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Editorial: Clear warning of threats to equality rights

If one message is clear from Rachel Crasnow QC's description of the processes required to disentangle the UK from the EU's legal framework, it is that there are no guarantees for the protection for workers' rights post-Brexit. The repeal of the European Communities Act 1972 will remove the EU's guaranteed protection of minimum workers' and equality rights. In the future, these rights will depend wholly on domestic law.

While rights which have entered into effect through primary legislation such as the Equality Act 2010 can only be modified through new primary legislation, those which have come into effect via secondary legislation (such as rights for part-time or agency workers, or to parental leave, as well as health and safety regulations contained in the Working Time Regulations) could be amended or altered, for better or worse, without the need for primary legislation.

Once we leave the EU, parliament and the Executive will legislate for the new protection and rights regime. The government's preferred Brexit route is via the Great Repeal Bill. The DLA will ensure that representations are made on behalf of members through consultation processes, but bearing in mind the government's equivocal stance on EU-derived employment rights and previous governmental approaches to 'red tape', we cannot predict what rights will be included or omitted during the legislative processes. Rachel highlights areas which may be particularly vulnerable to revision such as capping compensation for discrimination or amending family-friendly rights like maternity or shared parental leave.

The DLA has urged the government to ensure that these rights are supported and retained in their current form. Whilst many of the existing rights are far from perfect, DLA will continue to make representations for retentions and improvement of current protections from discrimination rather than their attrition.

In its response to the Women and Equalities Committee's inquiry on ensuring strong equalities legislation after EU exit, the DLA urged the government *'to make a binding commitment as part of the treaty negotiations to respect and enshrine the legal protections and provisions which are directly and indirectly associated with equality, discrimination, or the protection of workers or their health whilst at work, into UK primary legislation... signing Protocol 12 of the European Convention would be an important first step'*.¹ The DLA is also concerned about future EU developments around, for example, associative pregnancy discrimination and carers' rights, which may not benefit UK workers. One way forward would be a 'binding agreement' that developments in EU equality law and workers' rights which arise following Brexit will be applied in the UK, and will have status in the interpretation of UK statutes. This could be done either by recognising the fundamental importance of equality laws which could not be repealed without a weighted majority in parliament; or via a commitment from all the political parties to maintain protection.

Not all news from the CJEU is good however and there are some disappointing and difficult judgments and issues reported in Briefings. These include the CJEU's rejection of Mr Parry's sexual orientation and age discrimination claim following his employer's refusal to pay a survivor's pension to his gay civil partner. The SC's approach in the unsuccessful challenges to the SSWP's 'bedroom tax' benefit reductions for under-occupied social housing is also disappointing. The accepted *'manifestly without reasonable foundation'* test permits the government great latitude in justifying discriminatory laws in relation to state benefits. The interim report of the Bach Commission on *'The crisis in the justice system in England and Wales'* highlights, among other critical issues, that public legal education and legal advice services are inadequate and disjointed, and the cuts to not-for-profit legal advice centres have reduced access to justice. The government's review of the introduction of fees in the ET acknowledges a significant fall in ET claims, including workplace discrimination claims, and acknowledges evidence that the requirement to pay a fee has discouraged some people from bringing a formal ET claim. It does not however propose to reduce fees.

It is of vital importance that we continue to engage with politicians and the trade unions in the debate on not only protecting existing equality and workers' rights but developing new rights and maintaining access to justice. As the TUC has said *'UK workers should also not pay the price of voting to leave the EU in terms of reduced rights at work. The EU has played a central role in protecting working people from exploitation, combating discrimination and promoting good employment practices.'*²

The EHRC has expressed its interest in engaging with DLA members on identifying potential leading cases which will break new ground and develop equality rights. The Commission has had a good response to its initiative to provide funding for front line advice and representation for disability discrimination claims, particularly for employment related matters, and it is now focusing on attracting cases involving discrimination in access to services or education.

Equality and human rights activists must inform their political representatives of the issues and seize all opportunities to contribute to debates and collaborative working in the fight to combat discrimination and maintain and develop the tools which enable us to do so.

Geraldine Scullion

Editor

1. <http://www.discriminationlaw.org.uk/system/files/WEC+call+for+evidence+re+equalities+post-Brexit+-+DLA+response.pdf>
2. See page 6, TUC's *Working people must not pay the price for the vote to Leave; A national action plan to protect the economy, jobs and workers' rights*; June 2016