

# BREXIT – IMPLICATIONS ON LEGAL RIGHTS



Anthony Collins  
solicitors



## FOREWORD

Since the UK vote in favour of exiting the European Union on the 23rd June 2016 there has been much uncertainty across the social care sector as to what this will mean for residents, workforce, funding and development. There has been myriad speculation and concern about the immediacy within which any change will happen, and how any change might manifest. This briefing, prepared by our partners Anthony Collins Solicitors LLP, has been designed to reiterate the current legal status of the EU workforce and residents in order to provide certainty on the position today. In addition, it contains the perspective of Anthony Collins Solicitors on what they think the future might hold, thereby helpfully alerting the sector to potential changes which we might seek to work together to inform. This document is intended for information only and does not represent legal advice, and we would encourage any social care providers to use this briefing to develop their understanding, but revert to personalised legal representation in respect of individual cases and situations.

*Vic Rayner, Executive Director, National Care Forum*

## BREXIT—IMPLICATIONS ON LEGAL RIGHTS

A significant proportion of the UK's law comes from the EU, including employment rights of your workforce, rights of the people you support, and rules and regulations that govern how you conduct your services. The EU derived legislation in the UK will not change before the UK exits the EU as whilst we are a member, the UK is required to comply with EU law.

In theory, the UK government could repeal all, or some, of the laws once we exit the EU in the future. Our view is that the government is unlikely to take this step and it is therefore likely that the majority of EU law will continue to exercise a significant influence, even after Brexit. In any event, disentangling the UK from its EU commitments will be a lengthy process.

In the meantime, as a reminder we have set out below the key legislation that providers must continue to comply with. We have also provided a short commentary about what we think the future may look like in relation to the same.



---

*... alerting the sector to potential change which we might seek to work together to inform.*

---



---

*... use this briefing to develop your understanding...*

---

## EMPLOYMENT RIGHTS

STATUTORY RIGHTS AND REQUIREMENTS	DETAILS	FUTURE IMPLICATIONS
<p>Equal opportunities and the same recruitment process for EU and UK job applicants.</p>	<p>EU and UK nationals have the same rights during the employment process and should not be in any way treated differently or less favourably.</p> <p>Any job offer, regardless of the applicants nationality, should be made subject to a confirmation that the employee is free to work in the UK or has an appropriate work permit or immigration approval to work – currently all EU nationals are entitled to live and work in the UK without any restrictions.</p>	<p>If freedom of movement is not agreed following Brexit, EU nationals would no longer have the automatic right to live or work in the UK and it is likely that a new immigration system would be introduced.</p>
<p>Provisions of written particulars of employment.</p>	<p>All employees, regardless of their nationality, must be provided with the relevant paperwork within 12 weeks of commencing their employment.</p>	<p>This is unlikely to change as a result of Brexit.</p>
<p>Protection under TUPE</p>	<p>All workers, regardless of their nationality, are protected under TUPE when there is a relevant TUPE transfer.</p>	<p>This is EU derived legislation and therefore it could change after the EU exit, although we consider that to be unlikely. It is, however, possible that the government would make small changes to make the legislation more business friendly.</p>

<p>Protection from discrimination</p>	<p>All workers have the right not to be discriminated against because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation, including:</p> <ul style="list-style-type: none"> <li>• Prior to employment commencing as part of any recruitment process – in particular EU workers have the same rights as the UK workers</li> <li>• During employment – in particular the right not to be harassed or treated less favourably</li> <li>• After employment ended - for example when providing references</li> </ul>	<p>This protection is unlikely to change in the future, although provisions in relation to the recruitment of EU workers could change after the EU exit if the freedom of movement is not agreed. Further, some commentators have suggested that a cap could be imposed on discrimination compensation –similar to that for unfair dismissal. Another possibility is that the government could change the law to allow positive discrimination in favour of under-represented groups in a way that is not currently permissible under EU law.</p>
<p>Holidays and working time</p>	<p>The EU derived legislation includes:</p> <ul style="list-style-type: none"> <li>• Provision of sufficient rest breaks, as set out in the legislation</li> <li>• Accrual of statutory annual leave</li> <li>• Compliance with the night working limits</li> <li>• Compliance with 48 hour average working week</li> </ul>	<p>The right to statutory paid holiday is now well established and unlikely to change following Brexit.</p> <p>Following Brexit the government could, however, change some of the working time legislation including: the cap on maximum weekly working hours; the rights to other rest breaks; and protections for night workers.</p>
<p>Agency workers</p>	<p>The Agency Workers Regulations are complex and provide different rights and protections to all agency workers regardless of their nationality.</p>	<p>This is the most obvious legislation that could be subject to changes following Brexit, as it is considered to be to complex and unpopular with businesses. Further, it has not yet become embedded in a way that might make them politically difficult to remove.</p>

Protection from unfair dismissal	All employees, regardless of their nationality, cannot be dismissed unless there is a fair reason for the dismissal and the correct procedure is followed. Employers are entitled to dismiss if the employee does not have a right to work in the UK.	The protection from unfair dismissal is unlikely to change in the future.  If the immigration rules were to change in the future however, preventing EU national from working in the UK without a work permit, employers would be able to fairly dismiss any staff without the relevant work permit.
----------------------------------	---	--

## SOCIAL CARE – GENERAL

STATUTORY RIGHTS AND REQUIREMENTS	DETAILS	FUTURE IMPLICATIONS
Reciprocal care arrangements	Under EU rules, people who come from elsewhere in the EU to live in the UK, or who leave the UK to live in another EU country, have access to health and social care on the same basis as nationals of that country.	We consider that the government will need to negotiate arrangements with the EU following Brexit. It is anticipated that the government will either negotiate new reciprocal agreements or seek to continue existing arrangements.
The Care Act 2014 and comparable legislation in other parts of the UK	The reform of the adult social care regime was conducted outside of the EU and each part of the UK has introduced its own comprehensive regime around the duties of local authorities.	If Brexit leads to the separation of some of the UK states this may lead to issues over cross border responsibility for care, but the legislation is clear about the current obligations of commissioners for all internal and external migrants.

Regulatory oversight	There are numerous regulatory bodies which have been established independently of the EU and which will continue to prevail. Examples include CQC, ICO, the Charity Commission and the Homes and Communities Agency.	This is unlikely to change as a result of Brexit.
Human Rights Act 1998	The HRA provides individuals with numerous article human rights which can be of significant importance.	Whilst there has been much speculation on the founding and longevity of this legislation post Brexit, any change and/or repeal would involve a vote in Parliament revoking the same; exit alone will not undo this Act.

## PROCUREMENT

STATUTORY RIGHTS AND REQUIREMENTS	DETAILS	FUTURE IMPLICATIONS
Public procurement	<p>All contracting authorities must continue to abide by the EU Treaty Principles and the Public Contracts Regulations 2015 ("the Regulations"), at least until the UK finally exits the EU.</p> <p>A failure to comply may result in a challenge from unhappy tenderers, which could result in any awarded contract being set aside, the process being re-run and/or a successful claim for damages.</p>	<p>The current regulations are enshrined in UK law and so will continue to apply post exit unless and until they are changed.</p> <p>Although we do not yet know, it is anticipated that any exit terms will include continued access to the single market. To enjoy such access, similar regulations for public procurement are likely to be a requirement and therefore the regulations may not change very much or at all.</p>



## SERVICE USERS - MENTAL HEALTH AND MENTAL CAPACITY

STATUTORY RIGHTS AND REQUIREMENTS	DETAILS	FUTURE IMPLICATIONS
Mental capacity or mental health	There are various provisions, regulations and rights that providers will be fully aware of.	There are no EU regulations that affect mental capacity or mental health.

## FURTHER INFORMATION

If you would like to talk with us about issues raised in this briefing, please do get in touch .



**Anna Dabek**

Senior Associate

Tel: 0121 214 3521

Email: [anna.dabek@anthonicollins.com](mailto:anna.dabek@anthonicollins.com)