



Northern Ireland
Assembly

**COMMITTEE
FOR EMPLOYMENT
AND LEARNING**

**OFFICIAL REPORT
(Hansard)**

Employment Bill

16 September 2009

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Sue Ramsey (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Paul Butler
Mr Trevor Clarke
Rev Dr Robert Coulter
Mr David Hilditch
Mr William Irwin
Ms Anna Lo
Mr David McClarty
Mr Pat Ramsey

The Chairperson (Ms S Ramsey):

We move to the Committee's clause-by-clause consideration of the Employment Bill. I remind members that this part of the meeting is being covered by Hansard, so all mobile phones must be turned off, including any that anyone in the public gallery may have. Members will find an updated timetable for the Committee Stage of the Bill at tab 2 of their packs. Last week, we discussed a motion for a two-week extension of the Committee Stage. Based on advice that we have received, it has been suggested that we ask for a four-week extension. If we do not need that much time, so be it, but it allows for the possibility of a swine flu outbreak, or some other problem. Are members agreed that we request a four-week extension to the Committee Stage, and are they content with the wording of the motion?

Members indicated assent.

The Chairperson:

Members will also be aware that the Department has proposed amendments to the Bill. Those have not yet been finalised, but the wording will be ready for next week's meeting.

I am going to ask the Committee Clerk to take us through the clauses of the Bill. People are seated in the public gallery who are ready and willing to answer questions, if required.

The Committee Clerk:

Thank you, Chair. The Bill team from the Department is in the public gallery. Our Bill Clerk is also present, who can provide guidance for members if they wish to make any amendments.

I draw members' attention to the table at tab 4 of their packs. That table lays out the wording of the Bill as it stands, the explanation from the explanatory memorandum, and the four options that the Committee will have in respect of each clause. At this stage, we are just running through the Bill to highlight areas where the Bill will amend other pieces of legislation. It will be next week before the Committee decides final agreement, or otherwise, on the clauses.

Members also have a pack that corresponds with other pieces of legislation that the Bill will amend. I will go through the clauses to point out areas where the wording of the Bill will be inserted into those other pieces of legislation. We will be seeking provisional agreement on what has been set out — next week, the Committee will decide on the final, formal agreement.

Clause 1 amends the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 to provide for offences under employment agency legislation to be triable either in a magistrate's court or the Crown Court. At present, the maximum fine that can be awarded by a magistrate's court can be no greater than level 5 on the standard scale — currently £5,000. Agencies that act unlawfully can make much more than that amount. Allowing more serious cases to be tried in the Crown Court will provide for the potential for unlimited fines to be awarded against such agencies.

As members can see from the table, clause 1 of the Bill is entitled "Employment agencies:

mode of trial and penalties for certain offences”. Clause 1 states:

“1. — (1) In the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20), in each of Articles 5B, 6(3) and 7(2), for the words from “on summary conviction” to the end substitute ‘—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.’

(2) Subsection (1) does not apply in relation to an offence committed before the commencement of that subsection.”

Members can see at tab 1 of the separate pack of legislation to be amended where in the 1981 Order the provisions of the Employment Bill will be inserted. Those insertions will be at articles 5B, 6(3) and 7(2) of the 1981 Order. At this point, if members do not see any problem with that, we can move on to clause 2. Next week, we will consider the amendments. Provisionally, are members content with that first clause in respect of those insertions into the 1981 Order?

Members indicated assent.

The Committee Clerk:

Clause 2 concerns powers of enforcement. Clause 2 amends the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 to provide the Department for Employment and Learning with powers to compel agencies and third parties, such as banks, to provide the Department with financial information about an agency for investigation purposes. Limits will be placed on the circumstances in which that power can be used, and it will be available only where an agency is suspected of serious offences under employment agency legislation and is asked for, but does not provide, the necessary financial information. That power can be used only following authorisation by a senior officer of the Department — at least director level, which equates to grade 5: the level just below deputy permanent secretary.

Clause 2 refers to the same Order as clause 1. The clause is entitled “Employment agencies: powers of enforcement”, and it states:

“2. —(1) In the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20), Article 7B (powers of officers) is amended as follows.

(2) In paragraph (1) for sub-paragraph (b) substitute—

‘(b) inspect—

(i) any records required to be kept under this Part; and

(ii) any financial records not falling within head (i) which he may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part and of any regulations made under this Part are being complied with or of enabling the Department to exercise its functions under this Part;’.

(3) In paragraph (2) for the words from 'he may require' to the end substitute 'the officer may by notice in writing require the person carrying on the employment agency or employment business to furnish him with the record or information at such time and place as he may specify.'"

The Chairperson:

Is it necessary to read out all of the clause?

The Committee Clerk:

Perhaps not, if you do not want me to. This is laying out the powers of enforcement of the Department in respect of agencies. Those insertions go into the same piece of legislation that the first clause deals with.

The Chairperson:

Some of what is in the table is self-explanatory and some of it is technical. I thank the Committee staff for providing the table, and it will be helpful for members to read. I am not sure that it all needs to be read out. Does it need to be read out for the record?

The Committee Clerk:

No. Next week, we will decide on our final and official sign-off of each clause, and we will have the text of the amendments.

Clause 2 makes more insertions into the 1981 Order at various points. It makes much clearer the powers of enforcement that the Department will have, and it regulates the fines. Are members provisionally content with clause 2?

Members indicated assent.

The Committee Clerk:

Clause 3 concerns membership of the Industrial Court. It makes amendments to the Industrial Relations (Northern Ireland) Order 1992 to replace current arrangements for Industrial Court appointments with equivalent subordinate legislation provisions, which will provide greater flexibility in making appointments. Clause 3 also makes a minor change to remove the restriction that the court's secretariat functions may be fulfilled only by staff from the Department.

The wording of clause 3 represents an insertion into the Industrial Relations (Northern Ireland) Order 1992, which is at tab 2 of members' additional packs. As with the previous clause, there is probably no need for me to read out the full text. Clause 3 essentially sets down specific changes to that Order with respect to membership of the Industrial Court.

The Chairperson:

This came about as a result of discussions between the Department and the Labour Relations Agency. Are they content with those provisions?

The Committee Clerk:

They are content that the Department has carried out a consultation. Are members provisionally content with clause 3?

Members indicated assent.

The Committee Clerk:

Clause 4 concerns legal representation before the Industrial Court. It amends article 92(4) of the Industrial Relations (Northern Ireland) Order 1992 to enable parties before the Industrial Court to engage legal representation, with the exception of one jurisdiction related to the provision of voluntary arbitration in relation to industrial disputes. That reflects the view of the Industrial Court that voluntary arbitration, by its nature, would not benefit from legal representation. Legal advice states that failure to allow legal representation could lead to a challenge under article 6 of the European Convention on Human Rights — the right to a fair trial.

The clause closes the loophole in the remaining jurisdiction that is not already covered. The insertion into the 1992 Order is simply to close that loophole. Members can read in the table the wording of clause 4, and where it is to be inserted.

Mr P Ramsey:

There is a spelling mistake in the table: it says "cause 4" rather than "clause 4".

The Committee Clerk:

Yes; that will be amended. Are members provisionally content with clause 4?

Members indicated assent.

The Committee Clerk:

Clause 5 concerns information on employment agencies and the national minimum wage. It amends the National Minimum Wage Act 1998 and the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 to clarify the law relating to information-sharing and to allow HM Revenue and Customs national minimum wage compliance officers and Department for Employment and Learning employment agency inspectors to legally share and exchange information discovered by them in the course of exercising their powers. At present, the exchange of such information is restricted. The removal of that restriction will, for example, enable employment agency inspectors to report breaches of the National Minimum Wage Act 1998 by employment businesses to HM Revenue and Customs.

Clause 5 allows HM Revenue and Customs to communicate with the DEL inspectors to allow an exchange of information, closing any gaps in the knowledge of the inspectors. The insertions are detailed on the table and shown at tab 4 of members' supplementary packs. I will not read out the full text. Are member provisionally content with clause 5?

Members indicated assent.

The Committee Clerk:

Clause 6 concerns minor and consequential amendments and repeals. It provides that the minor and consequential amendments and repeals set out in the schedules to the Bill will have effect.

Clause 7 concerns commencement. It gives the Department power to bring the membership of the Industrial Court provisions of the Bill into operation by commencement Order. It also provides that the remaining provisions of the Bill will come into operation on the day after the Bill receives Royal Assent.

Are members provisionally content with those clauses?

Members indicated assent.

The Committee Clerk:

Clause 8 cites the short title. When the Bill is enacted, it will be known as the Employment Act (Northern Ireland) 2009. Are members provisionally content with that?

Members indicated assent.

The Committee Clerk:

Schedule 1 sets out the changes that are to be made to various other pieces legislation as a result of the Bill. All of those changes are set out in members' supplementary packs. That simply reflects the effect of the clauses that we have gone through. There is nothing new in schedule 1 — it just outlines what those pieces of legislation are, and which parts will be changed. Are members provisionally content with schedule 1?

Members indicated assent.

The Committee Clerk:

Schedule 2 lays out the specific repeals of parts of other legislation that the Bill will bring about. The detail is in members' supplementary packs. Are members provisionally content with schedule 2?

Members indicated assent.

The Committee Clerk:

Next week, we will have before us the final wording of the amendments. We will lay that wording over the clauses, and the Committee can give its final approval, or otherwise. If members have other amendments that they wish to draw up, it would be useful if they could flag that up in advance so that we can discuss those with the Bill Clerk and the Bill Office.

Members may also wish to note that the supplementary pack includes a research paper, which is an analysis of the Employment Bill and its provisions. Are members content that we include that paper in the appendices to our report on the Bill?

Members indicated assent.

The Chairperson:

To sum up, are members provisionally content to accept the clauses and schedules, prior to our formal examination next week of the Bill, in light of the amendments?

Members indicated assent.