The Midas touch:
Gold-plating of EU employment directives in UK law
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By Philip Sack
This paper was written by the Institute of Directors.

The Institute of Directors (IoD) was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 38,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 70% of FTSE 100 companies and 51% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises (SMEs), ranging from long-established businesses to start-up companies. IoD members’ businesses are entrepreneurial and resolutely growth orientated. More than half export. They are at the forefront of flexible working practices and are fully committed to the skills agenda.

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Foreword

European legislation is frequently blamed for the adverse effects that it has on UK competitiveness and often rightly so. By way of example, as I write, a General Regulation on Data Protection continues to progress through the European institutions. If implemented this EU imposition could spell immeasurable damage to UK businesses.

Despite these very real concerns regarding legislation originating in the EU, far too many UK Governments have hidden their own regulatory zeal behind a ‘fig leaf’ of enforced European requirements.

Successive Governments have reached the conclusion that gold-plating of EU rules is not as bad as claimed by industry; and some administrations have even professed to having eradicated the practice altogether. However, this report’s comparison between EU Directives and their corresponding UK employment legislation shows that over-compliance is significant, common and in cases, still being added to.

The current administration has embarked on a major review of employment law and should be congratulated for making some significant changes. In the gold-plating arena, it has published Guiding Principles for the transposition of EU legislation, which require that domestic implementation in UK law does not go beyond minimum requirements.

However, recent examples show that the Government has not gone as far as it is able in removing gold-plating when it reviews and re-implements directive requirements. This issue is in part a result of the Government’s ‘One In Two Out’ (OITO) system, which offers Departments the incentive of an ‘out’ if historical gold-plating is removed, but does not penalize them if instead historical gold-plating is retained. Ultimately, the Government’s approach to historical gold-plating is one of ‘carrot’ inducements, rather than ‘stick’ penalties. The IoD would argue the lack of progress on this issue might suggest a change of tack is in order.

Separately, the Prime Minister has stated that he wishes to renegotiate the terms of the UK’s membership of the European Union, including the potential repatriation of powers in the field of employment law. The IoD believes that the argument for fewer EU regulatory burdens is in danger of being weakened with those in Brussels if the UK cannot first demonstrate it has exhausted every dispensation already extended to it. To put it differently, the Prime Minister would greatly strengthen his arguments for further regulatory dispensations if the UK Government could first demonstrate it had stripped out all unnecessary gold-plating and made full use of all existing derogations and exemptions.

The IoD is not arguing that every element of every law that goes further than required by EU rules should automatically be removed. However, the first step in addressing gold-plating is to uncover every instance of historical over-compliance. It is then up to Government to
decide whether it wishes to defend the enhanced obligations or to remove them from the statute books.

This report shows that the Government will have its work cut out if it really wishes to tackle its inheritance from past ministers who grew too comfortable with their own Midas touch.

Alexander Ehmann
Head of Regulatory Affairs
Institute of Directors
Executive summary

The Coalition Government aims to end “gold-plating” of EU legislation - the practice of adding obligations or restrictions not required by EU rules when implementing them in UK law. But it still has some considerable way to go before it can claim to have done so. In the area of employment law in particular, several examples of unnecessary gold-plating to the detriment of UK business have been enacted in the past two years, and further examples are to be added in the coming months. These include legislation on agency workers, European Works Councils, collective redundancies, parental leave and pregnant workers.

The Government’s ambitions in this area are laudable, but there is still much work to be done to change the culture of regulation in Government, including in the Department for Business, Innovation & Skills which is responsible for implementing EU employment directives in UK law.

The Government promised in 2010 to review the existing stock of legislation implementing EU legislation with a view to identifying less burdensome methods of complying with EU law and making suitable amendments to the UK legislation. We are not aware that this review has been carried out, other than in a piecemeal and limited fashion. The Government should fulfil the commitment it made in 2010 by carrying out a comprehensive review of the transposition of all EU laws, starting with employment directives, to identify all gold-plating and then either justify it, simplify it, or remove it.

It is sometimes claimed that so-called “non-regression” clauses in EU directives prevent member states from deregulating. We disagree. In fact, such clauses often specifically allow later re-implementation of the directive in the light of changing circumstances, as long as the minimum requirements are still met.
The Government’s aim to end “gold-plating”

1. “Gold-plating” of EU law means, at its simplest, national legislation going beyond the minimum requirements in the law being transposed, and therefore imposing additional costs, burdens or restrictions, usually on business. In June 2011 the Government issued new Guiding Principles for EU legislation, a key aim of which was to end gold-plating of EU rules. These included:

   (1) ensuring that the UK does not go beyond the minimum requirements of the measure which is being transposed, save in exceptional circumstances;
   (2) endeavouring to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;
   (3) always using “copy out” for transposition where it is available, except where doing so would adversely affect UK interests, for example by putting UK businesses at a competitive disadvantage compared with their European counterparts;
   (4) ensuring the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a directive, unless there are compelling reasons for earlier implementation; and
   (5) incorporating a statutory duty for ministerial review every five years.

2. A recent report by the Department for Business, Innovation & Skills (BIS) entitled Gold-plating review – the operation of the transposition principles in the Government’s Guiding Principles for EU legislation (March 2013) concluded that there had been no gold-plating to the detriment of business since July 2011 in the 88 measures enforced. It said that during this period departures from a “copy-out” approach to EU law were only used to provide legal certainty or to benefit business, that early implementation of directives had only taken place to reduce business burdens earlier, and that a ministerial review clause is included in all legislation implementing EU laws unless the law is deregulatory.

3. These claims though do not bear close scrutiny. The BIS document does not identify the 88 measures examined. However, one of the most significant pieces of employment legislation in recent years was introduced in the period covered by the report, and fails on all of the above points. The Agency Worker Regulations, which came into force on 1st October 2011, gold-plate the definition of “pay” by including elements that were not needed, such as bonuses; they expand rather than copy out key clauses in the Directive, such as the definition of “basic working and employment conditions”; they came into force 2 months earlier than required; and they do not contain a ministerial review clause. The Regulations compare unfavourably with the equivalent Irish legislation on a number of points, not least the definition of “pay”. Annex A gives further details. Although the Agency Worker Regulations were drawn up under the previous Labour Government, they did not come into force until some 18 months after the present Government came to power. During that period the Government could have reviewed what the Labour Government had drawn up and could have scaled back what was proposed. But it chose not to. Indeed, the Department for Business, Innovation & Skills - which is responsible for implementing EU
employment directives in the UK - actually made some changes to the Agency Worker Regulations in July 2011 before they came into force in October of that year, but these were only minor adjustments.

4. The Department for Business, Innovation and Skills has also gold-plated, or plans to gold-plate, other EU employment directives – those on European Works Councils, collective redundancies, parental leave and pregnant workers. It also abolished the Default Retirement Age, at great cost to business, when EU law allows countries to keep it - as many other governments have done. Annex B contains further details on all these laws.

5. The Government’s ambitions in this area are laudable. But the evidence from the transposition of employment directives since June 2011 shows that there is still considerable work to be done to change the culture of regulation in Government, amongst civil servants, government lawyers who often adopt an extremely cautious approach in their advice, and also some ministers. It is somewhat ironic that the Department for Business, Innovation & Skills, which is responsible for driving forward the deregulation agenda in Government, is also responsible for the examples of employment gold-plating cited in this report.

A review of gold-plating of EU employment directives

6. In reply to a question in the House of Lords in July 2010 asking whether the Government intended to “re-examine EU legislation on the statute book to ensure it contains no "gold plating"; and, if so, whether they intend to re-transpose any legislation", Baroness Wilcox said that a review of EU law would be part of the “one in, one out” rule for all new regulation, in order to identify regulatory savings. She said “European directives will be within the scope of these reviews, and consideration will be given to the level and methods of transposition. If less burdensome methods of complying with a directive are identified, suitable amendments to legislation will be made where appropriate.” We are not aware that such a review has been carried out, certainly not on any comprehensive basis. There has been some piecemeal and limited re-examination of a few directives. Implementation of the Collective Redundancies and the Acquired Rights (Transfer of Undertakings (TUPE)) Directives has been reviewed, with some - but not all - of the gold-plating in the corresponding UK laws removed or proposed for removal. The Government has also identified some elements of gold-plating in the Equality Act 2010 which transposes the various non-discrimination directives, and plans to remove it. But this leaves numerous other employment directives, all of which contain an element of gold-plating, for example the Working Time Directive, directives on employee information and consultation and European Works Councils (EWC), those on part-time and fixed-term workers, and the rules on information to be given to new employees.

7. We would like to see the Government fulfil the commitment made in the House of Lords in 2010, by carrying out a comprehensive review of the transposition of all EU laws,
starting with employment directives, to identify all gold-plating and then either to justify it, simplify it, or remove it.

8. This review should look at the different forms of gold-plating, including where the UK law imposes additional obligations, conditions or restrictions not required by the corresponding directive; does not make use of permitted exemptions or derogations; adds unnecessary complexity to the law; gives the UK legislation wider scope than the corresponding directive; or imposes an unnecessarily high penalty. To assist in this review, the IoD has carried out a partial analysis of EU employment directives. The findings are at Annex C with a more detailed analysis of two of the most important employment directives – on agency workers and on working time – at Annex A.

Non-regression clauses in EU employment directives

9. It has sometimes been claimed that so-called “non-regression clauses” in EU directives prevent the UK deregulating in a way that would reduce the rights of employees, and that this is a barrier to removing gold-plating from the existing stock of UK employment law. We disagree.

10. Non-regression clauses typically state that implementation of the directive in question cannot constitute valid grounds for reducing the level of protection given to workers. In our view, this means a Member State may not argue that it is forced to reduce protection given to workers as a result of implementing the directive. It does not mean that a member state is not permitted to reduce protections. In fact most non-regression clauses explicitly state that they do not prevent Member States from developing different legislative provisions, in the light of changing circumstances, as long as the minimum requirements in the directive are met.

11. Here are two examples taken from the Working Time and Agency Workers Directives;

“This without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.” (Article 23 of the Working Time Directive)

“The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This is without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the
adoption of this Directive, provided always that the minimum requirements laid down in this Directive are respected.” *(Article 9 of the Agency Workers Directive)*

12. In any event, not all employment directives contain a non-regression clause, for example the Collective Redundancies, Acquired Rights, European Works Councils and Pregnant Workers directives.

**Conclusion**

13. The Government should be applauded for its ambition to end gold-plating of EU directives, but it should also be cautious about making claims to have done so already. It should now focus its efforts in this area on carrying out a comprehensive review of gold-plating in the existing stock of EU-derived legislation, starting with employment laws, and then either justify it, simplify it, or abolish it.
Annex A

Case studies – the Temporary Agency Workers Directive and the Working Time Directive

The Temporary Agency Workers Directive (2008/104/EC). The Directive requires equal treatment of agency workers in respect of pay, working time and annual leave, equal access to collective facilities (for example childcare) and information about permanent posts at the hiring organisation. Derogations allow a qualifying period before equal pay/working time applies, non-application of the equal pay obligation to temporary workers paid by their agency between assignments, and different arrangements through collective agreements.

The UK legislation – the Agency Worker Regulations 2010 – gold-plates the directive in several ways:

1. A derogation in the directive allowed for public or publicly supported vocational training, integration or retraining programmes (Article 1.3) has not been used (whereas it has been used in the Irish legislation).

2. A broader definition of “working and employment conditions” is used than is required by the Directive (Regulation 5(2) transposing Article 3.1(f)). The Directive definition is “working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking”. The Regulations definition is: “the relevant terms and conditions that are ordinarily included in the contracts of employees of the hirer... whether by collective agreement or otherwise...” The Regulations should have copied out the Directive definition, with guidance explaining that this means, in relation to pay, the National Minimum Wage, pay fixed under a collective agreement, and binding company pay scales.

3. The definition of “pay” starts with a very wide concept (“any sums payable... in connection with the worker’s employment”) and then carves out exceptions, with several further definitions (Regulation 6 transposing Article 3.2). The result is a definition that arguably goes beyond the Directive’s requirements, and is very long and extremely complicated, especially for bonuses. Compare this with the definition of “pay” in the Irish legislation which simply states what pay includes - basic pay, shift premium, piece work, overtime, and unsocial hours or Sunday work premium – and then specifically excludes sick pay, pensions and financial participation schemes. The Irish definition is narrower than the UK definition (by excluding fees, bonuses or commission), much simpler and far shorter (73 words compared to 760).

4. There are detailed requirements for “pay between assignments” contracts that are not required by the directive (Regulations 10 and 11 transposing Article 5.2). The provisions are long and complicated. By comparison, the derogation in the Irish legislation is far shorter (160 words compared to 670) and simpler, only requiring the
agency to first notify the worker that equal pay will not apply and the temporary worker to be paid at least half what s/he was paid during their most recent assignment.

5. The Regulations do not take up the opportunity to create an **exemption for collective or workforce agreements** (Article 5.3).

6. There are **long and complex rules around the 12 week qualifying period** – almost 1000 words in the Regulations transposing 10 words in the Directive (Regulations 7 and 8 transposing Article 5.4).

7. **Information on the use of agency workers** is required whenever consulting on a collective redundancy or TUPE transfer, even if it is irrelevant – the directive says it need only be provided when providing information on the employment situation in the undertaking. It must also be provided to a UK-based European Works Council – no other continental European country requires this. The directive references the Information & Consultation directive, not the collective redundancy, acquired rights or EWC directives. (Regulation 25 and Schedule 2 transposing Article 8).

8. There are long and detailed rules on **requests by temporary workers for information from an agency or hirer** to try to ascertain whether there has been a breach of the law, which are not required by the Directive (Regulation 16).

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**The Working Time Directive (2003/88/EC).** The Directive regulates the working hours, rest breaks, and annual leave of employees as well as night and shift working. It entitles employees to daily and weekly rest periods, four weeks of paid leave a year, and prescribes a maximum working week of 48 hours subject to certain exceptions and derogations. The UK legislation – the Working Time Regulations 1998 – is long and complex and has been amended almost 20 times since first enacted. The Regulations also partly transpose a separate Directive on the protection of young people at work (Directive 94/33/EC).

1. **Record-keeping:** the Directive simply requires “up to date records” of all workers who have signed the opt out; the Regulations require records which show whether this and other limits are being complied with, and require employers to keep them for two years. This could be simplified.

2. **Additional paid leave** of up to 8 days (28 in total) is not required by the Directive (it only requires 20 days). This is something that could be left to individual employers to decide, not imposed on all.

3. **Payment in lieu and carry over of unused leave:** the Regulations restrict employers’ ability to pay in lieu of unused additional leave (“Regulation 13A leave”), in a way
that the Directive does not require. Different rules for the first 20 days of leave ("Regulation 13 leave") and the additional 8 days of leave ("Regulation 13A leave") create needless complexity.

4. **Opt-out from the 48 hour week**: the Regulations allow workers to withdraw from the opt-out on 7 days’ notice. The Directive is silent on this.

5. **Autonomous workers**: the Directive allows an exemption from the 48 hour week for workers whose working time can be determined by themselves. The Regulations replicate this provision but it is too unclear for employers to use. A possible solution would be to exempt anyone earning more than a specified amount. Dutch law adopts a simple definition which classifies any worker earning more than three times the national minimum wage, as an autonomous worker. In addition, the Netherlands and Spain define junior doctors as autonomous workers.

6. Some options in the Directive are restricted in the Regulations by requiring the agreement of trade unions or workers.

7. **Inclusion of training time and additional periods** under a “Relevant Agreement” as part of working time is not required by the Directive and also adds complexity.

8. Many apparently *simple Directive requirements are transposed in a very complex and wordy fashion*, for example pro-rated annual leave in the first year or on termination of employment. Regulation 14 uses 270 words to transpose 7 words in Article 7.2 of the directive!
Annex B

Other Government actions involving gold-plating of employment directives


The Directive gives a right to 4 months’ unpaid time off for each parent of a child aged up to 8. The maximum age of the child during which the leave can be taken is to be determined by each Member State, subject to a maximum of age 8. The UK law presently says up to age 5. In November 2012 it was announced that this age limit will be raised to 18 in 2015, bringing many more employees within scope of the leave rights.


The Directive requires larger multinational companies to set up a European Works Council at the request of employees, and gives various rights to employee representatives for information and consultation, and rights to help them carry out their role. The provision on training of employee representatives in the Directive has been transposed in such a way as, apparently, to give the representatives free choice as to the identity of the training provider, and the contents of the training, paid for by the employer. The directive allows the employer to provide the training. In addition, the fine for breaches of the law, which was already much higher than in other EU countries, was raised further from £75,000 to £100,000. By comparison, the fine under the equivalent German law is EUR 15,000. There is no fine under the Irish law. The UK law also imposes a fine in more situations than is required.


The Directive requires employers to consult with employee representatives over proposed redundancies, and to notify the redundancies to public authorities. The Government carried out a review of the UK implementation of the Directive during 2012. The review resulted in a limited degree of de-gold-plating: (1) A derogation allowed by the Directive in respect of fixed-term contracts, which had not previously been used, was included. (2) The period for consulting on larger redundancy projects was reduced from 90 days to 45. However, this period could have been reduced to 30 days, which would have simplified the legislation by using a single period for all collective redundancies. The equivalent Irish law requires 30 days for all collective redundancies. The opportunity was also missed to strip
out another element of gold-plating, whereby employers are required to consult trade unions if recognised in the workplace - the Directive gives flexibility to consult other representatives of employees.


The Directive protects women who are pregnant, have recently given birth or are breast-feeding. Amongst other things, it requires member states to give at least 14 weeks’ maternity leave, paid at least at sick pay rates. The UK legislation on maternity leave and pay has changed many times over the years, progressively giving more leave (now up to 12 months) and more pay (90% of full pay for 6 weeks, then lower statutory pay for 33 weeks). The Government’s plans for Shared Parental Leave, announced in November 2012 and due to come into force in 2015, will take the UK legislation even further beyond the EU Directive obligations, with quite complex arrangements for parents to share leave amongst themselves during the child’s first year.

5. The Default Retirement Age

Although, strictly speaking, outside the timeframe of the June 2011 transposition guidelines, the abolition of the Default Retirement Age – initiated by the Coalition Government and coming into force in October 2010 - is one of the most significant examples of gold-plating of an EU directive in recent years. The relevant Directive (2000/78/EC establishing a general framework for equal treatment in employment and occupation) allows differences of treatment on grounds of age “objectively and reasonably justified by a legitimate aim”. The European Court has confirmed on several occasions that this allows a compulsory retirement age. By abolishing the Default Retirement Age, the Government has added significantly to business costs, burdens and risks because they must now either justify their own retirement policy or “performance manage” an older worker into retirement, with the threat of an employment tribunal claim hanging over them if they get it wrong. A recent survey of UK employers found that almost half of them want a default retirement age reinstated (www.hrmagazine.co.uk 3 April 2013).
Annex C

Examples of gold-plating of EU employment directives

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<tr>
<th>Directive</th>
<th>Summary</th>
<th>UK transposition</th>
<th>Gold plating</th>
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<tbody>
<tr>
<td><strong>Protection of employees</strong></td>
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</table>
| Information on Individual Employment Conditions (Directive 91/533) | All employers to notify new employees of essential aspects of employment contract within 2 months. | Employment Rights Act 1996. | 1. The Directive allows exemptions for employees with a working week of 8 hours or less, and casual workers – neither category has been excluded from the UK rules.  
2. UK law requires employer to include information on:  
   - holiday pay  
   - sick leave/pay  
   - deductions from pay  
   - disciplinary and grievance procedures  
   - pensions  
   that are not required by the Directive.  
3. There are very detailed and quite lengthy requirements in the UK legislation about itemized pay statements and deductions from pay to transpose a rather simple directive obligation.  
4. There are very complex and detailed rules on use of alternative documents for giving information, and the date on which they are deemed to be given. A standard model format for all employers would be far simpler.  
5. The UK law contains a definition of what is a reasonably accessible document which seems to be unnecessary detail.  
6. The Directive allows employee complaints to be excluded if the employee is covered by a collective agreement and has not first notified their employer - UK law does not incorporate this. |
| Collective Redundancies (Directive 98/59). Repealed Directives 75/129 and 92/56. | Employers making 20+ redundancies to inform and consult employee representatives, and notify Government authorities. | Trade Union and Labour Relations (Consolidation) Act 1992. | 1. The Directive says consultation must start “in good time”, UK law stipulates at least 30 days before dismissals take effect, and 45 days where there are 100+ redundancies (reduced from 90 days in April 2013). A minimum 30 day consultation period for all redundancies would be permitted by the Directive, and would be considerably less complex (Irish law... |

<table>
<thead>
<tr>
<th>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.</th>
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<tr>
<td><strong>Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).</strong></td>
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</table>
| 1. The TUPE Regulations apply to all “service provision changes” – the Directive only applies to a restricted category of service provision changes.  
2. UK law requires trade unions to be consulted – the Directive gives flexibility to consult other representatives of employees.  
3. The Directive allows a “static” approach to the applicability of collective agreements post-transfer; the Regulations appear to take a “dynamic” approach so that changes to terms and conditions negotiated by the former employer post-transfer will be binding on the new employer.  
4. UK law imposes severe restrictions on the transferee’s ability to change or harmonise terms and conditions post-transfer. Other countries take a more relaxed approach, for example France.  
5. The directive allows collective agreements to apply for no more than 12 months post-transfer, but the Regulations do not use this option. |

### Employee consultation

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<tr>
<th>European Works Councils (Directive 2009/38)</th>
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<tr>
<td>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”.</td>
</tr>
<tr>
<td><strong>Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323), amended 2010.</strong></td>
</tr>
</tbody>
</table>
| 1. The provision on training of employee reps in the directive has been transposed in such a way as apparently to give the representatives free choice as to training provider, paid by the employer. The Directive allows the employer to provide the training.  
2. The fine (up to £100,000) is very high compared with other Member States (for example Germany EUR15,000, Ireland zero). It is also imposed in more situations than is necessary.  
3. Non-implementation of specific wording in the Directive leaves it unclear whether pre-existing agreements under the UK Regulations can subsequently be amended. |
| 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. | Information and Consultation (I&C) of Employees Regulations 2004 (SI 2004/3426) amended by SI 2006/514 | 1. Directive does not specify any timescale for reaching an I&C agreement; I&C Regulations stipulates 6 months.  
2. Sanction in I&C Regulations for failing to start negotiations is application of “fallback” rules – Directive allows more flexibility.  
3. I&C Regulations require all employee representatives to sign an I&C agreement – Directive is silent on this.  
4. Penalty of £75k is considerably higher than in other countries. |
| --- | --- | --- | --- |

**Equality and non-discrimination**

| Equal opportunities and equal treatment of men and women (“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. | **Equality Act 2010** | 1. Directive does not require compensation for injury to feelings.  
3. Directive allows employer to offer an equivalent job, rather than keep actual job open - UK law requires employer to keep job open for 6 months, and only allows an equivalent job after 6 months. |
| --- | --- | --- | --- |

| 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. | **Equality Act 2010** | 1. Directive does not require compensation for injury to feelings.  
2. UK law applies to discrimination on grounds of nationality, the Directive does not. |
| --- | --- | --- | --- |

| 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 | **Equality Act 2010** | 1. Directive does not require compensation for injury to feelings.  
2. The Equality Act requires employer to make “reasonable adjustments” to prevent substantial disadvantage to disabled employees or prospective employees - there is no reference to disproportionate burdens. |
<p>| Parental leave | 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. | Parental leave - Maternity and Parental Leave Regulations 1999 (SI 1999/3312) as amended. Time off for dependents – Employment Rights Act 1996. | UK law gives a right to two weeks’ paid paternity leave, in addition to unpaid parental leave. Regulations implementing 2010 changes to the directive will allow leave to be taken until the child is 18. |
| Part Time Work (Directive 97/81) Extended to UK by Directive 98/23 | Prohibits less favourable treatment of part-time workers compared to full-time 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. | Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551). | 1. UK law does not take advantage of exemption in Directive for casual work. 2. An obligation on employers to respond to a complaint from a part-time worker within 21 days (not required by the Directive). |</p>
<table>
<thead>
<tr>
<th>Temporary agency workers (Directive 2008/104)</th>
<th>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. Derogations allow a qualifying period before equal pay/working time applies, and non-application to temporary workers paid by their agency between assignments.</th>
<th>Agency Worker Regulations 2010 (SI 2010/93) amended by SI 2011/1941</th>
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<tr>
<td>1. Derogation allowed for public or publicly supported vocational training, integration or retraining programmes not used.</td>
<td>2. A broader definition of “working and employment conditions” is used than is required by the Directive. It could have been limited to the National Minimum Wage, pay fixed under a collective agreement, and binding company pay scales (plus the equivalent for working time/annual leave) . 3. The definition of “pay” starts with a very wide concept (“any sums payable .. in connection with the worker’s employment”) and then carves out exceptions, with further definitions for different elements of it. The result is a definition that arguably goes beyond the Directive’s requirements, and is very long and extremely complicated, especially for bonuses. 4. The requirements for “pay between assignments” contracts are not required by the Directive. The provisions are long and complicated. 5. The Regulations did not take up the opportunity to create an exemption for collective/workforce agreements. 6. Long and complex rules around the 12 week qualifying period. 7. Info on the use of agency workers is required whenever consulting on a collective redundancy or TUPE transfer, even if it is irrelevant. This goes further than the Directive requires. It must also be provided to a UK-based European Works Council – no other continental European country requires this. 8. Long and detailed rules on requests by temps for information from an agency or hirer are not required by the Directive.</td>
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<th>Mobility of employees</th>
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<tr>
<td><strong>Posting of Workers (Directive 96/71)</strong></td>
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<td>to working time, paid annual leave, minimum pay, health &amp; safety, protection of pregnant women, new mothers and children, and non-discrimination.</td>
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**Selected Health & Safety Directives**

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<td>1. UK law allows women to resign as late as the day they are due to return from maternity leave, making it very difficult for employers to plan ahead - the Directive says nothing on this, so the law could be tightened up.</td>
<td>2. Women who have worked for their employer for 6 months are eligible for maternity pay (the Directive allows a 12 month qualification period).</td>
<td>3. UK law gives one year maternity leave, of which the first 9 months are paid, including the first 6 weeks on 90% of full pay.</td>
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<td>4. UK law extends rights to adoptive parents. EU law does not require this.</td>
<td>5. New rules on shared parental leave to be introduced in 2014 represent further major gold-plating of the directive.</td>
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</table>
| Working Time (Directive 2003/88). | Regulates working hours, night work, rest breaks and annual leave. | Working Time Regulations 1998 (SI 1998/1833) as amended. | 1. Record-keeping: Directive simply requires “up to date records” of all workers who have signed the opt out; the Working Time Regulations require records which show whether this and other limits are being complied with, and to keep them for 2 years. This could be simplified.  
2. Additional paid leave of up to a further 8 days (28 in total) is not required by the Directive (which only requires 20 days).  
3. Payment in lieu and carrying over unused leave: the Working Time Regulations restrict employers’ ability to pay in lieu of unused additional (Reg 13A) leave, in a way that the Directive does not require. Different rules for the first 20 days of leave (Reg 13 leave) and the additional 8 days of leave (Reg 13A leave) create complexity.  
4. Opt out from 48 hour week: The Working Time Regulations allow workers to withdraw from the opt-out on 7 days’ notice; Directive is silent on this.  
5. Autonomous workers: Directive allows an exemption from 48 hour week for workers whose working time can be determined by themselves; the Regulations replicate this provision but it is too unclear for employers to use; a possible solution would be to exempt anyone earning more than a specified amount. Dutch law adopts a simple definition which classifies any worker earning more than three times the national minimum wage, as an autonomous worker. The Netherlands and Spain define junior doctors as autonomous workers.  
6. Some options in the Directive are restricted in the Regulations by requiring the agreement of trade unions or workers  
7. Inclusion of training time and additional periods under a relevant agreement is not required by the Directive and adds complexity.  
8. Many apparently simple directive requirements are transposed in a very complex and wordy fashion (for example pro-rated annual leave in first year or on termination of employment) |

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