



European Union (Withdrawal) Bill

UNISON SECOND READING BRIEFING

Thursday 7th & Monday 11th September 2017

UNISON is the largest public service union in the UK with 1.3 million members. We represent 800,000 local government workers (including school support staff and workers in social care), 350,000 healthcare staff employed in the NHS and members employed in Education, Police and Justice, Water, Environment, Transport and Energy. In addition UNISON members are employed by private contractors and work in the community and voluntary sector (60,000).

Within the UK UNISON represents public service workers in all four nations of the UK: England, Wales, Scotland and Northern Ireland. UNISON actively participates in all parliamentary and devolved assembly's' legislature processes including Bills, policies and regulations.

UNISON's overall priority focus on the UK withdrawal from the EU has been to highlight the impact and challenges of Brexit on:

- **Continued EU/UK parity on employment rights and standards**, including environmental, health and safety, citizen, equality and human rights
- **Public services and the public service labour market**, with an emphasis on the need to fund and grow a skilled domestic workforce as well as maintaining a EU and Non EU migration system which is easy and accessible – particularly in education, health & social care services
- **A new trade deal that offers the best economic model** for continued UK growth and improved living standards and excludes public services from all free trade deals

More information on each of these priority areas can be found later in this briefing.

What UNISON would like from the Bill (including 13 constitutional concerns):

1. The Bill must respect the democratic processes and not become a 'vehicle' or opportunity to make policy changes through the back door; this would risk causing unnecessary disruption to public services at an already uncertain time.
2. There must be robust Parliamentary scrutiny at all levels with appropriate levels of transparency and debate both before and during the conversion process.
3. There must be clear limits and safeguards on the powers given to Ministers in the Bill and greater clarity on the devolved aspects of the UK constitution in the transfer of EU law into UK law.

4. Allow for a UK framework for common standards that is mutually agreed between the four UK administrations, to enable cross-border working and maintain an internal common market. This framework must respect the devolution settlements, meaning any administration can raise standards within the scope of those settlements, if they wish to do so.
5. The Bill must not undermine the ability of devolved Government, in Northern Ireland (NI) in particular, to make its own equality and workers' rights legislation. This would be an unacceptable approach to the devolution settlement and would come at a time when the political situation in NI is already extremely precarious. The Government must guarantee that it will seek legislative consent from the NI Assembly in relation to all aspects of this Bill, and cannot use the current political crisis as an excuse to avoid the commitments made in the Bill's explanatory memorandum to seek legislative consent.
6. The Bill as drafted contains no provision to protect the Good Friday Agreement and the peace process in Northern Ireland from the negative effects of Brexit. Instead the Bill undermines the Agreement through the interference with the devolved functions of the Assembly. It also removes the requirement placed on the NI Assembly under the NI Act 1998 to legislate in a way compatible with EU law (Clause 11), which has represented a significant mechanism to compel devolved Government in Northern Ireland to advance rights and equality standards. Instead, clause 11 will restrict the ability of the Assembly to modify retained EU law.
7. Outside of the undermining of devolution, we are not satisfied that the Henry VIII clauses provide sufficient oversight, either by Parliament, the NI Executive or NI Assembly of the ability of Ministers to change retained EU law. There is no condition within the Bill that would prevent Ministers either in London or Belfast from altering the operation of fundamental rights in Northern Ireland through this process.
8. In addition, the removal of the Charter of Fundamental Rights from UK law under clause 5 and the limits placed on the ability to pursue redress for breaches of rights under Schedule 1 must be opposed, so that there is no opportunity to weaken the human rights and equality framework across the UK.
9. In NI, it should also be noted that a principle contained within the Good Friday Agreement is equivalence of rights protections between persons in the Republic of Ireland and Northern Ireland; this Bill threatens the ability of this principle to operate effectively in the future, particularly where devolved Government in Northern Ireland will not be able to develop rights and equality protections in a way that is inconsistent with the UK Government policy.
10. The 'Acquired rights' currently exercised by EU nationals in the UK must be protected and any changes or the introduction of a new migration regime must receive full debate and scrutiny in Parliament
11. Guarantees that the same employment laws and workers' rights will apply on the day after exit as on the day before. The Government should be prepared to say how long after the day of exit rights will last.

12. Leaving the EU must not create a governance gap. EU institutions have a role in monitoring, oversight and ensuring compliance with the law as well as setting regulations. Where governance arrangements are changed as a result of leaving the EU, there must be clear powers and procedures for ensuring the law is properly implemented and enforced on an ongoing basis.
13. In order to provide stability across UK's health and social care services, we would like the government to put in place new funding to develop a domestic skilled health and social care workforce, remove the public sector pay cap, provide transitional arrangements that enable the continuation of existing immigration, access to medicines and treatments, research and science, and mutual recognition of qualification schemes which are vital to maintaining public service workforce numbers and patient safety.

UNISON'S THREE PRIORITY AREAS

1. Protect public services and the public service labour market

- Public services across the UK face a range of challenges as a result of Brexit and so it is vital that the government commits to new funding with an emphasis on recruitment and retention of the health and social care workforce. This will provide essential continued health and social care services with little risk to patient and staff safety when the UK leaves the EU in March 2019.
- Part of this commitment to new funding must include lifting the pay cap on public sector workers to improve recruitment and retention
- EU workers provide a vital addition to the health and social care workforce and their full rights must be respected to ensure that their workforce contribution is maintained now and in the future.
- The Government must not 'modify, limit or remove' the reciprocal arrangements that apply to EU citizens. These EU rights and obligations, including citizenship rights, rights of residence, and the free movement of workers will need to be recognised and available in UK law after Brexit
- UNISON is deeply concerned that under the provisions of the Bill, Ministers could lawfully rescind existing arrangements for EU citizens, such as their immigration status, rights to work in the UK, or the rights of family members, and introduce secondary legislation regarding the future arrangements for UK and EU citizens without any parliamentary debate or scrutiny. It is vital that EU workers maintain their full 'acquired rights' in any new arrangements governing the status of EU citizens in the UK
- We are also concerned that the arrangements for EU citizens rights do not fulfil the criteria required for an affirmative procedure SI (e.g. the creation of a new public authority, transfer powers to such an authority, create a new offence, charge a fee or create or amend a power to legislate) and so under the provisions of the Bill, will not be granted parliamentary debate
- UNISON has already provided evidence of the negative impact that the uncertainty of EU citizens rights to remain has had on the health workforce, resulting in the drop of EU nurse applications, low morale and anxiety and an increase in EU health workers considering leaving the UK following the referendum vote.

- A change of such magnitude and importance to the lives of millions of people must be discussed openly and transparently.

2. Continued EU/UK parity on employment rights and standards

- UNISON notes that the Government says that workers' rights enjoyed under EU law will continue to be available in UK law after we have left the EU.
- This government commitment is welcome but UNISON will robustly challenge any proposals to introduce changes to employment legislation as the Bill moves through Parliament and also after the date of exit itself
- Delivering on this promise is essential as it will give certainty and continuity to employees and employers alike, creating stability, safety and quality in UK public services.
- UNISON believes that all employment rights and standards (including environmental, health and safety, citizen, equality and human rights) should be constitutionally ring fenced to be protected from any back door attempt to weaken or remove them, including through free trade deals.
- UNISON also has concerns that the Bill will end the benefits of EU law in certain areas by ending the jurisdiction of the European Court of Justice (ECJ) in the UK. Whilst British courts "may have regard" to "anything done" by the ECJ or by another EU entity after Brexit, if the British court considers it appropriate to do so, UNISON believes that this needs to be strengthened so that courts don't cherry pick ECJ rulings in favour of employers not workers
- **Women's rights at risk** - More than two-thirds of the public service workforce are women. EU derived employment law has led to a fairer labour market for women in the UK, whether they work full time or part time. It has supported a more family friendly labour market for both men and women. From the effective implementation of equal pay for women, equal pensions for part time women workers, better protection from sexual harassment and better protections from pregnancy and maternity discrimination. It has supported families and parents with rights to parental leave, support for equal parenting and time off
- **Equal Pay** - The EU Equal Treatment Directive has underpinned a legal and negotiating strategy for UNISON that has secured equal and improved pay for millions of women in health, education and local government such as nurses, cooks, cleaners, health care assistants, teaching assistants, school meals staff and care workers. The historic 2004 Agenda for Change pay agreement in the NHS covering all 1.4 million staff was the largest equal pay for work of equal value agreement in Europe. It was underpinned by thousands of hours of work on local and national job evaluations that only got underway when the ECJ ruled in 1993 that women could not be paid less than men because their pay was set by separate NHS bargaining arrangements. Improvements do not just reply on directives. Common law decisions of the domestic courts rely heavily on EU law and have through time become intertwined. This has had the positive effect of women not needing to find a male comparator where they had suffered pregnancy discrimination (because pregnancy is a female state) as in the case of *Webb v EMO* [1995] ICR 1021.
- **Part Time Workers' Directive** - Using the Part Time Workers' Directive UNISON took thousands of legal cases to secure part time workers access to the Local Government Pension Scheme which they had previously been prevented from joining
- **Agency Workers' Directive** - As a result of this Directive, UK agency workers can access improvements in pay and holidays after 12 weeks of employment.

- **TUPE** - UNISON has been able to protect the pay and conditions of service of thousands outsourced workers since the 1990s. Before that in the 1980s, workers would face a large pay cut on day one with their new employer under the old compulsory competitive tendering regimes in health and local government.
- **Working Time Directive** - Using the Working Time Directive UNISON has been able to win through negotiation or legal cases: Increases in holiday pay so it includes all the regular allowances and pay does not drop when people go on holiday – this was the Lock case, where a UNISON member working for British Gas who received much of his pay through commission. As a result regular commission that accounted for 50% of an employee’s wage was included in holiday pay. Prior to this these employees avoided taking their annual leave as they could not afford lose this pay and miss mortgage payments; Safe shift patterns with rest breaks in the NHS – these have reduced accidents and critical incidents for patients over the last 15 years; pro-rata paid annual leave for zero hours contracts workers for the hours they have worked. This has helped care workers and swimming pool staff for example
- **Health and Safety** - The EU ‘6 pack’ regulations keep the public and workers safe. It also keeps employers free from litigation and reputational risk through a process of sensible risk assessment. In addition, the EU directive on needle stick injuries in the hospital sector has helped reduce accidents in the NHS and came about as a direct result of trade unions working through the EU.
- **Job losses** - In the last few years the EU Collective Redundancy regulations have helped UNISON avoid thousands of job losses in Local Government by ensuring meaningful alternatives, such as redeployment or retraining were properly considered before a final decision.
- **A voice for workers** - The EU Works Council Directive gives staff and unions working for EU owned utilities such as EDF and Thames Water a voice in company decision making.

3. A new trade deal that offers the best economic model to benefit workers

- The UK’s public services and the workers who provide them are still bearing the brunt ten years after the financial crisis. We need to avoid this being exacerbated and prolonged by the economic impact of the UK leaving the European Union. Being part of the Single Market and a customs union agreement with the EU for a transitional period will help minimise the impact of exit on the economy whilst the UK and EU negotiate a future trading agreement that must include protection for employment rights, equalities and public services.
- UNISON wishes to ensure that as EU law is transposed into UK law, current trading rights and standards for all sectors are maintained. These standards need to be constitutionally ring fenced for future protection against any future attempts to remove or weaken them through free trade deals.
- Any new trade deal or customs agreement must exclude public services from being liberalised. Public procurement regulations must maintain the existing positive social and environmental provisions currently embedded in the EU Public Procurement Directive.
- Any new trade or customs agreement must have full parliamentary and public consultation and not be secretly negotiated behind closed doors.

For more information on UNISON’s Brexit response please contact UNISON Policy Officer Allison Roche a.roche@unison.co.uk or 07957 505905