



Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

**The Health and Social Services Trusts
(Membership and Procedure)
(Amendment) Regulations
(Northern Ireland) 2011**

21 March 2011

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(Membership and Procedure) (Amendment) Regulations
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Members present for all or part of the proceedings:

Mr Jim Wells (Chairperson)
Mrs Michelle O'Neill (Deputy Chairperson)
Mr Mickey Brady
Mr Pól Callaghan
Dr Kieran Deeny
Mr Alex Easton
Mr Sam Gardiner
Mr Paul Girvan

Witnesses:

Ms Catherine Donnelly)
Ms Diane Taylor) Department of Health, Social Services and Public Safety

The Chairperson (Mr Wells):

I welcome Diane Taylor, director of human resources at the Department of Health, Social Services and Public Safety, and Catherine Donnelly, also from the Department. I do not know your full title, Catherine, but I am sure that you are someone very senior and important.

Ms Diane Taylor (Department of Health, Social Services and Public Safety):

Thank you for including this in today's agenda at such short notice. There has been no consultation. Until this day last week, 14 March, the Department assumed that the normal consultation process would take place in order to remove this disqualification. Last week, the Minister had a meeting with the Attorney General at which this came up and legal advice was sought. That advice indicated that the disqualification penalises trade unions alone for being in paid employment or holding office on trust boards.

I will give a little more background. There are 17 health and social care (HSC) bodies. Of those, nine have no disqualification for trade union membership, which means that we have five already with trade union members as board members. For the other four, as vacancies have arisen, we have sought to invite trade union members to apply and to sit as members on those boards. That is a part of the public appointment process. We have eight bodies, and there is a disqualification.

There are two options: remove the disqualification or prescribe that trade unions should sit on trust boards or boards of organisations. We thought that the removal of the disqualification was the more appropriate route. That would not mean that there has to be compulsory membership; it just means that we would remove the disqualification and trade union members can apply and sit as non-executive directors on boards of organisations.

At the minute, it affects the six trusts, including the Ambulance Trust. The Northern Ireland Medical and Dental Training Agency (NIMDTA) and the Regulation and Quality Improvement Authority (RQIA) are the organisations that currently have this disqualification. The legislation would remove the disqualification.

There is another piece of work that you need to know about. There are seven non-executive members on trust boards at the minute. The Health and Social Services Trusts (Membership and Procedure) Regulations (Northern Ireland) 1994 would need to be changed in order to increase the number of non-executive trust board members to eight. Such a change would be subject to a statutory consultation process, which we would have had to go through anyway. All that Committee members are being asked to consider today is the removal of the disqualification.

The speed at which this is being done has been unavoidable, for which I apologise. Until last

week, we were of the opinion that we would go out to consultation, but things have moved very quickly from then until today. Moreover, the Minister wants to talk to the Executive tomorrow about the matter.

Mr Easton:

I apologise, Chairperson, but I have to leave to ask a question in the House.

The Chairperson:

That is OK, because we are still quorate. The way in which this is being done is extremely irregular. There are situations in which extremely minor or extremely urgent matters have to be dealt with quickly. During the swine flu outbreak, for instance, we had to breach timetables, and we did the same when we were dealing with the mephedrone issue. Those were particularly pressing issues, and we had to move quickly. However, I am deeply uneasy, because this is not a minor matter. It represents a significant change to the make-up of the trusts' boards, and it is being done in the death throes of the Assembly. This is our last Committee meeting.

Although you indicated to me why this matter has come up late, you have not told me why it is so urgent that it cannot simply be tabled at the first meeting of the next Committee and put through the standard procedure. What is so urgent that it has to be passed now rather than be considered on 7 May, 8 May or whenever?

Ms Taylor:

The Minister has been asking for this piece of work to be done for some time. We have been talking to legal advisers. It was only last Monday, when he had a conversation with the Attorney General, that there was more clarity on the issue. The urgency is to do with carrying out what the Minister has asked us to carry out.

The Chairperson:

You have explained why it is late, but you have not explained why it is urgent. The Committee has to hold the Minister to account and scrutinise his work. We are not here to tug our forelocks and implement a decision to facilitate the Minister under a very tight schedule and on such an important issue.

I understand the sequence that you have explained, but apart from the fact that the Minister

would like this to go through, why should we break every protocol in the book to push it through when it could so easily be dealt with in May under a new Minister?

Ms Taylor:

I will give you some detail on the Attorney General's advice and, in particular, about how the trade unions are being penalised. The advice was given in order that we were not inconsistent with or contravening article 10 of the European Convention on Human Rights, which is to do with freedom of expression and freedom of association, whether taken by itself or in conjunction with article 14, which is to do with prohibition of discrimination. That is why we wanted to bring the matter forward at this stage.

The Chairperson:

Yes, but, again, if the Minister, or whoever succeeds him, can show that the issue is being addressed and will be dealt with by the new Committee, I cannot see anyone going to the European Court of Human Rights or to a judicial review and having any chance of success if the Minister can say that there was not time to put the matter before the incumbent Committee but that it will be on the agenda for discussion at the new Committee's first meeting on 7 May, or whenever it meets again. I still cannot see why the breakneck speed is required.

If I am being absolutely honest, I think that we are being bounced into a situation very quickly by the Minister. Other members can speak for themselves, but even if I thought that it was a good thing to proceed with this matter, the procedure worries me enormously. The Minister wants to bounce the Committee into a decision at short notice when he knows that we wind up at midnight on Thursday. We all become handsome princes at midnight on Thursday instead of ugly frogs, and we cease to be members of this Committee.

That being the case, the alarm bells are ringing very loudly in my head. I am not even 100% signed up to the principle of the matter, but even if I agreed with it, I believe that to do it in such a manner would result in the Committee being ridiculed. The statutory rule is not about swine flu or mephedrone, so people will not be dying in the streets if we do not pass it. It is the Minister's wish, and I do not know whether we, as a Committee, should be bounced into giving the Minister his wishes at such a late stage. It stores up problems for the next piece of legislation that comes along. I know that you cannot answer on the political aspects of the issue, but that is my feeling.

Ms Taylor:

It is certainly not the Department's intention to bounce the Committee in any way. That is not what I am here to do today. I am here to explain the reason for the disqualification and the reason why we are putting this down.

The Chairperson:

Have you consulted the trade unions on this yet?

Ms Taylor:

Yes. The trade unions have been asking for membership of the trusts for some time. They already have membership of five bodies and all of the new phase 2 RPA bodies. Trade unions are already represented on the Regional Health and Social Care Board, the Public Health Agency, the Patient and Client Council and the Business Services Organisation. There have been another four competitions for vacancies that have arisen, and we are seeking to fill them. That will mean that nine health and social care bodies will have trade union membership on their boards. There is a disqualification against the other eight: the six trusts, the Regulation and Quality Improvement Authority and the Northern Ireland Medical and Dental Training Agency.

The Chairperson:

What action could a malcontent trade unionist take between now and 7 May to address his concerns about this issue? What could he physically do?

Ms Taylor:

You make a very good point. There is not a lot that a trade unionist could do between now and then.

The Chairperson:

If the Minister were to say that this issue is being addressed, the standard procedure would start at the first meeting of the next Committee as a matter of urgency. I do not think that there would be a leg to stand on, legally. We are simply left with a view that the Minister wants to leave this as his dowry to his successor. That is my view, but I am sure that other members will have different views. Do members have any questions?

Mr Girvan:

I do not see why we have to make a decision on it today. I do not understand the urgency of the matter. I appreciate the time frame, and the way in which it has been brought forward has been explained. However, I cannot see how there will be any material change if we pass this today. I would rather have time to see the full implications from a Committee point of view. The best way forward would probably be for it to come back to the Health Committee in the new mandate. I cannot see that another eight or nine weeks will make that big a difference.

The Chairperson:

Does anyone else have any thoughts?

Dr Deeney:

I thank Diane and Catherine for coming to us, but this is our last Committee meeting of this mandate. I am surprised and shocked that we have been asked to do this now. You have mentioned the situation in England, Scotland and Wales, where there is quite a lot of participation by trade unions. It may well be the way forward, but the procedure that is being used makes it seem as if it is being bounced on us.

You said that the Minister has been thinking about this for some time. Why did he not bring it to the Committee one, two or three months ago?

Ms Taylor:

He was still considering the submission that was made to him. He had asked for some work to be carried out, and a submission was put to him. The Department held the view that the normal consultation process would take place. He had that submission for his consideration. It was a conversation with the Attorney General that led to a different turn of events. We found that there were inconsistencies with some European legislation.

Dr Deeney:

You also mentioned that no formal consultation has been undertaken.

Ms Taylor:

That is right.

The Chairperson:

I have one final question. Why does the regulation exclude trade unions? There must have been some thought put into that at an earlier stage.

Ms Taylor:

Years ago, it was thought that there would be a conflict of interest if there were a trade unionist on a trust board, especially if there were talk of efficiencies and redundancies, for instance. There are now arrangements in place at each board for dealing with conflicts of interest; for example, to decide whether the trade union member takes part in conversations on efficiencies. The original thinking was that there would be a conflict of interest.

Mr Gardiner:

Thank you for your presentation. I have a short question. What harm would be brought about if this is not cleared today? What damage would we be doing?

Ms Taylor:

You would not be doing any damage. The inconsistency would remain with the legislation, but it is unlikely that any damage would be done before the next Committee examines it.

The Chairperson:

Thank you very much. I know that you are delivering the news on behalf of the Department, and we do not want to shoot too many messengers on our last day. We will discuss where we take it from here.