



EU bibliographies: posting of workers

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Section International Affairs and Defence Section

This Note brings together documents relevant to the so-called 'Posted workers Directive', Council Directive 96/71/EC. It is not an attempt to define policy in this area. For information on policy developments contact Jacqueline Parker on extn 4317. See also SN/BT/301 [Posted Workers](#) and SN/BT/4501 [Government policy on "British jobs for British workers"](#).

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Contents

- 1 Directive 3**
 - 1.1 Posted workers Directive 3
 - 1.2 Treaty base 3
- 2 Implementation in the UK 3**
- 3 Related EU documentation since 1996 3**
 - 3.1 2003 Commission Communication 3
 - EU Scrutiny: 3
 - UK scrutiny 3
 - 3.2 2003 Commission Report 3
 - 3.3 2006 Commission Communication 3
 - EU Scrutiny: 4
 - UK scrutiny: 4
 - 3.4 2007 Commission Communication 4
 - UK scrutiny: 4
 - 3.5 2008 Commission Recommendation 4
 - EU Scrutiny: 4
- 4 Further information 4**
- 5 Recent case law. 4**
- 6 Parliamentary references 4**
 - 6.1 Parliamentary Questions 4
 - 6.2 Statements 9
 - 6.3 Early Day Motions 9
- 7 News and Comment 10**
 - 7.1 EurActiv 10
 - 7.2 EU Observer 11
 - 7.3 Press articles 11

1 Directive

1.1 Posted workers Directive

[Council Directive 96/71/EC](#) concerning posting of workers in framework of the provision of services. Adopted 16.12.96. Published in OJL 18, 21 Feb 1997. Member States were required to implement it by 19th December 1999. A further clause required the Commission to review the operation of the Directive by 16th December 2001.

1.2 Treaty base

Articles 57 (2) and 66 of the *Treaty establishing the European Community* (TEC)

Article 3 (c) of the TEC, the abolition, as between Member States, of obstacles to the free movement of persons and services constitutes one of the objectives of the Community

2 Implementation in the UK

There has been no specific legislation UK-wide to implement the directive as it was considered that existing provisions met the requirements of the Directive. In Northern Ireland the posted workers directive was implemented under the *Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations (Northern Ireland)* 2000 SI Number: [SR 2000/8](#) (Negative instrument). This came into force 9 March 2000.

3 Related EU documentation since 1996

3.1 2003 Commission Communication

Commission Communication on the implementation of Directive 96/71/EC in the Member States [COM\(2003\)458](#) 25.7.2003

EU Scrutiny:

EP report [A5/448/2003](#) 2 December 2003 by the Committee on Employment and Social Affairs. Rapporteur: Anne-Karin Glase

EP resolution on implementation of Directive 96/71/EC in the Member States, [15.01.2004](#)

UK scrutiny:

European Scrutiny Committee 33rd Report [HC63-xxxiii 2002-03](#)

European Scrutiny Committee 1st Report [HC 38-I 2004-05](#)

3.2 2003 Commission Report

[Report from the Commission services on the implementation of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.](#) January 2003.

3.3 2006 Commission Communication

Commission communication: Guidance on the posting of workers in the framework of the provision of services [COM\(2006\)159](#) 4.4.2006 (With accompanying Commission Staff working document SEC(2006)439.

EU Scrutiny:

EP report [A6/308/2006](#). 28/09/2006 by the Committee on Employment and Social Affairs
Rapporteur: Elisabeth Schroedter

[EP resolution](#) on the application of Directive 96/71/EC on the posting of workers.

UK scrutiny:

European Scrutiny committee [HC34-xxx 2005-06](#)

3.4 2007 Commission Communication

Commission Communication on the Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers [COM\(2007\)304](#) 13.6.2007 (With accompanying Commission staff working document SEC(2007)747).

UK scrutiny:

European Scrutiny Committee [HC 41-xxx 2006-07](#)

3.5 2008 Commission Recommendation

[Commission Recommendation of 31st March 2008 on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services.](#)

EU Scrutiny:

The Employment, Social Policy, Health and Consumer Affairs Council adopted conclusions on enhanced administrative co-operation on the posting of workers for the provisions of services in June 2008. See HC Deb 12.06.2008 477 c29-32WS.

4 Further information

Further information from the European Commission on the posting of workers, including the working forum on workers' rights and economic freedoms on 9th October 2008, can be found [here](#).

Guidance from the Department of Business Enterprise and Regulatory Reform is available [here](#).

5 Recent case law.

The Viking case judgement [C-438-05](#). See also Europa press release [88/07](#)

The Laval case judgement [C-341-05](#) See also Europa press release [98/07](#)

The Ruffert case judgement [C-346/06](#) See also Europa press release [20/08](#)

Commission v Luxembourg judgement [C-319/06](#)

6 Parliamentary references

6.1 Parliamentary Questions

Mr. Hancock: To ask the Secretary of State for Trade and Industry pursuant to her answer of 7 January, *Official Report*, column 380W, on Posting of Workers Directive, what research she has (a) commissioned and (b) evaluated on the

wages and conditions enjoyed by migrant workers in the UK under the Posting of Workers Directive compared to permanent British workers.

Mr. Sutcliffe: The Government undertakes regular surveys into the wages and conditions of workers in the UK, although it does not explicitly make a distinction between migrant and non-migrant workers. In December 2002 a joint Home Office and Department for Work and Pensions report, "Migrants in the UK: their characteristics and labour market outcomes and impacts" found that migrants (defined as the foreign born) earn approximately 19 per cent. more than non-migrants.¹

Mr. Hancock: To ask the Secretary of State for Trade and Industry what assessment she has made of the effect that the Government stance on the Posted Workers Directive is having on (a) the job prospects for British workers in the United Kingdom and (b) the wage levels of migrant workers in the United Kingdom; and if she will make a statement.

Mr. Sutcliffe: The UK fully implemented the Posting of Workers Directive in 1999, providing all workers temporarily posted to the UK from another state with certain minimum conditions of employment as laid down by law. We have no reason to believe that its implementation has adversely affected the job prospects of British workers in the UK. Unemployment in the UK fell from 5.9 per cent. in the three months ending October 1999 to 5.0 per cent. in the three months ending October 2003 (ILO Unemployment Figure, Labour Force Survey, ONS).

UK employment rights are applicable to all workers, regardless of country of origin, so migrant workers are protected in the same way as other workers by the National Minimum Wage.²

Mr. Cousins: To ask the Secretary of State for Trade and Industry what guidelines she gives under the Posting of Workers Directive; whether collective agreements in construction will be enforced; and if she will make a statement.

Mr. Sutcliffe: Guidance on the Posting of Workers Directive is available on the DTI website. Unlike most EU countries, the UK has a voluntarist system of collective employment relations. Collective agreements in construction are not universally applicable and accordingly are extended by law to cover employers and workers not party to them. These collective agreements are, therefore, not covered by the Directive, which we have fully implemented in the UK.³

John Robertson: If he will take steps at EU level to secure greater employment opportunities for UK workers when contracts for work in the UK are awarded to companies registered overseas; and if he will make a statement. [254310]

Mr. Pat McFadden: The Government support the rights of labour mobility that go with European Union membership. We supported the European Commission's proposals to ask its group of experts

¹ HC Deb 21.01.2004 Vol 416 c1282W + LINK or URL??

² HC Deb 7.1.2004 416 c380W

³ HC Deb 09.12.2003 Vol 415 c451W

to examine the operation of the posted workers directive and to ask social partners at European level to discuss the implications of recent European Court judgments. The posted workers directive operates throughout the EU and the recent report from the European Commission showed that there were 47,000 UK posted workers in the rest of the EU—three times more than the 15,000 posted workers from the rest of the EU working here in the UK.

John Robertson: The posted workers directive is, of course, the problem. The court ruling has brought it into disrepute, with subcontracting companies playing worker against worker, which is why we ended up with the strikes this week. Is it not time the UK put workers rights in the EU as No. 1 on the agenda, and made sure that we lead the field in ensuring that the rights of those workers are looked after?

Mr. McFadden: I understand what my hon. Friend says, but I am not sure that the recent court judgments are relevant to the unofficial strike action over the past weeks. Those judgments are essentially about pay and about the capacity of trade unions to take industrial action in support of collective agreements. We have been told that all sub-contractors on the site at the Lindsey oil refinery are required to pay according to the industry agreed rates. ACAS will test the veracity of that claim, but that is what we have been told, so whatever this week's dispute was about, it does not seem, on the face of it, to have been about a race to the bottom in terms of pay.

Mr. David Heathcoat-Amory: Is not the recent industrial unrest a direct result of the Prime Minister's call, from weakness, for "British jobs for British workers"? In answering the hon. Member for Glasgow, North-West (John Robertson), would it not be more honest for the Government to admit that the Prime Minister could never deliver on that promise? He is legally bound by EU law, which the European Commission has no intention of amending at all. What other way is the Minister finding through this terrible dilemma of serious industrial unrest, up against a legal prohibition on anything serious being done to remedy it?

Mr. McFadden: I do not accept the right hon. Gentleman's premise. Everyone in the House wants to see British workers having jobs, and we want them to have the skills and training necessary for that. However, we do not want to forsake a relationship whereby half our exports go to the rest of the EU, half of our inward investment comes from the rest of the EU, and 3 million to 3.5 million—one in 10—of the jobs in this country are in some way associated with trade with the rest of the EU. It is not inconsistent to support that and also to support skills and training for British workers for the jobs and industries of the future.

Shona Mclsaac: Given that the dispute at the Lindsey oil refinery seems to have been resolved, I would like Ministers to consider some of the wider issues underlying it. If terms and conditions are equal and there are no differences in pay, will the Minister and his ministerial colleagues look into why British firms are losing contracts, and why they are not winning the contracts when they compete against European firms? We need to establish that if we are to get to the real reason why the dispute occurred.

Mr. McFadden: My hon. Friend raises an important question, and I know that she has been very close to this issue and taken time to establish the facts. The question that she poses is a good one. If the issue was not about pay, what, in the competition for the contracts, may sometimes mean that UK firms lose out? That does not mean that every time a non-UK firm wins a contract some rule has been broken or we need a change in the law. There could be other reasons. My hon. Friend has asked an important and pertinent question.

Mr. William Cash: The Minister will be aware of the Bill that I introduced a couple of days ago on this issue. It supports, of course, the notion of fair movement, but it also supports free movement and fair provision for services and workers. Is he aware that in several other member states, parallel legislation already prevents social dumping, precisely because there are circumstances in which a correction is needed? Will the Minister be good enough to answer the question that I now have on the Order Paper? It is about ensuring that we bring in domestic legislation to ensure fair and free movement, and that we look after British workers as well.

Mr. McFadden: I believe in fair and free movement, and the Government have introduced many important employment rights for UK workers in the past decade. I hope that the hon. Gentleman will agree that it was a step forward for the employers in this situation to agree on guidance, which states:

“Always consider whether there are competent workers available locally. If there are, it is good practice for the non-UK contractor to explore and consider the local skills availability and to consider any applications that may be forthcoming.”

Two important things were required to end the dispute. One was that there should be a fair chance for UK workers. The other was that no Italian worker who was here legally should have to be sent home; I am glad that that too was supported by the trade unions in this situation.

Mr. Dennis Skinner: If the Government want to ensure that we do not have another situation such as that at Lindsey or anywhere else, the truth is that we need, among other things, to enact the Temporary and Agency Workers (Equal Treatment) Bill in total. That would ensure that middlemen and agency operators were not allowed to pick up about 25 per cent. of the earnings from foreign labour. Once we do that, we can stop the Lindseys of the future and deal with the matter in the Common Market as well.

Mr. McFadden: I do not believe that agency workers were a factor in the Lindsey dispute. My understanding is that in that particular part of the construction industry the workers are directly employed by the subcontractors on the site. I have also been told that the subcontractors all have to pay the agreed rates. However, I agree with my hon. Friend that it was right to reach an agreement on the agency workers directive which suited the UK labour market. We did that on the basis of an agreement between the TUC and the CBI which was then reflected in the text of the agreed directive. The Government will bring forward a consultation on the implementation of the directive here in the UK.

Jo Swinson: More than 16 jobs will be lost as a result of the recent awarding of a specialist vessel requirement Navy contract in the Falklands to a Dutch company with a Filipino crew, instead of to the Scottish company that has provided the service successfully for 27 years. As there are serious questions about the tendering process, with correct procedure not having been followed, will the Minister ask his colleagues in the Ministry of Defence to investigate the circumstances of this case?

Mr. McFadden: I am not aware of the individual circumstances of that case, but I am happy to ask the relevant Department to look into the issues that the hon. Lady has raised.

Tony Lloyd: Does my hon. Friend accept that it is not protectionist to insist on minimum pay and working conditions for British workers in competition with foreign workers? In that context, and in terms of the posted workers directive, can he insist that the European Commission gets a move on with its review? Will he also look at the British angle of this, which is that the current minimum standard is the minimum wage, but that we could move the standard up to nationally agreed collective bargaining regulation?

Mr. McFadden: I believe—or at least, I have been informed—that the agreed collective bargaining rate applies in this case, and that therefore pay was not an issue in this dispute. As for the European Commission’s proposal to examine the operation of the posted workers directive, the UK Government supported that when it was discussed in December.⁴

Mr. Byers: To ask the Minister of State, Department for Business, Enterprise and Regulatory Reform what his Department’s latest estimate is of the number of (a) UK nationals employed in other EU member states and (b) citizens of other EU member states employed in the UK under the terms of the EU Posted Workers Directive. [255463]

Mr. McFadden [holding answer 9 February 2009]: The latest figures on the number of EU workers who are employed under the terms of the Posted Workers are for 2006 and are not complete. They do not include postings from Spain to the UK, but the number of postings from the UK to all other EU countries includes postings from the UK to Spain. In addition, because these

⁴ HC Deb 05.02.2009 c957-9

are the 2006 figures, which is before Bulgaria and Romania joined the EU, there is no information for these countries.

Based on this incomplete information, there are more UK workers posted under the posted workers directive—around 47,000 than other EU nationals posted to the UK—around 37,000.

We also have other estimates on the numbers of people working in other countries from the OECD and Eurostat.

The latest data from Eurostat shows that in 2007, around 3.4 per cent. of total UK employment was accounted for by nationals from the other EU-27 countries including 1.8 per cent. from the other EU-15 countries. This equates to just under 1 million EU-27 (excluding the UK) nationals and around 527,000 EU-15 (excluding the UK) nationals working in the UK.

We do not have the 2007 data for the number of UK workers employed in the EU. However, according to the OECD analysis of the 2000 round of censuses, which are the latest figures available, around 581,000 UK born live in the EU-15 (excluding the UK), of which around 324,000 are employed. Total employment in the EU-15 (excluding the UK) was around 131 million, therefore around 0.2 per cent. of total EU-15 (excluding the UK) employment was accounted for by UK workers.

The 2000 OECD work also showed that around 1.2 million EU-15 (excluding the UK) nationals live in the UK, of which around 602,000 are employed. Total employment in the UK was around 27 million, therefore around 2.3 per cent. of total UK employment was accounted for by nationals from the other EU-15 countries. According to the Labour Force Survey (LFS) for 2000—which is on a slightly different basis(1)—there were around 470,000 EU-15 (excluding the UK) nationals, 1.7 per cent. of the total.

Since the OECD only reports data for its members and these do not include all of the EU member states, statistics for the EU-27 are unavailable.

(1)The LFS is based on a sample, whereas the OECD is a census, in addition, the OECD defined its data according to foreign born, while the LFS data presented are defined by nationality.⁵

Mr. Cash: To ask the Minister of State, Department for Business, Enterprise and Regulatory Reform if he will bring forward legislative proposals to provide equal rights in employment for UK nationals in the United Kingdom to those afforded under (a) the EU Posted Workers Directive and (b) other EU legislation. [255449]

Mr. McFadden [holding answer 9 February 2009]: Such legislation is already in place: all workers in the UK, whether they are UK citizens, migrant or posted workers have the same key employment rights.

Mr. Cash: To ask the Minister of State, Department for Business, Enterprise and Regulatory Reform what steps the European Commission has taken since the Forum on Workers' Rights and Economic Freedom in October 2008 to safeguard the rights of posted workers within the UK. [255450]

⁵ HC Deb 26.03.2009 c638-639W

Mr. McFadden [holding answer 9 February 2009]: The Council of Ministers and the European Commission have invited the social partners to analyse the challenges posed by the expansion in the various forms of labour mobility in the Union and in particular of their impact on the European Union's competitiveness, protection of workers' rights, the functioning of national labour markets, and the various modes of industrial relations, taking account of recent rulings of the European Court of Justice. The Commission's high level committee of experts will examine ways to improve the implementation of the directive and to exchange information, experience and good practice.

Mr. Cash: To ask the Minister of State, Department for Business, Enterprise and Regulatory Reform what assessment he has made of the conclusions of the expert committee on the posting of workers established after the meeting of the Employment, Social Policy, Health and Consumer Affairs Council on 9 June 2008. [255663]

Mr. McFadden [holding answer 9 February 2009]: After the Council meeting on 9 June 2008, the Commission was asked to set up an expert committee to examine questions and difficulties which might arise in the practical application of the posting of worker legislation. The Commission published details of the Committee's remit on 18 December 2008 (Commission document C (2008) 8640 final). I look forward to the conclusions of this group.⁶

6.2 Statements

[Industrial Action: Lindsey Oil Refinery. Lord Mandelson](#) HL Deb 02.02.2009 vol 707 c472-4

6.3 Early Day Motions

EDM 652. John Mann Date tabled: 02.02.2009

EU POSTED WORKERS DIRECTIVE

That this House deplores the use of temporarily resident overseas workers living in substandard accommodation by Total and IREM at Killingholme, RWE at Staythorpe and the lack of clarity of UK law on social dumping; congratulates Unite, GMB and other unions on exposing this exploitation and the absence of equal opportunities to apply for all jobs; welcomes the principle of the Posted Workers Directive that all European workers should receive local terms and conditions giving the right of all British workers to compete on a level playing field for all such jobs; notes with concern the potential for lower standards of health and safety with the use of temporarily resident contractors; further notes the huge capital programmes being brought forward and the forthcoming new power station build, including nuclear new build; calls for these to be built by companies employing primarily British labour on decent pay and conditions; further calls for an isolating of these companies continuing to exploit social dumping; welcomes the Government's intervention through the Advisory, Conciliation and Arbitration Service (ACAS); and calls on ACAS to investigate the contract at Staythorpe and to examine in detail the accommodation and travel charges levied on the temporarily resident contract workers and whether acceptance of this accommodation and travel is conditional on working on site.

⁶ HC Deb 12.02.2009 vol 487 c2293W

EDM 677. Jon Cruddas Date Tabled: 03.02.2009

LABOUR STANDARDS, EMPLOYMENT AND THE EU

That this House notes that global companies based in Europe are free under EU law to tender for British building and service contracts and to hire their own direct labour force; further notes that such posted workers in the UK have to be paid only the statutory minimum wage, which has the effect of undermining union negotiated collective agreements which are not recognised as 'universally applicable' in the UK; further notes that since December 2007 numerous European Court judgments, including the Viking, Laval and Ruffert judgments, have all served to weaken employment standards for working people; calls on the Government to support the European TUC proposals for a Social Progress Protocol to be attached to the EU Treaty so that the internal market is not an end in itself, but helps to improve the living and working conditions of workers and citizens; also calls on the Government to initiate effective reform of the EU Posted Workers Directive so that employers posting workers to the UK are required to observe the terms of appropriate collective agreements as well as minimum terms laid down in statute; finally recognises that what motivates members of GMB, UNITE and other trade unions is not protectionism or xenophobia but a desire for fairness; and congratulates their refusal to allow the British National Party to infiltrate into the action.

EDM 789 Alan Meale Date Tabled: 11.02.2009

BRITISH CONSTRUCTION JOBS

That this House is concerned about problems arising from the fact that many construction companies operating in the UK, especially in the energy sector and subsidiary companies sub-contracting to them, are declining to hire and in some cases refusing to consider the employment of British and local labour into their workforces; understands that the application of the EU Posted Workers Directive introduced to provide minimum protection for workers posted abroad is regularly cited by them as being to blame for this; believes instead that whilst it is clearly woefully inadequate to deal with present trends, it is being misinterpreted by many construction companies to their advantage; and calls on the Government to heed the call of the construction trades unions that a solution to current problems will only be found when a register of mandatory universally applicable collective agreements is established, which would end the exploitation and undercutting of workers in this and other industries in the UK and elsewhere throughout Europe.

7 News and Comment

7.1 EurActiv

EurActiv is an independent organisation which runs a website specialising in EU news and analysis. It has published the following recent news briefings on posting of workers:

[EU states eye political response to Laval court ruling](#) 10 October 2008

[EU Court ruling slammed as 'invitation to social dumping'](#) 7 April 2008

[European social model challenged by Court rulings](#) 27 February 2008

[Unions frustrated at Court ruling on posted workers](#) 19 December 2007

[EU court upholds right to strike but sets limits](#) 12 December 2007

[Business backs Commission on dispatched worker rules](#) 14 June 2007

[MEPs favour employment security over job guarantees](#) 12 July 2007

7.2 EU Observer

EU observer is an independent news service founded in 2000 “to support the debate on - and development of European affairs”.

[British strikes take on EU dimension](#) Honor Mahony. 04.02.2009

7.3 Press articles

The Guardian, 6 February 2009 “We must act against social dumping”. Caroline Lucas MEP (Green) Glyn Ford MEP (Labour) Stephen Hughes MEP (Labour) Bob Crow..

The Times, 5 February 2009 “Feel free to take up any British job ... Short of withdrawal from the European Union, what can the Government do to pacify the striking workers?” Edward Fennell.