a great sales pitch in the future. “We outsiders know better than you insiders” never works well.

But, for now, no matter how much members of the EWC and management might like to keep long-standing UK experts, is it legal to do so? While it is for EWCs (and SNBs) to decide on experts of their own choice, it is management who must pay the costs involved and, therefore, to be certain that the experts they are paying are legally engaged.

Brexit, by design, ended freedom of movement between the UK and the EU. It was one of the critical drivers of Brexit. It is no longer possible for UK citizens to simply move to, and work in, the EU (although see below on special rules for living and working in Ireland). Permission to work across the new UK/EU border is required. This also holds true for EU citizens who wish to live and work in the UK.

The terms and conditions under which professional service providers from the UK can now sell or provide services into the EU are set out in Annex Sevrin-4 *Contractual Service Suppliers and Independent Professionals* of the EU/UK Trade and Cooperation Agreement (TCA).

There is a list of services that can be provided on a short-term basis without the need for visas and work permits, though even here there are specific country reservations. If a service is not on the list, then UK service providers are excluded from freely selling that service into the EU and will require visas and work permits from individual EU Member States on whatever terms and conditions individual Member States set out.

“Employee relations advice” is not one of the listed services that can be freely provided, and it is doubtful if EWC expertise can be squeezed under the heading “management consulting”, which is allowed.

Therefore, it seems to us, that UK EWC experts, whether paid or unpaid, would have legal difficulties providing services to EWCs at this time.

Paid experts would need the appropriate visa and work permit paperwork from the country in which the EWC was meeting. Generally, such paperwork requires a sponsor in the host country. If the expert is



appointed by the EWC would the EWC have the legal standing in the host country to act as the sponsor? Even if the EWC had legal standing how long would it take for such paperwork to come through, especially if an “exceptional circumstances” meeting had to be held at short notice.

If the EWC does not have legal standing, would an obligation fall on management to act as the sponsor?

In business, consultants or experts generally do not work for nothing. They would soon go bankrupt if they did. But trade union officials will often act as EWC experts without their unions seeking to recoup the costs of their time from the “client”, the EWC, as funded by management. EWC involvement is seen as part of the wider services that unions provide to their members.

Under the TCA, and the laws of individual EU member states, are UK-based trade unions entitled to send their paid officials to work in EU member states? Could it be argued that in so doing they are displacing EU citizens from potential fee earning positions? Can the subscriptions which members pay to unions in the UK be used to fund work by UK union officials in EU member states? Why should trade unions from a “third country” have any role in internal EU matters?

It is more than understandable that UK unions would want continuing involvement with the EWCs of British headquartered companies in which they might have significant membership. But just because you want to do something does not mean you can do it where Brexit is concerned.

Scottish fishermen still want to be able to send their fish to European markets within hours while it is fresh. But they cannot because Brexit means borders and people, services and goods all need permission to cross borders.

There are no carve-outs for trade unions in the TCA.

The Irish Question



In thinking through all of this, one complication needs to be taken into consideration. There is a “Common Travel Area” (CTA) between Ireland and the UK (which consists of Great Britain and Northern Ireland). The CTA stretches back to the 1920s and allows Irish and UK citizens to freely live and work in each other’s respective jurisdictions. It is a “mini freedom of movement” space and separate from the right for many people in Northern Ireland to Irish citizenships if that’s their wish. Note that this only holds good for Irish and UK citizens. EU citizens living in Ireland do not have “freedom of movement” to Northern Ireland or the UK.

Therefore, there is no legal obstacle to a UK-based EWC expert working with an EWC if the meetings are held in Ireland. But just because an EWC agreement is based on Irish law does not mean that there is an obligation to hold meetings in Ireland. Just as there was never any obligation to have UK-based EWCs have their meetings in the UK. How many meetings took place in Brussels, Amsterdam, Rome, Barcelona and elsewhere? EWCs members pushed for meetings to be held anywhere but in a rain-soaked UK location. A glass of wine on a terrace on La Rambla in Barcelona was always to be preferred to a beer in a pub in Birmingham.

So, if an Irish-based EWC holds its meeting in Barcelona, then the “mini freedom of movement” of the CTA that would hold good if the meeting was held in Dublin does not apply. Spain is not covered by the CTA. A UK-based EWC expert can work in Dublin, but not in Barcelona.

What happens if the EWC nominates a UK-based expert, but management says that it cannot pay funds to an expert working in a way that would be illegal? Normally an EWC dispute is referred to a labour court or tribunal but, in this case, an EWC’s case would amount to it asking for the labour court or tribunal to interpret provisions of the TCA. Such a case would be very complex and take time. In the meantime, the EWC meetings would have come and gone.

The continued involvement of UK experts in EWCs is an extremely minor matter in the wider scheme of things. It pales into complete insignificance compared to the great many very real problems Brexit has created. But for some individual businesses it may create problems in the here and now.

Brexit: More questions than answers.

Announcement: Oxford Centre for Technology and Development

Our friend and colleague, Dr Emre Eren Korkmaz, tell us that he has

...founded the Oxford Centre for Technology and Development (OCTD) Ltd in July 2020 with the support of the University's Innovation Centre to help powerful agents of change like governments and corporations take advantage of emerging technologies in a way that would drive impact without sacrificing sustainable futures.



I've applied my 5 years of expertise in research and consultancy to help clients like Facebook, EBRD (European Bank of Reconstruction and Development), the UK Home Office, IPSOS and Red Cross to reimagine their business models, information-gathering practices and drive access to their products and services.

Now six months since its inception, OCTD is leading nine projects and bringing together the bright minds of over 30 researchers from Oxford to address client needs with creative, diverse, and rigorously informed perspectives. Benefitting from the University of Oxford's academics and networks, OCTD conducts research projects, prepares reports, provides training, convenes events and organizes pilot projects across the world. To-date our geographic coverage includes UK, Turkey, Kenya, Afghanistan and Uzbekistan.

OCTD “would be delighted to support BEERG's corporate members through preparing country reports, industry evaluations, industrial relations analysis; conduct research and any social responsibility-related project.”

For more information www.octd.co.uk and info@octd.co.uk

BEERG Bytes: BEERG Bytes available as Podcasts plus workshop videocasts



You can find the latest **BEERG Bytes** at www.beerg.com/beergbytes/. We plan post at least one new Beerg Byte per month. They are also available to download as Podcasts – search for “BEERG Bytes” via your favourite Podcast platform.

You can also find video presentations from the BEERG/C'M'S'/HR Policy workshop at www.beerg.com/call-notes. The videos are password protected; you can get a password by emailing HERE. The Workshop was co-hosted with [Dr Gerlind Wiskirchen](#) of C'M'S-HS in Germany.

BEERG Events in 2021:

Over the coming weeks we will consult with members on the advisability of BEERG hosting a limited number of physical/hybrid meetings later in the year (Q3 or Q4).

We will also discuss what protocols we should have in place regarding attendance any at such events.

For the moment, and up to the end of August 2021, BEERG meetings and events will be online.

TBC BEERG 2021 Dates for your Diary:

Date	Event	Venue
TBA	BEERG Members' Network Meeting [Oct]	TBC
TBA	BEERG Training Programme [Oct]	TBC