EU Green Paper on Modernising Labour Law

CIPD response to the European Commission

With 127,000 members, the Chartered Institute of Personnel and Development (CIPD) is the largest body in Europe responsible for the management and development of people. Our response to the Green Paper is based not on theory or ideology but on the practical experience of our members and the evidence about employment conditions in the United Kingdom and other member countries. Our approach to issues of public policy is to ask “What works?” in the context of improving employee well-being and productivity.

As a professional body, our views are distinct from those of the UK Government, employer bodies and trade unions. Our research shows that the way in which people are managed is a key driver of business performance.

We would make 3 general points which underpin our comments on specific questions:

(a) organisations need to be able to respond flexibly to changing circumstances in order to remain competitive;
(b) flexible working is attractive to many UK workers, for whom it represents a positive choice, while for others it represents a “bridge” into permanent employment.
(c) our survey evidence shows that those on flexible contracts tend to be more emotionally engaged in, and more satisfied with, their work.

This underlines that flexibility and employment security are best seen as mutually reinforcing rather than as alternative choices.

We set out below our answers to the specific questions posed by the Green Paper.

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

Employment legislation in the United Kingdom provides a comprehensive framework of employment rights. The CIPD believes that the priorities for employment law reform in the UK should be:

- to resist pressures for further regulation, whether originating from the EU or national government, that would discourage recruitment and add to employment costs
- to consider areas for simplification of existing employment legislation, on the lines of the current UK review
- to improve guidance to employers on the practical implications of employment regulation.

CIPD supports the UK legislation giving employees the right to request flexible working, and we continue to urge that the right should be extended to all employees.

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?

Segmentation of labour markets reflects a range of social, economic and political factors. Legislation on equal opportunities can encourage good practice by employers and extensive legislation in this area is now in place. In the UK, active labour market policies have been effective in reducing unemployment and helping disadvantaged groups into work. In those
countries where employers have recruited temporary labour on a large scale, this may have been a response to perceptions that existing employment regulation inhibits enterprise. Countries that impose substantial non-wage labour costs on employers, which have the effect of reducing their competitiveness, need to examine how these costs can be reduced.

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?

In general the impact of legislation will depend on how well it is drafted and how employers and individuals respond. In order for legislation to be effective in promoting positive working practices that will support business performance, timing and presentation will often be important. The symbolic effect of legislation may be more important, through its influence on attitudes, than its direct impact.

Experience in the UK with a “shared human resources” pilot scheme suggests that help for small firms may most effectively be directed at supporting good employment practice so as to improve employers’ confidence in managing the employment relationship.

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?

Within the UK, flexibility and employment security are not seen as alternatives. Research shows that good employment practices support business performance. In general employers are not looking for the relaxation or dilution of existing employment rights, but would welcome simplification, or the removal of unnecessary complexity. Employment legislation in the UK already offers individuals a significant degree of protection. The current debate on dispute resolution is focussing on how individual rights can be more effectively enforced, while depending less heavily on legalistic processes.

The statutory right to request flexible working has been effective in stimulating individuals to ask for, and employers to agree, more flexible working patterns. This is an example of “soft” law, where the individual employee’s right is limited to requesting a change in working pattern but research shows that the resulting dialogue between employer and employee produces positive outcomes in the majority of cases.

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 United Kingdom has adopted extensive employment protection legislation and provides assistance to the unemployed in the form of both active and passive labour market policies. A wide range of employment and training programmes is available to help unemployed people into work, and their effectiveness is regularly evaluated and reviewed.

The aim of most employment legislation in the UK is to establish minimum employment standards and beyond that to stimulate good practice by employers. A key underlying theme of UK employment legislation is the need to ensure that employers can adapt to changing market circumstances, and are not inhibited from offering permanent employment because
of the difficulties they would face should circumstances change and they needed to contemplate workforce reduction. The 12-month employment threshold for certain employment rights, including unfair dismissal, offers significant reassurance to employers in this respect.

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?

Existing legislation on working time affords opportunities for employers to negotiate with workforce representatives so as to vary the detailed application of the regulations. In general however relatively little use has been made of this provision in the UK, reflecting the decline of collective bargaining. Trade union learning representatives are recognised in many larger organisations. However CIPD does not believe that it would be helpful to require employers to negotiate on training since this would be likely to lead to unnecessary or inappropriate training and would be an inefficient way of determining training volumes and priorities.

Similarly it is hard to see how collective agreements would help in facilitating transitions between different contractual forms in the UK context. There are no statutory barriers to employees entering into different contractual forms with employers, where this is acceptable to employers and employees. The majority of workers on part-time and temporary contracts prefer these arrangements to the alternative; others see them as a route into full-time or permanent jobs.

UK employers have supported action to deal with unemployment black-spots and employment and training measures to help individuals negotiate transitions from unemployment or disability into work. Employers’ increasing focus on engaging employees also aims to promote positive attitudes which support individual learning.

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?

The legal definitions of employment and self-employment in the UK are fairly clear. The problem lies in applying the definitions to the actual circumstances of individual cases. This is in large measure a matter for courts and tribunals to determine (and where necessary HMRC in order to decide the appropriate tax regime to apply). The category of “worker” has been increasingly used in UK legislation to extend many basic employment rights, such as the minimum wage and legislation on health and safety and discrimination, to individuals who are not employed under an employment contract but are in a similar relationship to the employer. It is doubtful if significant value would attach to a further review of the distinction between “employee” and “worker”, aimed at establishing which if any further employment rights might usefully be applied to “workers”. Some clarification in this area is arising through case law. It is any case evident that people who are not “employed” cannot be made redundant or unfairly dismissed.

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?

There is some difficulty in laying down a fixed “floor of rights” applying to all workers regardless of their employment status. In the UK, “workers” enjoy the same protection as employees in respect of basic standards such as health and safety and the minimum wage
It is not evident however that all “workers” should have the same minimum entitlement to holidays and pensions: for example, temporary or self-employed workers may in effect be trading off one form of employment benefit against another.

**CIPD would be wholly resistant to any proposal to apply a common floor of employment standards across EU member countries.** Tax and pension regimes, (including the balance of state/company/individual provision) differ widely between countries. To have a meaningful statutory floor on employment conditions, there would first need to be an un-bundling of state arrangements and equalisation across the EU, plus a move towards harmonisation of tax and social security policy. There would also be political pressures to set the floor at a high level, so as not to threaten the competitive position of those countries with more generous provision, and this would be seriously damaging to economic growth and employment across the Community as a whole.

Employment law cannot in any event provide a guarantee of job security. Where there is evidence of need, the UK Government has shown itself capable of effective action to combat abuse, for example through the recent legislation on gangmasters.

**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”?**

It is in principle desirable that individuals should have a single employer, in the sense of some body or organisation that is clearly responsible for meeting the requirements of employment regulation. **However the increased focus on corporate social responsibility (CSR) means that many companies recognise that their commercial interests could be affected by poor treatment of employees by their suppliers or contractors, and this is influencing their behaviour in a positive way.** Recent UK legislation provides protection for workers employed by sub-contractors in certain sectors eg food production.

**10: Is there a need to clarify the employment status of temporary agency workers?**

Recent cases in the UK have suggested that agency workers will often in practice be employees of the client organisation to which they are allocated. A minority of agency workers are directly employed by the labour supplier (or employment business). **It would in general be undesirable to require the client employer to take on the full responsibilities of an employer in the case of temporary agency workers since this would seriously damage the agency market and make it harder for employers to recruit temporary workers when needed for business reasons.**

**11: How could minimum requirements concerning the organisation 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 key issue for the UK is the maintenance of the existing “opt-out” for individual employees. **Where employees are willing to work for longer than the weekly hours threshold, it would be wrong to prevent them from doing so.** The definition of “on call” time needs to be amended so as to allow national health services and others to operate lawfully where there is no clear threat to employees’ health.
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?

For the reasons outlined in the response to question 8 above, **Member States should certainly retain their discretion in relation to fixing employment rights for workers within their boundaries.**

13: Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

**Enforcement of employment law is a matter for member states.** Community enforcement would be both undesirable and impracticable.

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

No. It is unclear how effective would be Community-level action to deal with undeclared work or the “black economy”.

CIPD
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