



Northern Ireland
Assembly

COMMITTEE
FOR EMPLOYMENT
AND LEARNING

OFFICIAL REPORT
(Hansard)

Agency Workers Directive

15 June 2011

NORTHERN IRELAND ASSEMBLY

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FOR EMPLOYMENT
AND LEARNING**

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Members present for all or part of the proceedings:

Mr Basil McCrea (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Jim Allister
Mr Sammy Douglas
Mr Chris Lyttle
Mr Barry McElduff
Mr David McIlveen
Mrs Sandra Overend
Mr Pat Ramsey
Mr Alastair Ross

Witnesses:

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|---------------------|---|--|
| Mr Kevin Doherty |) | Northern Ireland Committee, Irish Congress of Trade Unions |
| Ms Kasia Garbal |) | Northern Ireland Committee, Irish Congress of Trade Unions |
| Mr Gary Irvine |) | Diamond Recruitment Group |
| Mr Nigel Smyth |) | Confederation of British Industry |
| Ms Caroline Maguire |) | Law Centre (NI) |
| Mr Daire Murphy |) | Law Centre (NI) |
| Mr Conor Brady |) | Department for Employment and Learning |
| Mr Tom Evans |) | Department for Employment and Learning |

The Chairperson:

So, who have we got? Kevin, will you introduce your team?

Mr Kevin Doherty (Northern Ireland Committee, Irish Congress of Trade Unions):

We both work for the Irish Congress of Trade Unions (ICTU) and have a position at the migrant workers' support unit, so we have quite a bit of experience.

The Chairperson:

OK, the floor is yours.

Mr K Doherty:

We do not have anything prepared because we did not realise that we had to prepare a presentation, but I think a question was asked about why the Irish Congress of Trade Unions did not respond to the consultation process. Perhaps I could deal with that first.

The Chairperson:

You can do that, but there is also an issue that I thought might be of interest to you. We had it explained in our previous sessions that a collective agreement was sought between the Irish Congress of Trade Unions and the employers' federation here that was not resolved. People then went back and said that they had a national agreement between the Trades Union Congress (TUC) and the Confederation of British Industry (CBI) in the United Kingdom. There is a letter in members' information packs that says that the TUC has no remit in Northern Ireland, so there is a bit of an issue.

Part of what we were looking at is why do the collective trades unions in Northern Ireland have a problem? What information would you like to give us about that? If you can help us, that is great; otherwise, we are more than happy just to hear what you have to tell us. I keep saying to people that this is an opportunity to exchange information: you tell us what you think we should know, and we will do our best to ask you questions on it.

Mr K Doherty:

ICTU was contacted by the TUC just before the agreement was reached with the CBI across the water, and they asked us to sign up to it. They said that there had been an error in that we had not been involved in the process. We told them that we could not be involved because that was against the policy of ICTU and that we had not been involved in negotiations. Therefore the agreement went ahead without ICTU.

As you pointed out, in the letter from Eugene McGlone, the vice-president of ICTU, the TUC has no remit at all in Northern Ireland. We are fraternal organisations, but there is no connection between us.

ICTU should have been involved in the initial agreement. However, because they did not involve us and because the Department for Employment and Learning proceeded with the agreement, Eugene challenged it on behalf of ICTU. We received a response from the then Minister saying that article 5(4) of the directive allows member states to derogate from it if agreement to do so can be reached by social partners at a national level.

We sought legal advice, and although article 5(4), refers to reaching agreement at a national level, it goes on to state:

“Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.”

Our reading of article 5(4) is that it permits, but does not oblige, states to introduce qualifying periods for equal treatment, such as the 12-week period in the agency workers regulations. The text implies that that should be on the basis of a national agreement, but it is clear that regional agreements could introduce more favourable terms for agency workers; for example, a shorter qualifying period or none at all. We see no basis for holding that the TUC/CBI agreement is legally binding on Northern Ireland to the extent that it would exclude us from negotiating more favourable treatment for agency workers in Northern Ireland legislation.

Moreover, the absence of ICTU from the agreement creates a compelling case that the existing national agreement is of questionable validity in Northern Ireland, given that the key organisation for the workers’ side, which is us, was not party to the agreement. That was the major problem that we had, and we raised those views with the Department for Employment and Learning.

Another concern that we raised on several occasions was how consultation processes are carried out by the Department for Employment and Learning. ICTU represents 230,000 workers. The trades union movement is the only organisation that represents workers, yet when ICTU submits a response to a consultation that directly affects workers, and an individual also submits a response, the consultation says that so many responses indicated this and so many indicated that.

There is no parity: an individual is given the same weight as 230,000 workers. We have a serious problem with that.

Those two factors coming together, and the fact that the Irish Congress of Trade Unions are not in favour of a 12-week qualifying period, is why we did not respond to the consultation.

The Chairperson:

That is very useful. Are there any other points that you wish to make?

Mr K Doherty:

Are you asking about the consultation itself?

The Chairperson:

The European directive is intended to be implemented in Northern Ireland through a statutory rule; that means that it is not part of the full legislative process with regard to scrutiny. Basically, the Minister will bring forward the rule and it will, presumably, be approved. We have to do that by November 2011 to meet with the European directive.

Because the Committee felt that the changes being proposed were substantial — there are big issues involved — and statutory rules are normally for fairly mechanistic matters, we have asked for a debate on the issue on Tuesday 21 June, which is why this is all so rushed. The Committee brought forward a take-note and respond motion to the Minister.

These are new members of a Committee by and large, apart from two who were on the Committee last time around, and there is a big amount of information to come out in this. Therefore given that the only debate that we will have in the Chamber about this is next week, we want to get your views.

We have heard and understand your views on the legality, why you were not involved and your policy. I am sorry for taking so long, but I want to put you in the position of knowing what I am really looking for. Some members will put forward arguments on, for example, the need to extend the provision to maternity rights. It will also be argued that there must be a derogation period, because the costs to Northern Ireland plc will be £66 million without a 12-week period and £26 million with it. Other members will argue that we should not do it at all. That is the

framework, and we are interested in hearing from you, as representatives of the workers and trade unions, what additional information you want to bring to our attention. If necessary, you can, of course, write to the Committee, and the information will be circulated to members before the next meeting. However, the Assembly debate is coming up, and you will probably want to get your spoke in — I am sure that that is not parliamentary language, but you get the gist.

Mr K Doherty:

Unfortunately, we were not aware of what was required of us today. We could probably submit more information in written form because it is quite detailed.

I would like to give an overview of our concern that the UK Government and, as we expected, the consequential Department for Employment and Learning regulations, are introducing the minimum requirements of the European directive. Agency working has been promoted as quite an advantageous arrangement for workers, and that is true of small elements of it. However, when we consider the number of workers employed through agencies in the UK, the situation is a national disgrace.

As there are no licensing arrangements, we cannot identify how many workers are, in fact, agency workers. The estimates range from 1.1 million to 1.5 million. In 2007, the International Labour Organization identified 1.378 million UK agency workers, which represents growth of 78% from 1997. That is far higher than in any other European country. France is next, with 638,000 agency workers, followed by Germany with 614,000. In both those countries, legal restrictions apply to the length of time for which an individual can remain an agency worker. We have no such restrictions. The United States has only 2.9 million agency workers, and Japan has 1.33million. In the UK, about 5% of the active working-age population are agency workers; the figures in the US and Germany are 2% and 1% respectively.

Our concern is that employing through agencies is no longer used as a flexible way of getting industry out of its problems and workers back into work. Given that it has been going on for so long and is so deeply rooted, it is clear to us that it is an attempt to get workers on the cheap. More than 60% of agency workers are female. It is vulnerable workers who bear the brunt: women; young people; older people who worked in the manufacturing industry and who have limited skills; and migrant workers.

The Department for Business, Enterprise and Regulatory Reform (BERR) consultation paper found that 40% of agency workers' assignments were in excess of 12 weeks. That means that the remaining 60% will be failed by these minimum standard regulations. We welcome any attempt to make things better, but we have serious concerns that these are minimum standards for what is a national disgrace. As I said, we had not prepared any detailed information, but there are serious issues, particularly those raised by the Northern Ireland Council for Ethnic Minorities (NICEM) and by the Law Centre, whose officials are, I believe, before the Committee today.

They are probably better able to deal with this than we are. However, we are concerned with the legal definition of agency workers that is proposed in the definition of a worker in the Working Time Regulations 1998. I am sure that the Law Centre will cover that. We share many of their concerns.

We oppose the 12-week qualifying period, as we see it simply as a matter of costs, which is not in the directive. The directive is meant to be about balancing the requirements of industry and the security of workers. It is not about cost. It is clear that cost is the only reason behind the 12-week qualifying period. If you look at the figures that I gave you earlier about the situation in the UK, you will see that this is not a temporary situation. From the ICTU's point of view, this is an abuse.

The Department for Employment and Learning regulations mention a six-week period between contracts. If there is a break in employment with that contract in six weeks, the 12-week period kicks in again. That is nonsense and not in keeping with the spirit of the directive. We agree with the Law Centre: if someone starts work for an agency and the 12-week period kicks off and if they finish the work with that company but are then brought back in again, they should not have to repeat the 12-week qualifying period, which they will have completed when they started with that agency. What is the purpose of that 12-week period? If someone has worked for an agency before for 12 weeks, why do they need to do so again?

We have many concerns, and we might take up the offer of putting something in writing to you. Did you say that that would have to be in by Tuesday?

The Chairperson:

The debate is on Tuesday. I realise that this is a bit rushed, so I will give you an undertaking that

if you get the information to us, we will make sure that it gets to the Committee and the Assembly. I am sorry that it is a wee bit rushed, but we are doing our best to give you the opportunity to make your case.

Mr P Ramsey:

Kevin and Kasia, you are very welcome this morning. There is a principal, fundamental point that we have to resolve: reflecting the worker's role in this has been ignored. That is a flaw on the part of the Department. Department officials are coming in and we need to address that flaw.

We have a letter from Unite, which clearly states the logic from the ICTU. The purpose, as the Chairperson has outlined, is that we are forcing a Committee motion through. That will be discussed, and everybody will have the opportunity to discuss it, but we need to reflect the opinion of workers. For example, you have 250,000 workers. I do not know how many agency workers there are, but it is important that you give us a clear, concise idea of where the concerns or support for this legislation going through are.

We need absolutely to find out for future reference that the Department accepts in good faith that it is ICTU and not the TUC that represents the workforce across Northern Ireland. It is very simple.

The Chairperson:

You got a bit of support on that, but no doubt you will put that question to the Department.

Mr P Ramsey:

Do you have an idea of how many agency workers you hold in the membership of the trades union movement?

Mr K Doherty:

There are very few, particularly in our unit, in which we come across agency workers from the migrant community and represent them in the first instance where we can. Normally, when a worker comes to the door and says that they are an agency worker, our hearts sink. We know that they have very few rights and that we will end up having to tell them that there is nothing we can do for them under the legislation. Where we can assist, we encourage them to join unions as individual members. However, there is concern that if they are identified as trades union

members their placements will, all of a sudden, dry up. That is a problem that we see time and time again.

There are more than 300 agencies in Northern Ireland. The guesstimate is that there are 22,000 registered agency workers here; it is a disgrace that we do not even know the figures. The Gangmasters Licensing Authority (GLA) legislates that licences should be issued to agencies working in that sector. Why do we not have legislation in place so that we can see what mistreatment is taking place? We do not have any.

Mr P Ramsey:

That information should be in the briefing papers that are provided to members.

The Chairperson:

So, there is an opportunity. Succinct and comprehensive is quite an interesting task.

Mr D McIlveen:

Both my questions should hopefully be pretty concise. This is an EU directive and will subsequently be UK legislation. I expect that a lot of your full-time employed members may see their role as possibly being under threat from agency workers at times. That has certainly been my experience, having spoken to some workers. What action would your organisation plan to take to oppose this legislation?

Secondly, you said you feel that this is a way of getting workers on the cheap. If the legislation goes through, what will you do to ensure that those workers do not encounter prejudice and bullying from existing employees? The last thing we want to see is a two-tier system in factories and workplaces. Will you work and engage with your current members to ensure that there is not an element of prejudice in the workplace?

Mr K Doherty:

First, we would not oppose it if the changes proposed in the Law Centre's submission, along with some of the points that we have put forward to the Committee, are taken on board. We are saying that the ICTU policy goes beyond what is contained in the agreement. We believe that rights should be there from day one. Effectively, an agency worker should have the same rights as an employee from day one. That is the crux of it. We would accept what we are given but we

would still campaign for more. We will not actually oppose it, which is the way things operate.

There is no doubt that we have a two-tier workforce. This is particularly evident and very concerning in the migrant community. We have found that quite a number of workplaces have shifts that are staffed almost predominantly with migrant workers, normally of one ethnic origin. Along with language barrier problems, that can create a suspicion between them and the core workforce. It does not give them an opportunity to meet. There can be less favourable conditions and lower wages, and sometimes, attitudes can develop into racist attitudes. Those will cause problems for this society if not addressed. We have seen that.

Our unit is involved in working to raise the issue of racist attitudes and sectarianism in the workplace. We are producing a booklet on the myths that fuel racism so that we can give them to shop stewards. That will arm them so that they can challenge the common myths that are about the place.

We are doing a lot, but we are heavily under-resourced. We think that the state could assist us quite a bit more in providing this training to help us to make sure that these divisions do not take place. However, a lot of responsibility lies with employers. They should not be setting up one production line that is purely Polish and one that is purely local. That is the road to no town. The cynics among us would say that that is deliberate because it keeps the two workforces from knowing what each other is being paid. That is a serious problem because it has an outflow to wider society.

Ms Kasia Garbal (Northern Ireland Committee, Irish Congress of Trade Unions):

We are not opposed to agency work as such; we just think that it should be properly regulated. The directive is about regulating agency work so that we do not have a two-tier workforce. In other European countries where the directive has been adopted and where the agency work is regulated, there are some limitations on agency work. For example, there is a limit on the time an assignment lasts; therefore, there is a limit on how long someone can be an agency worker.

We believe that there should be more regulations around agency work. At the moment, agency workers have very limited rights, and we believe they should have more. A couple of weeks ago, we spoke with three workers whose agency provided services for Red Sky. They were there for almost three years and they had no entitlement to redundancy or to anything. That

is just one example. We had pregnant women who had assignments with agencies, but there was no responsibility on those agencies to award maternity pay. These workers are often just dismissed and told their services are no longer required. It is very difficult to prove in court or at a tribunal that the reason for dismissal was pregnancy. People employed through agencies have these concerns on a daily basis.

Mr K Doherty:

We have a difficulty, but it is a wider issue. There may be rights on paper, but, even if the regulations go through as amended, as we would like to see, it is still difficult for workers, particularly vulnerable workers, to pursue their rights. We have a tribunal system, which is very difficult for the ordinary worker to access if they are unrepresented and do not have the money for legal representation. That needs to be considered.

The Chairperson:

Kevin, I have actually extended the time we have because I think, given the background, it is important that you get a chance to say things, but I want to bring in the other members of the Committee. We will go through it as best we can, and, if necessary, we will come back, but I have to manage the time, so you will just have to bear with me.

Mr McElduff:

I am interested in the profile of agency workers, and I want to focus on young people. Are there any particularly negative experiences of young agency workers that you want to highlight? Migrant workers are in one category, but I am asking specifically about young people.

Mr K Doherty:

Our perception is not that younger workers are experiencing difficulties compared to older workers. They are all treated equally badly. The argument from the employers' side is that it can be a first step on the ladder for young workers. We find that the majority stay on that first step of the ladder or fall off the ladder altogether. We are talking about workers with low levels of education. They are not getting access to training. Even the regulations, when they are put through, will not guarantee them the right to training. They will continue as manual workers on minimum wage, and it is a serious problem for this society.

One of the largest private sector companies, Bombardier Shorts, cannot get skilled workers. It

has to pay megabucks to get skilled workers in an industry that I worked in and knew, because it stopped doing the training. It relies on subcontractors. If you do not train up skilled workers, the premium you will have to pay to get those skills around the world is madness. It is just a road to no town.

Mr Ross:

This is more of a comment than anything else. Obviously we are not discussing the merits of the directive. It is about the 12-week period, because it is going to have to be implemented. Kevin said that the directive is not primarily about cost. With all legislation there are unintended consequences, and I think that everybody in the Assembly is pretty much agreed that we need to rebalance our economy in Northern Ireland. We need to grow the private sector, and therefore we need to be helping business.

The number one concern that we hear from business is about the amount of regulation and red tape that they have to go through, and most of that comes from Europe. I totally disagree with your view that cost is not an issue or relevant on this matter. Cost is very relevant, and if we can get to a position where there is a compromise between trade unions and the business sector, it is important that we listen to that and try to help business. Saying that cost is not or should not be an issue is wrong.

The Chairperson:

You made a good point, Alastair. In fairness, the trade unions recognised that certain things had to be done but thought that we should try to regulate it. The benefit of the debate is that you will get your points out. We have to be sensible about the way we go forward, but we will try to strike a balance.

Mr Allister:

One thing is clear: we cannot change what the directive says, so the debate has to be focused on what the implementing regulations say. I think you are wrong in your perception that you can depart from the national agreement. However, if you could, that would involve implementing a patchwork of rights across the UK, in that, if you had your way, agency workers in Northern Ireland would have greater rights — they would not have the 12-week threshold — than agency workers elsewhere. Is that a viable approach? Is that not just a seedbed for more difficulties, resentments and all sorts of things?

Mr K Doherty:

I take your point but I mentioned in my introduction that the TUC contacted us apologising. The UK Government recognised that we should have been in the initial negotiations but they went ahead anyway with that agreement after excluding us. That was our major point of concern. We then looked at the directive and our legal opinion told us that we could negotiate. Employment rights are a devolved matter here.

Mr Allister:

Yes, but surely under article 5 of the directive, the national agreement would have had to provide for regional variation. It does not.

Mr K Doherty:

Our legal opinion would say that it does. I am not a solicitor, so I am not going to engage, but we have legal opinion that says that we can.

Mr Allister:

If the national agreement had provided for that, but it does not.

Mr K Doherty:

The last sentence of article 5, paragraph 4, states:

“Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.”

So, the directive does provide for it.

Mr Allister:

Yes, but I think it would have had to have its aegis in the national agreement.

The Chairperson:

It is a moot point, but the point is made, and it will be decided.

Mr Douglas:

Following on from Pat’s point, and, I suppose, Alastair’s as well, we are at an extreme disadvantage because, in some ways, we do not know the scale of the situation for workers at a

Northern Ireland level. To go back to Jim's point: we do not know how much it will cost Northern Ireland.

When I look at the CBI response, I see a number of figures but they are very much based on UK figures. I would like to know, for example, what percentage are female workers. Kasia made a point about Red Sky in east Belfast. I know of another company in which people have been working for years as full-time agency workers.

It strikes me that we do not have the information at this point. Has there ever been any research carried out? Can we get that information? It is very difficult for us to have serious input when we do not have the information. That information also links to Alastair's point about the cost of this.

The Chairperson:

The point that Kevin and Kasia were making is that there ought to be information available but there is not. The other thing I have to tell you, Sammy, is that this decision will be made. This is not an optional issue; it is a European directive, and will be coming through. There are a number of questions. We do not have to do exactly what the national agreement suggests. You could come in with a regional variation.

Mr Douglas:

That would have a cost attached.

The Chairperson:

Yes, you could, but whether you want to, is a different matter. You have one chance to debate this, which is next week. So, whatever information we are going to get, we have to get to it.

Mr Douglas:

We are where we are.

The Chairperson:

The decision will probably be made by the Minister because he will bring forward the statutory rule. We have a take-note and "calls on" motion. This is our chance to put as much information on the table as possible and to see what we can do, but ultimately the timescale is such that this is

it.

Mr K Doherty:

I want to deal with the issue of red tape and costs. We have been consistently told that every improvement in employees' conditions will have a cost and lead to job losses. Just think back to the national minimum wage arguments when they were saying that millions of workers across the UK were going to lose their jobs when the minimum wage was introduced. It was introduced, it has continued to grow every year and there has not been a single job lost.

The point is how the UK economy has become dependent on and is abusing agency workers. Compared with the United States, the number of people in this country stuck as agency workers is obscene. This thing about cost may be a bit of a red herring. If you are going to have workers in for less than 12 weeks, there is no reason why you cannot give them the same wages as the worker who they are meant to be replacing over the peaks and troughs. That argument is a bit of a red herring, and is used every time there is a change to employment law.

The Chairperson:

I am sorry that we cannot have the debate here now because I need to bring in other things, but the briefing documents that we got previously, which detailed where there may or may not be cost implications, were recorded by Hansard and are available publicly. I recommend that you have a look those. Also, we are going to try to have the Hansard report of this meeting published before the debate on Tuesday. It is a bit of squeeze for the Committee, but I am hoping that our friends in Hansard can help us with that.

You now have a view of where the arguments are coming from. You are welcome to listen to what the other folk coming have to say; I have no doubt that there will be some contrary views. That is the best that we can do for you. I apologise that you were not quite sure about what you were coming for, but, to be quite honest, that maybe helped the debate. Thank you very much for your attendance. We look forward to hearing from you, by Monday if possible.

Mr K Doherty:

Thank you.

The Chairperson:

We now have Nigel Smyth from the CBI and Gary Irvine from Diamond Recruitment Group. A submission has been provided to members.

Mr Nigel Smyth (Confederation of British Industry):

Thank you, Chairman. I welcome the opportunity to give evidence to the Committee. I am a full-time director in the CBI. I am joined by Gary Irvine, who is a CBI Northern Ireland council member, managing director of Diamond Recruitment Group and actively involved with the Recruitment and Employment Confederation. I will speak for three or four minutes as a high overview. I will then ask Gary to comment, before taking any questions.

Agency workers have been a major issue for CBI for several years. Agency workers are a vital part of the UK's flexible labour market and help to maintain its competitive position. We believe that that is good for employers and good for workers. That is reflected in labour market figures. It is probably no surprise that unemployment in the UK, although rising, is significantly lower than in many other European countries and significantly lower than in the USA.

I do not intend to go through the technical details. We provided members with a written submission, which was CBI's response to the Department for Business, Innovation and Skills, known as BIS, national consultation, and which was submitted as part of our response to the local consultation. If you are up to speed with that, you will recognise that this involves some very complicated and technical issues. I will try to avoid going into that detail.

One big concern for CBI members is the administrative burden, which I will come back to. In Northern Ireland, we believe that the top priority for the Executive should be job creation. That is what the business community believes and that was reflected in the jobs plan put forward by a coalition of business interests. However, these regulations will not help to create jobs. Indeed, the absolute opposite will happen. We believe that the regulations will remove jobs from the local labour market.

We need policy based on evidence, and the evidence is that the majority of agency workers want to be agency workers, with less than one third looking for full-time employment. Many agency workers are young people and many find agency work a way of gaining experience to

move into the job market.

At a national level, we have welcomed the delay in implementing the regulations. However, here in Northern Ireland, we are now facing considerable uncertainty. Various organisations have been running seminars, but we do not know what is going to happen in Northern Ireland. We are sitting today, six months away, and we do not have the regulations or the guidance. That is of extreme concern. A lot of employers out there do not know what to do and this is going to have serious consequences for them.

The regulations are bad for business and the labour market as a whole. Yes, they will drive up costs for many, but a bigger concern is the increased administrative burden in monitoring and controlling the regulations. You need only go through the technical aspects to understand the burden that that is going to impose on companies.

An even bigger concern is the increased risk of using agency workers and the potential for tribunal claims. The whole area of tribunals — their cost and the management time tied up in them — is a major concern for the CBI, particularly here in Northern Ireland.

In essence, we expect fewer opportunities for agency workers once the regulations are imposed. At UK level, the CBI and the TUC reached a deal back in 2008. It is vital, from a Northern Ireland perspective, that the key aspects of that deal are reflected in legislation in Northern Ireland. That includes the 12-week qualifying period. That would remove about 60% of what we call very short-term agency workers from the scope and reduce the cost overall.

The second issue is the exclusion of what we call occupational social security schemes — pensions and so on — on the back of that, which tend to be inherently linked to long-term relationships that employees have with their employer, and also a derogation for pay between assignments. These are all set out in the written submission, and, if they were excluded from the Northern Ireland regulations, we would be distinctly disadvantaged compared with the rest of the UK.

One ongoing concern is around gold-plating. We believe that even the regulations in Great Britain have gone beyond what was required by the European directive in three ways. First, the definition of “pay” is wider. Rewards should be justified by comparison to staff, and that is a

very complex issue. Secondly, short-term assignments need to be measured too, despite the 12-week deal. We believe that should be longer. It was not required in the European directive. The third issue is about regulations set up to encourage claims. We believe we should be trying to resolve issues in the workplace rather than encourage tribunals on the back of that.

I will briefly comment on the CBI-TUC agreement. The Department asked us a year ago to sit down with the Irish Congress of Trade Unions. We were keen to do that and to engage. It is fair to say that, at that time, there was reluctance from ICTU to engage with us because it did not want to put its cards on the table until the situation was resolved in the Republic of Ireland. In the summer, we took the view that we needed to move ahead. We encouraged the Department and told it that we could not wait forever as employers were looking for answers and clarity as to what was happening in Northern Ireland so that they could prepare. In the late summer or the autumn, the Department informed us that it had taken legal advice that indicated that there was a national social partners' agreement. We had no further involvement, but we would have been prepared to sit down with the Irish Congress of Trade Unions on that issue.

Mr Gary Irvine (Diamond Recruitment Group):

I will give a bit of perspective on the recruitment industry and our view on the legislation and agency work. It is important for everyone to realise that the role of an agency worker has been around for over 80 years. It is nothing new. It is a type of work similar to permanent work. Temporary work is a category in its own right and should not be criticised for what it is. It has also been a big part of the reason why the UK economy is as successful as it has been over the years because of the flexible workforce that it brings to the economy.

I will provide you with some statistics, because I think we are a bit light on those. The recruitment industry in the UK is worth over £27 billion a year. It is a huge industry. There are around 1.3 million agency workers out working across the UK each year. The statistics for Northern Ireland assume that we represent about 1% of that. In Diamond, my company, we have over 2,500 agency workers working each day in Northern Ireland, and we represent about 10% of the industry here. A figure of around 20,000 to 25,000 agency workers is therefore reasonably accurate, although there are no statistics to prove that.

It has been mentioned that agency work is a matter of choice. It is a springboard into work for many people, and can provide experience for permanent work. For many people, it just works

with their flexible lifestyles, and it is a matter of choice for the majority of them.

This legislation is not news to the recruitment industry or to employers. It has been around for over 10 years, and it has been resisted by the UK and many other European states for that period of time. It obviously came into play in 2008 and now has to be up and running by the end of this year. We have had a lot of time to consider it and think about it, and we have been aware of it. The recruitment industry itself has no problem with the legislation. We largely understand what it has been born out of. The UK has a high dependence on agency workers, unlike most other European states, but that is changing greatly.

The European states are starting to see the benefits of agency work, and it is because of that that they thought this legislation was necessary. The UK gets it, but we are worried about the implications for employers and for agency work going forward. As long as it is implemented sensibly, we have no difficulty with it. For example, a 12-week derogation period was negotiated between social partners and the UK Government. We were striving for that to be one year. Twelve weeks was a lot shorter than what we had hoped for, but we will live with it and are working around it.

As to the effect on the Northern Ireland economy: as employers in the recruitment industry, we are assuming that what has been agreed for the UK mainland will simply be mirrored here in the legislation, not least that 12-week derogation period, amongst other things. Employers are hoping and believing that that is the case because there is a major cost implication behind day-one rights going forward. There is also a misconception that agency workers are underpaid, used and abused, and so on, but that is simply not true. There are rogue traders in every industry, but an incredible array of legislation already exists for the protection of agency workers, not least the conduct regulations for employment agencies. Agency workers avail themselves of virtually every other employment right apart from the right to unfair dismissal and to having a permanent contract. However, many agency workers are looking for that flexibility, and it is a springboard into employment. We offer a valuable service to employers, and that is under threat at the moment through this legislation. Therefore, the sooner we have clarity, the better.

Mr P Ramsey:

I am trying to be objective about this issue. However, I visited a friend in hospital recently, and three nurses on the ward approached me and told me that they were appalled at the way that they

were being treated as agency workers. That is a symptom of what is happening out there. I wonder where you are getting the evidence that a high majority of agency workers are quite happy to be in that position. What evidence can you bring to the table?

I appreciate and acknowledge the invaluable service that you provide and have provided here. In fact, we have agency workers here. We are trying to minimise the need, but we need them at times. However, I will use the example again of a nurse on a ward who is an agency worker. They are second class citizens compared with people who have a contract. They believe that because they are not getting any commitment to the services that the nurse on the contract is getting. Having spoken to people in my constituency, I fail to understand the point that you made in your evidence. There are other people in a similar position, but I am just using them as an example.

Mr Irvine:

That is based on the assumption that permanent work is available for everybody, but it simply is not. Agency workers are there to give cover when no cover is available from the permanent workers. They largely replace people who are off ill or on leave or when there are staffing shortages. Agency nurses are a great example of people who are typically paid more than they would be paid if they were in a permanent contract of employment, but I do not blame them for looking for permanent work. They should apply for permanent work, but the reason why we supply agency nurses is to fill gaps. It is not to give permanent work. When they are doing that temporary work, they have protection and should not be used and abused in any shape or form. I need to understand more about the nature of the abuse.

Mr P Ramsey:

If they were being given that protection, we would not be sitting here bringing forward legislation. If Europe has decreed that new legislation needs to come through, which we are examining now, and the Committee is taking the lead and having a debate on it, clearly, there is no legislation to protect them.

Mr Irvine:

This legislation really looks more at parity of pay and conditions, and nursing is not a good example of that because they already have —

Mr P Ramsey:

It may not be, but we are looking at giving the same protection to agency workers as we are giving to contract workers. Presumably what we are trying to do here is to provide some level of comfort to them.

Mr Irvine:

No, this legislation does not give them employment rights. It is not the same thing at all. It just gives them parity of conditions.

Mr P Ramsey:

We have received submissions from organisations that represent agency workers, and they are clearly saying to us that this legislation will help them in some way. Are you saying that it will not?

Mr Irvine:

The agency workers are saying that?

Mr P Ramsey:

Organisations that represent them, such as the Law Centre, among others, are saying that. They are fundamentally behind the legislation going forward.

Mr Irvine:

The legislation will not do agency workers any harm, but it will not necessarily do any great amount of good either.

Mr P Ramsey:

I will just ask one final question. Can the administrative burden and increased costs be qualified, or where is the evidence of it?

Mr Irvine:

We deal with some of the largest employers in Northern Ireland, and 90% of employers that we work with do not give parity of pay to agency workers.

If we were to give parity of pay, especially from day one, and add to that the cost of additional

holiday pay and the cost of the agency recruitment service, it would remove the attractiveness of using a flexible workforce through an agency.

We can debate for a long time about why companies use agency workers, but the employers that we work with use them so that they can upsize and downsize quickly according to the market conditions that they are working with. Some people are there for a few days or weeks and others for a few months. They need the flexibility to upsize and downsize quickly. However, if the cost of using agency workers increases substantially, that will be a disincentive to work with agency workers.

Mr Smyth:

I will go back to your first question about the evidence. In paragraph 12 of our paper we quote the Office for National Statistics figures on the number of people who are looking for permanent employment. In paragraph 19, we identify that more complex monitoring arrangements will be required compared with the situation at present. That is where the concern is, and that leads on to potential risks relating to tribunals and various things if there are faults in processes etc on the back of that.

Mr D McIlveen:

This may be more of a comment than a question, but you can come back at me if you think it is appropriate. No disrespect to the representatives of the unions, but the onus is often put on the employer. It is always the employer's job to sort those problems out. Is there an argument in this context that the system in place actually suits permanent employees quite well, particularly in a climate of non-continuous work? Many companies are gearing up and gearing down as the work comes in and goes out. Surely it is to the benefit of the full-time employees that their position is secure when there is that sort of floating workforce available, and surely to play around with that could be very damaging to contracted employees.

Mr Irvine:

The protection of the flexibility to use agency workers is still there and will remain, which is great. What you are saying is absolutely right. I will give you an example. We have a very large engineering client who, when the recession hit in 2008, had more than 600 agency workers. The company's orders fell off the shelf and it had no new orders coming through the books, so it had to release all our agency workers. That was incredibly unfortunate for the agency workers, but up

until that point they had very good terms and conditions in paid employment and were gaining skills and so on.

However, the flexibility was there for that client to downsize very quickly to the point where it saved permanent jobs. That enabled that company to stay afloat through the recession. As soon as that market picked up again in the global economy, it was able slowly to upsize that workforce by using agency workers. The other advantage that we bring to workers is the ability to get them into employment quickly. They do not have to go through a whole recruitment exercise or process with the employer or have to be short-listed and so on. The employer engages with us to get people quickly into work, and we are the ones who register them, assess their suitability and get them started quickly. That is very meaningful for agency workers. I totally agree that protecting that model is essential.

Mr Smyth:

I will add the example of another engineering company, which, at the moment, has a certain number of agency workers. The total cost to the company is higher than that for full-time employees, but its argument is that when demand goes up and down, as it has done over the past few years, if it had those workers as full-time employees there would be a massive additional cost, which would make Northern Ireland a much less attractive place for an American-owned company. Having a certain number of agency workers helping to meet the ups and downs of the market is very important.

As with any such regulations, there is a certain amount of abuse. We cannot regulate for the very small minorities that abuse the system; otherwise we will not get work at all. The issue in Northern Ireland is that we need to create more job opportunities. This is not going to do anything. It is going to create a burden, costs and risk, and we need to understand that. It is unhelpful. Our concern is that it will reduce the number of assignments for part-time workers and make it even more difficult, particularly for young people, to get into employment.

The Chairperson:

OK. Since there is agreement on the point, we will move on.

Mr McElduff:

Is it your reading of the directive, and legislation to come, that there will be an extension of

provision in the area of maternity rights, and do you welcome that?

Mr Irvine:

Agency workers largely have all those similar rights at the moment. They are entitled to statutory maternity pay, statutory sick pay, 28 days' holiday and the protection of the national minimum wage. There are extra protections. For example, if a lady falls pregnant and has to go to an ante-natal class, she already gets payment for that. Those instances where people believe that those things are not happening is an abuse of current legislation, and that is all about policing rogue agencies that are not applying existing laws. All those protections are already there.

The Chairperson:

What has the industry done about it, though? It is all very well for you to say that those are rogue agencies, but I will tell you what happens: if the industry cannot regulate itself, we will legislate for it. That is actually what is coming back up here. It is not acceptable for you to sit and say that there are rogue agencies. We are here to legislate for the minorities.

I understand that just because it has been stated does not mean that it is so, but there is a difficulty with people who are told that their services are no longer required and they cannot prove that they are pregnant. Perhaps we need comparative studies to see how many pregnant women are laid off. We are extremely sympathetic, and I have picked that up from colleagues, to the need to make Northern Ireland competitive. We want to give good jobs and do all the right things, but we also have to be fair and equitable.

Mr Irvine:

I agree. I have no difficulty with the licensing of the industry. It was once licensed, and it made no difference. You can have as much legislation in place as you like, but if it is not policed there will still be those who do not apply it, although they are a very small minority. The vast majority of sensible, professional organisations abide by the law, but every time legislation such as this comes into play it is a burden, and it is the good players who implement it. However, whether licensed or not, there will be a rogue element who do not care because they are just out for profit. I do not agree with that, nor does our industry. If agency workers are being used and abused in any way, my hope is that they find a reputable agency to work with and be looked after.

The Chairperson:

That is the sort of responsible attitude that I would expect from you and the CBI, and we will try to work out the way forward.

Mr McElduff:

The trades union representatives said that every time improvement in workers' rights is mentioned there tends to be an over-reaction, overstating cost and job losses, and that that is a red herring. How do you respond to that allegation?

Mr Smyth:

The costs are a reality. Over the past 10 years, Northern Ireland has faced about a £2 billion additional cost for employment rights and the associated administration. That has to be absorbed by companies increasing productivity, but we are competing globally and we have to absorb that. The question is whether we could do away with some of those.

It is unlikely that we will go back, but we are sitting here today looking at yet another layer. We will see changes in default retirement age and various things. The biggest burden in all our surveys, from the very small to the large company, is the cost of employment regulation. It takes more and more resources to manage that, and that is affecting our competitive position.

If it is coming, we will have to manage it. The issue is the people who do not have jobs: we are not creating enough of them. This is doing nothing to help to create more jobs.

Mr Irvine:

If the 12-week derogation period comes in, about 50% to 60% of all agency workers are unaffected. It is the 40% or so above 12 weeks who will be affected. We have a very large employer, a food production organisation in Northern Ireland that is a global organisation with a presence on the mainland as well as in other countries. We have about 600 agency workers with them each day.

The first question you might ask is: why? Well, because of their order books they are up and down not weekly but daily. Demand for their product goes up and down. To find those resources directly themselves would prove almost impossible, so working with a recruitment agency such as ours to find those people and manage them on their behalf works superbly well.

We have done the exercise whereby if we were to give those workers parity of conditions from day one, it would cost the company £6 million in additional costs per annum. They told us that they do not make that much in profit so they could not do that. It is bound at least to reduce their use of agency workers and make them consider whether they should operate elsewhere.

There are huge cost implications if we get this wrong. Over the past year or so, everyone has been working with guidance issued recently by the Department for Business, Innovation and Skills as well as the regulations on the UK mainland, on the assumption that that will be mirrored here. We have been coming up with solutions around that, not least regulation 10 of the conduct regulations and the derogation model.

Mr Allister:

I want to pick up on the food company that has variation in its employment of agency workers on an almost daily basis. How do you respond to the complaint that the follow-through of that on these regulations as drafted is that an agency worker who might work for four weeks, be off for a week, come back for 10 weeks, be off for a week, come back for 11 weeks and be off for a week might never qualify?

Mr Irvine:

They will qualify under this legislation.

Mr Allister:

Will they? That is not what the unions told us.

Mr Irvine:

There has to be a six-week period before that is counted —

Mr Allister:

Was the unions' evidence wrong on that?

Mr Irvine:

I am not sure.

Mr Smyth:

I think that their argument was that the six-week period between assignments should be shorter. You could work for 10 weeks, and you would then need to have a six-week gap.

The Chairperson:

For the sake of clarity, the scenario that Jim is pointing out is that if you took six weeks on, seven weeks off, six weeks on and seven weeks off, you would be outside that period. The worry is that that churn was happening and that people would do that artificially to make sure that they do not qualify. That is the point that Jim is putting.

Mr Irvine:

I understand that, Mr Chairman, but I am sad to hear that you believe that. I do not believe that that is how Northern Ireland employers —

Mr Allister:

Could that happen?

Mr Irvine:

It does not make any sense for it to happen. Generally speaking, when you start an agency worker on a long-term assignment with a client, a great deal of time, effort and money is spent on training and upskilling them to do the job. The last thing an employer wants to do when they have a person who is reliable and is doing a good job is get rid of them just to avoid parity on cost. They are worried about having a huge extra cost being put on them en masse from day one when they will not know the suitability, for example, of the agency workers —

Mr Allister:

I am totally with you on that point. However, I am just trying to explore whether there is cause for concern and whether there is a loophole by which it could be exploited and that someone could be dropped after five weeks and then brought back.

Mr Irvine:

I would say absolutely not. The legislation is written in such a way that it would be very hard to do that because it would be deemed as avoidance. There are protections in the legislation that would go after an agency or an employer who tried to do that. Employers are incredibly worried

about it because they, too, see that they are in the scope of this and that they have a part to play in policing and monitoring it and ensuring that they do not fall foul of the legislation.

I would honestly say that, largely speaking, all the employers in Northern Ireland who depend on agency workers value them and do the right thing. They do not put up with abuses. Where is the anecdotal evidence that that is happening? Who are we talking about exactly? I fear that sometimes it is just scaremongering.

The Chairperson:

We suffer a wee bit from a lack of evidence. There is a suspicion, founded or unfounded, that some unscrupulous employers might take advantage, particularly with migrant workers or for the lower-skilled workers, and that they would worry about tribunals and suchlike.

You have given a really good submission and we will rely on it, but if you want to put any of the key points raised here in writing, I will make sure that the Committee sees it before the debate. I made the same offer to the trades union. I want to reassure you that the Committee is as keen to see employment growth as you are; we do not want to place unnecessary burdens of red tape on you. That is why it is better to work with the industry to find an appropriate way of doing things.

However, we suffer from a lack of information and one way of getting information is to require returns. We must identify the key issues that we want to address and on which other issues we can generally agree a way forward.

Mr Douglas:

To go back to my initial remarks about the CBI response, it strikes me that your figures are based on the UK's example. In general, the UK has a far larger private sector with much bigger companies than Northern Ireland. My question is for Gary and is based on his experience. You say that you have more than 2,000 people employed through an agency and you have obviously done your own analysis. I asked earlier about agency workers in long-term employment, as I know some who have been in positions for years. What is your experience?

Mr Irvine:

On the number of long-term employees?

Mr Douglas:

Of those 2,000 agency workers.

Mr Irvine:

If Diamond has about 2,500 agency workers out each day and we represent roughly 10% of the industry in Northern Ireland, I suspect that there are between 20,000 and 25,000 agency workers active at any one time. However, that is a snapshot of a point in time. You have to consider how many people we employ or find work for during the year. Anywhere between 50,000 and 100,000 probably benefit from agency work across the course of the year.

I return to the point that agency work is a matter of choice for agency workers; it is almost the only way in which they can sometimes find work. For example, an agency's door is so welcoming to migrant workers who have difficulty with speaking skills and understanding how to go about finding and applying for work. We bring them in and talk them through how we can get them gainful, meaningful employment and so on. That service is invaluable for migrant workers who are trying to get into the Northern Ireland workforce.

Often, the assumption is that local people are available to do the work of migrants. That is simply not true. Frequently, migrant workers are in their jobs because employers cannot find local people to do such work. Does that answer your question?

Mr Douglas:

No.

Mr Irvine:

What specifically are you asking, then?

Mr Douglas:

You mentioned people involved in what I think you called a "long-term assignment". I took the example to be people employed for perhaps three years as an agency worker. From your experience — you also talked about the investment in training for the long-term assignment people — what percentage of staff are they?

Mr Irvine:

I go back to the example that I used earlier of the engineering company. Many of those workers would have been with that employer for between one and two years. Again, when we think —

Mr Douglas:

How many people are we talking about?

Mr Irvine:

In that organisation, 650 people, and, because it is a global engineering company that exports across the world, when the recession hit it had to downsize incredibly quickly. Had they been permanent workers, that would have been a huge cost exercise for the company. Therefore Northern Ireland/UK is a very attractive place to do business for employers such as that. They know that they have the flexibility of having a core workforce, which normally represents about 75% of their manpower. Typically, the other 25% are agency to give them that flexibility. That is the model that large manufacturing businesses typically work with in the UK because it is available, it works and the UK is known for that. Take away that flexibility and, because of the cost implications, employers are bound to ask themselves what else they can do.

The Chairperson:

I am just a wee bit worried about the time, Sammy.

Mr Douglas:

I will leave it at that.

The Chairperson:

I said that members had the points. If you have the executive summary of the key points, we will be happy to take them and circulate them if that is of value. Thank you very much for your time. You are welcome to listen to the other witnesses' submissions.

Committee, I am trying to keep you to time. We are drifting, so I am just warning you —

Mr Lyttle:

That we should tell our loved ones that we are not coming home.

The Chairperson:

We may have to send out for sleeping bags the way things are going.

Mr Daire Murphy (Law Centre (NI)):

Thank you, Mr Chairman and members of the Committee, for the opportunity to attend today. With me is my colleague Caroline Maguire. We work as employment legal advisers in the Law Centre (NI). Our principal job is to advise employees and workers on their employment rights. The Law Centre welcomes the keen interest that the Committee has taken in the draft legislation, and we are happy to have this opportunity to contribute to the debate. I intend to touch briefly on some of the issues that the Committee raised in a previous session, and I hope that that might be of assistance. We will then be happy to concentrate on any areas or questions that members might have a particular interest in. I shall start by addressing the issue of the balance between workers' rights and the cost to business, particularly small business, and I will then hand over to Caroline.

It is our experience that courts and tribunals that deal with cases involving agency workers have frequently been moved to comment on the injustice that the use of the agency model brings for those workers. The courts have to apply the law as it stands, and they can see all too clearly the unfairness that can result. Mr Justice Elias, then president of the Employment Appeal Tribunal, said on the case of *James v Greenwich Borough Council*:

“We should not leave this case without repeating the observations made by many courts in the past that many agency workers are highly vulnerable and need to be protected from the abuse of economic power by the end users.”

That comment was made in a case in which he made it much harder for agency workers to try to assert rights.

Our experience reflects that view and is probably in direct contradiction to the evidence from the CBI. We find that most agency workers are low-skilled and may accept work through an agency as a necessity because of want of an alternative. They are not looking to deprive themselves of employment rights by choice without getting any benefit in return; they simply end up being the second-class citizens of the employment sphere. That is borne out by page 14 of the Department's impact assessment, which shows that a very low proportion of professional-type agency workers would see the benefits of flexible work and do not want job security because they could move from assignment to assignment. An example of that might be an IT contractor. In fact, the statistics show that most agency workers are in low-skilled or elementary occupations

and, in the cases of those people, the only benefit is to the end user rather than to the worker. The arrangement excludes the worker from the statutory protections that they would otherwise enjoy.

It is difficult to assess the cost to business of these measures by using comparable figures from GB, because the pattern of employment in Northern Ireland is different, particularly the fact that there is a higher prevalence of small business here. In our experience, small businesses are much less likely to utilise agency workers because the cost of paying the agency is likely to make it prohibitive and more expensive than employing directly. That is echoed in the data on page 37 of the impact assessment document, which shows that agency workers here are used much more by large companies.

If small businesses do use agency workers, they are unlikely to offer their permanent employees in low-skilled positions enhanced contractual rights above the statutory minimum anyway. If that is the case, equality for agency workers as delivered by these regulations will have little or no impact and will not incur any significant costs for those small businesses. The evidence on page 38 of the impact assessment shows that pay differential between —

The Chairperson:

Sorry to interrupt. Members, we do not have a copy of the impact assessment, but I will ask that we get it before the debate.

Mr D Murphy:

Some of the evidence from that impact assessment is very valuable. Although the figures are based on GB, there are some identifiable trends. It shows that the pay differential between permanent employees and agency workers becomes much more marked, the larger the organisation.

In small firms that have fewer than 10 employees it is likely to prove more expensive to employ an agency worker; such firms would have to pay an agency worker more. We are looking at large organisations and — in our experience, government agencies — that utilise agency workers, often for low-skilled work and they do so, in many cases, as a device to avoid incurring legal responsibilities. That came across from the CBI's submission. What this is about is disposability. Agency workers do not have security, do not have the same terms as other employees and they can be got rid of. In our view, that shows a two-tier workforce. It is not that

there will be a two-tier workforce; there is one already.

The option of employing those people directly is always open to the recruiter. The end-user does not need to use the agency model. Employers cite flexibility as a benefit of using agencies, but I find it hard to believe that, in the current economic environment, they would have a major problem in filling vacancies quickly. Recruitment agencies are valuable in sourcing workers for the end-user, but there is no necessity for them to be paid through the agency, in the tripartite agency model that deprives them of employment rights. A recruitment agency can recruit those people, deliver them to the end-user, and he can employ them directly.

Another point is that, especially for short engagements, the difference for the end-user in flexibility and being able to terminate the contract of an agency worker or of an employee is very small. An employee does not have the right to claim unfair dismissal during the first year of employment anyway. The only difference is the obligation to give notice, and that is only a one-week statutory minimum.

Mr Allister:

Therefore there already is a two-tier system.

Mr D Murphy:

Clearly. Larger employers pay a premium to agencies, referred to in part of the CBI presentation, in order to operate those arrangements. The arguments that employers bring about additional cost has to be seen in the context of the damage that the use of the agency model entails to the employment rights of vulnerable workers.

Ms Caroline Maguire (Law Centre (NI)):

I will address some of our key concerns and some queries that were raised by the Committee in a previous session. The key issue that we raised in our submission was what we see as a problem in the definition of an agency worker. We would say that that is unduly narrow and may serve to exclude the majority of agency workers in Northern Ireland. We welcome the fact that the Department is taking legal advice on that definition, so I will not go into any further detail on it at present, unless the Committee has specific questions on it.

I move on to maternity rights. Let me clarify an issue that arose in the CBI submission. There

was a comment made about the right to paid time off for ante-natal care. The current position at law is that only employees are entitled to paid time off for ante-natal care. Most agency workers are not employees, and therefore agency workers at present do not have a right to it. We welcome the extension of that right to agency workers and also the extension of the health-and-safety protection that is included in the draft regulations. However, we strongly feel that those rights should apply from day one and that there should be no 12-week waiting period.

That is particularly important in relation to health and safety. All pregnant workers have a right to a health-and-safety risk assessment from the moment that they notify their employer that they are pregnant. In relation to women working in an environment where there are possibly biological or chemical toxins, it is very important that pregnant women have such an assessment done as early as possible in their pregnancy. Where a worker does not have a right to be moved to suitable alternative work, or to be put on paid suspension if there is no suitable alternative work because there is a health-and-safety hazard, a worker may be tempted to hide the pregnancy because of the fear that a risk assessment may lead to her losing her job. An example of that might be a migrant agency worker working in agriculture or horticulture, where there may be an exposure to biological toxins. To avoid the risk of a pregnant worker delaying asking for a health and safety risk assessment, it is vital that the right to be offered suitable alternative work or to be put on paid suspension is essential from day one of employment.

It was confirmed by previous speakers that the right to statutory maternity pay already exists for agency workers in exactly the same way as permanent employees, as long as they meet the qualifying conditions. There can be a perception that statutory maternity pay creates a financial burden on employers, but that is not true. Statutory maternity pay is recouped by an employer from PAYE and National Insurance contributions that they would otherwise pay to HM Revenue and Customs (HMRC). The usual recoupment is 92% for most employers, but, for small employers, it can be up to 103%, which takes into account the administrative burden of statutory maternity pay. There is no financial burden associated with paying statutory maternity pay.

Contractual maternity pay is paid at an enhanced rate by some employers. The draft regulations exclude enhanced maternity pay from the definition of “pay”, and so it is not proposed to extend that right to agency workers. In our experience, no woman goes into a job at the moment and acquires an immediate right to enhanced maternity pay. We find that there are lengthy qualifying periods — usually a year, sometimes two — before a woman has a right to

receive enhanced maternity pay from an employer. If an agency worker has been working for an employer for a year or two and otherwise would qualify for contractual enhanced maternity pay, she should be paid it. As Daire pointed out, the use of agency workers in professional-type organisations in Northern Ireland is quite limited. Our experience is that those enhanced rights tend to be in higher-earning jobs as opposed to low-paid jobs.

At the moment, the right to maternity leave is limited to employees, so it does not apply to agency workers. The key point about maternity leave is the woman's right to return to the job that she was doing before she went on maternity leave. The regulations should state explicitly that, where a woman is working on an assignment that would last longer than the time that she will be off to have a baby, she should have the right to return to that assignment after she has had her baby. The current case law states that, if an agency worker is deprived of the right to return to an assignment because she has been off for pregnancy reasons, it is sex discrimination. By setting that out in the regulations, you are not creating a new obligation or right; you are simply clarifying the current status of the law. That certainty would be for the benefit of workers and employers.

We said that there is no justification for excluding expenses from the definition of "pay". Agency workers should be entitled to be reimbursed, in the same way as their permanent colleagues, for expenses that were legitimately incurred. Bonuses should also be included in the definition of "pay". Agency workers will be covered by the new rules for workplace pensions. Those rules are to be introduced in 2012, so it is not necessary for the provision of pensions to be covered by the regulations.

I am aware that there could potentially be some unease about Northern Ireland having different regulations compared with the rest of the UK or there being a patchwork of rights. An alternative way of looking at that is for Northern Ireland to be taking the lead on equality and legislative reform, which is certainly what we recommend. Thank you.

The Chairperson:

Thank you very much. Do members have any questions? While you are thinking for a moment, I draw members' attention to the fact that the consultation was provided to us in the pack for our meeting of 1 June. The details are available, so I apologise to the Department if I misquoted. We will not take too long on this issue. I compliment you on your submission and the detail of it. It

has been very effective in providing clarity, and that may be reflected by the fact that there are not too many questions.

Mr P Ramsey:

It is a well defined and comprehensive presentation. Some of your evidence is at odds with what we heard previously, so that gives us a dilemma. How many agency workers have sought advice and guidance from you? How many have you formally represented? Do you have any figures or statistics on that?

Mr D Murphy:

Unfortunately, we do not break down our advice statistics for agency workers. What I can say is that there are standard questions that we ask at the start of any query. One of those questions is to try to identify the employment status of the person, because, if they are an agency worker, it quickly becomes apparent that they are not going to have the same level of rights. As Kevin said, your heart sinks when you realise that they will not be able to claim unfair dismissal, no matter how unfairly they have been treated, and you know that their options are going to be limited.

Some of the material before the Committee is inevitably anecdotal, and the statistics may not be as comprehensive as they could be. I will respond to some of the points raised by the CBI. I can give a couple of potential examples, from either end of the scale, about agency workers being mistreated.

The Chairperson:

There are injustices in any examples, so we will just keep it general because time is tight.

Mr D Murphy:

I understand. I have had the experience of representing a pregnant migrant worker who put in a sick note saying that she was pregnant, and the agency took her off the assignment the next day. At the other end of the scale, we have experience of representing agency workers who have been working in large companies and government agencies under agency arrangements for up to 20 years. Those people are still agency workers and could be sacked tomorrow or removed with no recourse. That gives you an idea of their vulnerability.

The Chairperson:

It may be useful to provide some of that information prior to the debate. Members may want to talk about that.

Mr D Murphy:

Flexibility was mentioned. Our experience is that nobody wants to go into a job knowing that they do not have security. Again, I will challenge the CBI to come back to us and show on what basis it is saying that people want to work as agency workers.

The Chairperson:

People will try to put forward arguments to try to strengthen any particular position they take. However, there is a valid argument that, by proxy, industry needs some flexibility, particularly in recessionary times, and it is a question of finding a balance between what the industry needs to survive for the long-term future and how individuals are treated with fairness and equity. I will move quickly on. I want to bring forward the Department, but Jim has indicated that he wants to speak. Does anyone else wish to speak?

Mr McElduff:

I want to seek reassurance that the Hansard report will be available before the debate.

The Chairperson:

I will make every effort to ensure that we get that, but, short of holding their heads under water, I am not sure what I can do to them. However, we will do our best. If Hansard could doctor that last bit, that would be great. *[Laughter.]*

Mr Allister:

I have one quick point. You took issue with the fact that the costs in Northern Ireland will be comparable to GB, but you did not give us the benefit of your assessment of the costs in Northern Ireland. You went on to say that, in part, it is because we have different employment pattern with smaller companies. Of course, the corollary of that is that those smaller companies that employ agency workers can even less afford the extra costs because they are small companies. Is that right?

Mr D Murphy:

Unfortunately, we are not in a position to be able to generate statistics or exact analyses.

Mr Allister:

So, on what basis do you provide the challenge that the figures are not right?

Mr D Murphy:

The figures that the Department has used are based on employment patterns in GB. It is widely acknowledged that there are more small businesses as a percentage of industry.

Mr Allister:

You are not factoring in the fact that, proportionately, the cost to a small business is higher than the cost to a big business.

Mr D Murphy:

In my presentation, I was trying to address the fact that I believe the cost for small businesses is proportionately much less. The cost is likely to fall on large business, because there is more of a pay differential between employees and agency workers in large companies.

Mr Allister:

Do you think so?

Mr D Murphy:

Large companies are more likely to be employing people at above the national minimum wage. The statistics in the impact assessment show that many fewer agency workers are employed in small businesses.

Mr Allister:

I understand that point.

Mr D Murphy:

The wage cost for a permanent employee in a business with fewer than 10 people is shown as being less than the wage cost of an agency worker. The regulations in respect of pay would have no adverse impact.

Mr Allister:

A small business is working on a much smaller turnover. Therefore, any increase can be disproportionate to that of a large company.

Mr D Murphy:

The figures show that there would be no pay increase in that there would be no disparity. However, I feel that there is a valid point about red tape around having a 12-week period, for instance, and maintaining the difference between agency workers and employees. If parity were delivered, there would be much less red tape and much less associated cost.

Ms Maguire:

Our experience of advising employees across the board who work for small business is that, generally speaking, they are not on high wages. A lot of people are working on the national minimum wage, and they do not have other contractual benefits. So, our argument is that there would not be a huge cost if an agency worker were brought in and given parity, because the permanent employees who are working for small businesses would not have significant benefits in any event.

The Chairperson:

Thank you for attending today's Committee meeting, and I thank members for the discussion. The benefit of doing this is that it will be in Hansard, and we will make sure that the Hansard report of the meeting gets to the Minister and the Department, but, hopefully, the various issues will be brought out in the debate. If there is any information that you think we should be aware of, over and above what you have given us, please send it to the Committee Clerk, and we will get it out beforehand.

Ms Maguire:

Thank you.

The Chairperson:

I invite the departmental officials to the table. The paper provided by the Department is in members' packs. Tom and Conor are here again to take us through this.

Mr Tom Evans (Department for Employment and Learning):

Thank you for inviting us to the Committee meeting. From the Department's perspective, it has been a very interesting session. Some things emerged that probably had not emerged in the consultation.

We wrote to you on the back of our previous meeting to give you some indication of our engagement with the trade unions. Obviously, the trade unions, through the Northern Ireland Committee, have given evidence. We had some discussions, and they were referred to as attempts to agree how to take forward the agency workers directive. That was prior to the emergence of the social partner agreement between the CBI and TUC.

The former Minister met the Northern Ireland Committee representatives on 25 January of this year, and a number of issues were raised. One issue related to the concern about the application of the social partner agreement between the CBI and TUC. This morning, there was a strong view that that could be at a regional level. We have taken legal advice on that, and the Minister made it clear at that stage that there was no flexibility to agree it at a regional level. There were two issues in the consultation process: first, the structural issue around the social partner agreement; and, secondly, the detail of the directive and how it is being implemented. The unions raised concerns about the need for a strong, robust enforcement regime, particularly where there were concerns about agency workers not being adequately protected. Those concerns were raised today as well. We believe that there is legislative provision in place to do that sufficiently.

We also have our own inspectorate, which inspects agencies, particularly to make sure that they follow the conduct regulations that govern employment agencies. Most recently, it has taken action right through to tribunal to prohibit an agency for almost 10 years. That inspectorate is moving forward with a risk-based approach to inspections. There is probably less value in inspecting annually or having agents follow every procedure and quality standard and looking at where potential risks may lie.

The unions argued that there would be a greater positive impact for agency workers if it was a day-one application. As you will understand from our consultation, the Minister determined that we would move forward on the basis of the social partner agreement for the 12-week derogation. It is believed that there are significant positive impacts even under the 12-week derogation, and companies availing themselves of that derogation will reduce the cost by the order of almost 60%.

When you have an annual cost of almost £17 million, taking that down was a consideration.

Those were the sorts of issues that we explored in the correspondence. We have noted all the issues, and we would appreciate a copy of the Hansard report. We have noted some of the comments, and we are happy to address some of them if you think that that may be helpful.

The Chairperson:

Tom, that is probably the right way to go forward, but I will let members in if they have specific questions to the Department. I have a few. Members should not feel obliged to ask unless they really have a question, but please indicate if you have a question.

Mr Douglas:

Tom, you mentioned that Northern Ireland had the inspectorate for various agencies. The point was made previously that there could be rogue agencies. What is your experience of that?

Mr Evans:

If you do not mind, I will pass over to Conor because he leads on that.

Mr Conor Brady (Department for Employment and Learning):

I will give you a very short background to the inspectorate. It was effectively set up about three years ago. Since that time, we have been carrying out what we call routine inspections. We identify every single agency that we can in Northern Ireland and go out and carry out a full inspection of that agency to ensure that it is compliant with the relevant legislation.

As regards rogue agencies, to date, we have made three applications for prohibitions and we have carried out one prosecution. All of those have been carried out within the past year or so. The process of routine inspections has enabled us to identify particular areas, perhaps geographic, where they may be a preponderance of migrant workers. There are particular occupational sectors, such as acting and modelling, where we find greater rogue agents. That has informed our process, which is now starting this business year, as Tom mentioned, to take a more risk-based approach to inspection. We are confident that there is a general level of compliance with legislation, but we fully accept that there is the potential for rogue agents.

We are a relatively new regulatory agency, and we are fully aware of the need to let people

know about us. We accept that there are a lot of people working out there, particularly migrant workers, who are probably not aware of the inspectorate, its role and the redress that they can seek. As such, over the past eight months, we engaged with a number of other agencies, including the GLA, which was mentioned, to carry out information seminars with organisations that have a specific focus on looking after the interests of migrant workers to let them know about the inspectorate, what we do and what further action, such as prosecutions and prohibitions, we can carry out.

Mr P Ramsey:

My query was similar to Sammy's in respect of policing. Do you carry out inspections of a random selection of those agencies? How does that process kick in? Presumably, a licence is required to act as an agency. How is that granted?

Mr C Brady:

I will take your second question first. In previous years, there was a requirement to have a licence. That stopped, I think, around 10 years ago. I am not entirely familiar with the background to the removal of licences for all agencies because it precedes my working with the Department. The Gangmasters Licensing Authority, which Gary mentioned earlier, monitors a certain number of occupational sectors. It was formed in the wake of the Morecambe Bay tragedy. It looks after a number of agencies, such as those involved in cockle picking, shellfish, mushroom pickers and general agricultural and horticultural areas. The GLA requires agencies to have a licence. However, they deal with probably a much smaller number of agencies that supply workers to those particular occupational sectors. My inspectorate looks after approximately 250 different agencies, whereas, if I remember correctly, the GLA looks after 25. So, it is a question of manageability with regard to the licences.

Going back to your first question about how the risk-based approach is looked at: we work very carefully with other regulatory agencies, such as the GLA, the Regulation and Quality Improvement Authority (RQIA) and HM Revenue and Customs' national minimum wage inspectors. We exchange a lot of information on inspections that we have carried out into agencies or individuals that we might have concerns about and try to carry out joint inspections in certain geographical areas.

We are also informed by our previous routine inspections. If, for example, we have seen a

number of agents who simply have not been compliant — as we have, particularly in the acting sector — we will focus on the small number of agents who operate within that particular sector. As well as that, as people become more and more aware of the inspectorate and the work that we do, we are fed greater amounts of information by members of the public and by competitors who operate in certain sectors. Effectively, we take our information and intelligence from a variety of different networks as well as our own experience.

Mr P Ramsey:

How many inspections took place in the past 12 months?

Mr C Brady:

I cannot remember the figure off the top of my head, I apologise.

Mr P Ramsey:

How many agencies or individuals have you sought to discipline or take action against as a result of those inspections?

Given the NIC-ICTU position on the agreement, is there a rationale for having a regional social partner agreement going forward?

Mr Evans:

We are stymied by a structural issue, because the UK is the member state and the social partner agreement is with the national social partners. The issue is bigger than the transposition of this individual directive. I think the issue was raised at the last Committee meeting we were at. I understand the frustration of the regional partners. We are not unhappy that the Committee has raised the issue, and we will raise it. However, with the TUC and the CBI, if we wanted to avail ourselves of the social partnership we had to avail ourselves of what was agreed. So, our hands and the Minister's hands were tied on that.

The Chairperson:

That is statement rather than fact. You have your legal opinion, but other people have sought other legal opinions on that.

Mr Evans:

I agree. What I am saying is based on the legal advice that we have. You are absolutely right.

Mr P Ramsey:

I am not going to labour the point, but we may have to come back to the issue of acknowledging the uniqueness of Northern Ireland and the importance of having a regional agreement here.

The Chairperson:

Tom and Conor, you have taken notice of what has been said in the debate. Some really good issues have been brought up. Would we be able to do another statutory rule at another date, such as a year from now? Could that happen, given that you have a timeline within which a minimum has to be done?

Mr C Brady:

Certainly, as issues evolve, whether that is with regard to policy change or case law, amendments can be made to any statutory rule. So, if, for example, in one year, 18 months or two years' time we want to revisit the regulations as drafted, it is possible to make amendments, as it is with any subordinate legislation.

Mr Evans:

The only caveat is that we need to make sure that we fully transpose the directive so that we do not risk infraction proceedings or any legal challenge.

The Chairperson:

We have taken note of that. It will be interesting to see how the Minister responds to the points raised.

Tom and Conor, thank you very much. It will be an interesting debate, and I am grateful for your acknowledgement that the Committee's work has been helpful in teasing out issues in certain areas that had not been brought to the fore previously. Hopefully, that will assist the Department and the Minister in coming up with something, and we will see where it goes. Thank you very much.