

"Implications for Equality and Socioeconomic Rights in Northern Ireland following a UK exit from the EU– a trade union perspective"

Paper given by Patricia McKeown

This paper was delivered at the seminar by Anne Speed of UNISON on behalf of Patricia McKeown who had been originally billed but was subsequently called to witness the signing of the Colombian peace accord in Cartagena, Colombia.

Abstract

UNISON campaigned for a vote to remain, in line with the wishes of our members, and in order to ensure that their rights as workers were protected. Outside of growing, deep uncertainties relating to the economy, the constitutional future of the 'United' Kingdom, the possible return of a border on the island of Ireland and whether migrant workers will enjoy a right to remain or not, exiting the EU could negatively impact on the equality and human rights protections that are so important within post-conflict Northern Ireland and threaten socioeconomic rights. This paper will consider the challenges to our devolved settlement that would be presented by an exit from the EU; the impact of a loss of EU funding for programmes designed to promote equality and build peace; the threat that exiting the EU poses for workers rights; and the impact that a withdrawal from the EU will have on the operation of public procurement in Northern Ireland.

Patricia McKeown is Regional Secretary of UNISON the Public Service Union and one of the most senior trade unionists in Ireland. She is currently Co-Convenor of the Equality Coalition. She was President of the Irish Congress of Trades 2007-09 and Chairperson of its Northern Committee 2005-07 and is former Deputy Chairperson of the EOCNI. Patricia is an elected member of both the Northern Ireland Committee and the Executive Council of ICTU. She has recently been appointed as a worker representative for Ireland on the European Economic and Social Committee. Patricia has pioneered a range of partnership initiatives with employers in both the public and private sector, including international initiatives with unions and employers in the US. Her union is an outstanding champion of programmes on lifelong learning and continuous professional development and has pioneered an award-winning jobs project in West Belfast with the Belfast Trust and the West Belfast and Greater Shankill taskforces delivering real jobs in areas of greatest objective need while developing parallel career opportunities for existing health service workers.



Implications for equality and socioeconomic rights in Northern Ireland following a UK exit from the EU - a trade union perspective

Introduction

On 23rd June 2016, the UK voted to leave the European Union (EU). However, the majority of voters in Northern Ireland voted to remain within the EU. UNISON campaigned for a vote for the UK to remain a member of the EU, in line with the wishes of our members, in order to ensure that workers rights were protected and to protect our public services from further damaging austerity if the economy declined. We recognised the invaluable contribution made by migrant workers to our public services. We wanted to remain within the EU so that we could then fight to reform it – we had been critical of, for example, the Transatlantic Trade and Investment Partnership (TTIP) and the threats it posed in terms of the potential for the privatisation of public services, but believed that we needed to be within the EU in order to create positive reform for our members, their families and their communities.



Following the referendum result, deep uncertainties exist in so many areas, which previous speakers and no doubt those coming after will reflect upon. Whilst Theresa May has told us that 'Brexit means Brexit', there are many things that we do not yet know – when will the UK trigger Article 50? What sort of arrangement will the UK seek to develop with the EU in terms of the single market? What will happen in terms of the free movement of persons? What will happen to all of our laws which have been brought in since the 1970s as a result of the UK's membership of the EU? In any event, 'Brexit' is a phrase which would sit uneasily with a large section of the community in Northern Ireland, immediately highlighting the unique impact any withdrawal of the UK from the European Union will have, not just on people in Northern Ireland, but across the island of Ireland.

The consequences for the economy and the value of the pound following the referendum result are still to fully materialise, but the economy has weakened and its prospects will be dominated by the process of leaving the EU; the constitutional future of the 'United' Kingdom in which Scotland and Northern Ireland voted to remain is unclear; the prospect of a return to a border on the island of Ireland is up in the air; and the form of any future support for our farmers, community projects or for the development of infrastructure is uncertain.

For UNISON's migrant worker members and their families, the most significant question following the referendum result has immediately been whether or not they would be granted an automatic right to remain in the UK following an exit from the EU. The referendum and the fallout from it have allowed hatred, xenophobia and racism to dominate discussion around immigration, ignoring the vital contribution made by migrant workers to the public services that benefit us all. An exit from the EU will have potentially massive consequences for migrants who lose their jobs; work on a precarious contract;

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become carers; or need to go home for a short period, all examples of issues that our non EU migrant worker members within UNISON will be all too familiar with. The new Prime Minister has not helped to calm the situation by refusing to commit to allowing EU citizens to remain, intending instead to use them in negotiations with the EU on a UK exit.

The referendum result has occurred during the process of developing the NI Executive's new Programme for Government, which is due to be coordinated with the budget process, and form the context for the Economic Strategy, Investment Strategy, and Anti-Poverty Strategy. UNISON has already highlighted that the impact and outworkings of the EU Referendum result must be factored into the new Programme for Government and we are already starting to see the impact of the referendum result in terms of this process by decisions such as to only bring forward a one-year resource budget, rather than a multi-year budget as was originally intended, due to the uncertainty following the referendum result.

For UNISON members, outside of these significant issues, their socioeconomic rights could be threatened, and exiting the EU could negatively impact on the equality and human rights protections that are so important within post-conflict Northern Ireland. This will be the focus of what I discuss today. We as a union, both within Northern Ireland and across the UK, are focussing intently on all the implications that a UK exit from the EU would bring, and the very particular and distinct impacts that this will have for people here.

Implications for the Good Friday Agreement and peace building

I think it is important within our discussions today to recognise that within Northern Ireland, unlike England, Scotland and Wales, EU membership is something that forms a major strand of our peace agreement. An assumption of continued membership of the EU is something that permeates through the Good Friday Agreement – in terms of the institutions established by the agreement, the Assembly and the Executive; in terms of the North/South Ministerial Council and North/South cooperation; and in terms of the British-Irish Council. EU membership is something that was wrapped into the constitutional framework that was created within the Good Friday Agreement. It was an inherent part of the Good Friday Agreement that UNISON and others very publically urged and campaigned for everyone to vote 'YES' to in another referendum in 1998, on the basis that we wanted to create a fairer, more just and more equal society. Over 70% of people in Northern Ireland voted in favour of the Good Friday Agreement, including UNISON members – anything that alters that agreement, or the conditions in which it operates must be taken very seriously indeed.

This would serve as another example of a 'rollback' from the terms of the Good Friday Agreement – a further serious development in this regard may be the attempts that are currently being made to repeal the Human Rights Act and replace this with a British Bill of Rights, with no attempt being made to introduce a Bill of Rights for Northern Ireland. A strong, enforceable Bill of Rights for Northern Ireland is now more important than ever – in this time of austerity and uncertainty we need strong socioeconomic protections. Withdrawal from the EU would also mean that the EU Charter of Fundamental Rights would no longer apply in the UK.

A particularly serious implication in terms of socioeconomic rights, promoting equality and peace building, that is starting to be seen as a result of the vote to leave is the status of

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future funding that would have been provided under the PEACE IV and INTERREG VA Programmes. The Chancellor in London has agreed to only underwrite this funding if letters of offer are secured prior to the Autumn statement. The Executive's Finance Minister has suggested that this effectively means that £300 million of future funding that had been earmarked for these programmes is in peril between now and 2020. The Finance Minister has also warned of hundreds, if not thousands, of job losses. UNISON members have benefitted hugely over many years from these programmes. Such a loss of funding is simply unacceptable.

Implications for workers socioeconomic rights and equality protections

I'm conscious that Ciaran White is going to discuss employment law protections later, and hopefully this will not cut across his presentation too much, but I think that it is vital that we reflect on the various areas in which EU membership has underpinned or strengthened and enhanced socioeconomic rights and helped to promote equality for workers in Northern Ireland. A number of examples include:

- The right to equal pay, not just for equal work between men and women, but for work of equal value is a fundamental right that was brought in through EU law and which has been of huge benefit to low paid women workers;
- A variety of maternity rights are grounded in EU law, such as paid leave for ante-natal appointments and duties on employers to assess health and safety risks for new and expectant mothers;
- Parental leave rights in Northern Ireland law are grounded in an EU Directive negotiated through social partnership at EU level;
- The European Employment Framework Directive 2000/78/EC provides a general framework for combating discrimination on the grounds of disability, religion or belief, age or sexual orientation with regards to employment. Various pieces of legislation in Northern Ireland were then brought in, or amended, in order to implement this EU Directive;
- The Fixed-Term Work Directive and Part-Time Work Directive gave fixed-term employees the right not to be treated less favorably than permanent employees of the same employer doing similar work, and part-time workers the right not to be treated less favorably than full-time workers of the same employer who work under the same type of employment contract. This was then given effect in Northern Ireland through domestic legislation;
- The Directive on Temporary Agency Work provide rights for agency workers, including the same basic employment conditions (e.g. pay, rest periods, annual leave) as if they had been recruited directly by the employer, subject to completing a qualifying period in the same role, with the same hirer, and again was implemented in Northern Ireland through domestic legislation;
- The EU Directive on Collective Redundancies requires employers to inform and consult with staff representatives, including trade unions, in the event of collective

'Brexiting and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

redundancies being proposed within certain time periods. Under the Employment Rights (Northern Ireland) Order 1996, which gives effect to the Directive, the consultation should be geared at avoiding redundancy, reducing the numbers of redundancies, or mitigating the effects of the redundancies;

- A key issue for UNISON members, given the outsourcing and privatisation of public services like residential care and domiciliary care that has occurred in Northern Ireland over the last number of years, are the Transfer of Undertakings (Protection of Employment) Regulations 2006 which were made to implement the EU Directive on the Approximation of the Law Relating to Safeguarding Employees Rights in the event of the transfer of undertakings or businesses. These provide that where a transfer takes place, employees contracts are not terminated, but transfer over from the transferor to the transferee, protecting jobs;

Following the vote to leave the EU, all of these vital socioeconomic rights and measures which have helped to promote equality for workers in Northern Ireland are now vulnerable to being removed, or weakened considerably. This is because UK law will no longer be required to comply with the various EU laws which underpin these rights, or which created them in the first place, if the UK is no longer a member of the EU. This could have potentially disastrous consequences for workers and their families and I'm sure Ciaran will touch on this issue further in his presentation. There is no doubt that there will be many who will be calling for such rights to be scrapped, or significantly altered, particularly given the opposition that was shown in the past to some of them being introduced in the first place. UNISON will be campaigning hard, both here in Northern Ireland, and across the UK, to ensure that socioeconomic rights and equality measures are not eroded, but are instead preserved, and where necessary enhanced.

Implications for public procurement

In this regard, another area that could be significantly affected by a withdrawal of the UK from the EU is public procurement. In its 2014 Report on Public Procurement and Human Rights, the NI Human Rights Commission (NIHRC) estimated that annually, £11.5 billion is spent through public procurement in Northern Ireland. EU law, such as Directive 2014/24/EU on Public Procurement, has a major impact in this area. It states that public bodies have to act in a transparent and proportionate manner in procurement processes. Member states have to take appropriate measures to ensure that in the performance of public contracts, economic operators comply with obligations in the fields of environmental, social and labour law established by the EU, national law or collective agreements. The EU Regulations also allow economic, social or employment-related conditions to be included as conditions for the performance of contracts. The Public Procurement Regulations 2015 give effect to EU law in Northern Ireland.

Public procurement is of real relevance to UNISON and our members because it is the process that is used to effectively outsource and privatise public services, such as domiciliary care, in Northern Ireland. We regularly demand assurances of an open and transparent procurement process, such as access to tender documentation, as well as influence in the construction of contracts, and the inclusion of conditions such as the real

'Brexit and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

Living Wage, not the UK Government Living Wage. We have been seeking a commitment to best practice models in procurement that protect equality and human rights by placing ethical procurement and the NIHRC recommendations on human rights and procurement on all public service negotiating agendas. We also believe that regard must be shown to the Equality Commission and Central Procurement Directorate 'Equality of Opportunity and Sustainable Development in Public Sector Procurement' guidance, which outlines the steps that should be taken to embed equality of opportunity within the procurement process.

We believe that the procurement process in Northern Ireland needs more transparency, not less, and needs to be used to give effect to socioeconomic rights and promote equality of opportunity. UNISON has always pressed for equality of opportunity to be applied to the spending of public money. This should be done in a manner capable of changing the old patterns of inequality and discrimination in our society. There has been a resistance by public bodies and government departments to using public procurement as a genuine tool to promote equality of opportunity. If Government were to attach the right conditions to contracts it would create an economic upturn, decent jobs, help tackle discrimination and disadvantage, regenerate our communities most in need and strengthen our society.

A withdrawal from the EU however could open up the opportunity to alter the procurement process in a potentially negative way, as once again EU law will no longer need to be complied with. Any moves which could be made to undermine the principle of transparency in public procurement, and which could set back the target of including conditions in contracts which give effect to socioeconomic rights and promote equality of opportunity, would be very damaging.

Conclusion

In summary, it is clear that exiting the EU will have significant implications for socioeconomic rights and equality in Northern Ireland. Similar to the other areas that have been explored by the other speakers, the exact implications at this stage are unclear. However, we must be vigilant to the threats that could be posed to all our rights following an exit from the EU and we must begin to organise to combat these threats immediately.

Thank you all for your attention and I look forward to taking part in the discussion and answering any questions that people may have.

'Brexit and Rights: Discussion seminar on the human rights and equality implications of the EU referendum', MAC Belfast, 27th September 2016

