



Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Employment Bill: Formal Clause-by-clause
Consideration

20 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Employment and Learning

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Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Sydney Anderson
Mr Gerard Diver
Mr Alex Easton
Mr Phil Flanagan
Mr David Hilditch
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
Ms Deirdre Walsh	Department for Employment and Learning

In attendance:

Ms Aoibhinn Treanor	Bill Office, Northern Ireland Assembly
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The Chairperson (Mr Swann): The Committee deliberated informally on the clauses of the Employment Bill at last week's meeting. I advise Committee members that this is the Committee's formal consideration of the clauses. The formal clause-by-clause consideration is the last opportunity to discuss the clauses, and any decisions made today will be final. I advise officials that I expect them to talk to each amendment as we reach it in the formal clause-by-clause consideration. That is the way in which we will go through the Bill.

Starting with clause 1, I will invite members to indicate whether they are content with the clause as drafted, whether there are any issues that they wish to highlight and any amendments that they wish to propose or whether they wish to reject the clause in its entirety. Where there are amendments proposed, I will put the Question on the amendment first. Where no amendments have been proposed and no issues highlighted, I will seek the agreement of the Committee to group particular clauses when putting the Question. There is a list in the tabled papers. There is also a separate piece of paper with all the proposed amendments so that we can see the individual amendments as we come to them.

Starting with clauses 1 to 4, which deal with industrial tribunals, I seek the views of members. The four clauses concern early conciliation and neutral assessment.

Question, That the Committee is content with clauses 1 to 4, put and agreed to.

Clause 5 (Power to require party to proceedings to pay deposit)

The Chairperson (Mr Swann): Clause 5 deals with the power to require the payment of a deposit. There is a proposed departmental amendment to clause 5. The amendment will ensure that such regulations will be subject to the draft affirmative resolution procedure. John touched on the amendments in front of us, so I will hand over to him to explain, over and above what was done earlier, the rationale for the amendment. Maybe Alan will do so.

Dr Alan Scott (Department for Employment and Learning): Yes, I will take this one, Chair. The particular purpose of the clause is to deal with industrial tribunal deposits. It amends article 25 of the Industrial Tribunals (Northern Ireland Order) 1996 to specify that regulations that deal with deposits are to be subject to the draft affirmative resolution procedure of the Assembly. That is in response to the concerns about the issue that have been raised at the Committee. The Minister has taken those on board and proposes to table the amendment.

The Chairperson (Mr Swann): OK, members. The amendment is in the tabled papers under clause 5, page 5, line 12. It is the second amendment listed. Are members content with the proposed departmental amendment?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

The Chairperson (Mr Swann): We will move on to clauses 6 to 9.

Mr Flanagan: Sorry, Robin. I presume that, as we are moving on to clause 6, we have done clause 4.

The Chairperson (Mr Swann): We did clauses 1 to 4 at the start.

Mr Flanagan: Sorry, I missed that. The Minister has given notice of his intention to oppose the Question that clause 4 stand part.

The Chairperson (Mr Swann): Yes.

Mr Flanagan: May I just clarify why that is? Is it a technical thing?

Dr Scott: Yes. That relates to the introduction of a revised clause or a new clause dealing with neutral assessment. That is the proposed new clause 9A, which we will come to.

Mr Flanagan: OK, no problem. That is dead on.

The Chairperson (Mr Swann): We dealt with clause 4 because it still stands part of the Bill.

Clauses 6 to 9 relate to the fair employment tribunal. I will seek the views of members on clause 6, which concerns early conciliation.

Question, That the Committee is content with clause 6, put and agreed to.

Clause 7 (Extension of time limit to allow conciliation)

The Chairperson (Mr Swann): Clause 7 concerns early conciliation. There is a proposed departmental amendment to clause 7. The Department wishes to amend clause 7(1) to remove obsolete references to statutory dispute resolution procedures from current legislation. I will now hand over to the Department to brief us on that. The amendment is under clause 7, page 7.

Dr Scott: Yes, the amendment is to amend the Fair Employment and Treatment (Northern Ireland) Order 1998 so that references will now include provisions around early conciliation, but they exclude reference to earlier provisions that have now been repealed by the Employment Act (Northern Ireland) 2011 around statutory dispute resolution procedures. Therefore, this is one of a number of amendments to the Bill to make that change. It is correcting earlier oversights by removing those provisions from legislation.

The Chairperson (Mr Swann): OK, Alan, so it is a technical amendment.

Dr Scott: Yes.

The Chairperson (Mr Swann): Members, are you content with the proposed departmental amendment?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 8, put and agreed to.

Clause 9 (Power to require party to proceedings to pay deposit)

The Chairperson (Mr Swann): In total, there are four proposed amendments to clause 9. There are two proposed departmental amendments, and these will ensure that such regulations will be subject to the draft affirmative procedure. There are also two Committee amendments, the outline of which were agreed by the Committee at last week's meeting and which concern the review of the early conciliation service. I will hand over to the Department to explain the rationale for the amendment to clause 9, and we will deal with clause 9A after the first amendment to clause 9.

Dr Scott: The amendment to this clause is similar to the amendment around industrial tribunals in clause 5. It is to amend the Fair Employment and Treatment (Northern Ireland) Order 1998 to ensure that any provisions that are made through regulations around deposits are made subject to the draft affirmative procedure before the Assembly. Again, that is in response to the concerns raised by the Committee.

The Chairperson (Mr Swann): Are members content with the proposed departmental amendment?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

New Clause

The Chairperson (Mr Swann): I will hand over to departmental officials to explain the rationale for the Department's amendment to insert a new clause 9A.

Dr Scott: The new clause 9A is intended to replace the existing clauses 4 and 8, and the purpose of that is to provide the Department with the necessary flexibility, having taken on board the evidence of stakeholders and, in particular, the tribunal service and the Labour Relations Agency, on being able to review existing provisions provided by both services, so that we are in a better position to specify the neutral assessment service when it is introduced at a later date. Obviously, there will be reviews of the early conciliation under the proposals prepared by the Committee and also of the existing LRA arbitration scheme and, finally, of the existing early neutral evaluation service provided by the tribunals. This clause is designed to provide the Department with the flexibility that it needs to introduce a new service that could be delivered in response to that.

The Chairperson (Mr Swann): Are members content?

Members indicated assent.

The Chairperson (Mr Swann): As explained earlier, the Minister has indicated his intention to remove clauses 4 and 8 and replace them with 9A. Will the Committee note clause 9A, subject to the departmental amendment?

Members indicated assent.

Mr Flanagan: What will the regulations that will be subject to negative resolution be about?

Dr Scott: Those will be regulations specifying what the neutral assessment service would consist of and the means of delivery of it.

Mr Flanagan: OK.

New Clause

The Chairperson (Mr Swann): I will hand over to the Bill Clerk to take us through the Committee amendment for new clause 9B. Members, the draft amendment is in the tabled papers.

Ms Aoibhinn Treanor (Bill Office, Northern Ireland Assembly): The Committee asked me to draft a review clause for early conciliation and neutral assessment. Proposed new clause 9B contains the ingredients that we discussed last time for early conciliation. The Department is not proposing any change to the relevant clauses covering early conciliation, so that will be very straightforward in your Consideration Stage process.

If I may, I will move on to the next one, Chairperson. The proposed new clause 9C —

The Chairperson (Mr Swann): Sorry, I will take clause 9B first, if you do not mind. Are members content with the proposed Committee amendment to include clause 9B?

Members indicated assent.

Question, That the Committee is content with the new clause, put and agreed to.

New Clause

Ms Treanor: New clause 9C contains a review clause for the neutral assessment measures that are in the Bill as drafted. You will have noticed from the conversation just now that the Minister intends to oppose clauses 4 and 8, which contain the neutral assessment provisions. If that happens at Consideration Stage, as this amendment refers specifically to those provisions, the Committee would probably not move this amendment at that time but would bring it back in a redrafted format for Further Consideration Stage. Does everybody understand why that is? The clauses in the Bill at the moment refer to industrial tribunals legislation and fair employment legislation in their description of neutral assessment. The Department is now changing its approach to that and describing neutral assessment in a different way. Accordingly, you would describe your review in a different way, if those changes were to be made in the first amending stage. For now, it applies to what is drafted in the Bill.

The Chairperson (Mr Swann): The Minister has indicated that he will not move clauses 4 and 8, but he cannot do that until the Bill comes to the Floor, so we are putting in our amendment in case he does not do so and they remain part of the Bill. It is a protection in case he keeps clauses 4 and 8 in the Bill.

Mr Flanagan: Do either of those two clauses prohibit the Department from producing a much wider report? Where it says "in particular include", does that mean that it has to include at least this but can include more, or does it limit the Department to this being all that it can produce the report on?

Mr John McKeown (Department for Employment and Learning): I do not think that it would prohibit the Department. During your call for evidence, Tom Evans said that the LRA would automatically review anything that it might wish to add by way of review. I do not think that this would prohibit the Department from doing so.

Question, That the Committee is content with the new clause, put and agreed to.

Question, That the Committee is content with clauses 10 and 11, put and agreed to.

Question, That the Committee is content with clauses 12 and 13, put and agreed to.

Clause 14 (Protected disclosures: reporting requirements)

The Chairperson (Mr Swann): There is a proposed departmental amendment to clause 14. That has been drafted to the effect that where a report relates to functions of a body in the reserved field, that report will be sent to the Secretary of State for laying before Parliament rather than being sent to the Department for laying before the Assembly. I will hand over to departmental officials to explain the rationale for that amendment.

Ms Margaret O'Hare (Department for Employment and Learning): When we were consulting on the annual duty to report, the Northern Ireland Human Rights Commission wrote to us and said that it did not feel that it could be compelled to produce a report that would be laid before the Assembly as its function is really a reserved matter. We took some legal advice on that and discovered — this has led to the amendment — that our Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2014 contains organisations that are both reserved and non-reserved. In essence, where a prescribed persons order function is a reserved matter, it would be ultra vires for us to put an onus on those bodies to lay the report before the Assembly. The onus would be on the Department for the laying of the report before the UK Parliament, and we would present the reports from prescribed persons in Northern Ireland to the Northern Ireland Assembly. In other words, the effect of the amendment is that, where a report relates to functions of a body in the reserved field, it will be sent to the Secretary of State for laying before Parliament, rather than to the Department for laying before the Assembly. The Secretary of State's consent will be required for this amendment as it touches on the reserved field, and we are working to secure that agreement as soon as possible.

The Chairperson (Mr Swann): Is there any way to differentiate between reserved and non-reserved functions so that two reports can be laid?

Ms O'Hare: There will actually be two reports. There will be the one in Parliament and our own, and when they are published, they will be in the public domain. It was only after hearing from the Northern Ireland Human Rights Commission, while we were drafting the annual duty to report, that we realised we could not compel people on our list. The prescribed persons order sits alongside the whistleblowing legislation, so these are regulators that people go to report wrongdoing. It was not in our gift to put an onus on them to present the report to us for laying before the Assembly. It would be ultra vires. We could not lay that report where it was UK. There would be duplication, as well as it being ultra vires.

Ms McGahan: At this time, I would like our concerns about this to be logged. We will not take it to a vote, but I would like our concerns to be logged. I respect the distinction between reserved and non-reserved, but we have a devolved Government and, as far as I am concerned, it should come to our Government, not to the Secretary of State. As I say, we will not put it to a vote, but I would like our concerns noted.

Mr Flanagan: The Human Rights Commission flagged this up to the Department. Are there any other prescribed bodies that do not report here but to the NIO or any other outfit?

Ms O'Hare: There could be, and that is why we felt that we needed the amendment. We reckon that, when we go out to consult on the detail of the annual duty to report, there could be more of these. So, it is really to future-proof the legislation.

Mr Flanagan: OK.

The Chairperson (Mr Swann): Members, I have noted and we have recorded Sinn Féin's concerns about this, but I will put the Question: are members content with the proposed departmental amendment?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 15 and 16, put and agreed to.

Clause 17 (Careers guidance)

The Chairperson (Mr Swann): Clause 17 consists of one provision that introduces a power to make regulations concerning careers guidance. In line with the Committee's request to strengthen the power of the regulations, the Department has brought forward a proposed amendment that changes the requirement from "may" to "must". I will hand over to departmental officials to explain the rationale for the proposed amendment to clause 17. I think that the Committee wanted "shall", but we are getting "must".

Dr Scott: That is right, Chair. We have been in discussions with the draftsperson, and their recommended drafting to achieve the same end is to include "must" there, and that places the duty directly on the Department to provide for such guidance. As the Committee can see, it needs to be:

- "(a) provided in an impartial manner; and*
- (b) be in the best interests of the person receiving it."*

It is in response to the Committee's concerns that this amendment has been drafted.

Ms McGahan: What is the difference between "shall" and "must" in the context of this purpose?

Dr Scott: They have the same effect, but originally the proposal was to establish this through regulations, and the duty is now conferred directly on the Department without the need for regulations. The Department is required to do something, and it may make regulations around these specific issues. It is really just a matter of technical drafting language.

The Chairperson (Mr Swann): Are members content with the proposed departmental amendment?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 18 (Apprenticeships)

The Chairperson (Mr Swann): Clause 18 consists of one provision that introduces a power to make regulations concerning apprenticeships. The amendment makes provision for traineeships. I will hand over to the Department to explain the rationale for the amendment to clause 18.

Mr McKeown: I will give a broad response. I have an expert behind me, Mr Raymond Kelly, if I get stuck on detail. The purpose of including reference to both apprenticeships and traineeships in the amendment is to recognise that apprenticeships and traineeships, although complementary parts of the new professional and technical training system, are different offerings. Traineeships will be available in professional and technical occupations at skills level 2. Apprenticeships will be available in professional and technical occupations from skills level 3 to level 8. The clause will also be amended to specify that regulations may make provision about the components of apprenticeships or traineeships. The purpose of the amendment is really to add reference to traineeships.

The Chairperson (Mr Swann): If members are content with the departmental amendment, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 19 (Indexation of amounts: timing and rounding)

The Chairperson (Mr Swann): There is a proposed departmental amendment to clause 19. The amendment means that the limits will not be reviewed twice in a calendar year, as originally proposed. The amendment also allows the Department to make an order at any time increasing or decreasing

sums dealt with under article 33 of the Employment Relations (Northern Ireland) Order 1999, without reference to the retail price index. That gives the Department the flexibility to review rates in a more fundamental way but with any other order making such provision having to be laid in draft form before and approved by the Assembly before becoming operational. I will hand over to the departmental officials.

Dr Scott: Essentially, the amendment is to the Employment Relations (Northern Ireland) Order 1999, and the purpose is to ensure that two different orders that affect the limits on payments related to employment rights are not made during the same year. The normal mechanism for changing those payments relates to the rate of the retail price index as measured in any given September. That amount is then calculated. However, a second power is being introduced that allows the Department, by regulation, subject to the draft affirmative procedure, to amend those amounts without reference to the retail price index. That is to ensure that an order that does that does not then require a second order linked to the rate of inflation to be made. It is an efficiency measure.

The Chairperson (Mr Swann): If members are content with the proposed departmental amendment, I will put the Question.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 20 (Prohibition on disclosure of information held by the Labour Relations Agency)

The Chairperson (Mr Swann): There is a proposed departmental amendment to clause 20. It is a minor amendment to the wording to provide the Public Prosecution Service (PPS) with increased flexibility in taking cases of this kind forward. The change allows the director of the PPS to initiate prosecutions, which is a power that can and has been delegated. I will hand over to departmental officials to explain the rationale behind the amendment.

Dr Scott: The amendment has arisen from our discussions with the PPS, which feels that it better reflects its internal processes in dealing with these issues. It allows the director to make those decisions or to delegate them. The previous draft was more prescriptive.

The Chairperson (Mr Swann): Are members content with the proposed departmental amendment?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 21 to 23, put and agreed to.

Question, That the Committee is content with clauses 24 to 26, put and agreed to.

Question, That the Committee is content with schedules 1 and 2, put and agreed to.

Schedule 3 (Repeals)

The Chairperson (Mr Swann): Schedule 3 is subject to a proposed departmental amendment. I will hand over to departmental officials to explain the rationale.

Dr Scott: The amendment relates to the issue that was mentioned earlier around statutory dispute resolution procedures that have now been repealed. Again, it is a tidying-up technical exercise. It repeals article 38(1)(a) of the Fair Employment and Treatment (Northern Ireland) Order 1998 and modifies article 46(1). It also repeals provisions of the Employment (Northern Ireland) Order 2003. All of those provisions refer to statutory dispute resolution procedures that have already been removed from the statute book.

The Chairperson (Mr Swann): Are members content with the proposed departmental amendment?

Members indicated assent.

Question, That the Committee is content with the schedule, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with the long title, put and agreed to.

The Chairperson (Mr Swann): That concludes our formal clause-by-clause consideration of the Employment Bill. Thank you for your time and input. On behalf of the Committee, I thank John, Alan, Margaret and Deirdre for coming in front us and for accommodating a number of the Committee's concerns and requested amendments. There has been a useful to and fro between the Committee and the Department to get the Bill to where it is. We have put the time and effort in to make sure that the Department has met its legislative timescale.