



Northern Ireland  
Assembly

Committee for Employment and Learning

# OFFICIAL REPORT (Hansard)

Employment Bill: Department for  
Employment and Learning

13 May 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for Employment and Learning

Employment Bill: Department for Employment and Learning

13 May 2015

**Members present for all or part of the proceedings:**

Mr Robin Swann (Chairperson)  
Mr Thomas Buchanan (Deputy Chairperson)  
Mr Sydney Anderson  
Mr William Irwin  
Ms Anna Lo  
Mr Fra McCann  
Ms Bronwyn McGahan  
Ms Claire Sugden

**Witnesses:**

Mr John McKeown	Department for Employment and Learning
Ms Margaret O'Hare	Department for Employment and Learning
Dr Alan Scott	Department for Employment and Learning

**The Chairperson (Mr Swann):** I welcome Mr John McKeown, who is the acting assistant director of strategy, European and employment relations; Dr Alan Scott, head of the employment relations policy and legislation branch; and Ms Margaret O'Hare of the employment relations policy and legislation branch.

**Mr John McKeown (Department for Employment and Learning):** Good morning, Chair. We thank you and the Committee for providing the opportunity to brief you on the Department's plan to publish its response to the public consultation on the employment law review. I will set out in broad terms the main policy intentions of the Employment Bill. If you are content, I will briefly cover the background in relation to the employment law review and then provide a brief overview of the key policy intentions of the Bill. Then, Margaret, Alan and I will be happy to discuss and answer any questions from you and the members.

I am conscious that departmental officials previously provided a detailed oral briefing to the Committee on the employment law review on 4 June 2014. That was covering feedback on key policy issues explored through the public consultation. In September last year, the Minister held a round of meetings with key stakeholders to further discuss the outcomes of the public consultation, and he also shared with the Committee some detail on how he was minded to proceed with employment law in his briefing to the Committee on 10 September 2014. On 20 November 2014, the Minister secured Executive's agreement to the drafting of an Employment Bill and indicated his intention to have the Bill introduced before the coming summer recess.

The review of employment law consultation sought views on a range of policy proposals under three main themes. I just want to remind members of those: early resolution of workplace disputes; efficient

and effective employment tribunals; and better regulation measures. Quickly, and in broad terms, I will run through the outworkings of the consultation and the range of discussions and briefings since then. First of all, the Department has taken appropriate primary legislative powers in the Employment Bill that will enable early conciliation to be established. It will make it mandatory for potential tribunal claims to be routed, in the first instance, to the Labour Relations Agency (LRA). Confidentiality provisions will, therefore, be extended to protect the integrity of this new process. The Department is also seeking appropriate enabling provisions within the Employment Bill to allow for a neutral assessment service to be established where the parties to conciliation agree that the process could be taken forward and to allow the LRA sufficient scope to deliver a process that would meet the needs of users in a way that learns from and builds on experience.

The Department will not be taking any action to amend the unfair dismissal qualifying period in Northern Ireland. However, in the event that any future need to re-evaluate that position arises, the Department is seeking an amendment to the relevant enabling power so that any changes to the qualifying period will be subject to the draft affirmative procedure in order to ensure a debate on the issue in the Assembly. Also, in relation to unfair dismissal, the Department will take forward a change in the legislation to curb above-inflation increases in the upper limit of the compensatory award that a tribunal can order in those cases.

The Department will seek to reduce the consultation period for redundancies involving 100-plus employees from 90 to 45 days and to remove fixed-term employees from the count for the purposes of collective redundancies. An amendment to the enabling power will be made so that any future changes to consultation periods will be subject to the draft affirmative process. Again, that will ensure that a debate on the issue will be taken in the Assembly.

There are no proposals for legislative changes on compromise agreements and protected conversations. However, the Department intends to commission further guidance on what is often referred to as the management of difficult conversations in the workplace. The Department will amend the law on public interest disclosure to introduce a public interest test in order to clarify that disclosures must be in the public interest. The Bill will also be used to alter the effect of the good faith requirement in making a disclosure and to amend the definition of "worker" to include some health workers who were inadvertently excluded from the scope of the public interest disclosure protections.

Finally, in relation to public interest, the Department will legislate for vicarious liability for employers in a situation where an employee who has made a protected disclosure subsequently suffers detriment from colleagues. I said "finally" on public interest disclosure, but the Department is also currently consulting on replicating additional proposals for reform on public interest disclosure. We often find that there is quite a bit of development in some of those legislative areas, and we are aware that there are some developments in GB, so we are consulting on replicating some of those proposals.

Turning to additional issues, the Department has taken the opportunity presented by the Employment Bill to make provisions relating to careers guidance and to apprenticeships. I will quickly explain our intent there. The report issued by this Committee following its inquiry into careers guidance recommended that the Department should consider introducing a statutory duty for the provision of impartial careers guidance. Subsequent reports from the CBI have also endorsed that recommendation. The clause, as drafted, will introduce a regulation-making power in relation to careers guidance. It is intended that regulations will be introduced as soon as is practicable. The detail of the duty on the Department will be specified in the regulations, and it is anticipated that it will place a duty on the Department to provide impartial careers guidance delivered by qualified careers advisers.

In relation to apprenticeships, the Department published its strategy document 'Securing our Success: the Northern Ireland Strategy on Apprenticeships' in June 2014. A number of projects outlined in the strategy have been established to pilot and test the new model for the purposes of securing implementation by 2016. Our intention through the Bill is that that will be underpinned in legislation with regulations to define the core components of an apprenticeship in Northern Ireland.

Turning to some other related matters, the Bill does not include provisions on zero-hours contracts, and that is pending agreement of the Department's proposals by the Executive. However, provisions can be inserted by way of amendments at a later stage of the Bill's passage through the Assembly, should such an agreement be reached. I will just raise another couple of issues relating to the Bill before I close. Tribunal reform was the second of the three key themes that I mentioned at the beginning of my presentation. We want employment tribunals that meet the needs of today's users, and the last substantial review of tribunals was over 10 years ago. Most of the changes can be taken

forward by subordinate legislation or through revised tribunal practice or guidance. The Department will consult over the summer on revised tribunal rules and procedures, with the objective of simplifying and improving processes. Our proposal is to include in the Bill only some minor amendments allowing the Department to amend regulations as appropriate in response to the public consultation in the summer. These changes relate mainly to the terminology for those currently known as tribunal chairmen and who are, in practice, referred to as employment judges. Another important issue to be dealt with in the consultation is the current requirement for a party to pay a deposit of up to £500 to continue with proceedings if the case is deemed to have little reasonable prospect of success.

As part of its better regulation work, the Department carried out research on how SMEs could be helped better to understand their obligations under employment rights. I understand that some smaller employers without, for example, HR functions sometimes find it difficult to get to grips with what are sometimes complex requirements. Our consultation sought feedback on recommendations arising out of that research for a targeted subsidy scheme and a mediation pilot, and we asked how information could be more effectively communicated to small employers. While there was some support for the subsidy scheme, and a lukewarm reception for mediation, the clear sense emerged was that there was little desire for resources to be diverted from the LRA, which is a trusted body with expertise in both advice and dispute resolution. The Department does not propose any legislative action in this area, but is working with the LRA to establish how services can be better targeted to help SMEs. The Department is also considering the possibility of developing quick reference documentation, which would assist SMEs to understand their key obligations and responsibilities at a glance, with further signposting to more detailed information.

I know I have run through the broad detail of the Department's direction of travel quite quickly, but I hope that these proposals align with the Department's commitment to build an employment relations framework that is balanced, fair and effective. As I said at the beginning, I am happy to take questions or engage in discussion.

**The Chairperson (Mr Swann):** John, as you said in your opening comments, the Committee has been over this a number of times; it is something that we have taken an interest in. At the outset, I welcome the recognition of the work that this Committee has done through legislating for careers guidance on the basis of some of the recommendations we made in our inquiry. It is important to note that the work we have done is included. I will just ask about some of the specifics that you are taking forward, in particular the reduction from 90 to 45 days in the consultation period for redundancies involving 100-plus employees. There is an exclusion for fixed-term employees in that count. Why are they excluded?

**Mr McKeown:** Including fixed-term employees was recognised in the consultation as what was termed "gold-plating". Based on those kinds of responses, they were excluded, as I believe they are in GB.

**Dr Alan Scott (Department for Employment and Learning):** That is not actually required by the underlying European directive, and the consultation therefore suggested that it should be removed.

**The Chairperson (Mr Swann):** Has the reduction in the redundancy notice from 90 to 45 days for 100-plus employees received Executive approval?

**Mr McKeown:** The paper to the Executive on the Bill is currently being drafted, so not yet.

**The Chairperson (Mr Swann):** What increase in capacity will be provided to the LRA as a result of the Bill for it to take on the additional roles and duties?

**Dr Scott:** We are currently in discussions with the LRA, and it is seeking to put together a business case establishing what its additional requirements will be. There will be some possibility of savings through redeployment of staff, but it may well be that there will be a need to train additional staff. We will work with them to develop a robust business case. On the basis of that, we will determine how it is appropriate to fund the early conciliation model and the neutral assessment. One of the key factors that emerged from the consultation was that the consultees were very keen to ensure that the LRA resources would continue to be supported. In fact, this financial year, we have ensured that the LRA resources have not been reduced, despite cuts in other areas.

**The Chairperson (Mr Swann):** John, you mentioned a £500 fee, if a case looked unlikely to succeed, that would be payable by the person making the complaint. Does that not adversely affect someone

on a zero-hours contract, the minimum wage or a low wage coming forward and being able to take forward their complaint?

**Mr McKeown:** First of all, Chair, that is an issue that we are bringing to the summer consultation on tribunals.

**Dr Scott:** It is. That provision already exists in the existing tribunal rules. There is the possibility of imposing a deposit of up to £500 if a case is deemed to have little reasonable prospect of success. It is not necessarily frequently used. Furthermore, in looking at that, the tribunals have to consider a party's ability to pay. In the consultation that will take place over the summer, we will be looking at the deposit provisions as a whole to see how they are operating at the minute and whether there is scope to revise them. Obviously, in looking at that, we will be considering whether there are access to justice issues and how those can be addressed.

**The Chairperson (Mr Swann):** So that is not fixed as yet?

**Dr Scott:** It is not. There is scope to look at that.

**The Chairperson (Mr Swann):** The definition of a worker will now include health workers. Further, the Bill will legislate for employers to be liable if any employee who makes a protected disclosure subsequently experiences detriment from colleagues. Will that change in legislation — the changes of the definition and that extension — give further protection? Will it protect whistle-blowers within the health service?

**Mr McKeown:** That is the intention.

**Ms Margaret O'Hare (Department for Employment and Learning):** Yes, the NHS workers should have been included originally, but they were left out. They will be included this time round. At the minute, if someone blows the whistle, some of their colleagues can, so to speak, discriminate against them. This provision is intended to place some responsibility on to the employer, who will have to behave in the best interests of the person who blew the whistle; there will have to be protections. If it is deemed that the employer had not done all that they could to protect the whistle-blower from discrimination, they will be held responsible.

**The Chairperson (Mr Swann):** So this will actually strengthen those who work in the health service?

**Ms O'Hare:** Yes, absolutely.

**Ms Lo:** I am reading the section of the paper on unfair dismissal. It seems quite complicated. We are not following GB in extending the qualification period from one year to two years, but we are putting in legislation the possibility of change through the draft affirmative procedure.

**Ms O'Hare:** Yes. There were mixed views in response to the consultation but, overall, there was not a great deal of appetite for change to the qualifying period. The consultation looked at what that change would do for the economy. Would it grow the economy? Would it reduce tribunal cases? Would there be inward investment? There really was not the evidence. However, the Minister was keen to allow for future evidence coming to the table.

At present, if we wanted to change the unfair dismissal qualifying period, the power is subject to the confirmatory procedure, which means that we could bring the change in before it would be debated by the Assembly. It was important to give the Assembly the opportunity to debate such an important and potentially controversial issue first. If there were further evidence, the Minister would consider it but open up the issue to the Assembly to give it the opportunity to debate it.

**Ms Lo:** What happens if it is a UK-wide company? You would then have two sets of principles for employees working, for example, in London and Belfast. Staff there would be subject to a two-year period before being able to take an unfair dismissal case but here they would not. It is a bit out of sync.

**Ms O'Hare:** It does not —

**Ms Lo:** Not that I advocate that, I have to make clear.

**Ms O'Hare:** It is always a balancing act, to be honest. The consultation also looked at it not as being a case of following GB but of doing what was good for Northern Ireland. Some consultees highlighted the fact that powers are now devolved. They said that we needed a solution that suited Northern Ireland and that we should not always follow GB slavishly and bring in something that perhaps did not suit Northern Ireland. As there was no evidence, there was not the argument to change.

**The Chairperson (Mr Swann):** On zero-hours contracts and the difficulties around them, you said that the Executive may bring in zero-hours contracts through amendments to the Bill.

**Mr McKeown:** Yes, Chair. I was here a couple of months ago with Tom Evans and Deirdre Walsh talking about zero-hours contracts. We outlined our proposed direction of travel at that stage. We followed that up quite quickly with a paper to the Executive. We are still awaiting Executive agreement on the proposals.

**The Chairperson (Mr Swann):** If the Executive do not agree to those amendments, a party could still bring them in.

**Mr McKeown:** I am not sure.

**The Chairperson (Mr Swann):** As amendments to the Bill.

**Mr McKeown:** Do you mean in debate?

**The Chairperson (Mr Swann):** Yes.

**Dr Scott:** Yes, that would be feasible.

**The Chairperson (Mr Swann):** John, have you a timeline for us?

**Mr McKeown:** We go the Executive with the Employment Bill paper in the next few days. We are still confident of meeting the deadline of introduction before the summer recess.

**The Chairperson (Mr Swann):** From the Committee's point of view, it would be in our interests to have the Bill introduced and through Second Stage prior to the summer recess. That would enable us to carry out our consideration. The extent of the legislation means that we will probably look for an extension to the Committee Stage.

**Mr McKeown:** Absolutely, Chair.

**The Chairperson (Mr Swann):** It is just to make you aware of that.

**Mr McKeown:** Absolutely. We understand that. We are aiming for early June, but we absolutely understand your position.

**The Chairperson (Mr Swann):** John, Margaret and Alan, thank you very much.