

Review of UK and EU balance of competences:

call for evidence on social
and employment policy



STANDING UP FOR YOU

About Thompsons

Thompsons is the most experienced trade union, employment rights and personal injury law firm in the country with 29 offices across the UK. On employment and industrial relations issues, it acts only for trade unions and their members.

Thompsons represents the majority of UK trade unions and advises on the full range of employment rights issues through its specialist employment rights department.

At any one time we will be running 70,000 claims on behalf of people who have been injured at or away from work, through no fault of their own.

Introduction

This consultation is based on the ideological premise that employment and health and safety laws simply represent a burden to business and appears to be another opportunity – like the Government’s Business Taskforce “Cut EU red tape” report in October 2013 – to attack workers’ rights.

The Business Taskforce sought the views of over 100 UK and European businesses but was void of any input from trade unions or workers, and, in its conclusion that “the complexity and quantity of employment legislation coming from Europe is preventing job creation”, of any credible evidence. It was a report produced by and for business leaders of a particular political view.

In fact, health and safety standards do not represent ‘red tape’, as good employers are well aware. Risk assessments, personal protection equipment and safety protocols are, like parental leave, working time regulations and equal treatment, basic standards that if removed will threaten people’s safety by exposing them to unnecessary risk and will cost lives.

A European wide level playing field is, in our experience, necessary between nations and companies. Lower health and safety standards or more limited basic employment rights in one country may deliver short term economic benefits but this only serves to distort the market and those who suffer are ultimately the workers on who the market depends as employees but also as consumers.

The argument for social and employment competence (Q1 – Q3)

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

EU Health & Safety legislation promotes a more efficient single market. “Social protections” affect both the price of labour and the quality-competitiveness of business – a healthy worker is an efficient worker who, instead of relying on the State whether through benefits or use of the health services, contributes to its coffers. As such, it is not merely socially desirable that workers are not needlessly hurt, but it is economically efficient, and necessary to the effective operation of a single market, that consistent social and employment policies are applied throughout the EU.

Since 2006/07 when EU Health and Safety Regulations came into effect in the UK there has been a downward trend in injury and illness numbers but the cost of workplace injuries to UK businesses in 2010/11 was still £13.8 billion.¹ There is also a powerful economic case for ensuring that that figure continues to fall rather than turning back upwards again.

HSE Statistics 2012/13 show:

- In 2010/11, workplace illness cost the UK economy an estimated £8.4 billion; workplace injury (including deaths) an estimated £5.4 billion.
- Over half of the total cost in 2010/11 fell on individuals, but the remainder was shared between employers and Government.
- **Most importantly**, between 2006/07 and 2010/11 the estimated total cost fell by around £2.5 billion

Without EU action on health and safety the UK economy would be several billion pounds worse off (quite apart from individual pain, suffering and financial hardship). And the Health and Safety Executive have evidence that companies who take a proactive approach to Health and Safety gain financially.

Sainsbury's implemented a health and safety plan with targets over three years and gave all board directors training on health and safety responsibilities. The business benefits included a 17% reduction in sickness absence, a 28% reduction in reportable incidents and improved morale and pride in working for the company.

The UK has relatively high standards of social protection, but also a relatively flexible labour market. Both are possible within the EU but become much more challenging in any other settlement.

Half of Britain's trade is with the EU (compared with, say, 2.5% with China and, 1% with Brazil), it is our single most important market and, given that 70% of British businesses do not export, (a relatively high proportion) there is plenty of potential for growth.

Export growth, however, depends on the successful operation of the single market otherwise British business (with its relatively high social protections) will bear higher costs than most of the rest of the EU, where the price of Labour is already lower than in the UK.

¹<http://www.hse.gov.uk/statistics/overall/hssh1213.pdf>

The only intellectually coherent single market alternative to setting social protections at the EU level is having no social protections at all. There are some right-wing politicians and business leaders who advocate such an approach. But in reality, a “Wild West” settlement would not only lead to a huge increase in avoidable misery and death as standards got driven down, but it would actually reduce the competitiveness of British business relative to most of the rest of the EU (both our largest market and our main competitors).

A unified regulatory structure across the EU lessens the risk of states ignoring employment protections in order to derive short-term advantage, and provides a framework for consistency of action between nations and companies. Unless the same health and safety regime is in place in Jaguar in Castle Bromwich, BMW in Munich and – most importantly – the Tychy car factory in Poland – then it’s quite simply not a single market at all.

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

Without a consistent approach, lower health standards in one country will create a “race to the bottom” in safety and employment standards across the continent – whereas the overwhelming trend in the UK has been the reverse since Victorian times (fatal accidents at work, for instance, have declined in the past century by about 97% despite a near-doubling of the population). It is a question of what kind of country we want to be. If we want to compete on quality, that must mean a high quality workforce and a high standard of working conditions. Even within the EU we will only ever lose – a race to the bottom. This is more true than ever in today’s EU of 28.

Although successive surveys have shown that most smaller employers only implement progressive employment practices because they are legally required to do so – and hence the need for law from the EU to take the lead – larger employers increasingly understand that providing good quality workplace conditions is not necessarily the “added cost” burden it is often presented as. In fact, getting the best out of a safe and supported workforce attracts better people and leads to greater productivity and higher profits. Many studies have demonstrated this beyond reasonable dispute.

Even the CBI is unequivocal: “Engaging employees effectively, using their skills to best effect and rewarding them appropriately – including provision for their eventual retirement – are central to business success in a globalised economy.” (CBI Website, as of 19.12.13).

Many employers would now choose to opt into employment practices – for sound business reasons – where previously they may have been compelled to do so by law.

Accreditation for Investors in People (IIP), owned and operated by the Government, carries a financial cost and imposes a framework on a business’s employee relations – all things which we are told by those who would have us separate from the EU are anathema to employers, and yet 20,000 businesses have opted-in to IIP over the last 20 years, because they know that investing in their employees pays dividends for their business.

The EU and other organisations that campaign for high standards of safety understand that there is a moral responsibility to maintain those standards and to export them to less affluent regions.

In the case of the Bangladesh factory collapse – when the true cost of deregulation and a race to the bottom was laid bare and over 1,100 people were killed, both the UK and European business community were quick to condemn the standards in the factory and championed the need for more regulation. To date, 89 companies including big British brands such as Marks and Spencer, Sainsbury and John Lewis² have voluntarily signed a legally binding, enforceable and transparent Accord on Fire and Building Safety in Bangladesh.

In the aftermath of crisis events, such as the Rana Plaza collapse, the Riga shopping centre tragedy, and indeed the horse meat scandal, the immediate cry is for more regulation, more controls, and higher safety standards. No one seeks to argue when workers are killed that the answer is lower standards or that poor standards are an acceptable or necessary part of a modern day economy.

Shockingly low standards of safety in Bangladesh are of course bad for Bangladeshi workers but they are also bad for British business. In a statement in the wake of the Bangladesh factory collapse, Tesco's Group Commercial Director Kevin Grace said:

“Tesco did not use factories in the Rana Plaza building, but we are all responsible for ensuring we prevent another tragedy... If multinational retailers left, it would damage the industry, the economy and ultimately the people who rely on it. Clothing may still be made because the demand for affordable clothing would remain, but the inspections, commitment, expertise and accountability that big multinational brands bring would go”.

Exactly the same arguments apply to the European Union. No one gains by the EU having low social protections and indeed where they are lower within the EU that represents a threat to the competitiveness of UK business.

An EU framework for social and employment policy has provided long-term policy solutions which withstand the changing of governments across Europe. In the case of health and safety, an EU-wide consistent approach over the last twenty years has had the socially desirable impact of the numbers of non-fatal injuries in the UK.

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

In the absence of EU legislation, the UK would, unless it wants to undo the health and safety advances and injury and death reductions, have to enact domestic legislation with equivalent provisions. EU wide social and employment legislation offers a better quality of life and a safer working environment to British workers but also ensures that British business are more competitive. Were these ends not being achieved through EU social legislation, they would, unless as government is prepared to 'go it alone' with the social and economic consequences that would flow from that decision, need to be achieved through domestic legislation, as they are vital to the national interest, the nation's health, and the economy.

The reality is that it is likely that even were the competence 'returned' to the UK the remaining members of the EU and the countries against whom we would then be in open and unbridled competition would insist, to ensure the continuation of some form of single market that UK legislation enact equivalent social provisions.

The UK would, should we choose to 'go it alone', be following the Norwegian paradigm, in which all the obligations of membership (in the UK's case, social policy competence) have to be met, without having any say in legislation. There are no benefits to the UK in taking such a position.

² <http://www.cleanclothes.org/news/2013/05/14/more-brands-commit-to-the-accord-on-fire-building-safety-in-bangladesh>

Impact on the national interest (Q4 – Q7)

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

Case study

Thompsons has direct experience of the dramatic beneficial effects of manual handling legislation, an area in which domestic health and safety legislation was relatively weak. The introduction of the Manual Handling Regulations and the need for risk assessment and reduction of risk saw a sea change.

Before 1993, Thompsons was regularly instructed by NHS nurses and ancillary staff who had career-ending injuries from the manual handling of patients. The introduction of EU Manual Handling Regulations into UK law led to a significant change such as the introduction of lifting aids. The net effect has been a drastic reduction in the number of such cases, so that they are now quite rare.

This change is a benefit to the individual healthcare worker saved from injury but it's also a benefit to their employers, who are not paying compensation, sick pay or replacement worker costs. And it's clearly to the advantage of the Exchequer, through treatment-cost saving to the NHS, and the welfare-cost saving of previously active workers no longer being able to do so and no longer being economically active. Such have been the beneficial effects of risk assessment that the concept is largely imported into non-employment related areas of health and safety and is effectively now part of common law.

There are no negative aspects to the implementation of this legislation, which would not have been initiated by the UK government of the time. The legislation has been wholly beneficial to the UK, but has its origins entirely in the EU. Yes there has been a need to reconsider workplace strategies and to risk assess work but the benefits to UK workers, employers and the Exchequer are considerable. These are matters of fact clearly demonstrated by Thompsons' caseload over twenty years.

Yet these regulations were not just resisted but derided at the time of their introduction. "Brussels bureaucrats telling British workers how to pick things up" was the sense of the headlines.

Direct cost savings to employers of EU membership

- The number of working days lost due to work related illness has fallen from 40 million in 2000-2002 to 27 million in 2011/12. And it has fallen especially rapidly since 2006/7.
- According to HSE statistics (2010) – based on self-reports of working days lost due to work-related illness and injury – there has been a reduction of 30% in the days lost per worker between 2000-02 and 2009/10.³
- Between 2006/07 and 2010/11 the estimated total cost associated with workplace injuries and ill health in Great Britain fell by around £2.5 billion (£13.8 billion in 2010/11 compared with £16.3 billion in 2006/07, all in 2011 prices).⁴

So, very clearly, a health and safety framework significantly influenced by EU legislation generates very significant and direct economic benefits to UK employers. And the scale of those benefits has grown more rapidly the more the environment has been shaped by EU legislation.

³<http://www.hse.gov.uk/statistics/history/progress-since-2000.pdf>

⁴<http://www.hse.gov.uk/statistics/cost.htm>

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

There are a lot of myths – widely circulated in the media and by insurance companies – about compensation culture and the burden that safety and employment regulations supposedly represent to business.

They are though just that – myths – unsupported by evidence. That is why, for instance, the HSE – hardly the most ‘go getting’ instrument of Government – devotes part of its website to the “Myth Busters Challenge Panel”. Even the HSE feels compelled to rebut some of the ridiculous scenarios which are blamed on a ‘health and safety culture’ but are not actually a result of health and safety regulations.⁵

Incredibly at times it would appear that this Government is making policy decisions based on such myths. Responding to the report of his one-sided “Business Taskforce” in October, Prime Minister David Cameron said “I will be calling for a clear commitment to sweep away unnecessary burdens and to unleash private sector growth”. It was a disingenuous, politically motivated reaction to a specious and misleading report.

As leading legal practitioners in the field, Thompsons is not aware of a single credible piece of academic research demonstrating that EU action in social policy disadvantages the UK. Systematised anecdotes and surveys from (usually small) business lobby groups do not constitute evidence.

On the contrary, a recent report by the workers' health journal Hazards found that the number of people actually receiving awards for work-related injuries or diseases has fallen by 60 per cent over the last decade – down from 219,183 in 2000/01 to 87,655 in 2011/12. These are facts, derived from a Freedom of Information request to the Department for Work and Pensions' Compensation Recovery Unit. The report went on to highlight that when it comes to compensation, even for most occupational cancers, the chance of getting any compensation pay-out is below 1 in 50.⁶

The notion that the EU burdens business with regulation is also demonstrably false. For the overwhelming majority of businesses there will never be any need to consider more than a handful of “general” regulations that in fact apply to all sectors. Of the 208 sets of regulations, 40 are concerned with mines, 15 with the offshore industry and 33 with chemicals, biocidal and environmental hazards and explosives.

In Thompsons' view those who operate in high risk industries should expect higher levels of regulation. And as the recent experience of ‘light touch’ regulation in other areas, such as in the banking sector has proved, light touch is too often disastrous. However for the overwhelming majority of employers who operate in relatively low-risk environments, regulation, if properly applied, is not excessively burdensome.

In fact, high quality social protections are the hallmark of high quality businesses and a high quality economy. It is only on the basis of quality that we can hope to become more competitive as a nation.

⁵<http://www.hse.gov.uk/myth>

⁶<http://www.hazards.org/votetodie/robbed.htm>

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

Please refer to examples noted above of the many positive impacts of EU action in social policy.

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?

Some beneficial impacts of EU action have been noted. The UK would need to retain the present regulations on which the directives are based.

The economic advantages and the general advantages of consistency of policies have been outlined above.

The Lofstedt review asked for and failed to find evidence that the requirements of EU directives have been 'gold-plated' when incorporated into UK health and safety regulation. There though are a number of aspects in which UK law actually fails to provide the protection provided for under EU law. For example:

- The Workplace (Health, Safety and Welfare) Regulations 1992, which seeks to implement the Workplace Directive 89/391/EEC. Under Regulation 2(1) of the UK law the definition of 'workplace' expressly excludes domestic premises thus failing to give protection to a whole category of home workers. There is no such exclusion under the Directive.
- The Provision and Use of Work Equipment Regulations 1998, which seeks to implement the Work Equipment Directive 89/655/EEC. Under Regulation 22 of the UK law employers must take appropriate measures to ensure that maintenance operations involving a risk to health and safety can be carried out while the work equipment is shut down "so far as reasonably practicable" whereas paragraph 2.13 of Annex 1 of the Directive states that maintenance operations must be capable of being carried out when the equipment is shut down unless that is not "possible".
- The Management of Health and Safety at Work Regulations 1999 contain the general obligation to risk assess in Regulation 3. By Regulation 3(6) there is an obligation to record the result of that risk assessment, but that obligation applies only to employers employing five or more employees. The obligation to record the result of a risk assessment as set out in the Directive applies to all employers regardless of size. Small businesses are, therefore, already placed in a privileged position in UK law, which does not match the obligations of EU law.
- UK businesses and workers also profit, alongside workers and businesses in the rest of the EU, from the standardisation of working environments in ways which render it universally intelligible – across the EU, and in some cases beyond. This makes workers safer and more productive, businesses more efficient and profitable, EU economies more internationally competitive and our Labour markets more flexible. A simple example is the Health and Safety Signs and Signals Regulations. These provide a common set of signs and signals throughout EU member states so that wherever a particular safety sign is seen, it provides the same message. The benefits are obvious of knowing – wherever in the EU you're working – that a black hand dipping into liquid means it's corrosive.

Future options and challenges (Q8 – Q12)

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

We have already quoted examples above in which the EU has legislated in areas in which the UK showed no sign of acting, with outcomes which were wholly beneficial to the UK.

Another example is the Health and Safety (Sharps Instruments in Healthcare) Regulations 2013. These would never have been introduced were it not for the EU Council Directive of 2010. Current estimates suggest that there are 100,000 sharps injuries in the UK each year and Thompsons are often instructed for healthcare workers genuinely frightened about what they have been exposed to as a result of a poorly disposed needlestick. Some cause infection and serious illness, with the commensurate costs, not to mention the distress.

Over time, the implementation of the Directive is bound to lead to a reduction in the number of sharps injuries. This will be a benefit to UK healthcare workers, healthcare employers and the Exchequer, all accruing directly to the UK solely as a result of EU action in social policy.

It is impossible to know how much more benefit might accrue from hypothetical “more EU action”. But logic, from experience, would suggest that the EU taking a lot more action on social policy would yield a lot more benefit to the UK.

There are also areas of social and employment policy in which the current UK government is failing to take appropriate action to promote high quality employment practices, which would improve competitiveness. UK workers and businesses would benefit from the EU taking a lead in such areas, as has happened in the past. Examples would include:

- Proper implementation of the Agency Workers Regulations. The ‘Swedish derogation model’ is being widely used in the UK as a loophole to avoid the intended effects of the Regulations. In the apparent absence of the will of the UK government to act, action at the EU level to ensure proper implementation would protect UK workers and advantage high quality British employers.
- EU level minimum wage legislation, which would create a more level playing field in the market for Labour across the EU, to the benefit of British businesses, as well as to the benefit of workers in the UK and across the EU. Again, the best British businesses would benefit the most.
- In the absence of a UK government intention to introduce a Living Wage, EU level legislation would benefit both UK workers and the best UK businesses. Research carried out for the TUC by Howard Reed of Landman Economics demonstrated that £3.2bn of savings could be made if the UK’s 4.8 million low-paid workers were paid the living wage. An extra £2.1bn would accrue to the Exchequer from the increased tax and national insurance contributions. This is in addition to the savings in benefits and tax credits, and does not even measure the (likely considerable) multiplier effect of the commensurate increase in economic activity.

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

No comment to add.

10. How could action in 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?

No comment to add.

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

No comment to add.

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

No comment to add.

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