



Northern Ireland
Assembly

**COMMITTEE
FOR EMPLOYMENT
AND LEARNING**

**OFFICIAL REPORT
(Hansard)**

Employment Bill

23 September 2009

NORTHERN IRELAND ASSEMBLY

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FOR EMPLOYMENT
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Members present for all or part of the proceedings:

Ms Sue Ramsey (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Paul Butler
Mr Trevor Clarke
Mr David Hilditch
Mr William Irwin
Ms Anna Lo
Mrs Claire McGill

Witnesses:

Mr Andrew Dawson)
Ms Valerie Reilly) Department for Employment and Learning
Miss Lynne Taylor)

The Chairperson (Ms S Ramsey):

We move on to clause-by-clause analysis of the Employment Bill. Without any preamble, I hand over to the witnesses.

Ms Valerie Reilly (Department for Employment and Learning):

Good afternoon, and thank you for inviting us today. What would the Committee like us to do? Shall we go through the provisions of the Bill or concentrate only on the amendments?

The Committee Clerk:

Perhaps you would go through the clauses and overlay the amendments, making clear exactly where those are. Members should bear in mind that the Committee is in a position to give its final approval only to the clauses. As the amendments have not yet been laid with the Executive, they may not be in their final form. Today's objective is simply to see where the amendments fit. However, when members are asked to give their final approval using the formal wording, it will be for the clauses. Therefore, please give the Committee the full context of the amendments.

Ms Reilly:

You asked us to "overlay" the amendments, but we have not attempted to insert the amendments into the Bill.

The Committee Clerk:

That makes it easier.

Ms Reilly:

OK; that is fine. Committee members should have received copies of the Bill as introduced in the Assembly. The explanatory memorandum is helpful when considering the clauses.

Clause 1 relates to employment agencies and the mode of trial. It provides for offences by employment agencies to be tried either in a Magistrates' Court, as at present, or in the Crown Court. The latter allows for unlimited fines, whereas, at present, the maximum fine that can be imposed by a Magistrates' Court is £5,000. The Department considers that that represents an insufficient deterrent to agencies that may make a great deal of money by exploiting agency workers. The proposal, therefore, is that offences could also be tried in the Crown Court to facilitate unlimited fines.

Clause 2 gives the Department the powers to compel third parties, namely banks and building societies, to provide it with financial information. That is necessary to enable the Department to carry out meaningful inspections of employment agencies, particularly when financial irregularities are suspected. The power would be used only in exceptional circumstances and would have to be approved at director level, at least, which is grade 5 in the Department.

Clause 3 amends the Industrial Relations (Northern Ireland) Order 1992 to replace the

arrangements for appointments to the Industrial Court, which are currently contained in primary legislation, with the equivalent subordinate legislation. The Department considers the current provisions to be too restrictive and that subordinate legislation would facilitate future changes to appointments to the Industrial Court and make the process more efficient and capable of being carried out in a timely manner. The Committee will have an opportunity to see the subordinate legislation before it is passed.

Clause 4 allows for legal representation before the Industrial Court. Legal representation is currently permitted only in relation to the court's main role, which is the statutory recognition of unions in the workplace. However, when new jurisdictions connected to European directives on employee consultation and information rights were added to the court, the Department should have disapplied certain provisions of the Industrial Relations (Northern Ireland) Order 1992 to permit legal representation for those new jurisdictions. However, the Department did not do so and proposes to amend the legislation to allow for legal representation by either party before the Industrial Court, should they so wish.

The Department also took legal advice on that, which showed was that the Department could be challenged under article 6 of the European Convention on Human Rights, which is the right to a fair trial.

Clause 5 amends the National Minimum Wage Act 1998 and the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 to allow for the sharing of information between employment agency inspectors and HM Revenue and Customs (HMRC) inspectors who are responsible for the national minimum wage. Currently, our legislation does not allow for that sharing, and if departmental inspectors find agencies that are not paying the national minimum wage, that information cannot be passed on. Clause 5 will, therefore, amend the current legislation and allow the Department to share information with HMRC.

Clauses 6, 7 and 8 deal with minor and consequential amendments and repeals as a result of the Bill. Clause 7 deals with the commencement of the various provisions, and clause 8 cites the short title of the Bill.

The first part of schedule 1 amends the Industrial Relations (Northern Ireland) Order 1992 to provide for consultation with the Labour Relations Agency (LRA) and appointments to the

certification office. The effect is that the Department will consult the LRA on the arrangements for appointments to the certification office, but not on the actual individual who is to be appointed, as that will be the responsibility of the Minister. That was agreed between the LRA and the Department. Schedule 1 also provides for minor and consequential amendments.

Schedule 2 provides for appeals that result from the Bill, and it also repeals provisions contained in the Employment Relations (Northern Ireland) Order 2004 that relate to the right of trade unions to expel members. Those provisions were never commenced, which is why they are being repealed.

Again, the Committee should have received copies of proposed departmental amendments. Amendment No 1 will insert a new clause 6 into the Bill to empower tribunals to order employers to pay compensation, for example, for bank or interest charges, where a tribunal has found that the employee has suffered an unlawful deduction from his or her wages or the non-payment of a statutory redundancy award.

Currently, a tribunal can only order an employer to pay the amount that arises directly from the employer's liability, but the new clause will allow tribunals to compel the employer to pay other costs, such as interest charges, suffered by the employee as a result of unlawful deductions. In the past, the claimant had to bring such actions through the civil courts, which is expensive for both the employer and the employee. The new clause will permit tribunals to make such awards.

Amendment No 2 will amend the Employment and Training (Northern Ireland) Act 1950 and the Employment and Training (Amendment) (Northern Ireland) Order 1988. The Department recently made The Steps to Work (Miscellaneous Provisions) Order (Northern Ireland) 2009 to ensure that payments made to Steps to Work participants were not treated as income for National Insurance contributions or for benefits purposes. However, the primary legislation, the 1950 Act, and the 1988 Order only cover payments that are made by the Department.

Training providers also make payments to trainees in relation to travel, for instance. At the minute, the risk is that such payments made by training providers could be subject to National Insurance contributions and could affect trainees' benefits. We propose to amend the 1950 Act and the 1988 Order to read "payments by any person" and thereby ensure that such payments are protected.

Miss Lynne Taylor (Department for Employment and Learning):

I will speak to two amendments that will create new provisions in schedule 1. If the Committee is content, I will speak to both amendments together because they make similar changes, but to two separate bodies, namely the Labour Relations Agency and the Construction Industry Training Board (CITB).

By way of background, appointments to the boards of the LRA and the CITB are ministerial appointments that are regulated by the Office of the Commissioner for Public Appointments (OCPA). Under the legislation, the Department is required to consult with organisations that are representative of employers and employees when appointing board members. In practice, the Department observes that requirement by writing to such bodies at the outset of a competition to ask them to encourage their members to apply. It is made clear that those individuals who are encouraged to apply will be treated in the same way as other applicants.

However, it has come to our attention that consultation could potentially be interpreted differently. Legal advice suggests that it could be interpreted in a way that involves consultation with specific individuals, which is similar to the provisions that relate to certification officers, which Valerie has already explained. The Department considers that to be inconsistent with the ministerial code and the OCPA code of practice, which require appointments to be made on merit. As a result, we recommend that the legislation be amended. The Department recognises that the LRA and the CITB benefit from employer and employee representation. For that reason, rather than remove the consultation rights, we propose to clarify that those organisations will be consulted on arrangements such as the criteria to appoint board members. As we said, the Employment Bill contains a similar provision.

Ms Reilly:

Those are all the amendments.

The Chairperson:

That was painless.

Ms Reilly:

Who for?

The Chairperson:

This question could be way out there, but work with me. Amendment No 1 proposes changes to the process for claiming compensation. Last year, several companies closed and there were issues about redundancy packages. I will not name those companies, but you are aware of who they are. Annex A of the Department's letter explains the compensation for financial losses and says that new provision will be included to allow an employment tribunal to make an additional award. However, above that, it says that a tribunal will order the employee to pay or repay the amount arising from the employer's direct liability for breaches. It also discusses the issue of unlawful deductions of wages and the non-payment of statutory redundancy awards.

How does that fit in cases where auditors have assessed several companies, and staff have been last in the pecking order to receive assets, because bills have been paid first? Given that, will the amendment help staff in any way?

Ms Reilly:

No. The Employment Bill is a mixed bag; it is not entirely initiated by employment relations branch. However, it provides an opportunity to rectify some issues. My understanding is that it does not apply to employers who have gone into administration or liquidation, which is the group that you are talking about. It only applies to employers who are making people redundant and are capable of making the redundancy payment but fail to do so. It is not about insolvency.

The Chairperson:

That is fair enough. However, you need to consider that as well, because it is an ongoing issue. The other thing is —

Ms Reilly:

The Trades Union Congress (TUC) raised that issue recently.

The Chairperson:

One of the unions raised that issue with me. I do not want to get into a discussion about that. However, if we are considering loopholes, we need to consider other issues that Members are, rightly, raising in the Assembly. Some employers made staff redundant, tweaked the job description a bit and employed other people. That created allegations in communities that foreign

nationals were being employed. Legally, those companies were doing nothing wrong, but their actions were morally questionable and created a lot of issues. Perhaps you will come back to us, having found out whether there is scope to include some of that in the Employment Bill.

Ms Reilly:

We will look at the issue that was raised by the TUC and ascertain whether there is a proposal to do anything about it.

Mrs McGill:

The CITB is mentioned in annex 2 of the Department's letter. How will your proposals work out in relation to the CITB?

Miss Taylor:

Are you referring to consultation rights on CITB appointments?

Mrs McGill:

No; perhaps you were not here for the briefing session on the review of the CITB.

The Chairperson:

We were given a presentation on the options, but these witnesses were not here for that session.

Mrs McGill:

We have a report on the future of the CITB, which deals with new branding and rationalisation. Indeed, Ms Lo asked about a new name and so on. How relevant is all that to the Bill?

Ms Reilly:

We are not proposing anything that is relevant to all that. There may be a need for new legislation on the CITB, and we met our CITB colleagues yesterday to discuss that. However, that is not relevant to the Bill. We are concerned with appointments to the CITB and how people should be consulted in relation to those appointments.

Mrs McGill:

The CITB will not be there; did you not know that?

Ms Reilly:

We are aware of the review, but I thought that there was still to be a board.

Miss Taylor:

The amendment is being introduced in consultation with the officials who are responsible for CITB. It is a case of being consistent for the time being. If legislation has to change in due course, new legislation will take account of changes to CITB.

The Chairperson:

That is actually an amendment, but you are absolutely right, Claire. Given the presentation that we heard earlier, which lasted more than an hour, the officials may need to go back and check that. Nuala Kerr, director of the skills and industry division in DEL, mentioned the issue of legislation. Given that we heard a presentation that says there is a possibility of moving on CITB, we can put the amendment to one side for today and wait on further information. Are you happy with that arrangement, Claire?

Mrs McGill:

Yes; perhaps I have shown ignorance of what is happening.

The Chairperson:

No; it is a relevant point. We have been asked to deal with legislation that impacts the CITB and now other legislation has appeared.

The Committee Clerk:

If members are content, the Committee will formally approve the clauses today. The issues that have been flagged up relate to the amendments and not to the Bill, and officials will come back to us on those. Am I correct that the amendments have not yet gone to the Executive?

Ms Reilly:

The amendments have not yet gone to the Executive. We are waiting the Committee's report on the Bill, and anything that members have to say about the amendments, before we go to the Executive.

The Committee Clerk:

That is fair enough, and members have now made those comments. Putting the amendments to one side, members can now flag up any further questions or issues on the clauses as they stand.

Clauses 1 to 8 agreed to.

Schedules 1 and 2 agreed to.

The Chairperson:

Today's meeting is being reported by Hansard, and we will return to the amendments at a later date. I am keen for you to return with the information that we have requested, because if there are things that we want to put to the Executive, we want to do that as quickly as possible.

Ms Reilly:

I will also check on the matter that was raised about the CITB before returning to the Committee.

The Chairperson:

Thank you very much.