



**Government review of the balance of competences between the United Kingdom  
and the European Union - Call for evidence: Social and Employment Review**

**UNISON Evidence – January 2014**

UNISON is the UK's largest public services trade union with more than 1.3 million members. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers working full or part time in local authorities, the NHS, the police service, universities, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector.

We have extensive experience of employment relations in small and large organisations including dispute resolution and efficiently negotiating fair pay and conditions for all employees.

## **The Argument for Social and Employment Competence**

### **1. To what extent is EU action in this area necessary for the operation of the single market?**

The Lisbon Treaty establishes that the internal market is not an end in itself but is a means to an end. The EU is a highly competitive social market economy aiming at “full employment and social progress”. Its aim is to be a source of high employment providing quality jobs within an equality framework and where justice in the workplace is present.

This social dimension is not subordinate to the internal market rather it goes to the heart of the values of the EU. UNISON strongly supports the TUC's position that this should continue to be the aim of the EU moving forwards. In fact, if anything, we do not consider there is currently enough of a social programme and we are very concerned about any attempts to deregulate what does exist.

The aim of any social aspects of the EU should always be to level the playing field across member-states for fair treatment for all. For instance, there should be emphasis upon attempts to avoid outsourcing and a refocus on rights for those migrating throughout the EU to ensure equal treatment for all newly located citizens wherever they work. We further consider that a social model is vital to address labour market failures through the provision of strong labour laws. We are concerned that any fragmentation of such provision would lead to discrimination.

It is important to have a framework which means that all EU citizens are best able to participate in the labour market and to ensure a fair distribution of wages. We also share the view of the TUC that EU labour law establishes a minimum floor, setting out vital rights and minimum basic standards, which must apply in all member states for the internal market to operate most successfully for business and workers alike.

However, like the TUC we also consider that there should be respect for national models so that countries are permitted to establish their own provisions provided

they meet this minimum standard. Very often national governments elect to exceed them and this is only to be welcomed.

**2. To what extent are social and employment goals a desirable function of the EU in their own right?**

UNISON wholeheartedly believes that the social and employment goals must be at the heart of the European Union's aims and objectives. They are vital in combating social exclusion and discrimination. They are necessary to promote social justice and protection. They are very important for addressing issues of equality between men and women, on grounds of race and ethnicity, disability and sexual orientation amongst other protected characteristics.

We also consider that for the EU to be a success it must have popular support. While businesses want the EU to exist for the free market, the absence of a social dimension is likely to render it irrelevant for many EU citizens. Creating provision and/or maintaining provision based on a social model encourages citizens to invest in the project.

**3. What domestic legislation will the UK need in the absence of EU legislation?**

We start our response to this question by stating that we do not believe that this is a question that should be asked. Like the TUC we do not believe in the repatriation of employment law to individual member states.

However, if the Government was so minded to pursue such a measure then we consider that the loss of EU minimum standards would be very complicated for the UK. This is because in addition to relying on EU legislation there is a vast body of European case law and jurisprudence which is relied upon in order to establish key rights.

In practice, implementing domestic equivalents would be both extremely complicated, time intensive and expensive. It would require provision of, for instance, equality law, family friendly rights, atypical worker rights, restructuring

rights, information consultation rights and health and safety laws. Additionally as stated, there would be need to consolidate EU case law into UK law. We consider that this would be disproportionate and of significant disadvantage the UK.

### **Impact on the national interest**

#### **4. What evidence is there that EU action in social policy advantages the UK?**

There are significant social policy advantages to the European Union's action. These include:

- Equality legislation
  - Closing pay gaps
  - Preventing discrimination and harassment
  - Tackling labour market segmentation and exclusion
- Family friendly rights
  - Increased labour market participation
  - Women remaining economically active after maternity leave – although this is an example of where gains have been made due to domestic enhancement of EU minimum standards
- Atypical workers' rights
  - Aim of the Directive is to balance flexibility with fairness
  - No evidence of reduced flexible employment
  - Increased job security for fixed term contracts
  - Pay rises for some agency workers
- Working time
  - One million fewer employees working excessive hours
  - Increase in paid leave entitlements especially for women in part-time work

- Health and safety benefits for workers and for employers
- Collective redundancies
  - There is evidence that this has worked well in the private sector with low levels of job losses due to concession bargaining meaning that skills have been retained
  - Evidence employers agree arrangements which exceed Directive minimum
- TUPE
  - Facilitating restructuring and avoiding dispute
  - Equality and avoidance of two tier workforce
  - No impact of UK outsourcing market
- Information and consultation
  - EU fitness check confirms benefits of the legislation. In fact the vast majority of employers in trade unions thought that EU legislation was required and was good for business not just for employees
- Health & Safety
  - More prescriptive EU legislation provides greater certainty for small firms
  - Consolidation of legislation
  - Level playing field for firms
  - Reduced injuries and deaths at work
  - Provision in use of work equipment regulations.
  - Improved working conditions with limited financial implications and in one case study it was shown there was a six percent reduction in sickness absence and a fifty per cent loss of time due to accidents

## **5. What evidence is there that EU action in social policy disadvantages the UK?**

There is no negative correlation between EU action and UK labour market performance according to the OECD. In fact, between 1997 and 2008 increased regulation saw a period of economic growth in the UK. The UK remains one of the lightest regulated economies in the EU. It is worth noting that BIS's own research

shows that businesses do not see employment protection as a main restriction on growth. UNISON considers that EU action in social policy is of benefit, not disadvantage, to the UK.

**6. Are there any other impacts of EU action in social policy that should be noted?**

EU action on social policy has been beneficial to working people across Europe in creating a level playing field. This has meant that employers are equally bound to adhere to minimum standards and treat people with in accordance with equality, with established employment protections and with adherence to health and safety standards across Europe. We agree with the TUC that, "If both the UK and the EU were to abandon the current framework of rights, it is likely there would have been a 'race to the bottom', with countries seeking to compete on the basis of lower pay and conditions and reduced employment protection. As a result, all the social and economic benefits associated with such policies would be lost".

**7. What evidence is there about the impact of EU action on the UK economy? How far can this be separated from any domestic legislation you would need in the absence of EU action?**

We do not consider that there is negative impact of EU action on the UK economy, to the contrary, it is our view that it is beneficial as stated in our response to question 4. We also reiterate the points made in our response to question 5.

### **Future Options and Challenges**

**8. How might the UK benefit from the EU taking more action in social policy?**

We believe that there are a number of areas in which more EU social policy would be of benefit. For instance, equal pay reforms which deal with occupational

segmentation. There would be also be benefit arising from anti-discrimination provision in relation to goods and services, paid parental leave, rights for fathers and second parents, stronger information and consultation rights including provision for sanctions and enforcement of the Posted Workers Directive.

**9. How might the UK benefit from the EU taking less action on social policy or from more action being taken at the national level than the EU level?**

UNISON considers that it is vital to protect and extend the existing minimum floor of rights. We value giving national governments freedom to expand and build upon those minimum EU standards. We do not believe in total harmonisation across member states as we consider that this is only likely to drive down standards. We also consider that it is important to enshrine a democratic right to provide standards above EU minimums where that is desired by individual member states. We consider it important that the relationship between the internal market rules and social policy are reconfigured to insulate against challenges from the internal market. Therefore, we would suggest a social progress clause is very important.

**10. How could action and social policy be undertaken differently? For example, are there ways of improving how EU legislation is made, e.g. through greater adherence to the principles of subsidiarity and proportionality or the ways social partners are engaged?**

We consider that only where there is an opportunity to legally enforce standards can minimum standards be guaranteed across the EU. Therefore, we place considerable importance on such provision in ensuring the genuine levelling of the playing fields. We also consider that there is value in social partners being committed to negotiate and agree effective solutions in order to reflect the needs of the specific industries. Employee representatives and employers will be best placed to ensure they are effective if they have been agreed through negotiations.

**11. How else could the UK implement its current obligations in this area?**

We believe that collective bargaining provides an important opportunity to establish minimum standards and also permit flexibility within an industry. Currently most EU measures are implemented through legislation which can be complicated and inflexible. Insuring a minimum standard which is then developed for the specific industry can only be of value to all concerned.

**12. What future challenges/opportunities might the UK face in this area and what impact might these have on the national interest?**

In order to maintain public support for the EU, it is important that there are social rights provided so that people feel that there is value in being a part of the project. In our view an absence of social employment rights at a European level would be a significant disadvantage to business so it is in the interest of all that a collective approach is established. To strengthen the market there must be a strong social policy.