

## 1. Introduction

**1.1** UNISON Cymru/Wales is Wales' largest public sector trade union. UNISON Cymru/Wales has 100,000 members working in public services across Wales.

**1.2** We represent full-time and part-time staff who provide public services, although they may be employed in both the public and private sectors. Two thirds of our members are women and our members work at every level in public services. This includes frontline staff and managers, working full or part time, in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector.

**1.3** We welcome the opportunity to feed into the inquiry on Wales' future relationship with the European Union.

**1.4** This inquiry will result in a wide response and so UNISON has opted to limit our response to elements of specific interest to public services and public service workers.

## 2. To identify the most essential aspects of the UK's future relationship with the European Union from a Welsh perspective

**2.1** We have serious concerns over the UK government's approach to new trade deals and the impact these could have on devolved services. This must be addressed in any common framework.

**2.2** The primary focus of modern trade agreements are 'regulatory barriers to trade' and the trade in services rather than traditional tariffs and quotas on goods. Subsequently, these agreements affect many aspects of public policy including jobs, labour rights, environmental and consumer protection. They also seek to extend services liberalisation including public services.

**2.3** UNISON believes any trade agreement that the UK negotiates after exiting the EU should be subject to meaningful public and parliamentary scrutiny. The Trade Bill currently before Parliament fails to ensure that.

**2.4** Instead the Bill grants the Secretary of State for International Trade wide-ranging powers to open, conduct, conclude and sign trade agreements without a mandate or scrutiny from Parliament. Furthermore, under the Constitutional Reform and Governance Act (2010) the Government may simply lay a trade agreement before Parliament for 21 days and it is deemed to be agreed unless there is an objection from the Commons.

**2.5** The Trade Bill is aimed at replicating after Brexit those trade agreements to which the UK is already party through its membership of the EU and does not make any provision for the negotiation of new agreements.

**2.6** UNISON believes that the Bill is a missed opportunity to shape a modern, open and transparent mechanism that is fit for purpose in giving Parliament the powers to fully scrutinise modern trade agreements thereby allowing public concerns and groups with expertise to be taken into consideration.

**2.7** We believe the UK Government should obtain the consent of the devolved administrations and believe an amendment to the Bill should be made on this basis.

**2.8** UNISON believes individuals should be able to continue to bring free-standing legal challenges in UK courts on the basis that UK law breaches the principles of EU law.

**2.9** In recent years, UK workers have increasingly relied on the principles of EU law to defend and enforce their workplace rights. For example, in the recent UNISON landmark victory, on employment tribunal fees, the Supreme Court concluded that Employment Tribunal fees not only breached the common law principle of access to justice, but it was also inconsistent with the principle of effectiveness in EU law which means that domestic law must not make it impossible or excessively difficult to enforce any EU right.

**2.10** The principles of EU law have also played a vital role in ensuring working people are fully compensated if they face discrimination at work. UK workers have been able to rely on the principles of effectiveness and equivalence in EU law to challenge previous caps on compensation in equality cases. UNISON is concerned that measures in the Bill could create the opportunity for a future UK government to reintroduce a cap on compensation in discrimination claims.

**2.11** A further point is that the Francovich rule will also no longer apply to domestic law after exit day. The Bill would remove the right in domestic law to seek Francovich damages where the government has failed to comply with its obligations under EU law.

**2.12** This would mean:

- The UK government can no longer be held to account for past breaches of EU obligations which only come to light once we leave the EU
- Individuals or communities would have no right to legal redress if a future UK government decides not to comply with EU environmental standards

- Workers would have no legal remedy if the UK government were to renege on promises to protect their workplace rights, for example, by removing rights to holiday pay or equal treatment rights for part-time workers or agency workers

### 3. To ensure the issues of most importance to Wales are being adequately represented in negotiations

- 3.1** Under the current terms being discussed, devolved administrations will continue to be bound by EU law, unless the UK government and Parliament agrees to devolve power to modify it.
- 3.2** Ministers will be able to release powers to devolved administration using Orders in Council, where the agreement has been reached between the UK government and the relevant authority. However, decisions over whether to initiate this process will lie solely with UK ministers. We believe this represents an imbalance of power.
- 3.3** The UK government had sought to justify this policy on the basis that existing restrictions, which prevent devolved administrations from amending EU law, should be retained until decisions have been taken on whether common policies are needed.
- 3.4** This will mean that devolved administrations are restricted from creating new agricultural, fisheries and regional policies – a striking move away from the current conferred powers model of devolution that was agreed through a referendum.
- 3.5** Instead, devolved powers in these areas would be frozen until the UK government decides whether to “unfreeze” any of them, resulting in all powers exercised at EU level to flow back to Westminster.
- 3.6** This will impact the Welsh Government’s legislative competence in many devolved areas for, in our view, no legitimate reason. In essence, the UK government is unilaterally moving devolution in the UK away from the referred powers model. This is undemocratic and of no benefit to Wales.
- 3.7** Clearly this is against the public choice and will be of no benefit to Wales. The Welsh Government and National Assembly have vast and growing experience of legislating in these devolved areas – unlike the UK government which has no recent experience in these areas.
- 3.8** Whilst the UK government maintains this will be a temporary measure, the lack of a sunset clause on powers is alarming.

**3.9** UNISON as part of the Repeal Bill Alliance ([www.repealbill.org](http://www.repealbill.org)) agrees that following the UK's withdrawal from the EU, there will be a need for common standards and frameworks to enable cross-border working and the maintenance of an internal common market.

**3.10** Establishing high standards in common UK frameworks will help to ensure future delivery of high quality public services. UNISON and the Repeal Bill Alliance urges MPs to back amendment New Clause 64 which will ensure that a common framework is mutually agreed between the four administrations. Such a framework should maintain a common UK approach but respect the difference of the territorial constitutions.

**3.11** The starting point of any common framework in the UK should be to respect devolution.

**3.12** Whilst the EU (Withdrawal) Bill would ensure EU derived employment rights will remain in place when we leave the EU, these provisions will only protect workers' rights on day one. There is nothing in the Bill to stop a future UK government from watering down or removing these rights after Brexit.

**3.13** UNISON believes a clear amendment should rule out the use of delegated powers to amend employment law, equality law, and health and safety standards. We believe any future changes employment law, equality law and health and safety standards should require an Act of Parliament, which would ensure Parliament can fully scrutinise and decide on any proposed changes.

**3.14** The EU Charter of Fundamental Rights currently provides important protections for rights that fall within the scope of EU law, such as non-discrimination rights in employment, rights to fair treatment at work and to collective bargaining. UNISON is very concerned that the UK government has explicitly exempted the charter from being retained. There is no reasonable explanation as to why an exception has been made.

**3.15** UNISON believes that several Charter rights – for example, rights relating to children and the free-standing right to non-discrimination – have no equivalent protection in UK law.

**3.16** UNISON is clear that Wales should not lose out financially as a result of the UK exiting the EU and appropriate funding should be allocated to Wales and, crucially, be within the control of the Welsh Government.

**3.17** Furthermore, it is UNISON's view that this money should then be prioritised and spent on public services. This would benefit the entire population of Wales and will go some way to addressing the ongoing underfunding of services which has resulted from the UK Government's austerity agenda. Quality public services reduce poverty and inequality, creating a fairer, better Wales we want to live in.

**3.18** We have ongoing concerns about the lack of clarity over the citizenship status EU citizens from outside of the UK post-Brexit. These individuals represent a

significant and valuable element of the public sector workforce. We have concerns over the long-term sustainability and continuity of the public services after Brexit.

**3.19** Furthermore, we are already aware of continuity issues in areas including social care where clients have experienced a change in care personnel because EU citizens from outside the UK have opted to return to their country of citizenship in order to access job opportunities in the face of uncertainty. This will inevitably lead to a loss of skill and expertise within the workforce.

## 4. To identify opportunities for continued engagement with the EU and its institutions after Brexit

**4.1** UNISON believes it is vital that the rights of working people across Wales and the rest of the UK do not fall behind those of their counterparts in the EU. We therefore believe the withdrawal agreement and the future UK-EU deal should include a commitment that UK employment law will keep pace with improvements in EU social and employment policy.

**4.2** The ECJ has played a central role in improving the rights of working people. If UK courts are no longer required to take new decisions of the ECJ into account, UK workers could lose out on future advance in workplace rights.