



Northern Ireland  
Assembly

Committee for the Economy

# OFFICIAL REPORT (Hansard)

Employment (Zero Hours Workers and  
Banded Weekly Working Hours) Bill:  
Ms Jemma Dolan MLA

8 December 2021

# NORTHERN IRELAND ASSEMBLY

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

Dr Caoimhe Archibald (Chairperson)  
Mr Matthew O'Toole (Deputy Chairperson)  
Mr Keith Buchanan  
Mr Stewart Dickson  
Mr Stephen Dunne  
Mr Mike Nesbitt  
Ms Claire Sugden  
Mr Peter Weir  
Ms Jemma Dolan

**Witnesses:**

Ms Jemma Dolan	MLA - Fermanagh and South Tyrone
Mr Pearse McFlynn	Sinn Féin

**The Chairperson (Dr Archibald):** I welcome to the meeting the Bill sponsor, Jemma Dolan MLA, a Member for Fermanagh and South Tyrone, and her policy adviser, Pearse McFlynn. Jemma, I hand over to you for your opening statement, and then we will bring members in for some questions.

**Ms Jemma Dolan (Northern Ireland Assembly):** Thank you, Chair, and good morning to you all. Thank you for giving me the opportunity to brief you on my private Member's Bill (PMB) to ban zero-hour contracts and to replace them with banded-hour contracts. As the Chair has said, with me is Pearse McFlynn, my policy adviser. We both really appreciate your time today; we know how pressed for time Committees are at the minute. I will give a short run-through of the main principles of the Bill, and then we will be happy to take questions.

The Bill will end the use of zero-hour contracts in our labour market and replace them with banded-hour contracts. The proposal has been made in recognition of the fact that there are around 11,000 zero-hour contract workers in the North, although I met the Labour Relations Agency (LRA) last week, and it reckons that that figure is vastly underestimated. Zero-hour contracts do not provide workers with guaranteed hours or income. In reality, that means that workers are expected to be readily available to work shifts that may never materialise. Such contracts also disrupt access to social security due to their unreliable and unpredictable nature, and it is difficult for workers to maintain consistency in their eligibility and entitlement. That can also impact on the so-called passport to benefits, such as help with health costs and free schools meals, and can, in some cases, lead to the benefit cap being applied. I know from my constituency office that the COVID pandemic has exposed that. The pandemic laid bare the harsh reality of zero-hour contracts for workers and their families.

The difficulties that those workers have faced during the pandemic explain the need for the contracts to be banned as soon as possible.

In its report on COVID-19 clusters in occupational settings, the European Centre for Disease Prevention and Control found that workers on precarious contracts were more at risk of presenting themselves for work while experiencing COVID-19 symptoms. The lack of paid leave and uncertainty around their regular income was found to put them more at risk than workers on standard employment contracts, if they were required to self-isolate. That was also identified by the former First Minister, Arlene Foster, on 14 September 2020:

*"We know that some people, such as those who are on zero-hours contracts, will not have an income if they have to stay at home." — [Official Report (Hansard), 14 September 2020, p44, col 2].*

On top of that, the contracts have created precarious working arrangements that have led to stress and uncertainty for people. They make it difficult, if not impossible, for workers to manage their household budgets and make long-term financial commitments, such as applying for a mortgage. As a result, the contracts worsen in-work poverty, economic inactivity and financial anxiety.

My proposal to ban zero-hour contracts and replace them with banded-hour contracts will mean that workers on lower-hour contracts will have a statutory entitlement to a banded-hour contract, if the number of hours that they have actually worked in the previous three months does not reflect their contracted hours. The banded-hour contract will provide workers with a minimum and a maximum number of weekly contracted hours. The legislation will set out eight bands of weekly working hours as follows: it starts three to six, six to 11, 11 to 16, 16 to 21, 21 to 26, 26 to 31, 31 to 36 and 36 and over. That will benefit workers and families as it will provide them with greater certainty on their household incomes from week to week. It will also be beneficial to employers and the wider economy as it will reduce the high staff turnover and regular recruitment costs for employers associated with precarious work.

In practice, the Bill will place a legislative duty on the employer to offer the banded contract after the employee has served a three-month qualification period. It is optional for the worker to accept the contract, but, once the worker accepts it, they must begin to work on the contract within a month of it being agreed. The employer must keep a record of offering the banded-hour contracts to employees whether they accept or not. The worker can also request to be placed in a band of weekly working hours that accurately reflects the hours that they do. After they make the request, the employer has four weeks to comply. In addition, the Bill will place a duty on the employer to pay workers three times the hourly minimum wage in cases where they would normally call the workers into work and then send them home without work or more meaningful compensation.

The Bill will also ban the use of contractual exclusivity clauses that have been factored into employment contracts to prevent workers from looking for work elsewhere when they need more hours to bump up their earnings. Trade unions have said that they want to be proactive in enforcement and will pursue employers to enact the legislation, and the Labour Relations Agency will take on the role of conciliation and dispute resolution. Workers will also have the right to bring a claim to an industrial tribunal if an employer fails to place them in a band of weekly working hours.

As is the norm, I carried out a four-week consultation on the Bill, and I received 478 responses. It showed that 93% of respondents agreed that zero-hour contracts should be banned from the labour market, while 90% agreed that the proposal to create banded-hour contracts was a good way to achieve that. The banning of zero-hour contracts was part of the New Decade, New Approach (NDNA) agreement that all parties in the Executive signed up to. Despite that political consensus, consecutive Economy Ministers have failed to move on the issue. Also, as part of the process of bringing forward this proposal, I wrote to the Economy Minister — at the time, Minister Dodds — and she confirmed that she did not intend to bring forward this banded-hour contract proposal to resolve the issue.

Similar legislation was passed in the Oireachtas in the form of the Employment (Miscellaneous Provisions) Act 2018, and there is a PMB in progress at Westminster. In the absence of legislation on the issue here, there is nothing to realistically prevent the contracts from being used. As I have said, I feel that change on this is even more relevant and necessary due to the COVID-19 pandemic and the precarious economic circumstances that workers and families now find themselves in.

I am happy to take suggestions and questions from the Committee and look forward to working with you in the time ahead. Go raibh maith agaibh.

**The Chairperson (Dr Archibald):** Thank you, Jemma, for that overview. As you have outlined, there is broad support for the banning of zero-hour contracts. It was one of the New Decade, New Approach commitments in employment. As you have set out, there has not been progress from the Department so far in moving forward with that. I appreciate, therefore, that this is the only legislation that will progress in the current mandate to bring about the ending of the contracts. Can you talk a little more about the consultation, how it was carried out and what the response to it was? In particular, what organisations did you engage with on the Bill, and what was their response to it?

**Ms Dolan:** No problem, Chair. We carried out the four-week consultation between October and December last year. As I said, 90% of people agreed with the proposal of banded-hours contracts. We engaged heavily with the women's sector and all the trade unions on the island. They all supported the proposal. The women's sector, in particular, emphasised how zero-hour contracts were more likely to affect women, just because of the nature of them, with caring responsibilities etc. In my constituency of Fermanagh and South Tyrone, we have a lot of food factories, and we engaged with them on their workers' conditions. I will never forget one conversation that we had with one fellow. He admitted that he had needed to self-isolate but could not afford to. He had to go to work, and, in the event, he was off sick and he was afraid that he would lose his job because of it. There are some really harrowing stories about what people on those contracts experience. Did I answer your question, Chair, or did I just waffle?

**The Chairperson (Dr Archibald):** No, you answered my question, Jemma, thank you.

I will pick up on your final point there. As I understand it, we have the highest prevalence of zero-hour contracts or this type of precarious contract and the lower pay that goes with it. Then there are the implications that that has for the broader economy and what we know to be the lowest levels of productivity in these islands. There is a clear link between employees and workers' terms and conditions of employment and the impact on the economy. That is one of the reasons why the move away from the contracts is necessary.

In the course of your presentation, Jemma, you said that 11,000 people are known to be on zero-hour contracts but the Labour Relations Agency said that it was likely to be more. Have you any indication of what numbers we are talking about? Why is there a lack of clarity on that?

You spoke about some of the other types of clause that might be in employment contracts. The issue of bogus self-employment is also in the mix in some of this stuff. Do you have any detail on the general picture in respect of that?

**Ms Dolan:** No, I do not, and the Labour Relations Agency does not have it, but it knows that the problem is larger. It has a lot to do with the definition of zero-hour contracts and how they are interpreted and, as you mentioned, the bogus self-employment. There is a wider issue of precarious working contracts, and the Labour Relations Agency knows that the problem is definitely larger. I had a figure for how many there are across these islands but not to hand. I will send it to you, if you wish.

**The Chairperson (Dr Archibald):** That is good, Jemma.

I have a final point before I bring in other members. You mentioned the issue of enforcement and said that trade unions wanted to have a role in respect of that and that the Labour Relations Agency would have a role in respect of early conciliation. Can you speak a bit further about how the legislation will be enforced?

**Ms Dolan:** Obviously, we hope that there will be no issues with enforcement, but sometimes that is inevitable. We will encourage workers to work with their trade union, if there are any issues to report, and then to report them to the Labour Relations Agency, which is happy to take them on. The Labour Relations Agency welcomes the Bill. It knows exactly the issues that it causes. As I said, if it is not resolved and it comes to a *[Inaudible owing to poor sound quality]* position, workers have the right to take it to an industrial tribunal. We will obviously try to avoid that.

The other thing is that employers have to make a record of offering the contracts to workers. In the event that a trade union or the Labour Relations Agency approaches them, they have proof that employers have been offering those contracts, if that is what the issue is.

**The Chairperson (Dr Archibald):** Thank you, Jemma. I will bring in other members.

**Mr Nesbitt:** Thank you, Jemma. I will just preface my words by saying that I am instinctively supportive of what you are trying to achieve, but, obviously, we have to scrutinise it. Tell me a bit more about the consultation. How was it done? Was it an online, SurveyMonkey-type consultation?

**Ms Dolan:** Sorry, the Chair asked me that, and I forgot to answer. It was online, unfortunately, because of COVID. We had a number of online meetings, and we met the Zero Hours Justice group. We met a wide range of people, including hoteliers in Fermanagh, so, from businesses to the trade unions, a lot of ground was covered.

**Mr Nesbitt:** What about the business organisations? What was the response from the Institute of Directors?

**Ms Dolan:** We did not meet the Institute of Directors.

**Mr Nesbitt:** OK. CBI?

**Ms Dolan:** Pearse can correct me, but I think we had a response from the CBI. Did we, Pearse?

**Mr Pearse McFlynn (Sinn Féin):** Thanks, Mike, for offering initial support. We put out the online consultation, as everyone does with all PMBs. It was open to the CBI and other groups to respond. As this stage, unfortunately, we have not had a submission directly from the CBI or the Institute of Directors, although, as Jemma mentioned, we met the Zero Hours Justice group in Britain. That organisation indicated that the CBI had been in touch with it to come on board with ideas about phasing out zero hours itself and voluntary schemes that are happening in Britain to provide workers with more secure arrangements. I hope that that clarifies your point. The CBI did not engage with us directly, but the consultation was open to all groups.

**Mr Nesbitt:** What about the Federation of Small Businesses (FSB)?

**Ms Dolan:** No.

**Mr McFlynn:** No. It is the same. Obviously, we published this and sent it out to a variety of business groups. Again, those groups did not directly respond to the consultation, but we continue to seek engagement with them on the Bill.

**Mr Nesbitt:** From what I hear, you chose to reach out to certain groups. How did you make the decision about whom you would contact?

**Ms Dolan:** As Pearse said, we put the consultation out on SurveyMonkey, and it was on social media etc. We asked people to approach us, and that was how we set up our meetings. People came to us to engage on the proposal. That is where my link with the CBI was — apologies, Mike. I remembered that the Zero Hours Justice group had mentioned it.

**Mr Nesbitt:** I am sorry, Gemma. I am slightly confused: did you reach out to groups or not?

**Ms Dolan:** We reached out to the trade unions, and then, on the back of the proposal and the consultation going live, the other groups contacted us.

**Mr Nesbitt:** Is there a downside for either the employer or the employee?

**Ms Dolan:** I do not see a downside to it, but I may be biased. As I said in my opening remarks, it cuts recruitment costs for employers, and it incentivises employees to be more loyal to their employer. It does not take away the flexibility that, some people argue, zero-hours contracts provide for employees and that some workers might enjoy. It just provides more clarity and certainty for them around what hours they will work and what wages they will get from week to week.

**Mr Nesbitt:** Yes, I get it. Are there any exemptions, or will it cover every transaction where one person pays another person a sum of money for an activity?

**Ms Dolan:** If a person has worked the hours for three months, that is our aim. Say they have worked three hours a week for three months. We will be hoping that the employer will offer them — they will be entitled to it — a banded-hour contract.

**Mr Nesbitt:** Let me try a scenario. Let us say a young couple with a child want to go out on a Friday night for a meal and a movie, and they go to the neighbour's young daughter and say, "Will you look after our child?". Is that a zero-hours contract?

**Ms Dolan:** That is a job for a teenager. I did it as a teenager. It is not something that you would depend on as such, but, if it is consistent and that is the way that the family wants to work it and make it professional, they would be entitled to a banded-hour contract.

**Mr Nesbitt:** Really?

**Ms Dolan:** Pearse wants to come in there.

**Mr McFlynn:** I will just clarify that. The Bill is essentially directed towards workers and employees. The issue that you refer to is the idea of bogus self-employment or the idea that someone would be doing a contract for service. We spoke to the drafters of the Bill about that issue. At this stage, that is probably not covered in the Bill. This is very much about workers and employees doing hours that are not reflected in an employment contract. Clause 1 mentions that point: it refers to "workers" and "employees". We are happy to take suggestions on those sorts of issues, and we can keep them under consideration, but, for the purposes of the Bill, it is essentially workers and employees.

**Mr Nesbitt:** That is helpful clarification. Thank you both very much.

**The Chairperson (Dr Archibald):** Pearse and Jemma, to clarify that point, clause 1 refers to what a zero-hours worker is. That, therefore, will be set out in terms of the general definition of a worker or employee in terms of an employment contract.

**Mr McFlynn:** Yes.

**The Chairperson (Dr Archibald):** OK. Thank you for that clarification.

**Mr Weir:** Thank you for the briefing, Jemma. I have a few questions arising from Mike's point. You had a four-week consultation. In one of the previous mandates, I took over a PMB when it was at a slightly more advanced stage. Is four weeks not quite a short period for consultation? When Departments consult, they will often have a minimum of eight weeks or, often, 12 weeks. Four weeks by SurveyMonkey seems to be a short time.

**Ms Dolan:** As far as I know, we —.

**Mr McFlynn:** You have been misquoted there, Jemma. It was eight weeks of consultation. It was through SurveyMonkey, which is the standard procedure for PMBs, just to clarify that, Peter. I know that people have asked about the terms of engagement, but that is generally the same procedure as for other PMBs. The consultation was published on the Assembly website so that organisations could provide a response.

**Mr Weir:** Again, there is a bit of a difference. You told us a few minutes ago — maybe you misspoke or whatever — that it was a four-week consultation, and it is now eight weeks. I am a bit concerned.

Mike referred to employers. I suppose there are a couple of things. There was mention of FSB. Have you met or had any discussions with Hospitality Ulster? One of the major users of zero-hours contracts is the hospitality sector. Have you had any meetings with organisations representing hospitality?

**Ms Dolan:** Sorry, Peter, that probably was my fault. I might have misspoken about the four weeks.

**Mr Weir:** We all do it, Jemma. I can understand that.

**Ms Dolan:** We have not met Hospitality Ulster as a whole, but, as I said, we met hoteliers in County Fermanagh who approached me. They had concerns, but, once we had clarified the banded-hours

issue and that there would still be flexibility and we were looking only for more clarity and certainty for workers, they were more or less welcoming of the Bill. So, not Hospitality Ulster as a whole but hoteliers in County Fermanagh.

**Mr Weir:** A lot of wisdom can, at times, come from County Fermanagh, but it seems a little strange that you are that focused. I will make two points. There has not been a direct meeting with representative organisations that cover all of Northern Ireland. It seems a little weak to say, effectively, "We met just a few local businesses". Is there a potential criticism that where you have reached out seems to be quite one-sided? You mentioned the CBI, for instance. Essentially, you met an organisation that is, presumably, quite strongly against zero-hours contracts. Sorry, what was the name of the group that you met?

**Ms Dolan:** Zero Hours Justice.

**Mr Weir:** I am assuming that Zero Hours Justice is a group that is reasonably hostile to zero-hours contracts. I do not know the group, but I guess that. The connection to the CBI is that Zero Hours Justice told you what it had said, like a second-hand opinion. It is perfectly reasonable that you reach out to the likes of the trade unions and organisations like that. Clearly, there are important issues for employees but also for employers. It does not seem that that side of the equation in terms of employers, particularly in relevant industries, has been addressed. How do you deal with criticism of that nature?

**Ms Dolan:** That is fair enough, Peter. One of the hoteliers in County Fermanagh is a Hospitality Ulster representative — he sits on its board — but I am not saying that he spoke for Hospitality Ulster at our meeting. However, that is a fair enough point. We put the consultation out there. If we wrote to the trade unions, maybe we should have written to the FSB. That *[Inaudible owing to poor sound quality]* take away *[Inaudible owing to poor sound quality.]*

**Mr Weir:** I think in particular about the hospitality side and where we have all been over the last couple of years. For good or ill, COVID has brought a lot of things into focus. We all accept that. Do you not think there will be a certain reluctance among the broader hospitality sector, given where we are with COVID and that, frankly, none of us knows precisely what the way forward will be as new variants potentially emerge? The hospitality sector has probably been under more pressure than most sectors in the economy, but also, as it moves ahead, it is likely to be a lot more volatile. It may be difficult at times for the sector to know what provisions it will be making a month or two ahead.

I just want to clarify a couple of points on the qualification period for banded contracts. If we are talking about three months, is that a continuous three-month period? I am thinking of the drafting side of this. If a company used zero-hours contract worker X in April and then in July and August, is it a cumulative or consecutive three months? How is that interpreted?

**Ms Dolan:** I will take your last question first. It is a consecutive three months if the worker has been working *[Inaudible owing to poor sound quality.]*

**Mr Weir:** Jemma, you mentioned that there would be a certain level of advantage in that it would create a greater level of potential loyalty from the employee to an employer. I can see the logic of that, but, on the flip side, what is to stop employers, either because of circumstances or because they are a bit more cavalier about the way that the system operates, being less loyal to their employee? If people suddenly get a qualified right through being there for three consecutive months, what is to stop employers rotating what are, effectively, casual staff? Those staff would do casual work with an employer for a couple of months, and then the employer would bring in some other casual employees for the next couple of months and then re-employ some of the original people so that the employees do not work for a three-month period. It strikes me that, to some extent, there is an almost an argument that it will, potentially, make it easier for employers who are going to be very casual about their attitude towards potential employees, as opposed to employers who have a much more structured and, potentially, better relationship with their employees.

**Ms Dolan:** You are basically talking about employers abusing the three-month qualification period. Is that it, Peter?

**Mr Weir:** "Abusing" is a bit of a strong word, because, actually, they would be following the legal position. I can understand that, if you are going to have criteria on banded weekly working hours, you

need a bank of information to which you can apply that criterion. However, if an employer comes to the conclusion, for instance, that that route ties their hands more and they want greater flexibility or whatever, to some extent, does this not, effectively, encourage them to be slightly more casual in their approach to employees and, potentially, to treat them on a much shorter-term basis?

**Ms Dolan:** Unfortunately, there will always be employers who try to get round this. Employers will always try to get round some workers' rights legislation, but this legislation has been in place in the South and has worked well. It closes some loopholes that currently exist. That is how we see it.

**Mr Weir:** I am not an expert in contract law or employment law, but, in general, for a contract to exist between two people, there does not need to be a written contract. Mike raised the example of the babysitter who was facilitating a young couple on a one-off basis. Have you explored what counts as "a worker"? In Mike's example, a couple with a child asks a 17-year-old who lives two doors down to babysit. Instead of it being, as it was in Mike's example, one Friday night when the couple goes to the cinema, the couple decides that their date night will be every Friday night. Every Friday night, they would, effectively, employ that babysitter from down the street. There would be no formal contract of employment through a written contract, but, each week for three hours a week, that neighbour would provide that service. Would that be covered, or is there a differentiation between that and the much more casual arrangement that Mike outlined?

**Ms Dolan:** Clause 1 defines the worker and the type of work that is covered. I do not think that your example would come under this, Peter.

**Mr Weir:** There is a point about what a contract of employment is. As MLAs, all of us will have — it is well regulated through the Assembly — direct contracts of employment for all our staff in which everything is written and is explicit. It may well be that, as part of this, the Committee needs to get direct legal advice. One thing that you are taught early on in contract law is that a contract, possibly with the exception of contracts involving land, could be inferred or, indeed, reached without it necessarily having to be explicitly written down.

This is my final point. I want to check whether I picked this up right. I did not immediately see this. In your introduction, you mentioned compensation if somebody is, for instance, hired and then, at a particular point, the employer says, "Well, actually, we are not giving you the six hours this month" or whatever it is. Did you say that the employee or the banded person would then be compensated at three times the — can you run over the detail of that again?

**Ms Dolan:** Peter, that is to avoid people being called in at short notice and then not being given any work. Obviously, it is an inconvenience if nothing else, but people may have spent money on travel etc to get to work and then are told when they get there, "No, sorry, we do not need you any more. Go home". They will be entitled to three times the hourly wage.

**Mr Weir:** How did you settle on three times the hourly wage as a form of compensation? Casual work is, generally, not particularly highly paid work. I appreciate that there is a high level of inconvenience for the employee who is being brought in, but it could be quite punitive on the employer. Will that not be a deterrent to the employer bringing people in? It might cut down the amount of casual work.

**Ms Dolan:** That is kind of the point. We hope that employers will not do that.

**Mr Weir:** To some extent, Jemma, employers might interpret that differently. An employer might think, "We need Mike or Matthew in tonight to help us out, but, if we do not need them, we will have to pay a high rate for them. We will just try to struggle through". In that scenario, Mike and Matthew will not get the work. There seems to be a certain level of jeopardy on both sides of that in terms of where that is pitched.

**Ms Dolan:** I see where you are coming from, but the point of the Bill is, as I said, to create certainty.

**Mr Weir:** OK. I was just making a point in that regard.

**Ms Dolan:** Thanks, Peter.

**Mr O'Toole:** Thanks, Jemma. On the question about what it means for small businesses, there are strong arguments and clear evidence that large businesses — Sports Direct springs to mind — have

abused zero-hours contracts. Spurious self-employment, the gig economy, the growth of Uber and other delivery-driver roles are issues that we have all — well, I certainly have — been shocked by over the last number of years.

Further to what Peter was saying, there will be questions about small hospitality businesses, for example, and zero-hours contracts under which people work for a few hours on a Saturday afternoon in a pub. How do you foresee, for example, the Bill's effect on the person who works a few hours a week in a rural pub? Obviously, it should not be someone under 18 if they work in a pub, but it might be a student, or it might be someone who does something else during the week but wants a bit of extra cash and is relatively satisfied with the casual nature of the job. How does the Bill ensure that there is not an increased burden on small businesses like rural pubs?

**Ms Dolan:** I will answer that in two parts. The Bill will not prevent the flexibility of the job for someone like a student who works in a rural pub on a Saturday afternoon. If they work for three to six hours every Saturday afternoon in a pub, they can be put in the three- to six-hour band. There should not be any extra cost to the employer, because they would be paying them for those hours anyway. Furthermore, the employer has to offer them a contract after three months, but, as I said, they do not have to accept it. The obligation is on the employer to offer a contract after every three months. If the student or whoever it is is trying to bump up their wages by working in a pub on a Saturday, they have to be offered the contract, but they do not have to accept it.

**Mr O'Toole:** Would the Bill mean that, from day one, there is basically a three-month grace period after which there has to be a degree of formality? So, the person who does the five hours a week on a Saturday afternoon can do that and be paid, but, after three months, that has to be on a contractual basis?

**Ms Dolan:** Yes.

**Mr O'Toole:** OK, fine.

I have a couple of questions about consultation. I am particularly interested in the small business side and how this will be communicated to small businesses. I completely agree that there is a huge problem with zero-hours contracts that needs to be addressed, so I support the intention of the Bill to deal with it. My question is around microbusinesses and reassuring them that this will not be burdensome. How would you go about approaching that?

**Ms Dolan:** As I said, this will not change the wages that those small businesses pay those employees. There is no extra cost. They will still pay the wages. For example, when we first met the hoteliers in Fermanagh, they were a wee bit wary of it. Once I explained the banded hours issue, however, they came more on board because they realised that it is not taking away the flexibility that all those businesses want. Again, it is about creating certainty and assuring them that there is no extra cost to them. It is simply about taking extra notes every three months that they have offered a contract to their employees.

**Mr O'Toole:** Just out of interest, what are the worst sectors for abuse of zero-hours contracts here?

**Ms Dolan:** That is a good question. I do not want to get anybody into trouble, but I would say that it includes the food industry. I do not want to be quoted on that.

**Mr O'Toole:** Do you mean food processing and manufacturing?

**Mr Weir:** You are on a live feed. *[Laughter.]*

**Mr O'Toole:** That seems plausible; thank you.

**Ms Sugden:** Thank you, Jemma. I am somewhat supportive of what you are trying to do. As we have heard, a lot of this is around the detail of how it will play out practically and whether there is more that we need to do to strengthen clauses of the Bill.

I am sorry to labour the point, but I will pick up on what others have said in relation to what constitutes an employee or a worker. Just to give you another example, what is a "contracted service" rather than an employment contract? At what point would it be considered to be that, if a consistent type of

service is being offered? An example of that — not the babysitting one — popped into my head. There is a lady who walks my mother's dog, and she will do that on a regular basis. That is her business; it is how she gets her income. It is not just an informal arrangement like a babysitting job on a Friday night, which, for some, could be their income and their formal business. We talk about formal or informal businesses, but will that be defined in the law so that there will not be any ambiguity when we try to implement or apply the legislation?

I will even make the point in relation to the hospitality sector. There are people who are self-employed in the hospitality sector and will, for example, work for a hotel one evening and a restaurant on another. How do we define that so that there is clear blue water between contracted services and a contract of employment? If the contract of employment is not there, is it the default position that there is a basic statutory one, and how do we cover what you are trying to do in those various things?

**Ms Dolan:** Thank you for that, Claire. I understand the bogus self-employment thing. We wanted to tackle that in this mandate, but, unfortunately, given the time constraints etc, we could not do it. We felt that tackling zero-hours contracts was a stepping stone, basically, to tackling some of the precarious work situations out there.

I may have picked up the example of the dog walker incorrectly, but is the woman self-employed, basically?

**Ms Sugden:** I assume so, because she walks people's dogs and charges them per hour. That would be considered to be her income. If she were to do that regularly and it became consistent to the point that there was a set day and time, at what point would she be considered as an employee, or is she just contracting her services? I imagine that she is doing all the things that she has to in relation to declaring income and all of that. I know that we look at those things on an informal basis, but, at some point, it may become more formal for the individuals, to the point at which they have to declare things. Will they be entitled to the things that other employees or workers are entitled to? Others have raised it, and it is an interesting point about the difference between an employee or worker and someone who does something on a contract basis, if you know what I mean. Obviously, if it is a contract for services, again, it is up to that individual to manage their benefits, rights and all those things, but at what point does that cross over? Maybe it does not, but, when Mike, Peter and Matthew raised that point, it occurred to me that maybe we need to do something to make sure that people are not taking advantage of that. Sadly, you are right. You mentioned that people always try to take advantage of these things, but is that not why you are trying to do this in the first place?

I am keen to know more about the crossover, and, in fairness, if you do not have an answer to that today, you can, maybe, come back to the Committee on that. You are right, and, to paraphrase one of your colleagues from earlier in the week in another debate, maybe there is not enough time in the mandate to take the Bill forward. Maybe the issue is too complicated. The intention may be there, but we may have to give ourselves more space in the next mandate to get it right.

**Ms Dolan:** I think that Pearse wants to come in to answer your question.

**Mr McFlynn:** Yes. It is an interesting point, because it has, obviously, been raised a few times. We touched on it at the start. We discussed the issue of contracts for services, which is outside the scope of workers and employees, with the Bill Office. That issue has come up in England with Deliveroo, and Matthew mentioned a couple of examples. Recently, the Supreme Court discussed the question of what is a worker, because there are people who go from week to week in those contracts for services. For us, the issue in the Bill is ending zero-hours contracts for workers and employees, as things stand.

I am trying to play it out. If we were to have contracts for services in the Bill, those people would still miss out on things like maternity leave and sick pay. The Bill will deal with only one aspect of employment law: zero-hours contracts. That exact issue, Claire, is important, and I know that Gemma has strong views on it as well. Logistically, it cannot be included in the Bill, because that would require a wider look at employment law. It would be better to do that in an employment Bill, in which you could look at the definition of contracts for services. Hopefully, that clears up that issue, because it has been raised a few times.

**Ms Sugden:** I am not sure that it clears it up. However, if we take the Bill forward and it potentially becomes law, would that compromise any future consideration of that wider conversation that we need to have on that issue? I do not want us to end up creating an issue by doing something like this,

despite the good intention behind it. It is an important point that we may need to look at more in the context of what the Bill means and perhaps for future-proofing any other policy change.

I had another question, but I cannot remember it. I beg your pardon.

**Ms Dolan:** Thank you, Claire. If it comes to you, let me know. You can drop me an email or whatever.

**Ms Sugden:** All right. Thank you, Jemma. Thank you, Pearse.

*(The Deputy Chairperson [Mr O'Toole] in the Chair)*

**The Committee Clerk:** We have lost the Chair, but the Deputy Chair has taken over.

**Mr Dickson:** Like others, Jemma, I support the intention of your Bill. Will you briefly talk us through where it is different from the Small Business, Enterprise and Employment Act 2015, which amended the Employment Rights Act 1996 in the UK? Maybe we could have a discussion about why the Department did not implement that here.

Will you outline the main differences between the legislation in the rest of the United Kingdom and here — sorry, I mean between it and your Bill. We know what the difference is between the rest of the UK and here; we want to understand the difference between the legislation in the rest of the UK and your Bill.

**Ms Dolan:** Thank you, Stewart. I will hand over to Pearse to answer that question, if that is OK.

**Mr Dickson:** OK.

**Mr McFlynn:** You refer to specific legislation, Stewart. Obviously, we went through Assembly research in preparing the Bill. From memory, that legislation was not mentioned to Jemma and me. We are happy to look at it to see the difference.

The Taylor review in Britain identified unfairness with zero-hours contracts. As we understand it, there is no legislation in Britain at the minute — maybe you can correct us — that bans zero-hours contracts or creates banded-hours contracts. I think that there is legislation on things such as exclusivity clauses, which are included in and would be ended by the Bill.

Do you want to elaborate on that question, Stewart? I have to confess that, in the research that we and the Assembly Library have done, that legislation has not come up, I am afraid.

**Mr Dickson:** OK. Our understanding is that legislative changes were made in the rest of the UK that were not enacted here, although, presumably, that could have been done by a legislative consent motion (LCM) or by legislation introduced by the Department. What interaction did you have with the Department on your Bill? Can we look at why the Department did not introduce legislation of its own and why it was, therefore, necessary to have a private Member's Bill?

**Ms Dolan:** As I said, I wrote to the Minister at the time and subsequently submitted written questions asking, "Will this be enacted?" and "What is your position on zero-hours contracts?". At the time, Minister Dodds said that there was no intention to introduce banded-hour contracts in this mandate. I do not know why it has not happened since then. It was always our intention to ban zero-hours contracts, however, so we were happy to take forward a PMB, given that the Department was not willing to move on it. It is probably a question for the Department, Stewart, rather than for me.

**Mr Dickson:** What will the costs be, if your legislation is passed?

**Ms Dolan:** I have been given a figure of £276,000 by the Labour Relations Agency. That comes with a health warning, however, because the Assembly research team asked the Labour Relations Agency for a figure, and that is the figure that it gave. It is not convinced that that level of finance will, in fact, be needed for the compliance role. I understand that it is a bit confusing, Stewart, but that is what the Labour Relations Agency told us about a fortnight or three weeks ago.

**Mr Dickson:** I do not expect you to be able to answer this, but we have recently been grappling with the issue of HMRC costs arising from changes to employment legislation. Will there be any potential HMRC costs as a result of the Bill?

**Ms Dolan:** I am not aware of any, Stewart, but we could try to find out for you.

**Mr Dickson:** OK, thank you.

**Mr K Buchanan:** Thanks, Gemma and Pearse. My broad question is about overtime and what is defined as overtime. If a worker in the three-to-six-hour band works for seven hours two weeks in a row, do they get an overtime rate? What are your thoughts on an overtime pay rate?

**Ms Dolan:** The Bill does not stop employees doing overtime, Keith; it permits it. For the sake of clarity, the Bill gives workers the choice of whether to work additional hours, provided that they get paid the overtime rate in accordance with the overtime pay arrangements.

**Mr K Buchanan:** Jemma, if a worker in the three-to-six-hour band or the six-to-11-hour band goes over those hours in one week, should they expect to get an overtime rate for working outside what is technically their contract? That is my understanding.

**Ms Dolan:** Yes.

**Mr K Buchanan:** OK. Say that the worker does eight hours a week for a few weeks, it is probably in the interests of the employer to say, "We want to move you into a different band", because that could be cheaper for the employer.

**Ms Dolan:** They would have to be doing those hours for three months.

**Mr K Buchanan:** OK. Fair enough.

Clause 8 states:

*"Nothing in this Part requires an employer to offer hours of work in a week where— ...*

*(b) the employer's regular business is not being carried out."*

What is the definition of "regular business"? Is it when you have takings of £10,000 a week? Is it when you are closed for one day a week? The definition of "regular business" could be broad, which could be to the detriment of the employee, rather than the employer. Do you get my point? I do not expect an answer; it is just something that I spotted. The definition of "regular business" could be to the detriment of the employee.

**Ms Dolan:** I know what you mean. That is a good point. We would not expect that to be every week. It would be an exceptional circumstance.

**Mr Weir:** One of the areas that have potential for most volatility is the hospitality industry, which may or may not face particular levels of restriction at different stages. If it is under considerable restrictions, is that regular work? Is there any thought on a definition in that regard?

**Ms Dolan:** If there were restrictions on the hospitality sector, that would not be its regular work. If there were another lockdown or something, that would not be its regular work.

**Mr K Buchanan:** You referred to the food industry. I worked in the food industry in your constituency for 22 and a half years. A lot of food processors use agency staff, which, obviously, gives them a degree of flexibility, as orders can go up and down. However, generally, processors employ people on a fixed contract of 37 hours, 40 hours or whatever. Do you see that being a big issue for agency staff across the board, whether it is in food processing or whatever? The appeal of agencies is the flexibility. Would you say that the employers of agency staff are the issue?

**Ms Dolan:** No, Keith. I was not attacking the food industry. The offer of a banded-hour contract would still apply to agency staff. As I said, it does not take away the flexibility of their contract; it would just

create more certainty for them. Remember that they would not have to accept the offer of the banded-hour contract; they could stay on their agency contract if they wish.

**Mr K Buchanan:** OK. Thanks, Jemma and Pearse.

**Mr Nesbitt:** Jemma, clause 8 states that article 112J, relating to entitlement to banded weekly working hours, will be inserted into the Employment Rights (Northern Ireland) Order 1996. You have eight bands. Say that I am the employer and you are the worker and I offer you band A, but, every week, you do between six and 11 hours, so you should actually be in band B. How do you rectify that?

**Ms Dolan:** Are you asking about if the worker is in the wrong band, Mike?

**Mr Nesbitt:** Yes. As an employer, it is easy for me to say, "I'm going to put you in band A", because that limits my commitment, even though I know that I will use you twice or three times as much as band A.

**Ms Dolan:** Obviously, the employee has to move up a band. The employee would have to put it in writing to the employer that they request to be moved up a band. The employer then has four weeks in which to comply with that request.

**Mr Nesbitt:** What happens if the employer does not comply?

**Ms Dolan:** That is when the trade unions and the Labour Relations Agency will, unfortunately, have to get involved. That is the enforcement and compliance end of it. That is the point about the employer keeping a record of the offer of the banded-hour contract and the employee keeping proof of it.

**Mr Nesbitt:** Basically, it goes to law, to the extent that you go to the LRA.

**Ms Dolan:** If the Bill passes, if they are breaking the law, unfortunately, that is the way that it will have to go.

**Mr Nesbitt:** That is clear. You make clear in proposed new article 112J(2) that there is an issue if it:

*"does not reflect the number of hours worked per week".*

That will, ultimately, go to the Labour Relations Agency.

**Mr Weir:** On a similar point, what about jobs or industries that are seasonal in their nature? For example, somebody might have done their three months between March and May but, because of the nature of the job, there is a spike during the holiday period from June to August. What flexibility is there in the banding if it is not so much a case of the employer deliberately attempting to keep somebody down but more that there is much more of a need for the employee for a short-term period?

**Ms Dolan:** Are you asking about someone who works three hours a week, for example, from March to May, and the employer increases their hours during the summer?

**Mr Weir:** It may be that, because of seasonal work, they will need to take on additional hours for a couple of months, but, once the summer holidays are out of the way, that need will drop off. Their qualifying period might be in the run-up to the summer, but then there is a spike during the summer.

**Ms Dolan:** If it is three months — say March to May — they should be placed in a band. If their hours are increased over the summer but not for three months, they would not be placed in a band, unfortunately.

**Mr Weir:** OK.

**The Deputy Chairperson (Mr O'Toole):** There are no further questions. Thanks, Jemma and Pearse, for your evidence. I am sure that we will talk about it more in the Second Stage debate. I do not know if there are any specific actions; we have had a fulsome session.

**Mr Weir:** I am not opposed to the principle. It might be helpful, ahead of Second Stage, to get advice from the Assembly's Research and Information Service (RaISe) or Legal Services on what constitutes a contract of employment and who falls within it. We bandied about a few examples, but it seems that there is a bit of a grey area regarding the scope. It might be useful for the Committee to have that information.

**The Deputy Chairperson (Mr O'Toole):** Clerk, is that something that we could ask RaISe to do?

**The Committee Clerk:** We can ask for that legal advice. If members are content, we will seek legal advice on what kind of work constitutes a contract. Mr Weir highlighted that there is the actual contract and the inferred contract. I suppose it is about how far that can go.

**Mr Weir:** We should also look at what constitutes a worker, as opposed to, simply, "Here is a service being provided".

**Mr Nesbitt:** There is a difference between "contract of services" and "contract for services".

**The Deputy Chairperson (Mr O'Toole):** Thank you, Jemma and Pearse. Assuming that the Bill passes Second Stage, we will have a survey and a list of stakeholders ready for the Committee Stage. I am sure that we will hear from you again, should that happen.

**Ms Dolan:** I look forward to it. Thanks, Deputy Chair.