Editorial

Out-Smarting the Opt-Out

The view that the social chapter opt-out agreed for the United Kingdom at Maastricht is fundamentally incompatible with the concept of a common market is by now well-known to readers of this *Review*. Commissioner Flynn is known to put it in terms of the way forward being to have everybody playing with the same football. More precisely, though, it is not enough to play with the same football if the players are not playing according to the same rules. In fact pressure for the United Kingdom to conform is now starting to come from the employers' side, with the voluntary establishment of works councils by the largest multinationals operating in the United Kingdom ensuring protection in the form of industrial democracy for the United Kingdom employees mirroring that established for continental employees. The somewhat dismissive approach that if the United Kingdom had not opted out a much larger number of firms would have been forced to establish works councils is scarcely a reaction of which the government can be proud, yet it is astonishing how the loud voices of the smug ignore the fact that at the very least for large size companies, the labour market in the European Union pays ever decreasing attention to the mere hazzard of national frontiers. The single market approach is omnipresent, albeit with respect for local levels of employee protection in terms of wages and conditions so that the interests of free movement are properly combined with those of host state control in view of the special sensitivity of the labour market. Just as the horizons of the workforce can no longer be limited to national territory, so too the rights of the workforce cannot be restricted by doctrinaire approaches steeped in self-interest under the cloak of arguments about competitiveness. Yet the press is full of complaints that awfully nice young people will be unable to work in ski chalets next season because their employers will be forced to match local labour rates; scant attention is paid to the point that the European measures are designed to prevent exploitation and to ensure that there is equal competition instead of unfair advantage. A young Briton working abroad has the same right to a fair deal as a national of the host Member State. Perhaps surprisingly, in view of the second-class conditions in the United Kingdom, foreign nationals are prepared to accept the same principle when they arrive in the sceptred isle. It has long been Commission policy to ensure that the legitimate interests of migrant workers are protected, intertests which were very much behind the concerns about social dumping reflected in the judgment in Case C-113/89 *Rush Portugesa* [1990] ECR I-1417. These interests are classically questions falling within the scope of health and safety at work, but are not limited to that field. As the workforce in the European Union begins to change its horizons, so too must employers and regulators respond to the new challenges and new demands by thinking which takes account of the changed perspectives. In this respect it is undoubtedly the out-of-step ostrich-like stance of the United Kingdom government which must adjust its position. As so often, industrial practice is streets ahead of the regulatory framework, so it is particularly pleasant to note that larger scale companies are now beginning to recognise that industrial rights offered to employees in most of the common market cannot legitimately be denied to employees based in the United Kingdom. Must we really wait for a change of government before we see a change of heart on the part of the United Kingdom authorities?

Laurence Gormley