Dear Sir/Madam,

**EU Commission Green Paper on Labour Law : Modernising labour law to meet the challenges of the 21st century**

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the EU Commission Green Paper on Labour Law on behalf of its 200,000 members. Please find our comments in the document attached.

We trust that you will find our comments helpful and that they will be taken into consideration. The FSB is willing for this submission to be placed in the public domain.

We are, of course, happy to meet you if you wish to discuss any of our proposals in further detail.

Yours faithfully,

Lucie Goodman
Policy Team
EU Commission Green Paper on Labour Law: Modernising labour law to meet the challenges of the 21st century
Executive Summary

1. Small Businesses, which provide 75 million jobs in the European Union, depend on a flexible labour market. A successful small business provides prosperity, security, and flexibility to its employees. But the small business employer is rarely accorded adequate governmental assistance and the FSB would like to see greater support for small businesses employers.

2. The option to be self-employed is crucial for the EU Labour Market and its status should be expressly recognised and enhanced. The FSB recommends that when a person makes his or her income tax return he/she may make a declaration that he/she is self-employed. The FSB believes that such a declaration should entitle the individual to be regarded as self-employed (subject to challenge). The status of self-employment needs to be elevated and encouraged as self-employed people make a strong contribution to the economy.

3. Small businesses, which are still excluded from the social dialogue, should have their own institution and given equal weight with the so-called social partners. The traditional collective bargaining system where agreements are made between large businesses and trade unions, is increasingly less relevant and more importantly, less representative of the current UK labour market. Given the fact that small businesses account for 99% of all EU businesses, the FSB would urge a realistic appraisal by the EU of the future validity of the traditional collective bargaining system.

4. Labour market legislation, which reduces the freedom and flexibility of the employer and employee, should be a last resort. In the 2006 FSB Employment Survey, 35% of business owners said they had chosen not to employ anyone because of the perceived threat of employment legislation.

5. A “one size fits all approach” to regulation and legislation does not work satisfactorily as it denies the principle of proportionality. While flexibility has to be balanced by essential protection for employees, the FSB believe that the balance has swung too far in favour of the employee at the expense of the employer. A major cause of the imbalance is the adoption of a “one size fits all” approach, which frequently ignores the realities that small businesses face. The needs of small businesses, including that of their employees are not the same as those of large businesses; nor are the needs of private sector employees the same as those in the public sector.
6. It is most unlikely that Flexicurity, could be universally applied to every Member State to achieve the same result for all. Each Member State knows best how to govern its own labour market as it has a closer and more detailed understanding of its own cultural, demographic and economic requirements and choices. This is recognised in the principle of subsidiarity.

7. Impact assessments should be taken seriously and monitored subsequently to implementation. Impact assessments are frequently of poor quality, unduly optimistic, ignored and not monitored. The FSB believes there should be a mandatory “do nothing” option in any consultation on regulation as there are frequent occasions where retaining the status quo is the best option.

8. In cases where collective agreements are permitted to replace legislation, individual employees of a small business should also be able to opt out. The principle should be adopted that wherever a collective agreement provides for an opt out of a regulation, an individual employee in a small business should be entitled to do so by agreement. Where a legislative remedy is deemed proportionate for large business and public sector employees, but not for small businesses, there should be an exemption for small businesses.

9. To counter the loss of jobs to the newly emerging economies, the diversity of the EU labour markets should be utilised to meet the challenge. This can best be done by application of the principle of subsidiarity, which enables national labour markets to respond quickly and experimentally. Each Member State knows best how to govern its own labour market as it has a closer and more detailed understanding of its own cultural, demographic and economic requirements.

Introduction

The Federation of Small Businesses is the UK’s leading non-party political lobbying group for UK small businesses, existing to promote and protect the interests of all who own and manage their own businesses. With over 200,000 members, the FSB is the largest organisation representing the self-employed and small and medium sized businesses in the UK. FSB members together employ more than 2.5 million people and turn over more than £10 billion a year. About 25% of the membership are self-employed, the others being mainly one or two person businesses, which are owner-managed. Membership is voluntary, funded by members’ subscriptions and unlike trade unions, the FSB receives no state or EU funding.

The FSB welcomes the opportunity to respond to this consultation concerning the evolution of EU Labour Law to meet the challenges of the 21st century
and the FSB believes that flexibility is a key factor in the future of Europe as a strong global contender. There is great strength in the diversity of Europe and a move which might seek to impose labour market uniformity on so many member states with differing economic and cultural needs, would be counter-productive. As the intention of the Green Paper on Labour Law is to promote the Lisbon Agenda’s objective of achieving sustainable growth with more and better jobs, the FSB would urge the European Commission against regarding the labour market diversity of each Member State as a problem which needs to be “fixed”.

Small businesses – the backbone of employment in Europe

The SME sector has a tremendous part to play in the economic future of Europe. An important factor to bear in mind in the digestion of the FSB’s response is that small businesses account for 99% of all European Businesses and 75 million jobs in Europe (European Commission: DG Enterprise and Industry). Small businesses are an integral part of the community and they sustain communities by underpinning a strong local economy. According to the FSB’s 2006 survey, “Lifting the Barriers to Growth”:

- 27% of respondents operated in rural areas, villages and farms
- 19% were located in town centres
- 78% of small businesses serve local markets.

By looking after local communities, whole nations will thrive. When Member States are allowed to prosper, the whole of Europe can prosper.

According to the UK Department for Trade and Industry, 64% of commercial innovations in the UK come from SMEs. Therefore if Europe wishes to increase its competitiveness in the global market, it is clear that the health of the small business sector needs to be a priority.

Half of all new jobs in the EU are already created by less than 5% of high-tech small and medium sized enterprises. (1)

The FSB welcomes the Green Paper’s agenda to give “consideration to the problems faced, especially by SMEs, in dealing with the administrative costs imposed by both Community and national legislation” and urges the Commission to be mindful of this agenda in their consideration of this document.

Flexibility

Flexibility in the labour markets has been accepted as crucial by both the UK Government and the European Union. It benefits employers by enabling them to adapt rapidly to changing trading conditions - vital if the EU’s small businesses are to hold their own in a global marketplace. It also benefits employees in a variety of ways. It can enable them to manage their family lives and have greater control over their working day. It gives them greater job security in difficult times and can enable them to participate in the
rewards in prosperous times. Many workers prefer the traditional informality and convenience of small businesses.

Flexibility is not an absolute state. It has to be balanced by essential protection for employees, but the FSB believe that the balance has swung too far in favour of the employee at the expense of the employer. A major cause of the imbalance is the adoption of a “one size fits all” approach, which frequently ignores the realities that small businesses face. The needs of small businesses including their employees are not the same as those of large businesses; nor are the needs of private sector employees the same as those in the public sector.

Yet the pressure for additional employment legislation would appear to come mainly from large business and public sector employees and the press frequently seems to consider lobbying organisations who represent large businesses to be representative of businesses of all sizes. Although it is often recognised that the resulting legislation impacts disproportionately on small business, the legislation can fail to adequately take into account the difficulties for small businesses. In the EU, it is extremely hard for small businesses to make their voices heard due to lack of representation on the Social Dialogue and it is also difficult in the UK. Legislators often forget that almost every new employment law regulation imposing statutory terms and conditions on employment contracts reduces flexibility, which in turn holds back competitiveness and prosperity.

Glass Ceiling

As a result of employment legislation, many small businesses are reluctant to take on employees. The 2006 FSB Employment Survey shows that 35% of FSB members have chosen not to employ anyone, considering that employees are “too great a business risk”. In the 2006 FSB and FPC Survey, “Burdened by Brussels or the EU”, we found that as a result of the Part-Time Workers regulations of 2000, nearly a quarter of small businesses said that new amendments deterred them from employing part-time staff. These fears are further demonstrated to be realistic by the figures from the FSB helpline which compute a massive 77,000 calls (of a membership of 200,000) in the year 2006 on the subject of employment law.

Understanding the small business sector

Understanding small business problems is difficult for those who have never worked in small business. There are two main problems – cashflow and administration. By their nature, small businesses frequently have very limited funds when they start, and developing the business is a considerable challenge. Much employment legislation eats into cash flow, upon which they heavily depend. In our recent employment survey, it was found that 2/3 of our respondents had an annual turnover of less than £350,000 and are very vulnerable to the negative impact of any legislation which increases cost.

Legislators can overlook the costs in making regulations (even those designed with good intentions), but impact assessments are frequently of poor quality, unduly optimistic, ignored, and not monitored. The FSB would
also like to see more use of a “do nothing” option in any consultation on regulation as there are frequent occasions where retaining the status quo is the best option. Extended holidays, parental leave and other regulations requiring use of temporary labour, all undermine the cashflow foreseen in the business plan. Administering the responsibilities of employment takes an inordinate amount of time, frequently requiring costly professional help, and detracting from the main task, which is to build a prosperous business.

1. What would you consider to be the priorities for a meaningful labour law reform agenda?

The role of small business as employers is huge. A successful small business provides prosperity, security, and flexibility to its employees. But the small business employer is rarely accorded adequate recognition and the FSB would like to see greater recognition and support for small businesses employers.

The status of small businesses is an important priority. The hallmarks of small businesses are independence, enthusiasm, flexibility, agility, dedication and innovation. They are the lubricant that facilitate large business and the public sector. With the right conditions, small businesses who wish to do so can become big businesses, although Europe has a poor track record in this area¹. But because they are, as individuals, small, they are less able to weather imposed legislative changes.

The voice of small business is inadequately heard in the EU. The voices of large business, environmental and social groups and public sector workers have enjoyed the advantages of the social dialogue for half a century. The so-called social partners have enormous influence. But small business is comparatively excluded and the FSB would like to see a comparable institution for small business.

The EU principle of proportionality is rarely applied in employment legislation. What is proportionate for the public sector, where the requirement to make a profit is absent, can be disproportionate for small business. Similarly, what is proportionate for businesses with a large labour force and hence a pool of workers and a human resources department, is disproportionate for those without. The use of small business exemptions is rare – the FSB would support the use of exemptions in burdensome employment legislation for businesses with 20 staff and under becoming commonplace.

Small business, apart from finding and filling the gaps left by large businesses, are often in competition with them. This is particularly visible in the high streets. It is widely acknowledged that the costs of employment legislation are greater for small business than for large organisations. According to the FSBs publication of 2004 “Better Regulation”

¹ EU Research Advisory Board EURAB 04.028-final, EURAB report on: “SMEs and ERA”, 2004
written by Robert Baldwin of the London School of Economics, small firms with 1–2 employees spend nearly five times as many hours per person dealing with regulation than firms with 50 or more employees. They spend over 4% of annual turnover on compliance and businesses with under 20 employees incur 35% higher compliance costs than firms with over 50 staff.

Much of this legislation is initiated within the social dialogue. Even so, unionised employees can mitigate their effects by collective agreement but this procedure is not usually available to small business employees. The principle could be adopted that wherever a collective agreement (in which small business is represented) can provide for an opt out of a regulation, an individual employee in a small business should be entitled to do so.

**Flexibility in the labour market is a hallmark of small business, which is a major reason why so many workers choose to work in one.** Every legislative instrument that replaces freedom in employment contracts with a “one size fits all” compulsory provision, erodes that flexibility. This should be a foremost consideration in formulating legislation. This becomes increasingly important every day as EU employment policy faces up to global competition, particularly from Asia.

2. **Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation? If yes, then how?**

Labour Law can contribute to improved flexibility and employment security if it recognises that simplification and flexibility leads to enterprise and economic growth, which in turn provides opportunity and employment. Small businesses can better deliver goals if they have enough flexibility to do so. The FSB would not recommend strict employment legislation as it works against itself by ensuring that there are less employment opportunities and a weaker economy, which cannot afford to pay for increased employee security. The power to opt out needs to be retained and opt outs should be extended to the individual who has as much right to fair representation as the “work force”.

Any enhanced social security for those out of work needs to be thought through very carefully as there is danger that it can serve as a disincentive to work, which would prevent adaptation to the challenges presented by the 21st century.

Collective agreements can be a force for good, since they can take account of conditions prevailing in a specific sector or region. Much is said about employees’ rights, but collective agreements can also recognise that employees collectively also have responsibilities. They are however of little practical worth in a small business with only a handful of employees as in the UK, Trade Union recognition only starts in a business with 21 employees or over. In order to be fair to these, they should be enabled to reach agreements with their employers where that can be done in the interests of both sides in the business. The direction which EU labour law should take is restoring freedom of contract. They too can be and continue to be social
partners when the legislation allows. This added flexibility would enable the
parties to take account of sectorial and regional diversity, to their joint
prosperity and security.

It is unlikely that one rule could be applied to every Member State to achieve
the same result for all. Each Member State knows best how to govern its
own labour market as it has a closer and more detailed understanding of its
own cultural, demographic and economic requirements. For example, the
Nordic labour market model is successful because it has evolved to suit
Nordic needs and choices. Countries such as Denmark and Norway have a
culturally strong tolerance to high taxes and a considerably lower population
than the UK. The Danish model of flexicurity has been successful in
Denmark, but is unlikely to work in Member States with larger and more
diverse populations, vastly differing service industries, greater wage
differentials or an enterprise based culture.

1 In a survey on the effects of over implementation of the Part-Time Workers Regulations, 2002, it was
found that a quarter of businesses said that the new regulations had deterred them from employing part-
time staff (Burdened by Brussels or the UK? Improving the Implementation of EU Directives, Sarah
Schaefer & Edward Young, Foreign Policy Centre – FSB, 2006

3. Do existing regulations, whether in the form of law and/or
collective agreements, hinder or stimulate enterprises and
employees seeking to avail of opportunities to increase productivity
and adjust to the introduction of new technologies and changes
linked to international competition? How can improvements be made
in the quality of regulations affecting SMEs, while preserving their
objectives?

The FSB would encourage the EU to reach its goal of 3% investment in
research and development to ensure that Europe can remain globally
competitive. As mentioned earlier, 64% of commercial innovations in the UK
come from SMEs and 99% of all European businesses are SMEs. Further
focus on R & D is therefore likely to result in a globally competitive rate of
innovation.

Burdensome legislation stifles employment opportunities

The labour market would benefit from less regulation of SMEs as our 2006
Employment Survey indicates. **One third of our members have no
employees and when asked why, half of them said it was because of
the volume, complexity and overall burden of employment
legislation, which made the concept of an employee seem like too
great a business risk.** The FSB and FPCs survey **Burdened by Brussels or
the UK,** found that as a consequence of part-time workers regulations,
nearly a quarter of all businesses said that the new amendments deterred
them from employing part-time staff.

The FSB supports attempts to prevent malpractice by rogue employers, but
considers that such legislation can frequently be so weighted on the side of
the employee that it penalises the honest employer. This creates the risk of
unintentional non-compliance, due to a lack of understanding of the legislation. The result of allowing a flexible labour market by minimising regulation, would be an increase of job opportunities, allowing the employee more scope to choose the job which best suits their needs.

Reduction in legislation requiring extensive paperwork by the employer would facilitate increased economic activity, particularly productivity and job creation. A typical small business employer has to devote 7 ½ hours a week to paperwork and compliance problems – note the huge number of calls on this topic alone to our helpline referred to earlier in this document.

For this reason, the FSB fully supports the efforts of the European Commission and of Commissioner Verheugen in particular, to reduce the administrative burden on small business. The Commission has itself revealed that EU legislation costs the business community €600 billion every year. Therefore it is important that EU member states adopt the Commission’s recommendation to cut the burden of regulation by 25% at EU and national level. If every small business in the EU were to create one more job, unemployment would be eradicated.

4. How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective agreement, so as to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?

The FSB do not believe this is an area that needs reviewing. As covered in question 8, there is already a good record in terms of a network of rights for temporary workers in the UK. It is also less costly for UK employers to employ permanent workers than temporary due to the high fees employers have to pay agencies. It is therefore unlikely that employers will use temporary workers for any other reason than the need for (often seasonal) flexibility and for example, maternity leave and extended holidays.

5. Would it be useful to consider a combination of more flexible employment protection legislation and well designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?

The FSB has examined the principles of Flexicurity, in particular the Danish labour market model characterised by:

- loose legislation for employment protection
- a generous social safety net for the unemployed and
- high intensity spending on further training

This system has been successful in Denmark as it provides robust protection for those who are out of work while allowing businesses the power of relatively uncomplicated “hire and fire”.

However, while Flexicurity has been successful in Denmark, the FSB considers that it would be unwise to indiscriminately apply Denmark’s system to other Member States who have also evolved differing Labour Market models to suit their needs and choices.

Any such measures would result in unsustainable tax rises to fund the enhanced security which would cause the SME community to face additional pressure on cashflow. If the disparity in income for those who work and those who are out of work was minimised, there is the risk that there would be less incentive for workers and employees to return to work. Any tax rises would also be most likely to result in loss of employment opportunities and would greatly harm the efficiency of the labour market, putting a greater financial burden on the State, due to increased need for more social security.

The UK labour market is geared towards flexibility and has a culturally low tolerance to high taxes. It is also worth noting that the UK rate of unemployment is already the same as Denmark’s, at around 5%.

6. What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?

Small businesses cannot individually take advantage of collective agreements. The FSB believes that it is the State’s responsibility to ensure that the population have good literacy and numeracy skills. However, it is not for the employer to absorb the burden of supporting training below level 3.

The training received from working for a small business can be invaluable, but often does not fit into the category of a recognised qualification as with a larger business. The FSB believes that most small business owners are very willing to assist their staff in realising their potential as well-trained staff enhance the success of businesses. However, the FSB does not support any enforced training requirements which would eliminate the opportunity for flexibility.

The traditional collective bargaining system where agreements are made between large businesses and trade unions, is increasingly less relevant and more importantly, less representative of the current UK labour market. Given the fact that small businesses account for 99% of all EU businesses, the FSB would urge a realistic appraisal by the EU of the future validity of the traditional collective bargaining system.

7. Is greater clarity needed in Member States’ legal definitions of employment and self-employment to facilitate bona fide transitions from employment to self-employment and vice versa?
UK law draws a distinction between contracts of service – “employment contracts” and contracts for services – “commercial contracts”. This is probably the best general principle. Its application depends on a number of tests, including:

- Does the worker supply his own skill and judgment?
- Does he/she supply his own tools and equipment?
- Is he/she free to supply services to other contractors or is he required to be dedicated to a single contractor?
- Is he subject to supervision not only for his outcomes but also the way in which he achieves them?
- Is he in business on his own account?
- Has he invested money in that business?
- How have the parties themselves expressed their relationship?
- What is the mutuality of obligation?

These criteria, which are not exhaustive, have been developed by the Courts over many years. They leave room for uncertainty in borderline cases, but are probably the best that can be done to cover the wide range of activity which the status of self-employment embraces. In more recent years the income tax authorities have administratively narrowed the scope of self-employment. To counter this, the FSB supported a bill to make provision about self-employment ordered to be brought in by Mr. Mark Prisk MP on 9th January 2002. It provided that when a person makes his income tax return he may make a declaration that he is self-employed. Such a declaration entitles him to be regarded as self-employed. However, if the officer is of the opinion that the declaration should be disallowed, he may give notice of disallowance, with reasons. The declarer may then, if he so wishes, appeal against the disallowance. On such appeal, there is a presumption in favour of the declarer. The bill includes provisions to protect workers from being pressurised into making such a declaration. These provisions would give statutory recognition to the right and freedom for a worker to be self-employed whilst at the same time inhibiting the comparatively small number of employers who seek to “disguise” their employees as self-employed in order to evade their responsibilities. It would provide a speedy solution to borderline cases.

The criteria outlined above form part of the common law, one of whose virtues is that it evolves to meet new or changing situations, by analogising from precedent. These are retained. They may not be suitable for other member states. The framework established by the bill has features which we understand are not replicated in some other member states. Most notable amongst these are that registration is voluntary; the right to be self-employed cannot be refused on anti-competitive grounds, e.g. “there are already enough bookshops in town”; or business appraisal e.g “the business is under-funded”. There are no restrictions on the right to be self-employed merely a mechanism for ascertaining that the status of self-employment in fact exists. Hence the FSB doubts whether it is practicable or desirable to attempt to impose a definition that would apply in all member states.

It is predicated on the proposition that the employed have great advantages over the self-employed, benefiting as they do from the network of rights and
the reduction in commercial risk. In view of the major contribution to the economy that the self-employed make, we consider that revenues would increase, unemployment fall and productivity improve if self-employment were encouraged in this way. The effect on the national insurance fund would be neutral, as the Government Actuary has recently confirmed the contribution/benefit ratio of the self-employed is commensurate with that of an employee.

The FSB doubts that creating a rigid, EU-wide definition of self-employment would be a helpful way of competing with other emerging economies as it may hold back enterprise and innovation. Each Member State’s definition of self-employment has evolved over time to suit their needs. The FSB believes the fact that different Member States have variations in definitions of self-employment and employment is a necessary reality which the EU would be best advised to accept and work with.

The FSB would urge the EU commission to bear in mind the dangers of standardising the definitions of self-employment or do anything to limit or undermine this increasingly important social and economic trend. The FSB would remind the EU Commission that the majority of EU citizens favour self-employed over employed status\(^2\). Furthermore, this correlates with a wider trend towards self employment, for example in Australia where the number of self-employed outnumbers trade union members.\(^3\)

The FSB believes that a rigid definition of self-employed status would hinder the development of socio-economic trends that are society’s natural response to the challenges of the 21st century. The development of so-called “lifestyle” businesses is a relatively new but increasingly important phenomenon. According to an FSB survey, lifestyle or home based businesses account for over one-quarter of small businesses in the UK. 45% of home-based businesses are registered as sole traders\(^4\). Research has demonstrated that operating from home, often in rural areas, is no barrier to growth. Fuelled by the revolution in information technology this development is contributing to a renaissance of local communities, strengthening the social fabric that is perceived to be under attack from globalisation.

<table>
<thead>
<tr>
<th>Small Business View: Restrictions on the right to be self-employed as a barrier to creating jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Owner of Financial firm, Yorkshire</strong></td>
</tr>
<tr>
<td>&quot;I own a financial services firm in Goole and have five self-employed advisors working on my behalf.</td>
</tr>
<tr>
<td>Under the Financial Services Authority (FSA), to avoid confusion of the public, an advisor can only register and work for one company at a time.</td>
</tr>
</tbody>
</table>

\(^2\) Flash Eurobarometer n° 83: Entrepreneurship, Survey conducted on behalf of The European Commission, Directorate-General Enterprise by EOS Gallup Europe, September 2000

\(^3\) Institute of Public Affairs Review June 2005, John Roskam

\(^4\) Lifting the Barriers to Growth in UK Small Businesses, The FSB Biennial Membership Survey, 2004
Our advisors work from home and are not working under direct supervision, which means we have no idea how often they work. For this reason they are classed as self employed. Payment is based on results. This arrangement allows the advisor to set their costs against tax, car, petrol, home and office costs.

If I had to employ the advisors they would not have the potential to earn as much money as the risk would transfer to the company from the individual.

I would also be less likely to expand as the risk of employing advisors would be too great. Large companies can carry this risk but as a small company, we could not.

Our advisors are paid only for the work done and meet their own expenses. I feel this is a good definition of self-employment.”

Viewpoint from one of the self-employed financial advisors

“I have been working as a Mortgage Advisor on a self employed basis since April 2005.

I have been employed and self-employed doing the same job and I much prefer to work on a self-employed basis as the earning potential is greater than if I were to work for someone on an employed basis. It also gives me greater flexibility in my working day as I can structure it to suit me. If I was employed I would have to work to specific hours that were set for me. There is also a lot of traveling involved in my job and being self employed I can claim my petrol and car maintenance against my tax bill.

I do not feel that it would be in my best interest to do this job on an employed basis.”

8. Is there a need for a “floor of rights” dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

The FSB believes that there is no need for a “floor of rights” for all workers. In the UK, employees already enjoy a network of rights. Some of these derive from EU law, e.g. working time including paid holidays and age discrimination and these are frequently “goldplated” by the UK Government. Others derive from UK national law, for example national minimum wage and unfair dismissal. These rights are subject to inspections and monitoring and are enforceable by Tribunals. Cumulatively they impose a heavy administrative burden. Workers in the UK are also entitled to free healthcare
under our National Health Service and are protected by our health and safety legislation.

The already protective network of rights in the UK does not require any further regulation and any such attempt will seek only to encourage the black economy, a move we strongly oppose. If the labour market becomes even more formalised, it will damage the bridge into employment as many people return to work through these casual flexible means.

In the FSB’s Employment Survey 2006, it was found that 40% of small businesses have at least one casual or seasonal worker per average year. One third of employers said that they were deterred from creating jobs because of the burden of employment regulation and further regulation would only serve to deny these casual workers the opportunity for the flexible work they seek.

Workers who are not employees are recipients of public services which apply to all whether workers or not, for example, healthcare and health and safety regulation. Apart from the right to be self-employed, this sector has the right to “buy in” services as and when required and the right to provide services in accordance with commercial contracts, such as computer services. Commercial contracts take a wide variety of forms and much depends on the sector. They are tailored to meet the needs of the parties and as such, flexibility is crucial. Self-employed contractors are adept at spotting and filling gaps in the market, and make a huge contribution to the efficiency and productivity of the business sector which they serve. They do not need a “floor of rights” which may reduce their flexibility.

9. Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in "three-way relationships"?

The FSB would repeat the point that the UK already has a network of rights for workers. The UK has an extensive record of ensuring that our agency and other workers benefit from many of the rights enjoyed by other employees. The UK has also extended protection to fixed-term contract workers so that they are treated in the same way as comparable permanent employees.

According to the UK Department of Trade and Industry, recent research conducted by Kings College, London and sponsored by the EU, shows that temporary workers are among the happiest in the workforce.

The FSB reiterate that it is at least as easy to get permanent work in the UK as temporary work, therefore any employee who seeks temporary work does so because it suits his/her needs at the time. We would suggest that the
current system in the UK is more than adequate and provides a flexibility which is beneficial to both employer and employee.

There is a wide variety in the circumstances in which multiple employment relationships are established – from nurses to bricklayers. Each sector has developed systems which meet its needs and the needs of the consuming public. Any attempt at universal clarification would be likely to attract unintended consequences.

Case Studies to illustrate the natural flexibility of small businesses

Case study 1

**Owner of a small trust and will writing business in Rotherham**

“I have 2 members of staff, a PA and a consultant. We operate our working hours on an informally flexible basis. We know each other quite well by now and because there are only 3 of us, there is a culture of trust, where I do not impose rigid working hours, where staff have to "clock in". For example, if my PA needs to arrive late for family reasons, I am happy to be flexible. Sometimes my consultant prefers to work from home. This is all agreed informally.

My staff and I enjoy a happy working relationship and I know I can trust them to do an excellent job.”

Case study 2

**Owner of a small business in the sales sector in Surrey**

“An employee (salesman) has been having personal and sleep problems and showing a lot of symptoms of impending depression/mental breakdown. His ability to work was suffering. We came to an arrangement that he would work three days a week for a few months to see if this will allow him to unwind, relax more, and recover. We have agreed that we will pay him and allow holidays on a pro rata basis, i.e. 60% of full pay, while it lasts.

It is about three weeks since we started this arrangement, and he is showing signs of improvement. His working days are quite productive.

We came to this arrangement at the request of the employee and I never even considered whether there is any legislation covering the situation. As a concerned employer, I considered it to be an internal matter.”
10. Is there a need to clarify the employment status of temporary agency workers?

The FSB is of the opinion that such universal clarification is unnecessary because it would be damaging to the balance that each country has achieved through experience. We would suggest that the EU ensures that there is easily accessible and clear guidance which any potential workers in the EU can consult when deciding to work in a particular country.

Workers and employees are free to make their own decision to work where they wish in the EU and the FSB believes that with this freedom comes the responsibility of the individual to make the decision that is right for them. For example, if a worker is pregnant, it is her responsibility to ensure she makes an informed decision should she decide to work in another country during her pregnancy.

To produce one employment status rule for all temporary workers would be complex. This would ultimately costs jobs as the employer is also at liberty to decide against employing workers in inflexible circumstances.

11. How could minimum requirements concerning the organization of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers’ health and safety? What aspects of the organization of working time should be tackled as a matter of priority by the Community?

The FSB believes that it is crucial that individual workers retain the opt-out from the Working Time Directive. The employees are free to choose whether they sign the opt-out. Often, when given the freedom to do so, small business offer their staff more flexibility than any protective legislation ever could ever ensure, (see case study 1). We consider the retention of the individual opt-out is vital to the success of the UK small business sector for the following reasons:

- The flexibility offered by the opt-out enables the UK to maintain a thriving small business sector which in turn contributes to 50% of UK GDP. Small businesses have little control over next week’s order book.

- Small businesses, unlike larger ones, do not have personnel or administration departments with a pool of employees on whom they can draw. The opt-out helps mitigate this disadvantage.
• The individual opt-out reduces the frequent, unpleasant laying-off of staff and recruiting them. Many small businesses have seasonal activity and some have to respond rapidly to exceptional demand or economic factors.

• The typical UK small business consists of an owner/manager (who often works very long hours) who employs a few staff. According to our 2006 survey “Lifting the Barriers to Growth” the average small business owner employs 4 people. The resources of such businesses are generally focussed on meeting customer demand in the most efficient and cost-effective way. Expenditure for additional, administrative and support staff is not something small businesses can afford. These tasks inevitably fall upon the owner/manager to undertake when not servicing customer demand thereby extending the hours worked.

• The FSB does not wish to see the health and safety of employees compromised. It is clear, however, that in the UK, where the opt-out has been retained, we have one of the best health and safety records in the EU.

The Working Time Directive should be amended to provide that time spent on call when there is no call should **not be classified as working time**. Further it should be clarified that records of hours worked for salaried employees who have opted out and who do not get paid for overtime, need not be kept.

**12. How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community?** Do you see a need for more convergent definitions of 'worker' in EU Directives in the interests of ensuring that these workers can exercise their employment rights, regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter?

A distinction has to be drawn between workers who go to work in another member state for a short period to do a particular task, (for example a lawyer appearing at the ECJ in Luxemburg who retains their employment rights of their own member state) and one who goes to do multiple tasks for a prolonged period, (for example a manager of a lawyer's branch office in Brussels). The distinction drawn by the treaties and the case law of the ECJ between the provision of services and establishment should be applied.

The “one stop shop” adopted by the Services Directive should be emulated so that workers operating in another member state under an employment contract of their home member state can get clear guidance as to their position.
13. Do you think it is necessary to reinforce administrative cooperation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

Small businesses do not currently enjoy the opportunity to engage in the Social Dialogue, despite the magnitude of their relevance in the EU Labour Market. The FSB believes that there should be a new SME forum at the EU level with advisory status and which could be restricted to Employment and Social Affairs. It is very important that small business concerns are taken into consideration at all levels of the EU legislative process.

However, the FSB would not support the reinforcement of administrative cooperation between the relative authorities to boost their effectiveness in enforcing Community labour law, as we do not believe that enforcement should take place at EU level.

14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

The FSB would be strongly against any such further initiatives at EU level. The principle of subsidiarity applies and any monitoring should take place at a national level. To add such further unnecessary regulation would work against the Better Regulation Agenda which the Green Paper aims to adhere to.