



Northern Ireland Assembly

Employment Bill

Annotated Marshalled List of Amendments Further Consideration Stage

Monday 22 February 2016

Amendments tabled up to 9.30am Wednesday, 17 February 2016 and selected for debate

Amendment 1 *[Made]*

Clause 9, Page 9, Line 9

Leave out from ‘dealt’ to end of line 10 and insert ‘of cases dealt with by early conciliation, the average length of time taken to deal with cases and the outcome of cases;’

Chair, Committee for Employment and Learning

Amendment 2 *[Made]*

New Clause

After clause 9 insert -

‘Review of section 8: Assessment of matters relating to tribunal proceedings

9A.—(1) The Department must review the operation of section 8 at the end of the period of one year beginning with the commencement of that section.

(2) The Department shall, having consulted with relevant stakeholders including employers, lay the findings of this review in a report to the Assembly.

(3) The report shall in particular include—

- (a) a synopsis of consultation responses;
- (b) an assessment and evaluation of the effectiveness of section 8;

- (c) the number of cases overall, the number dealt with in accordance with regulations under section 8, the average length of time taken to deal with cases and the outcomes of the cases;
- (d) any savings directly attributable to the introduction of regulations under section 8.

(4) The Department shall also review and report as in subsections (2) and (3) at the end of the period of three years beginning with the coming into operation of section 8.'

Chair, Committee for Employment and Learning

Amendment 3 [Made]

New Clause

After clause 16 insert -

‘Zero hours workers

16A. After Article 59 of the Employment Rights (Northern Ireland) Order 1996 (meaning of “wages” etc.) insert—

“PART IVA

ZERO HOURS WORKERS

Zero hours workers

59A.—(1) The Department may by regulations make such provision as the Department considers appropriate for the purpose of preventing abuses arising out of or in connection with the use of—

- (a) zero hours contracts;
- (b) non-contractual zero hours arrangements; or
- (c) worker’s contracts of a kind specified by the regulations.

(2) In this Article—

“non-contractual zero hours arrangement” means an arrangement other than a worker’s contract under which—

- (a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but
- (b) the employer is not required to make any work available to the individual, nor the individual required to accept it;

and in this Article “employer”, in relation to a non-contractual zero hours arrangement, is to be read accordingly;

“zero hours contract” means a contract of employment or other worker’s contract under which—

- (a) the undertaking to do or perform work is an undertaking to do so conditionally on the employer making work available to the worker; and
- (b) there is no certainty that any such work will be made available to the worker.

(3) For the purposes of this Article—

- (a) an employer makes work available to a worker if the employer requests or requires the worker to do the work; and
- (b) references to work and doing work include references to services and performing them.

(4) The worker's contracts which may be specified under paragraph (1)(c) are those in relation to which the Department considers it appropriate for provision made by the regulations to apply, having regard, in particular, to provision made by the worker's contracts as to income, rate of pay or working hours.

(5) Regulations under this Article may amend or repeal any statutory provision (including paragraphs (2) to (4)).".

Ms Anna Lo

Mr Stewart Dickson

Amendment 4 [Made]

New Clause

After clause 16 insert -

'Gender pay and disclosure of information'

Gender pay gap information

16A.—(1) Employers must, in accordance with regulations to be made by the Department under this section, publish—

- (a) information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees; and
- (b) details of the methodology used to calculate any statistics contained in the information.

(2) Where there are differences in the pay of male and female employees, an employer must publish an action plan to eliminate those differences.

(3) A copy must be sent to all employees and any trade union recognised by the employer.

(4) The Department may prescribe by regulations a limit to the total number of employees and workers in an organisation below which this section does not apply.

(5) Regulations under subsection (4) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(6) The regulations must prescribe—

- (a) descriptions of employer;
- (b) descriptions of employee;
- (c) how to calculate the number of employees that an employer has;
- (d) a standardised method for calculating any differences in the pay of male and female employees;
- (e) descriptions of information;
- (f) a requirement that information include statistics on workers within each pay band in relation to—
 - (i) ethnicity, and
 - (ii) disability;
- (g) the time at which information is to be published; and
- (h) the form and manner in which it is to be published.

(7) The first regulations under this section must be made by 30 June 2017.

(8) Regulations under subsection (6)(g) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months or less frequently than at intervals of 36 months.

(9) The regulations shall make provision for a failure to comply with the regulations—

(a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale for every employee;

(b) to be enforced, otherwise than as an offence, by such means as are prescribed.

(10) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

(11) Within 18 months of the day on which this Act receives Royal Assent, the Department must, in consultation with trade unions, publish a strategy including an action plan, on eliminating differences in the pay of male and female employees.

(12) For the purposes of this section, the ‘Department’ means the Office of the First Minister and deputy First Minister.’

Ms Bronwyn McGahan

Mr Phil Flanagan

Mr Fra McCann

Ms Megan Fearon

Amendment 5 [Not called]

New Clause

After clause 16 insert -

‘Zero hours contract

16A.—(1) Zero hours contracts means a contract of employment or other worker’s contract under which—

(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and

(b) there is no certainty that any such work or services will be made available to the worker.

(2) For the purposes of subsection (1) the Department may by regulations vary the definition.

(3) Regulations under subsection (2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.’

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 6 [Negated on division]

New Clause

After clause 16 insert -

'Contract information'

16B.—(1) Employers shall be required to give notice in writing of the minimum hours of their workers' employment.

(2) The notice shall be given before the commencement of the contract. If it is given orally, it must be given in writing within seven days from the commencement of the contract.

(3) The requirement under this section is without prejudice to the obligations of employers in respect of employees under section 33 of the Employment Rights (Northern Ireland) Order 1996.

(4) A worker who does not receive a notice under subsection (1) shall be regarded for the purposes of this Act as if he or she were a zero hours contract worker.

(5) In complying with the duty under section 33 of the Employment Rights (Northern Ireland) Order 1996, an employer may refer to any document issued under subsection (1).'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 7 [Negated]

New Clause

After clause 16 insert -

'Equal treatment'

16C.—(1) Employers shall be required to treat zero hours contract workers on the same basis as comparable workers engaged by their employer on fixed and regular working hours contracts.

(2) The requirement of equal treatment shall be an implied term of any contract between a zero hours contract worker and his or her employer, and the implied term shall apply to all matters relating to terms and conditions of employment.

(3) A comparable worker is a worker selected by the zero hours contract worker on the grounds that the worker in question is engaged on the same or broadly similar work having regard, where relevant, to whether the worker selected has a similar level of qualification and skills.

(4) For the avoidance of doubt, subsection (2) applies to the overtime rates payable when the worker exceeds the minimum hours of work under the terms of his or her contract.

(5) Subsection (2) shall not apply to the allocation of working time.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 8 [Negated]

New Clause

After clause 16 insert -

'Reasonable notice'

16D.—(1) The Department must by regulations require employers to give zero hours contract workers reasonable notice of—

- (a) any request or requirement to undertake a period of employment; and
- (b) any cancellation of a period of employment already agreed.

(2) A period of notice shall not be reasonable if given less than 72 hours before the period of employment referred to in subsection (1).’

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 9 [Negated]

As an amendment to amendment 8

At end insert -

‘(3) If a zero hours contract worker accepts employment offered contrary to the requirements of subsections (1) and (2), the employer shall be required to pay the zero hours contract worker at a rate of 150% of the rate they would normally be paid for the period in question.

(4) An employer who has cancelled a period of employment of a zero hours contract worker contrary to the requirements of subsections (1) and (2) shall be required to pay the zero hours contract worker for the period of employment in question, even though no work has been done.

(5) For the purposes of subsection (4), the amount of payment shall be made up of—

- (a) the payment the zero hours contract worker would normally be paid by his or her employer for the period in question; and
- (b) a sum equivalent to any other monetary loss incurred as a result of the cancellation.”.

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

New Clause

After clause 16 insert -

'Requests for fixed and regular employment'

16E.—(1) There shall be a duty on employers to consider at any time a request by a zero hours contract worker for fixed and regular working hours unless a request has been made in the previous 12 weeks.

(2) An employer to whom a request under subsection (1) is made shall deal with the application within ten working days.

(3) In considering a request, the employer shall give overriding consideration to the interest of the worker in having fixed and regular working hours.

(4) An application by a worker under this section shall be refused only where there are compelling business reasons to do so.

(5) The employer's desire to use zero hours contracts is not a compelling business reason for using such contracts.

(6) An application shall be treated as having been refused if the provisions of subsection (2) have not been complied with.

(7) A zero hours contract worker whose request under subsection (1) has been refused may make an application to an employment tribunal.

(8) An employment tribunal shall not consider a complaint under this section unless it is presented—

- (a) before the end of the period of three months commencing ten working days after the application for fixed and regular employment was made, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(9) Where an employment tribunal finds a complaint under subsection (7) well founded it shall make a declaration to that effect and may—

- (a) make an order for reconsideration of the application, or
- (b) make an order that the application has been successful and make an award of compensation to be paid by the employer to the worker.

(10) The amount of compensation under subsection (9) shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.

(11) For the purposes of subsection (10), the permitted maximum is such number of weeks' pay as the Department may specify by regulations.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 11 [Negated]

New Clause

After clause 16 insert -

'Fixed and regular employment'

16F.—(1) There shall be a duty on employers who have continuously employed a zero hours contract worker for a period of 12 weeks to offer the zero hours contract worker fixed and regular working hours contract from the date commencing 12 weeks from his or her first engagement with his or her employer.

(2) Where a zero hours contract worker has not been continuously employed for a period of 12 weeks, there shall be a duty on employers to offer a fixed and regular working hours contract to any such zero hours contract worker who has been employed in at least 12 of the preceding 26 weeks (the reference period).

(3) For the purposes of subsection (1) and (2) the Department must by regulations make provision to establish—

- (a) a rate of pay;
- (b) a minimum period of hours; and
- (c) any other relevant terms and conditions of employment.

(4) The Department must by regulations provide for a zero hours contract worker to make an application to an employment tribunal where a fixed and regular contract under this section is not offered.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 12 [Negated on division]

New Clause

After clause 16 insert -

'Prohibition of exclusivity clauses'

16G.—(1) Any term or understanding, written or oral, of a contract or engagement (whether express or implied, and whether formal or informal) that requires a zero hours contract worker to work exclusively for one employer shall be void.

(2) The provisions of subsection (1) shall not apply where the employer can demonstrate a compelling business reason, such as confidentiality or the protection of trade secrets, to justify a contractual requirement that the zero hours contract worker shall work exclusively for the employer in question.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 13 [Negated]

New Clause

After clause 16 insert -

'Detriment'

16H.—(1) It shall be unlawful for an employer to subject a zero hours contract worker to a detriment by any act or any deliberate failure to act on the ground that the zero hours contract worker—

- (a) is or has been a zero hours contract worker; or
- (b) any other condition prescribed by the Department.

(2) A zero hours contract worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of subsection (1).'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 14 [Negated]

New Clause

After clause 16 insert -

'Unfair dismissal'

16I. The dismissal of an employee shall be unfair for the purposes of The Employment Rights (Northern Ireland) Order 1996 if the reason or principal reason for the dismissal is that the employee—

- (a) is or has been a zero hours contract worker; or
- (b) any other condition prescribed by the Department.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 15 [Not moved]

New Clause

After clause 16 insert -

'Continuously employed'

16J.—(1) References in this Act to a period of continuous employment are to a period computed in accordance with Chapter III of The Employment Rights (Northern Ireland) Order 1996.

(2) This is subject to the proviso that the words "employee" and "employer" as they appear in Chapter II of The Employment Rights (Northern Ireland) Order 1996 are substituted by the words "worker" and "employer", as these terms are defined in this Order.

(3) In section 8 of The Employment Rights (Northern Ireland) Order 1996 (weeks counted in computing period), after subsection (4) insert—

“(5) In the case of an employee who is engaged by an employer on a zero hours contract or contracts, any week in which work is performed shall count in computing the worker’s period of employment.

(6) In the case of an employee who is engaged by an employer on a zero hours contract or contracts, any week in which work is not provided by the employer shall be treated as a week falling within subsection (3)(c).

(7) For the purposes of subsections (5) and (6), the terms worker and zero hours contract have the same meaning as in the Employment Act 2016.”.’

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 16 [Negated]

New Clause

After clause 16 insert -

‘Proportion of zero hour contracts

16K.—(1) The Department must by regulations set a limit on the number of zero hours contract workers as a proportion of the total number of those employed by an employer.

(2) Regulations under subsection (1) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.’

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 17 [Not moved]

New Clause

After clause 16 insert -

‘Interpretation for zero hours provisions

16L.—(1) A person is employed for the purposes of this Act if he or she is engaged by another to provide labour and is not genuinely operating a business on his or her own account.

(2) For the avoidance of doubt, a zero hours contract worker shall be regarded as being employed by an employer on days on which—

- (a) he or she works for that employer, and
- (b) he or she does not work for that employer

(3) It shall be for the respondent to show in any legal proceedings that the applicant is not employed.

(4) A person is an employer for the purposes of this Act if he or she engages another to provide labour, and the person engaged is not genuinely operating a business on his or her own account.

(5) A fixed and regular working hours contract is a contract that specifies working hours, and does not require the worker to be available for work for a period that exceeds by 20% the minimum hours specified in the contract.

(6) A worker is a person who is employed.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 18 [Negated]

New Clause

After clause 16 insert -

'Living Wage Agency'

16A. The Department must, by 1 November 2017, establish an unincorporated body of persons known as "the Living Wage Agency" for the purpose of measuring, researching and advancing a living wage.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 19 [Not called]

New Clause

After clause 16 insert -

'Reporting'

16B.—(1) The Living Wage Agency shall, on an annual basis, publish a report, in which it shall—

- (a) determine what single hourly rate shall be deemed to be a living wage, which is to be calculated based on the minimum income standard;
- (b) identify barriers that impede employers within sectors from paying the living wage;
- (c) bring forward recommendations to address the barriers identified in subsection (b);
- (d) bring forward recommendations to reduce the proportion of employees and workers paid less than the living wage;
- (e) set targets to reduce the proportion of employees and workers paid less than the living wage;
- (f) monitor progress in reducing the proportion of employees and workers paid less than the living wage; and
- (g) undertake any other related matters as the Department shall determine.

(2) The minimum income standard is the income that people need in order to reach a minimum socially acceptable standard of living.

(3) The Living Wage Agency shall determine how the minimum income standard is to be calculated.

(4) Before arriving at the recommendations to be included in their report, the Living Wage Agency shall consult—

- (a) such organisations representative of employers as they think fit;
- (b) such organisations representative of workers as they think fit; and
- (c) if they think fit, any other body or person.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 20 [Not called]

New Clause

After clause 16 insert -

'Membership

16C—(1) The Living Wage Agency shall consist of a chairperson and members appointed by the Minister.

(2) In appointing members, the Minister shall have regard to the desirability of securing that there is such a balance as the Minister considers appropriate between—

- (a) members with knowledge or experience of, or interest in, trade unions or matters relating to workers generally;
- (b) members with knowledge or experience of, or interest in, employers' associations or matters relating to employers generally;
- (c) members with expertise in labour market analysis; and
- (d) members with other relevant knowledge or experience.

(3) Members shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(4) A member may resign his or her membership by giving notice to the Minister.

(5) A person who ceases to be a member shall be eligible for re-appointment.

(6) The Minister may by notice to the member concerned remove from office a member who is in the opinion of the Minister unable or unfit to perform his duties as member.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 21 [Not called]

New Clause

After clause 16 insert -

'Operational considerations

16D. The Minister shall provide the Living Wage Agency with—

- (a) such staff from within the Department,
- (b) such accommodation, equipment and other facilities, and

(c) such sums,
as the Minister may reasonably determine are required by the Living Wage Agency for carrying out their duties in preparing any report on matters referred to them under this Act.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 22 [Not called]

New Clause

After clause 16 insert -

'Remuneration'

16E. The Minister may pay the members of the Living Wage Agency such allowances in respect of travel or other expenses properly incurred by them, or in respect of loss of remuneration sustained by them, in the performance of their duties, as the Minister may determine.'

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 23 [Negatived on Division]

New Clause

After clause 16 insert -

'Blacklists'

16A.—(1) Article 5 of the Employment Relations (Northern Ireland) Order 1999 is amended as follows.

(2) Leave out subsection (4) and insert—

“(4) Regulations under this Article shall create an offence, which shall provide for it to be punishable—

- (a) by a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding 6 months, or both, in the case of an offence triable only summarily;
- (b) by a fine or imprisonment for a term not exceeding 3 years, or both, in the case of summary conviction for an offence triable either on indictment or summarily.

(4A) The first regulations under this subsection must be made by 31 December 2017.”.

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 24 [Made]

Clause 21, Page 14, Line 37

After ‘Article’ insert ‘59A or’

*Ms Anna Lo
Mr Stewart Dickson*

Amendment 25 [Made]

Clause 25, Page 16, Line 10

After ‘Act’ insert ‘, except in section (*Gender pay and disclosure of information*),’

*Ms Bronwyn McGahan
Mr Phil Flanagan
Mr Fra McCann
Ms Megan Fearon*

Amendment 26 [Negated on division on cross-community vote]

Clause 26, Page 16, Line 14

At end insert -

‘(1A) The repeal of Article 71 of the Fair Employment and Treatment (Northern Ireland) Order 1998 as set out in Schedule 3 comes into operation one year after this Act receives Royal Assent.’

*Mrs Sandra Overend
Mr Danny Kennedy [R]*

Amendment 27 [Negated on division on cross-community vote]

Schedule 3, Page 25, Line 23, Column 2

At end insert -

‘

Article 71.

,

*Mrs Sandra Overend
Mr Danny Kennedy [R]*

Amendment 28 [Made]

Long Title

After ‘disclosure;’ insert -
‘to make provision for disclosure of gender pay information;’

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann

Amendment 29 [Made]

Long Title

After ‘disclosure;’ insert -
‘to make provision for zero hours contracts; ’

Mr Phil Flanagan

Ms Bronwyn McGahan

Mr Fra McCann