



Regulatory Reform (Scotland) Bill

The UNISON Scotland Evidence to the Economy, Energy and Tourism
Committee

June 2013

Introduction

UNISON is Scotland's largest public sector trade union representing over 160,000 people delivering services across Scotland. UNISON members deliver a wide range of services in the public, community and private sector. They also perform key regulatory roles in local authorities and Non Departmental Public Bodies (NDPBs). UNISON Scotland is able to collate and analyse members' experience to provide evidence to inform the policy process. We therefore welcome the opportunity to provide evidence to the committee

Evidence

UNISON is concerned that rather than improved regulation the proposed bill is aiming for less regulation. The emphasis is still more on the needs of businesses rather than the public, despite the government stating in the consultation that there is little evidence to support the view that regulation is harming businesses: "At this stage we have been unable to quantify costs and benefits in any proper way." Nothing in the Bill papers indicates that any more evidence has been uncovered to support the view.

Everyone supports clear unambiguous legislation, particularly our members who have to implement it. However, complaints of red tape are rarely about the detail of specific legislation, instead they are about regulation in general. This is because some employers' organisations promote the myth of a 'red tape' crisis to try to dissuade governments from defining minimum standards for workers' rights; consumer rights and safety; protection for the environment and safety. The UK version of this approach is specifically being used as an excuse to weaken employment rights and undermine health and safety.

Regulations don't just protect the public from unscrupulous and dangerous practices they protect other businesses as well. Companies who don't follow the rules can offer a cheaper and/or faster service. This makes it difficult for those who do the right thing to compete. Fly tippers can charge a lot less than those who pay to have their waste disposed of or recycled. This drives down profit margins and increases costs for taxpayers who have to pay to have streets cleaned.

The OECD has developed measures of the administrative burdens on business and whether regulation is more or less strict. The UK ranks lower than virtually any other OECD economy on all the indicators. UK government research also suggests that the methodology used for employer organisations' surveys is flawed; in that they are most likely to be answered by a group of small business employers who are over-pessimistic about regulation. For most businesses it simply isn't an issue. The consultation quoted support for change from the Federation of Small Businesses (FSB) but even their report indicated that less than a third of those who responded see regulation as a problem for their business. The examples given in the consultation, like the misunderstanding about refreshments, showed poor understanding of regulations by individuals not poor regulation. A national standard is not the best route to tackle performance management.

UNISON is concerned that despite a minor change of wording the Bill still places regulatory reform in terms of economic growth rather than protecting the public:

“It places a duty on listed regulators (...) to exercise functions in a way that contributes to achievable sustainable economic growth (in so far as this is not inconsistent with the exercise of those functions). These regulators must also have regard to any guidance issued by the Scottish Ministers in relation to the duty.”

“It also provides for a code of practice in relation to the exercise of regulatory functions. The purpose is to encourage the adoption of practices that reflect the better regulation principles and the principle that regulatory functions should be carried out in a way that contributes to achieving sustainable economic growth.”

The government’s key aims to make Scotland “healthier” or “safer and stronger” should be the focus for a Bill claiming to improve regulation not “wealthier”. While the inclusion of “*in so far as this is not inconsistent with the exercise of those functions*” is at least an acknowledgement that there could be a conflict it does not go far enough in supporting the staff that will be doing the work (and protecting the public). Many are concerned that it will leave their decisions open to a range of challenges when they give priority to ensuring public safety or that of the environment.

Scotland has the highest level of E-Coli infection in the world. Three people died in the last outbreak of Legionnaires’ disease in Edinburgh. Days are lost at work through accident or ill-health caused by poor food hygiene, substandard housing and accidents at work. All of these are a greater burden on our economy than adhering to regulations. The majority of businesses surveyed by the Federation of Small Business did not see regulation as a major problem for their businesses. Cutting back on vital regulation and inspection can and will cost lives. This Bill is chasing the wrong target. All the evidence shows that businesses succeed because they have a good product or service to sell, which is delivered in a well-organised way. In contrast, deregulation favours ‘cowboy’ employers who want to race each other to the bottom of the hill.

UNISON does have feedback from our members working in food hygiene and environmental health that cuts are impacting on their ability to protect the public. Adequate funding for services, like food hygiene and environmental health, is a better way to avoid the issues raised by the FSB than cutting back or centralising.

The government’s role in supporting business and the economy is through building and maintaining infrastructure, a functioning legal system and through providing education and healthcare so that employers have a well educated population to provide employees and customers. Regulations are part of that legal system; they ensure that businesses operate on a fair playing field and that ordinary people are protected.

Define and implement national standards and systems

These proposals have particular relevance to local authorities and NDPBs who carry out regulatory functions like environmental health and planning. The Scottish Government is proposing to take major powers of direction that could further undermine local democracy. UNISON has on occasion been critical of local authorities for reinventing the wheel, when some strong guidance from CoSLA would have ensured greater consistency, without undermining genuine local responses. However, the solution to that difficulty is better coordination and best practice guidelines, rather than imposition from government.

Local Government has its own democratic mandate. The Scottish Government's proposal will further centralise services and limit the scope of local government to respond to its citizens. Authorities must be able to set their own standards and respond to local situations. National standards and systems conflict with the bottom up approach recommended in the Christie Commission report which the Government welcomed. Local authorities have a range of different aims for the sustainable development of their communities. This is more than just an urban rural split, although this does exist, Glasgow's regeneration priorities are very different from those of Aberdeen.

Transferable certificates of food hygiene compliance for mobile food business

UNISON believes that there may be some merit in transferable certificates for mobile food businesses. Currently the government is planning to set up a new food standards body and UNISON is concerned that this Bill is not properly co-ordinated with that proposal. Given the many problems Scotland has with food hygiene this cannot however be allowed to weaken the protection people need. What is essential is that businesses can't be allowed to "shop around" for the lowest standards. They would have to have a reasonable attachment to the area where they are inspected and issued a certificate. Members expressed some concern that smaller councils may find large numbers registering in their area when they would not have the resources to deal with the increased workload that would bring. Local authorities must still have the right to inspect any business operating in their area to ensure that there is no danger to the public.

Linking planning application fees to the performance of the planning authority

Despite the radical reform of the planning system in 2009, the government is proposing further changes to the performance management of planning authorities. The proposal to link fees to the performance of the planning authority is a management approach that is normal for NDPBs, but this would be a major interference in the role of councils. Such scrutiny is the role of democratically elected councillors.

This is the area which caused most concern for our members as it could impact severely on the already constrained planning budgets. Delays are due to underfunding and heavy workloads. Members also point out that there is a range of community planning partners involved in the process. There are no proposals to introduce carrots or sticks for these organisations. They deal with a range of issues from large developments to house extensions. The number of planning disputes and often bitter and lengthy neighbourhood feuds over boundaries, extensions and hedges show how important it is for planning decisions to be right in the first place. This requires adequate funding. UNISON is not aware of any evidence that punishing the public or private sector in this way drives real improvement. This comes instead through adequate funding and staffing levels' empowering staff and giving them the time to reflect, learn and implement change.

The system could become a route for the government to set priorities for local government rather than letting the directly elected councils set their own. Overly focusing on the timescales rather than getting the right outcomes could also "punish" departments for delays that are out with their control. This would also

require a performance measuring and management system to be developed; wasting money and taking resources from the core work of departments. Even comparing across planning department will be difficult given the range of in-house experts available to each council and the range of demands on departments. For example larger councils have in house archaeologists while others have to source this externally.

Land no longer to be considered as contaminated land

Members working in this area believe that it is important that land which has been decontaminated is still shown as having been previously contaminated. This ensures that there is a clear record of previous contamination and remedial action. The current register makes it clear that the land is no longer considered contaminated. The register is clear showing- remediation statements, declarations, remediation notices, prosecutions etc. Anyone inspecting a register could therefore see what (if any) remediation had been carried out. Anyone buying/using land therefore is able to make decisions based on full knowledge of its history. Members see no value in changing this process.

Fixed Penalty Notices for Environmental Offences

While members understand that fines and penalties are key parts of enforcing legislation they believe that more needs to be done to protect the individuals who will impose any new and current fines. Members highlight waste regulation as an area where members can find themselves dealing with criminal gangs who have been known to use intimidation of individual officers to dissuade them from enforcement. These workers regularly experience abuse and sometimes violence. These examples are from the Health and Safety Executive website:

- While visiting a site, an inspector was badly bitten by a guard dog.
- An inspector was threatened with a shotgun while approaching someone who was tipping illegally. The inspector immediately retreated from the scene.
- Two inspectors were investigating illegal tipping and became separated while looking for the owner of the site. When the owner was found he was brandishing a knife in a threatening manner. Fortunately, the inspector was able to handle and effectively defuse the situation.

Those expected to impose the new penalties will require training and protection from employers. This will require appropriate risks assessment including around risks of lone working and funding for training, equipment for example parking attendants in some areas now wear cameras to film encounters to both aid in preventing aggression/violence and prosecution of perpetrators of attacks.

Conclusion

UNISON members deliver a wide range of regulatory services including environmental health, food hygiene, meat hygiene and planning. UNISON is concerned that by prioritising economic growth this Bill will weaken the essential protections needed to ensure that Scotland is a safe place to live and work. We therefore welcome the opportunity to submit evidence to this committee.

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