



EU MEMBERSHIP AND HEALTH AND SAFETY

THE BENEFITS FOR UK WORKERS – A TUC REPORT



EU MEMBERSHIP AND HEALTH AND SAFETY - THE BENEFITS FOR UK WORKERS

Background

The UK joined the EU in 1973. Since the mid-1970s, the European Union has played an important role in protecting working people from exploitation and combating discrimination, but it was not until the 1986 Single European Act that there was a significant increase in the volume of health and safety Directives. That Act aimed to facilitate the free movement of workers within a single market, in particular through the new Article 118a. It abolished national vetoes in a host of areas relating to the single market, increased the legislative powers of the European parliament and made the first commitment by member states to create a "European Union".

Health and safety regulation

In respect of health and safety, the biggest change was the Health and Safety Framework Directive (89/391/EEC) and five “daughter” directives¹ which established broad-based obligations on member states to ensure that employers evaluate, avoid and reduce workplace risks in consultation with their workforce.

At the time, little was required to implement the directive as Britain already had a legislative system which met most of the requirements of the Directive in respect of assessing and managing risk, as well as the duties of employers. The Directive mirrored much of what was in the 1974 Health and Safety at Work (HSW) Act, but also the Regulations that had been made under it such as the Safety Representatives and Safety Committees Regulations 1977. Although, in the UK, the HSW Act was considered adequate as a means of achieving the appropriate standards, the Directives were more prescriptive and detailed and thus it was necessary to extend the law. Carefully avoiding any disruption to the HSW Act, six new sets of regulations (called the ‘six pack’), together with Approved Codes of Practice and Guidance Notes were enacted on 1 January 1993.

Since then, the UK Government has had to make a number of modifications to bring UK legislation in line with the provisions of the Framework Directive, including the Health and Safety (Consultation with Employees) Regulations 1996 which arose from the threat of infraction proceedings and extended worker representation to unionised workplaces. In addition the Government had to change the law to ensure that the police were covered by health and safety legislation.

A range of other health and safety directives, implemented through national regulations have also come about as a result of EU regulation. These cover the management of specific workplace risks such as noise or work at height, as well as the protection of specific groups of workers (such as new or expectant mothers, young people and temporary workers). Specific regulations cover areas such as construction work, asbestos, chemicals, off-shore work, etc.

Although the pace of activity peaked soon after the Single European Act with the introduction of the ‘six-pack’, legislative activity has continued and health and safety regulation in the UK is now firmly driven by the EU. 41 out of the 65 new British health and safety regulations introduced between 1997 and 2009 originated in the EU².

However, there has been a considerable reduction in pace as the European Commission has adopted a more deregulatory approach, in part due to pressure from successive UK Governments. The number of new directives has halved in the past five years and this trend seems set to continue, as the European Commission's most recent work programme abandoned 80 proposals and introduced just 23.

UK Government reviews of EU regulation

There have been a number of reviews done by the former UK coalition Government into health and safety which have touched on European regulation. In the case of some, such as the reviews of Lord Young³ and Professor Loftstedt⁴, these were specifically asked to look at “burdens” on business.

The Young review simply complained that “there is evidence that there has been significant regulation ‘creep’ over the years”, but without making any specific proposals for deregulation. Lord Young did however call on the European Commission to look at exempting smaller enterprises from some health and safety requirements, but recognised that the UK could not do this on its own. This suggests a key change that a deregulatory post-Brexit government might seek to introduce, removing protections from several million workers.

The more far-reaching Lofstedt report was more positive. He stated “The increasing influence of the EU in health and safety regulation has provided a number of benefits to the UK. The more prescriptive nature of much of EU legislation may have helped small businesses who often welcome greater certainty over what they are required to do⁵. Where EU Directives have been implemented, it has provided an opportunity to consolidate a number of previous sets of regulations. Furthermore, the Directives provide a level playing field across Europe, which can help competitiveness, particularly as UK health and safety law was already well established.”

He also addressed the belief that EU regulations were “gold-plated”, which means that the British Government went further than required when transposing them into national law. For unions, this is a positive thing as countries should see EU regulations as minimum standards, but he reported “Previous studies^{6,7} have looked into the extent of gold-plating and found little hard robust evidence suggesting it is a widespread problem.”

Lord Davidson carried out probably the most comprehensive review of gold-plating in 2006, and found that it was not as big a problem as often suggested. “My review was not principally focused on the issue of gold-plating, and I did not have the time or resource to carry out the analysis that would be necessary to expand upon the studies previously done on this issue, but I found little evidence to significantly challenge the conclusions of these previous studies.”

A review undertaken by Martin Temple⁸ on the UK regulator, the Health and Safety Executive, also concluded “I did not receive any evidence that suggested HSE gold-plated EU legislation in British legislation.”

All these reviews have been severely limited by what they could propose because of the minimum standards that the European legislative framework provides. This means that the Government have been unable to remove or reduce much of the protection that they may, ideally, like to. The only major regulatory reduction they have managed is the exemption of many self-employed workers from the protection of health and safety

regulation, and that was only possible because the Framework Directive does not cover the self-employed.

Benefits of EU membership

It is difficult to state exactly how many lives have been saved, or how many illnesses have been prevented because of EU legislation. Since the 1989 Framework Directive came into effect, the number of fatalities has fallen considerably, but that continued a downward trend that had been more or less continuous since the 1974 Health and Safety at Work Act. In the year that the Framework Directive and six-pack came into force (1992/92) there were 368 worker fatalities. Last year there were 142 and the rate of deaths has fallen from 1.5 per 100,000 to 0.46⁹. Some of the decline is likely to be caused by structural changes in the workforce, but it is likely that much is down to regulation and enforcement.

What is noticeable is that the decline in fatalities has plateaued since 2010. The same is true of occupational illnesses. This is the period during which there has been a reduction in the level of regulatory activity from the European Commission, although it also corresponds with a decline in inspection activity in the UK¹⁰.

Professor Loftsdet also recognised the benefits of EU regulation. He commented “A number of regulations introduced as a result of EU Directives were identified as particularly helpful in the responses I received and discussions I had. The evaluation of the Provision and Use of Work Equipment Regulations, originally introduced as part of the six-pack of regulations, suggests that it led to improved working practices without causing significant financial concerns¹¹. The evidence suggests another of the six-pack, the Manual Handling Operations Regulations, was also generally well received by duty holders¹², with a case study of one organisation reporting a six per cent reduction in sickness absence and 50 per cent fall in lost time due to accidents directly as a result of measures introduced to comply with the law¹³.”

The professional body for health and safety professionals, IOSH, published an evaluation¹⁴ of the implementation of EU regulation in 2012. It concluded that “the current portfolio of health and safety legislation and Approved Codes of Practice (ACoPs) have contributed immeasurably to health and safety in the UK and will continue to do so”. The report even recommended extending the scope of EU regulation in a number of key areas.

A European Commission review¹⁵ of all the 24 main Directives on health and safety conducted in 2015 concluded that the EU framework is coherent with few overlaps. The regulations have also been transposed into national states with very few problems. Overall the review stated that the effect of EU regulation is good, especially for workers’ health and safety, and there is no evidence of the regulations being a burden. These regulations cover many of the most important sectors or risk factors that lead to death injury and ill-health in the workplace such as chemical safety, carcinogens and musculoskeletal disorders. They also cover machinery safety and personal protective equipment which means that there are minimum and understandable standards that exist across Europe and which have helped prevent the importation and use of substandard or dangerous equipment.

British trade unions and others have used complaints to the European Commission, or threats to seek infraction proceedings, to gain changes in UK legislation. An example was changes to the Management Regulations in 2006 which arose from a trade union

challenge over the way that employees may have been deemed liable for actions in a way that was inconsistent with EU regulation. More recently the HSE had to make positive changes to the 2006 Asbestos Regulations to ensure that they afforded the full protection that should have been given under the 2003 European Directive on asbestos. Given that asbestos is the biggest cause of occupational death in the UK, causing 5,000 deaths a year, the need for strong regulations cannot be overstated.

EU regulations also forced the UK to strengthen the regulations on one of the most dangerous industries, construction, because they have been inconsistent with EU law¹⁶.

Strong regulation have a major impact on workplace culture and an exit from the EU could allow the UK Government to seriously reduce the protection we have in the UK. If employers see a strong, effective, set of regulations on health and safety they are more likely to take the issue seriously. If however, the message coming from Government is that we need to remove protection, employers will believe that what they are doing is already more than enough and the 20,000-plus deaths a year and 2 million people who suffer ill-health because of work will be seen as being acceptable.

Social partnership

The social partners (employers and unions) play a major role in the EU in developing EU regulation on health and safety. The British trade union movement is represented on the European Commission's Advisory Committee on health and safety and on the Board of the European Agency for occupational health and safety, and plays an active part in both of these.

The EU has recognised the important role which unions and employers play in improving standards and working conditions. A succession of EU treaties have provided a role for unions and employers to agree standards and directives in the field of health and safety at both a sector-wide and EU level, and unions are consulted on the development of all new regulations in this area. In addition, EU agreements between unions and employers can also be negotiated at sector-wide level, such as the health sector agreement on needlestick hazards which was transformed into a Directive.

Whilst Directives agreed by the social partners must subsequently be agreed by the European Parliament and European Council, the negotiation process provides scope for employers and unions to agree the text for directives which balance the interests of business with the need for protection for working people. Recently, the European Trade Union Confederation (ETUC) strongly criticised¹⁷ the Commission's decision to reject a social partner agreement on health and safety within the hairdressing sector and there was concern this decision set a worrying precedent. Nevertheless, the involvement of unions and employers in EU decision-making is generally significantly better than existing UK practice.

If the UK withdraws from the EU...

It is unclear what the situation will be if the UK votes to leave the EU. The UK will have up to two years after notifying the European Council of its intention to leave. However a Parliamentary briefing paper¹⁸ concluded leaving would still involve "complex and probably lengthy negotiations". Talks would be held on the future of the UK's relationship with the EU, including whether it could still have access to the single market. If that were the case, Britain might need an EU association agreement, similar to those negotiated with Switzerland or Norway, the only two significant European

economies outside the EU.

Among the conditions accepted by Norway and Switzerland are that they must abide by all EU single market standards and regulations, without any say in their formulation. They agree to translate all relevant EU laws into their domestic legislation without consulting domestic voters. Of course that does not mean that these arrangements will apply to the UK, or that any association agreement will cover health and safety law.

The UK has already indicated that it wants to reduce existing EU protection. A report for the DWP¹⁹ on the HSE's approach to Europe contained an Annex which outlined a number of proposals that the Government wanted to make to reduce health and safety regulation. They included repealing the Optical Radiation Directive, repealing part of the Chemical Agents Directive, removing the requirement for employers to provide eyesight tests for display screen equipment users, and remove the requirement for small, low risk businesses to make a written risk assessment. In respect of eye tests, the report wrongly states that the tests are required because of a misconception that computer use can damage eyesight, while the actual reason is that poor eyesight leads to bad posture – a cause of musculoskeletal disorders. Also employers with less than five workers already do not have to do a written risk assessment under UK law.

The Governments current deregulatory proposals were written in the context of remaining within the EU. If Britain were to leave, depending on any agreement with the EU, further reductions in protection are certainly likely. This was confirmed by advice from a QC who said, in a report on the impact of Brexit on workers' rights from Europe that "if the last Government were not constrained by EU law to provide some effective remedy for breach of the Directives - which it now purports to do so by criminal law alone, without civil claims - it may well have taken the further step, consistent with its logic of reducing the 'perception' of burdens on business by repealing in whole or in part some of the health and safety regulations which implement EU law. In this light I think that many of the regulations which implement duties in EU health and safety Directives are both legally and factually vulnerable in the event of Brexit, to be replaced largely by a common law duty of care alone."²⁰

Conclusions

The TUC is campaigning against withdrawal from the European Union, by emphasising the many positive changes for workers in the UK have happened directly as a result of EU membership and making a strong case for a social Europe.

In recent years, EU-led improvements in health and safety protection have been more limited than in the past, but the overall contribution of EU regulations on health and safety to the UK workforce is substantial. As shown by the recent evaluation of EU regulations, the overall package of directives is practical, fit for purpose, and, more importantly, effective.

It is clear that EU membership continues to deliver wide-ranging protections to UK workers, and the UK Government should not only continue to be part of the European process, but should more actively engage and support an improved and revitalised package of measures aimed at tackling the huge burden of occupational illnesses that are being experienced both in Britain and across the EU.

At the same time, the European Commission needs to expand its work programme to include new regulatory initiatives on health and safety to help make the case to British

workers for remaining in the EU. Further work should be done at both Commission level, and by EU-OSHA, on developing the evidence base for the benefits of EU membership on workers' safety, health and well-being, as well as on living standards and equality in all member states, and that the findings be used to make the case for strong, effective, regulation on workers' rights across Europe.

References

- ¹ <https://osha.europa.eu/en/legislation/directives/the-osh-framework-directive/1>
- ² Taylor C, Health and Safety: Reducing the burden, 2010.
- ³ Lord Young, Common Sense, Common Safety, Cabinet Office 2010
- ⁴ Lofstedt, Reclaiming health and safety for all, DWP 2011.
- ⁵ Vickers I, Baldock R, Smallbone D, James P and Ekanem I, HSE Research Report 150, 2003.
- ⁶ Davidson Review, Final report, 2006. www.bis.gov.uk/files/file44583.pdf
- ⁷ Persson M with Booth S and Gaskell S, Out of Control? Measuring a decade of EU regulation, Open Europe, 2009.
- ⁸ Temple. Triennial review of HSE, DWP, 2014.
- ⁹ HSE Annual statistics, various years.
- ¹⁰ Health and Safety. Time for Change. TUC, 2014.
- ¹¹ Wright M, Marsden S, Hopkins C, Collier D and Turner D, HSE Research Report 125, 2003.
- ¹² Lancaster R, Jacobson Maher C and Alder A, HSE Research Report 346, 2001.
- ¹³ Tesh KM, Lancaster RJ, Hanson MA, Ritchie PJ, Donnan PT, Graveling RA, HSE Contract Research Report 152, 1997.
- ¹⁴ Report on the UK's practical implementation of European OSH Directives during 2007-12, IOSH, 2012
- ¹⁵ 'Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States'- June 2015, DG Employment, Social Affairs and Inclusion
- ¹⁶ HSE board papers.
- ¹⁷ Emergency resolution adopted at the ETUC 13th Congress on 2 October 2015
- ¹⁸ Leaving the EU. Research Paper 13/42 1 July 2013 House of Commons Library.
- ¹⁹ Archer, Appraisal of HSE's approach to negotiating and implementing European legislation. DWP 2014.
- ²⁰ Michael Ford QC, Workers' rights from Europe: The impact of Brexit, April 2016.