Northern Ireland
Assembly

COMMITTEE FOR EMPLOYMENT AND LEARNING

OFFICIAL REPORT (Hansard)

Employment (No. 2) Bill

2 November 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mrs Dolores Kelly (Chairperson)
Mr Jonathan Bell (Deputy Chairperson)
Mr Sydney Anderson
Mr Chris Lyttle
Mrs Claire McGill
Ms Sue Ramsey
Mr Peter Weir

The Chairperson (Mrs D Kelly):

We move to the continuation of the informal clause-by-clause scrutiny of the Employment (No. 2) Bill. The Committee reached clause 10 in its first session, with issues being raised over clauses 8 and 12. The Labour Relations Agency (LRA) will be briefing the Committee on 10 November, and members have its briefing paper. The paper raises the same issues about clauses 8 and 12 that members are already aware of, along with two further issues. A rewording of the explanatory and financial memorandum with regard to clauses 8 and 12 has been tabled.

The Committee Clerk:

The first item is a rewording of the parts of the explanatory and financial memorandum that refer to clauses 8 and 12, which members had previously drawn attention to, where it mentions "resources" and so on. I met the lead Bill official last week over this, and the Committee has been offered a rewording of those two parts by the Department. Members

may want to have a look at those, take them away and consider them. Effectively they are eliminating any reference to "resources".

The LRA will be coming to the Committee on 10 November, but we got its paper in advance so that members could have a look at it. It does raise issues that have been flagged up before. It also supports having discretion to prioritise the caseload that it wants to deal with. That may be a way of the Department then being able to say that it can then lower the LRA's resources. Obviously, that is a speculative feeling — there has been no statement of that from the Department or anything — but that is what the LRA has suggested could happen. That is contained in the briefing document, and it will come and discuss that with members on 10 November. We wanted to raise it at this point because it has been raised by members before.

Those papers are there if members want to take them away and consider them. We have the Law Centre in tomorrow; it has raised different, more abstract issues.

To continue with the bits of the Bill and —

The Chairperson:

As members consider the additional information, they should also bear in mind that some of these measures might actually encourage greater efficiency and effectiveness, as well.

The Committee Clerk:

The Department has said that essentially the clauses are there to give the LRA the discretion to be able to prioritise cases so that it will not be forced to deal with cases that it knows will not go anywhere or where no conciliation is possible. In the words of the Department, it is a measure for effectiveness and greater efficiency. Members need to balance out those two arguments from the Department and the LRA, and you will have a chance to hear them both on 10 November.

As for the Bill itself, as the Chairperson said, we had got as far as clause 10. If I proceed with clause —

Mrs McGill:

The revised wording of the memorandum — as first glance, I have some difficulty with it. We will be coming back to this:

"The intention of the amendment is to relieve the LRA of the obligation to offer conciliation".

That does not sit easily with me. It may do with the LRA, but —

The Committee Clerk:

That is the wording that the Department has offered. I have also come up with my own wording, which I can also offer if it is timely and if members like. It is simpler:

"The intention of the amendment is to enable the LRA to prioritise its cases".

If you stop at the word "cases" and take out:

"where demand for conciliation exceeds resources available",

it will then read:

"The intention of the amendment is to enable the LRA to priorities cases and to relieve the LRA of the obligation to offer conciliation".

That still leaves in the word "relieve", which Mrs McGill has flagged up, but it is a simple possible change. It just eliminates an extra sense without putting anything more in, but it does leave that word "relieve".

The Chairperson:

It was my understanding that it was to allow the LRA, where there were cases that were going to go to tribunal or to court, that there was not a time-wasting aspect to it. If Mrs McGill wants to bring forward a wording that she might be happy with at a future meeting, that might be useful.

Mrs McGill:

I think that it is important that it be a Committee decision, in the final analysis.

The Chairperson:

Oh yes, but if you thought that there is something that would assist —

Mrs McGill:

I just want to make the point at this initial stage, but thank you.

The Chairperson:

If any member wants to bring forward a suggested wording, it may well be adopted by the Committee.

The Committee Clerk:

The Department has shown itself more than happy to look at what alternatives the Committee wants to bring forward, so there should not be any kind of problem.

Mrs McGill:

We will hear the views of the LRA —

The Chairperson:

And others.

Mrs McGill:

And others.

The Chairperson:

We will indeed. OK, members, we will move to the other clauses. I ask members to stay so that we can get this bit of business done. It will be a couple of minutes.

The Committee Clerk:

There are only a couple of bits left.

Clause 11 covers the powers of the Fair Employment Tribunal in relation to matters within the jurisdiction of industrial tribunals. Members are aware that the Fair Employment Tribunal currently has the power to hear, alongside the fair employment aspect of a complaint, additional aspects of the complaint relating to other forms of alleged unlawful discrimination and unfair dismissal. Any other aspects of the complaint, such as a claim for unpaid wages or breach of contract, must be heard and determined as part of a separate industrial tribunal. It is one case, but if there are these additional elements they have to be heard separately, in an industrial tribunal away from the Fair Employment Tribunal.

Since all aspects of the claim often arise out of the same original set of facts, this duplication of effort is considered to be administratively wasteful and an unnecessary burden on all of the parties involved. Clause 11 aims to amend existing legislation to remove that anomaly. It means that all aspects of the case may be heard in one go at the Fair Employment Tribunal at the same proceeding, so there is no need to split it up and have two different cases before two different tribunals.

The Chairperson:

That should make it easier for claimants.

The Committee Clerk:

It is a slimming-down, administrative-burden-removal exercise.

We skip now to clause 15. Clauses 12 to 14 were dealt with previously when we dealt with earlier clauses where there was a tie-up. Clause 15 works with schedule 3. This is what we can effectively describe as the new element of policy being injected into the Bill. This time off to train or study was not an issue that the Committee originally took evidence on when it did the pre-legislative phase of this Bill. It is a new thing that has been brought to the Bill that the Committee will be thinking about during Committee Stage rather than having thought about previously.

The provisions introduce a power that will allow for the subsequent introduction of a new right for a qualifying employee who has had basically half a year's service — 26 weeks — to make a formal request to the employer for time away from core duties to undertake study or training. The application for this study or training must be to improve the employee's effectiveness at work and the effectiveness of the employer's business, so there are criteria within which these applications will have to work.

The Chairperson:
Mutual.

The Committee Clerk:
It has to be mutually beneficial. Employers will be obliged to give serious consideration to such a request, and can turn it down only on the basis of one of a specified list of business reasons, comparable to a list that is already in place in respect of the right to request flexible working, which, members will be aware, is in separate legislation. The permissible grounds for refusal are listed as schedule 3, and they will be inserted after article 95 of the Employment Rights (Northern Ireland) Order 1996.

The very final thing that we look at is the list of delegated powers. I do not propose to go through them in detail, because it is one of those aspects of the Bill that are extremely technical. However, I will give a broad overview of what delegated powers are for. Essentially, delegated powers are put into other legislation by this Bill to allow the Assembly to have elements of control over future legislation. What we do with the delegated powers is forward them to the Examiner of Statutory Rules, who looks at all the statutory rules for us — that is a protocol that the Committees enter into at the beginning of a mandate. The Examiner of Statutory Rules looks at these to see if they give an appropriate level of delegated power. The Examiner of Statutory Rules has looked at these, and at the parent legislation and so on that they will affect, and he believes these all to be an appropriate level of power and control

for the Assembly.

Unusually for a Bill that is not a particularly big Bill, there are a lot of delegated powers. If members recall, the last time we did the informal clause-by-clause, I flagged up the fact that this Bill slightly modifies a very large amount of existing primary legislation. That is why there are so many delegated powers.

That takes us through to clause 16 and schedule 4, the repeals. That is simply a list of parts of legislation that have to be taken out of other primary legislation because of this Bill. Remember that we talked before about removing the old statutory grievance procedure, and so on. This list simply puts in one place all the bits of legislation that must be repealed.

Clause 17 is the commencement clause. All it really does is provide for the commencement of the provisions of the Bill on dates that are specified in Orders made by the Department. That is effectively when things will begin and when everything becomes law.

That pretty much takes us through, Chairperson. We have the Law Centre coming tomorrow, and we have received a paper. Next week we have the LRA, as I said before, and the Department immediately after that. It will be giving its views on the same clauses that have been flagged up to us.

The Chairperson:
Well, members, that was only the informal scrutiny. We will be having formal scrutiny, so if there are concerns that members wish to raise —

The Committee Clerk:
Previously, I used the phrase "it is not the river of no return". Nothing has been decided.

Mr Bell:
Nothing is agreed until everything is agreed.

The Chairperson:
That is correct. The devil is in the detail.