



Northern Ireland
Assembly

Committee for Employment and Learning

**OFFICIAL REPORT
(Hansard)**

**Review of Employment Law:
Departmental Briefing**

25 April 2012

NORTHERN IRELAND ASSEMBLY

Committee 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
Ms Michelle Gildernew
Mr Chris Lyttle
Mr Fra McCann
Mr Barry McElduff
Mr David McIlveen
Mr Pat Ramsey
Mr Alastair Ross

Witnesses:

Mr Tom Evans	Department for Employment and Learning
Mr Colin Jack	Department for Employment and Learning

The Chairperson: We welcome Colin Jack, director of the strategy, European and employment relations division of the Department for Employment and Learning (DEL), and Mr Tom Evans, head of the employment relations policy and legislation branch. You are very welcome, gentlemen.

Mr Colin Jack (Department for Employment and Learning): Good morning. I thank the Committee for the opportunity to brief members on the Minister's plans to engage with stakeholders in employment relations on the scope of a review of employment law here. We mentioned it briefly to the Committee on 29 February, and Tom gave an outline of the division's general work on employment relations. Over the past number of months, the review of employment law has been the subject of a fair bit of discussion among stakeholders, particularly in the business community but also in trade unions and other areas. That has been largely, although not entirely, stimulated by the work being done by the UK Government to review employment law, which has raised significant expectations about how things might change here.

I will give the Committee a bit of general background, and Tom will go into a bit more detail on the issues in the discussion paper and how we will manage the engagement with stakeholders. The purpose of the discussion paper is very much to scope the employment law review. It is a very large and complex policy area. Some definite announcements have been made by the UK Government about what they are doing to change employment law. The position in Northern Ireland is that employment

law is devolved. We are the only devolved Administration with responsibility for employment law, so there is an opportunity to do something here that meets the needs of Northern Ireland. The Minister has taken the view quite strongly that he does not want an automatic read-across of the changes that are being made in UK employment law. He is, through the paper, seeking views from stakeholders here on the changes that the UK Government have announced, but that does not mean that he thinks that those are the best or the only things that can be done here in Northern Ireland.

As for the process up to now, the Minister has had a number of exploratory meetings with social partners, the Confederation of British Industry (CBI) and the Northern Ireland Committee, Irish Congress of Trade Unions (NICICTU). It is fair to say that those stakeholders are coming at it from quite different perspectives. Business interests are keen to have a streamlining of employment law; they are keen to follow the changes that are being made at GB level as far as possible. Employee representative organisations take a different view; they are concerned about any attempt to dilute the rights of individual employees. The Minister wants to seek a balanced way forward. It is also fair to say that the way in which the UK Government have approached the review of employment law in GB has raised a lot of expectations. However, in discussions with officials in the Department for Business, Innovation and Skills (BIS), which is responsible for employment law in Whitehall, it has become very clear that the review of employment law is a long-term project. On the Department's website, it is now described as a review that will last the entire term of the current Parliament, from 2010 to 2015, although it was not initially described as that. So that review will take them a significant amount of time to complete.

In taking this forward, Northern Ireland also has some advantages of scale. The commitment in the economic strategy describes a review of employment law:

"which will stimulate business confidence while maintaining the rights of individual employees."

In the engagement that we and the Minister have already had with stakeholders, it has become clear that, in trying to meet that commitment, not everything that we might do to change the current arrangements would change the primary legislation. Quite a lot of administrative changes are potentially at our disposal. Work has already been done with the fair employment and industrial tribunals, for which we are responsible. Work has been done to review their rules and make some changes to how their procedures operate. Such changes are already sending out the message that employment law and the way that tribunals in particular work does not have to be as bureaucratic or intimidating as it can be currently.

I turn now to the timescale for the engagement exercise. The Minister wanted to give the Committee sight of the paper before it is issued for consultation on 1 May. There will be a 12-week consultation that will last until 20 July. After that, we will want to look at what issues have been identified as important to stakeholders.

The Chairperson: Colin, you have been talking for a while now, and I am really not clear about what exactly you want us to consider.

Mr Jack: Tom will go into more detail on the proposals in the paper. We are looking for views on what the most important issues in employment law are and what issues a more far-reaching review of employment law needs to cover. That is what I am looking for your views on.

The Chairperson: Let us get on with it, then.

Mr Jack: We do not necessarily need all the views of the Committee today. We will issue the paper on 1 May. We are looking to have the comments back by 20 July. So, we are happy to answer any initial questions today, and Tom —

The Chairperson: I want to hear from Tom now. Then, between the two of you, I want to hear what bits the Minister is not minded to go along with and what bits he is minded to go along with so that we can start to form a view on that. However, we will hear from Tom first.

Mr Tom Evans (Department for Employment and Learning): I will briefly cover the discussion paper's content and structure. As Colin said, the UK Government have announced a significant number of initiatives and are just starting to take them forward. In developing the discussion document, we tried to get the balance between giving the right level of detail and not overloading people. So, the document is structured around three broad themes that will be meaningful to stakeholders in Northern Ireland. They are the early resolution of disputes and how that can be achieved and improved; efficient and effective employment tribunals; and measures to reduce the regulatory burden of employment legislation. Those themes will have a resonance with stakeholders in Northern Ireland, and we will ask them to comment on them rather than on every individual proposal.

In asking us to develop a discussion paper, the Minister was determined that the review should build on what is already happening, rather than just stop everything and replicate what GB is doing. Therefore, for each of the key themes, the paper sets out the current developments in Northern Ireland under those initiatives. That serves two purposes. First, it raises awareness among stakeholders who may not be so attuned to such issues and who may think that the GB proposals are completely new and that Northern Ireland has not been taking anything forward. Secondly, it will help to focus our discussion with stakeholders on the measures and allow them to think about how we can add value to what we are doing in Northern Ireland.

Under the three themes, I will briefly highlight some of the key things that are already in place in Northern Ireland and which are fairly consistent with the GB proposals. The Labour Relations Agency (LRA) has an enhanced pre-claim conciliation service in place. It is well bedded down now and is very much about early resolution. That came out of the Employment Act (Northern Ireland) 2011, which came into effect in April of last year. There is an increased focus on the use of mediation, not just with the Labour Relations Agency but through stakeholders and employers. That applies not only to employment law but right across the various policy areas. The Minister is about to clear an enhanced arbitration scheme that the Labour Relations Agency has developed. Currently, there are two arbitration schemes, one that covers unfair dismissal and another that covers flexible working. They are almost redundant because, if you want to use them but your dispute has other aspects, you have to take the other aspects to an employment tribunal. So, they have never really been used. The new enhanced arbitration scheme, which will have to come to the Committee and will be debated in the Assembly, will cover all discrimination and non-discrimination jurisdictions, so it gives people an absolutely viable alternative to an employment tribunal. That will come to the Committee.

Under the theme of effective tribunals, the industrial and fair employment tribunals here have introduced, through the tribunals president, a robust case management system and a rigorous postponement policy. Through the 2011 Act, we removed the requirement that, if someone had a fair employment claim but also had other non-fair employment issues, they had to have two separate tribunal hearings. Those can now be amalgamated for efficiency and effectiveness.

The third theme is better regulation measures. Again, we have put a number of measures in place for that. Coming out of our review and discussions is the fact that small and medium-sized enterprises (SMEs) are struggling to cope with their responsibilities under employment law. When we spoke last, we said that we had commissioned a research project. The consultants are now working on that with us and some of the stakeholders to determine the kinds of constraints and difficulties that SMEs face and to look at what government and non-government bodies already provide so that we can see whether there are any gaps or whether you could use the system better. That work is to come with recommendations on how SMEs can be better supported.

The second issue is that we are about to initiate a pilot review of employment regulations. Colin talked about a commitment in the economic strategy to review all employment regulations over the next three years. That is a huge undertaking. We are identifying three pilot regulations at this stage, which is fairly substantial work. We will use better regulation principles to see whether the regulations are required, and, if they are, we will consider whether they can be better drafted so as to provide flexibility both for employers and the employee. The review will also look at the support of admin arrangements. We intend to establish a stakeholder group of employers and employees who understand these regulations, and we have entered into discussions with the universities through the school of law at Queen's to see whether the two universities can help us by providing their expertise. We are doing this

with a view to developing a mechanism for reviewing all of the employment legislation over the next three years.

We did not want to be directive about how stakeholders should respond to the document, but we offered a number of prompts to give people a framework. It is really about whether the individual GB proposals should be consulted on in Northern Ireland. If so, what are the key issues? Are there alternatives that are more appropriate for Northern Ireland to explore, and is the status quo the preferred option on some of these issues? One of the fairly controversial ones will be that, on 6 April this year, the UK Government increased the qualifying period for taking a claim for unfair dismissal. At this stage, the Minister wants to take a view from stakeholders on that and, obviously, take a view from the Committee on the range of issues. Ultimately, it is about asking this question: what are the priority issues that the Northern Ireland review of employment law should look at? The Minister wants to get a clear steer from stakeholders on what the key issues are for people in Northern Ireland.

As Colin said, the Minister wants the Committee to have an advance copy of our engagement strategy before it goes out. It will go out to all stakeholders on 1 May, and we will then initiate a programme of meetings with stakeholders. Already, some stakeholders have been approaching me about meeting to discuss some of the GB proposals. I have indicated that the Minister is about to launch a discussion, and they are keen to arrange some multiagency environments. One is the Law Centre, which has arranged that with the independent advice sector, and we will replicate that. We have also reconstituted the steering group of social partners; that is, the CBI, the Federation of Small Businesses (FSB), the Labour Relations Agency, the Equality Commission and NICICTU, which advised on the consultation on the dispute resolution review. Those organisations have agreed to be a reference point for this exercise as well. As I said, we will be meeting very soon.

The purpose today is to get a sense from the Committee, either today or in the future, of what the Committee thinks are the key issues. The Committee may want to look at specific issues. As Colin said, the formal engagement will happen between now and the middle of July. We will then analyse the feedback from the various public gatherings and individual meetings, and any written responses, and provide those to the Minister. Then, it will be for the Minister to determine what the terms of reference and the scope will be for the review of employment law in Northern Ireland. That is where we are.

The Chairperson: Anything else, Colin?

Mr Jack: No. We are happy to take the Committee's questions.

Ms Gildemew: You are very welcome. First, I want to put on record that I am happy that the Minister is taking his own path on this and is not doing a cut-and-paste job. The last time you were here, we were fairly critical of the new agency regulations and how there had been no local response to that.

Colin, you said that there will be very different approaches. So there will be, because you will have the trade unions and others battling for the employees and the CBI and others battling for the employers. It is going to be difficult to get consensus, but it is important that we do. It is also important that we recognise that the whole economy here is different. For example, there is our reliance on SMEs; something like 90% of our employers are small and medium-sized enterprises. What might suit in Britain will not necessarily suit here. That is the main thing.

I worry about the increase in the qualifying period for unfair dismissal in the British legislation. It sounds like they are already going down the route of looking to the employers' rights. I think that a number of us around the table would be very keen to look at the employees' rights. To that end, I know you mentioned NICICTU, but is the Law Centre a stakeholder? I found the Law Centre's contributions to the Committee very helpful on previous occasions. I think we would want to hear what it has to say.

I am pleased that the Minister is trying to find his own way. We will try to be as helpful in shaping that as we can, but, for me, the rights of employees have to be paramount.

Mr Jack: Thanks for those comments. As well as employers and employees, a key group of stakeholders is the lawyers. Some of the concerns we hear raised are that the current system is perhaps balanced in such a way that the lawyers are more involved than ideally they need to be. There are aspects of employment law in which we need to move the processes towards more informal resolution to issues. I will certainly take that into account. The Law Centre is a key stakeholder for us. Indeed, as Tom mentioned, we are in discussions about it facilitating some events as part of the engagement process that we are taking forward.

We will very much take into account the dominance of SMEs in the economy here. Small and medium-sized enterprises sometimes do not have a lot of expertise in detailed issues of employment law, compared with large companies that have in-house lawyers and so on. Various supports are provided for them. Some of the stakeholder events that have already happened, organised by the sectors themselves in the run-up to the Minister launching this exercise, have highlighted that there can be perverse incentives, even in the way that insurance companies operate hotlines for small businesses that refer people straight to lawyers rather than other forms of dispute resolution. So there are many complex issues that we need to look into, and we look forward to hearing people's views.

Mr Evans: The point about employer versus employee is important. We have met all the stakeholders and are encouraging the employer representative bodies and the employee representatives to meet. That is one of the benefits of getting together the social partners steering group, because the reality is that the two groups come from very different perspectives. However, we can get them in a room and tell them that the Minister will not be able to accommodate the views of everybody in that room if they sit in their respective camps. There will need to be compromise. We need to look for consensus and a shared solution. That is why we are not seeking to meet people on just an individual basis. People will present their own perspective. Why would they not? So we get them in a room and give them the responsibility to come up with solutions. That is where the discussion paper takes us, and that is what we did in the dispute resolution review.

Mr Ross: Was Northern Ireland consulted when the national Government's BIS was coming up with its proposals? Was there any input from our Minister in the drawing up of those proposals?

Mr Jack: Officials there would certainly keep us informed about anything that they were going to do, and there is formal inter-Administration correspondence about that. However, employment law is a devolved matter in Northern Ireland, so things that are done in Whitehall do not automatically read across to here. We have ongoing engagement with BIS officials. Indeed, Tom and his team have had a series of meetings with them.

Mr Ross: When BIS announced its proposals, businesses in Northern Ireland were concerned that we were suddenly falling behind reform in GB. Given that you were aware of the proposals that were being formulated in GB, why are we only now at a stage where the Minister is going to talk to stakeholders? We are not even in a position of having any proposals from the Minister. Given that we knew that GB was going to come up with proposals, why have we not been doing this work earlier so that we are at the same level as GB instead of falling behind and taking many months before we even have any proposals to look at?

Mr Evans: The UK made a public announcement in November last year. However, nothing came out before the end of January, and that was the response to the consultation on resolving disputes in modern workplaces. To be quite honest, it was difficult to get information. The reality was, I think, that Ministers were not happy. At that stage, they were into sensitive discussions with the Trades Union Congress (TUC) and CBI. We went across at the start of February to talk to all of the policy leads, at which stage we realised that there was not the same urgency about matters other than unfair dismissal. We have discussed this with employer representative bodies and employee representative bodies. So, we have been having discussions. This is not new. We started talking to them at that stage, and I think that they are very comfortable with the way in which we are moving forward. They think that it is a measured approach. Even on the employer side, I think that they realise that some of the stuff around protected conversations is long term and will require primary legislation. They have not gone out to consultation on it. I understand the point that you are making, but we have been very proactive. The Minister does not want to just dance to the tune of the UK review; he wants to take a

Northern Ireland perspective. The structure of our economy is much different, and we will take a more measured view of the areas that we want to review and of whether we want to do different things.

Mr Ross: On that point, the rationale behind the Westminster reform is that it will reduce regulatory red tape, which politicians here always talk about but are often not so good at doing. Westminster has said that that issue is particularly relevant for small companies, and we have said that SMEs dominate our economy. You would imagine, then, that the reforms would be particularly useful in Northern Ireland because we have so many small companies. We all know that it is not Government who ultimately create jobs; businesses and employers create those opportunities. If we have an opportunity to allow companies to create more jobs and to have more confidence in creating jobs, we would obviously want to advance that as soon as possible because we have quite stretching job creation targets. We all know that we have smaller businesses, but, as has been said, that is part of the rationale behind the reforms in Westminster anyway. What other aspects that are specific to Northern Ireland are we considering at the moment?

Mr Evans: There are two things. First, the SME research project that I mentioned was not generated by the UK Government; we gave a commitment to do that, and that came out of the dispute resolution review. Secondly, the pilot on reviewing employment regulations has come out of the work that we are doing with the Department of Enterprise, Trade and Investment (DETI) and the work that we have been doing under the Better Regulation strategy. Previous consultations highlighted that we should look at policies and our key customers or citizens in business and look to lighten the burden. Those two initiatives were not generated elsewhere, and we have already been taking them forward. The Minister, through the economic strategy, which was a driver to the Executive's economic strategy, decided that the issue was big enough because the business community said that employment regulations are particularly difficult.

The reason why there is a measured approach to the issue of unfair dismissal is that we looked at the impact assessment, and it talked about promoting business confidence and providing employers with the confidence to take on staff. The regulatory impact assessment was not able to evaluate whether that is the case. There are no positives in the regulatory impact assessment as regards increasing the unfair dismissal qualifying period. In fact, it has been changed six or seven times in the past 10 years. The Minister wants to see whether there is any positive impact or a stronger rationale —

Mr Ross: But surely you would need a fairly long period of time to measure that. Are you suggesting that we wait a year or two for evidence of whether it has had an impact on firms in GB taking on more employees?

Mr Jack: That evidence will take time to emerge, and we will scrutinise it as it emerges. There is a very complex interplay between the incentives for businesses to create jobs. The CBI published a report at the beginning of the year. It undertook a survey of its members, and it had certain findings. On the issue of comparing the impact of reducing the eligibility period for an unfair dismissal claim from two years to one with the impact of reducing corporation tax, the message that we get is that the latter would have a bigger impact.

We get a bit of a sense from some of the stakeholders, even from stakeholders in GB, that they feel that the UK Government have made changes that grab headlines and have a symbolic impact but that they do not expect some of the impacts to be all that significant. Tom mentioned the number of times that the qualifying period for unfair dismissal has been changed. One representative from the CBI said that every time it was changed, economic growth happened afterwards. We need to monitor the impact of that, but we want to emphasise that the Minister wants to take a more holistic approach to all the issues and to what would really make a difference to business confidence. We have already had engagement with the business sector, which it has welcomed. From what it is saying to us, it seems that it is satisfied that we are moving in a direction with which it is comfortable. The Minister has also been engaged with the unions.

Mr F McCann: Thank you for the presentation. It was certainly interesting. Michelle touched on some of the stuff that I was going to raise. You may be talking about mediation between business and trade

unions, but, by the end of this, the Committee may need a bit of mediation as well because there is a wide difference of opinion.

We heard about consultations and reviews. Over the years, I have become fairly cynical about them because what you get in the initial document is usually what will be rolled out in the end. The stuff going through the Assembly at the minute called welfare reform is really about welfare cuts. It is just a way to dress things up. The starting point for the paper is a review of employment law. To me, that usually means a reduction in the rights of workers, and most of those rights have been hard fought for over a lengthy period. I am glad that we will have control over what comes out at the other end, and I hope that what comes out will be stronger rights for workers and something that will allow businesses to move forward.

The paper mentions the early resolution of workplace disputes and efficient and effective employment tribunals, and everybody would want that. However, the third proposal, which is about measures to reduce the regulatory burden of existing employment legislation, covers up a multitude of sins. I have followed some of the stuff going through in England. To me, it is about a reduction in employment rights. It is about trying to reduce the minimum wage to make life easier for businesses and trying to make it easier to sack people. There are reduced redundancy packages for people. I have quite a number of concerns about where we could end up. We live in a low-pay economy, and most of the stuff that we buy is more expensive here than elsewhere. I am concerned that this proposal will have a detrimental effect on employees and will reduce the power of the trade unions.

I have a concern about the date. I am not saying that this was intentional, but people will be cynical about the fact that 20 July has been chosen as the closing date for the consultation. Usually, consultations end in the middle of a holiday. July is a holiday period, so that cuts the amount of time that people have to respond. The closing date is usually 1 January, 28 December or sometime in July. People can be forgiven for being cynical about matters like that. There are people who may want to respond but who are not able to because of the dates, and I would like that to be taken into consideration.

Mr Jack: The Minister has emphasised that he wants to get the right balance between encouraging investment in job creation, reducing the regulatory burden and protecting the rights of employees. We will be engaging with all the stakeholders on that. The Minister has emphasised that he wants to strike a balance.

With regard to 20 July; this is a scoping paper rather than a full-blown consultation document. We are at the stage before the stage of making firm policy proposals. We would expect that, when we do make firm policy proposals, we will have a further, formal consultation period.

Mr Evans: It was not a deliberate decision to go into the quiet period. We have been and will be in discussion with all the key stakeholders. I had discussions this week with two stakeholders, and they said that they want to run events in the last two or three weeks of June — that is key — and then feed back. The date of 20 July is not a firm line in the sand. We will continue to absorb any —

The Chairperson: That raises the question: why are you doing it in this format? You have no questions going out for consultation. This is a scoping exercise, and you are going to come up with proposals. Why do you not just come up with proposals? Why not just do it as a normal consultation? Why the delay?

Mr Jack: It is partly because we want to be very open with all the stakeholders. We want to get views from them about the issues that are causing them problems, because we are getting the message from businesses —

The Chairperson: You are actually saying that this is a genuine consultation, unlike the normal one that Fra was talking about, where you tell us what you are going to do and we agree to it.

Mr Jack: No. I would describe it as a pre-consultation. Because of the nature and complexity of the issues, it is important that we get them down on paper so that people can see what the issues are and are prompted to —

The Chairperson: We are not really sure what your proposals are. There are bits of the paper that I liked. The review of what has gone on before is quite good, but how big is the scope of the changes? What things are you not going to do that they will do in GB and what things do you suspect that we need to look at?

Mr Evans: That is where we will listen to the stakeholders, who know about this. Take protected conversations as an example. Before this work began, we met a number of bodies about changing the name of agreements from "compromise agreements" to "settlement agreements". Their words were, "What's in a name? The real issue is the underpinning processes." The same applies to protected conversations. Both employee and employer representatives have said that they are not sure whether the issues can even be framed legally. It is about getting that dialogue going. The Minister may then decide that he will not consult on something because stakeholders on both sides have said that it is not a viable or sensible option. It is about getting a focused consultation on the issues that are important to the Northern Ireland community. We could have issued a consultation document on every proposal, but everybody has consultation fatigue; this is about getting priorities.

The Chairperson: All right, Tom, we have got that point. Fra, are you happy with that?

Mr F McCann: I will have to leave it there. I remain as cynical as ever, but I am willing to give them the benefit of the doubt. I think that, in the end, we may have control over what comes out at the other end of the consultation. I think that the rush is on in England to lessen workers' rights, to make it easier to sack them and to diminish the minimum wage, so I have real concerns.

The Chairperson: I think that, as you said, you would probably agree that everybody would support the idea of getting a quicker resolution to matters. There is some frustration; a system that takes forever does not help anybody. So, there may be some things that we can look at.

Mr F McCann: I do not disagree, but those affected by the outcomes of tribunals also have rights, and they may want to take their case —

The Chairperson: I agree with that and looked at that. However, your point was that we do not like consultations ending in the middle of a holiday period. The response was that this is a pre-consultation and that we will have another look at the issues later. Do you want to go down any other line of questioning?

Mr F McCann: I will wait with bated breath.

The Chairperson: Do not do that. We value you too much and would not want you to pass away on us.

Ms Gildemew: Do you think he would not come back for air, Basil? *[Laughter.]*

Mr F McCann: I was just thinking of Barry going to a computer in Benidorm to send a response on 19 July.

The Chairperson: I was waiting to hear his views on STEM subjects yesterday.

We have some business a wee bit later on, at midday, so I will try to keep as tightly as I can to our timetable.

Mr Allister: I want to focus on some of the buzzwords in the Minister's foreword. He talks about developing "regional solutions" and "a NI-specific policy solution". I then look in the document for the drivers for those solutions, only to find it all but silent on that. What are the drivers that cause the Minister to think that we need a "regional solution", whatever that means?

Mr Jack: The Labour Relations Agency organised a seminar with a wide range of key stakeholders in, I think, March. Certainly, one of the things driving this review is the UK Government's commitment to review employment law, but another driver is the general sense among business and trade union stakeholders that, yes, they want changes but they do not want to replicate what the UK Government are doing. They see some of the changes being made at the UK level as cosmetic or not having the desired impact.

Mr Allister: What is it that they do not want to do? Is it the introduction of an increase in the cost award to above £10,000? Is it the suggestion of lodging fees, hearing fees or pre-hearing deposit options? What is it?

Mr Jack: There is a range of issues. Fees, for example, have featured as an issue in public debate at the UK level. In fact, as the document mentions, some mechanisms are already in place to act as, I suppose, disincentives to bringing vexatious cases to tribunals.

Mr Allister: They already exist.

Mr Jack: They already exist, but, historically, they have not been used. For example, if either the employer or the employee does not have a strong case and the tribunal takes an early view on that, the other party in the tribunal can ask for a deposit hearing. Those mechanisms are increasingly being used. Part of the purpose of having this exercise now is to reach a better understanding of what is possible under the current framework.

Mr Allister: Yes, but does this not break down into two issues? There is the issue of whether or not, across the United Kingdom, you have common employment rights, and within that category is the question of whether you need to be employed for 12 months or 24 months before you have the right to go to a tribunal. Then there is the issue of the localised mechanisms of how your tribunals operate. That deals with, for example, whether the limit on costs should be £10,000 or £15,000 in one part of the UK or elsewhere. Those are merely mechanisms, and they do not impact on the commonality of the fundamental rights that workers have or do not have. Is there a driver that says that the fundamental rights of workers should be different in Northern Ireland than they are in the rest of the UK?

Mr Jack: I do not think that there is a driver saying that they should be fundamentally different. The driver is that, in some quarters, the current framework of employment law is perceived as being a disincentive to companies to create jobs and, on the other hand, the whole system of industrial tribunals, which are seen as almost the default place to go to get disputes resolved, is seen as being intimidating for workers and for those taking cases. There is a general feeling that it is the system that is —

Mr Allister: Take the threat to increase the amount of costs that can be awarded against an applicant, the fact that he would be charged for hearing fees and that a greater deposit would be required; all of that would be diminishing, would it not?

Mr Jack: Depending on the changes that were made, they could advance the interests of the employer or those of the employee. We are trying to find a balance.

Mr Evans: If there are entitlements right across the UK, the Minister would not want to diminish them. You made the point about increasing the qualifying period, and the Minister wants to listen to stakeholders before introducing what would be perceived to be a constraint on someone's right to go to a tribunal if they feel that they have been unfairly dismissed.

Mr Allister: This is the Department for Employment and Learning, so you have to take account of whether or not disparity in Northern Ireland would be an incentive or a disincentive towards employment. If a GB company, based somewhere in England, were looking to expand and had a choice between Glasgow and Belfast, would a consideration in the making of that decision be the thought that, "Well, if we go to Glasgow, there is a two-year qualification period before someone can sue us,

but, if we go to Belfast, the qualification period is 12 months?" Would that have an impact on employment?

Mr Evans: I would be surprised if that particular issue were to have an impact, because one of the key reasons for that initiative was to reduce the number of tribunal cases. We have looked at the evidence from when the qualifying period was decreased from two years to one year, and there was no material difference in the flows in and out of the tribunal system. As I said, the Minister has asked whether there is evidence that the Department for Business, Innovation and Skills believes that an increased number of people will be employed as a result of this, and there is no evidence to show that. The Chairman asked whether there is anything that the Minister will or will not do. I imagine that the Minister will feel that he is obliged to at least consult formally on that particular issue.

Mr Allister: Even though you are saying that it is a non-issue?

Mr Evans: No; I am saying that, at this stage, there is not the evidence from BIS. We need to listen to stakeholders because, in a Northern Ireland situation, with an SME economy, maybe it is an issue. We do not know. We will need to listen to the stakeholders on that.

Mr Allister: I am still struggling a bit to identify these important drivers for a regional solution.

Mr Evans: The drivers have come out of the work already. We talked about themes, including the early resolution theme. The driver is to reduce the amount of litigation in Northern Ireland. Northern Ireland has traditionally been perceived to be a litigious society. The default position has always been to go to a tribunal. If somebody has a problem, whether it is a HR professional, a friend or whatever, they are told to lodge proceedings. This work is about continuing the work to promote early resolution. It is about continuing the work with the tribunals. We already have a rules committee, but obviously it will look at what justice —

The Chairperson: Tom, I am going to intervene. I will go back to Jim in a minute. The point is that the case has not been made. The case needs to be made as to why we would want to deal with certain issues. Jim's point is about why you would want to have a different resolution in Northern Ireland than you have in the rest of the United Kingdom. The points that you made were general; yes, we would all like to improve employee relations and all those sorts of things. You need to take the point on board that, certainly as far as the Committee is concerned, a case needs to be made as to why we are going down this route and in this manner.

Ms Gildernew: Maybe it is enough of a driver that a right-wing Government are in place in Britain, and you might not necessarily want their policies in here when employment law is devolved to us. That is enough of a driver for me.

Mr Allister: I would like to think that we would be a bit more rational than that.

Mr Jack: One of the things —

The Chairperson: Hold on a tick; I am allowing a little bit of tennis here. *[Laughter.]* Jim still has the floor.

Mr Allister: I have not had the big drivers identified for me, and I do not see them identified in the paper. The paper simply says, "This is what the UK Government are proposing; what do you think?"

Mr Jack: I was going to say that one of the things that we found from the engagement that we have already had with business interests in particular — I think that it is one of the drivers — is that there is a perception that the framework of employment law in Northern Ireland is more bureaucratic in some way than the framework of employment in law in the UK as a whole.

Mr Allister: Is it?

Mr Jack: When you probe the issues with employers, the sense you get is that it is perhaps more of a perception than a reality.

Mr Allister: We do not set policy according to perception; we set policy according to reality. If it is not distinctly different, that is not a driver.

Mr Jack: Part of the purpose of having the process that we are launching now is to allow more discussion about what the real issues are.

The Chairperson: OK. I take the point, but you need to come back from your pre-consultation process with an argument that explains why you want to do x, y and z. At the moment, as Mr Allister said, we are just looking at a document that states, "Here's what they are doing in GB; what do you think?" You will need to come back with an articulate argument about what the problem is that we are trying to solve and, indeed, whether there is a problem. It does not matter whether it is a perception or a reality; we need to deal with it. I am going to stop that particular line of questioning. Jim, is there anything else that you want to pick up on?

Mr Allister: No, thanks.

The Chairperson: I take the point that Jim has made.

I will say this to colleagues: we are supposed to be trying to sort out conciliation, but we are actually getting stuck into workers' rights and employers' rights. What we want is a better system for everybody.

Mr F McCann: A better system for who?

The Chairperson: For everybody. It needs to be quicker.

Mr F McCann: It does not always work out like that, Chair.

The Chairperson: It needs to be quicker, fairer and whatever.

Mr Evans: Chairman, you have touched on one of the drivers. That is actually one of the —

The Chairperson: Tom, I am trying to keep some control over this particular bit. *[Laughter.]* We will just move on.

Mr D McIlveen: I will try to be as succinct as I can because I know that time is of the essence. My point echoes a lot of what has already been said. The document, from an objective point of view, seems to lack a sense of purpose; it does not seem to have any clear motivation as to where it even came from. Where are the problems that contributed to this document having to be written? It seems to me that there are very few areas in which European legislation has more say than in employment law, so there are protections in place for workers. I disagree largely with my colleagues to the left — ideologically rather than literally — because I do not think it is down to the trade unions that workers' rights are substantially better now. I think it is down to legislation that has been brought forward by elected representatives. Where has this document come from? There are opportunities for a document like this to contribute. A substantial piece of work that was done by the Filipino community recently suggests that non-EU workers who are working here have had some pretty unpleasant experiences in the working environment. Those are areas in which there are very few protections; they are not protected under EU legislation. I suppose I am struggling to see where this document has come from.

Mr Jack: The UK Government are taking forward various reforms to employment law. Over the early period of the Parliament, they announced initiatives in isolation from each other. They have now presented that as a five-year review of employment law, and that reflects the time it takes to change legislation. That was one of the prompts.

It is also very much about the issues that are raised by members of the business community, in particular, about employment law being seen as a barrier to investment and job creation. Yet, as I mentioned, when we probed that with them, it appeared that there are perceptions that the system is more bureaucratic than it is or that there are more tribunal cases than there are. In fact, the number of tribunal cases has been going down. There are also issues around the fact that we do not have to change the law to make the system more streamlined. We can simply make changes to the rules that govern the tribunals, and that can make a difference.

The Chairperson: David's point is that the document lacks purpose. That point has been made repeatedly, so you need to come back and address the issue of why we should be doing this, given that the UK Government are having a five-year review and putting the matter on the long finger. Do we need to do that? Will there be a review of the Employment Act (Northern Ireland) 2011, for example, and the effectiveness of the changes that we made last year? When will we review that? I do not want you to answer that; I am just saying that those are the sorts of questions that we have.

Mr D McIlveen: At the start, you asked for our contributions and opinions. My feeling on this, for what it is worth, is that there are protections in place already. I think that was acknowledged; Colin, you mentioned that the mechanisms are in place but are just not used. A more useful approach would be to try to present some sort of directive locally to ensure that the legislation that is already in place in the United Kingdom and Europe is followed and adhered to. That would be a much more beneficial and constructive piece of work than the tweaking of legislation to suit something that is probably very short-term.

The Chairperson: I am sure you will note those points.

Mr McElduff: I want to follow on from Michelle's point about the Law Centre. Did the Minister include the Law Centre in his initial meetings with key stakeholders? It seems that the Law Centre is a key stakeholder.

Mr Jack: I am not sure that the Minister has met representatives from the Law Centre recently.

Mr Evans: The Minister's meetings were not generated by the Minister. A number of stakeholders asked for a meeting with the Minister, and he responded to requests. Officials have had good discussions with the Law Centre this week.

Mr Lyttle: I want to make a point rather than ask a question. I find it bizarre that we are criticising the Minister and the Department for proactively engaging with us, in some detail, on an issue, but it is what it is.

The Chairperson: I would not take it as criticism, Chris. People are asking for this as a non-standard procedure. It is not criticism; members are seeking purpose.

Mr Lyttle: I welcome an opportunity to proactively engage with the Department on the issue. In making a case for bothering with this, is it possible to look to the alternative dispute resolution review? It seems that some of the solutions found in relation to that are actually already in place, in terms of what the Great Britain legislation is suggesting. By endeavouring to make a regional response to particular issues, it seems that we are ahead of GB on some of the issues. Maybe that is a reason to have regional solutions. Indeed, we have applied a pretty big regional solution to the fees issue, so I just find some of the comments a bit bizarre.

The Chairperson: Does anybody want to respond to that?

Mr Evans: On David McIlveen's point, can I explain one of the levers for doing it this way? The UK review created an unbelievable response. Various stakeholders were knocking our doors down asking why we were not talking about this. They asked for the discussion. Not often is our work reasonably high profile, but that was the genesis. They asked for this — that was very much the case — and are keen for it to happen. I have had a really positive response to say that they want to engage with us and the Minister.

The Chairperson: That is useful, Tom. It might have been useful had we had some of that in the document, but it is easy enough to be wise after the event. I reiterate that, actually, nobody is being critical; we are just asking the questions. We just need a bit more guidance on it.

Mr Jack: We are holding events with stakeholders during the period in which we have asked for views on this. We can certainly reflect that. That is useful feedback from the Committee on how we contextualise things.

The Chairperson: Given that you have got the open engagement, it might be worthwhile letting the Committee know about those events, in case members want to avail themselves of the opportunity to participate in any of them. It would be useful to see whether there is an issue.

Chris, have you finished?

Mr Lyttle: Absolutely.

The Chairperson: I was not telling you off either. I am just saying that it is not as bad as we are making it out to be.

Sammy, bring a little bit of happiness and mirth to the final contribution.

Mr Douglas: Unfortunately, I will not be able to do that. *[Laughter.]*

The Chairperson: Oh dear, Sammy.

Mr Douglas: I apologise for being late. I was at another engagement.

I thank the lads for their contribution this morning. I have a couple of points. You said that the Minister is looking at all aspects of the legislation and listening to stakeholders. Does that mean that he is looking at any and every option? Certainly, one option is to do nothing; to leave things as they were. Is that a possibility?

Mr Jack: Maybe that is the unspoken thing that we have not put in the document. I talked about the engagement we have had with business interests. When you probe some of the issues, you see that they are about perception. I think the unspoken assumption is that one of the possibilities is for no change and that, actually, the framework of employment law may be the way that it needs to be.

Mr Evans: It is set out in the document. We ask upfront whether the status quo is a reasonable position.

Mr Douglas: Colin, you mentioned cosmetic changes in GB. In his foreword, the Minister said that:

"the trade union movement believe that a number of the UK proposals are about weakening the existing framework of employment rights and that this will have an adverse effect on the economy."

That is a very strong statement. That is certainly not the cosmetic changes that you are talking about. What are the cosmetic changes in the UK?

Mr Jack: To take one in particular, the paper outlines a name change for "compromise agreements", which are now "settlement agreements". That is something that the UK Government have consulted on and, really, is purely a name change. There is a perception issue around the name; some of the business interests feel that, by calling them compromise agreements, they are seen to have compromised, when, in fact, they feel that they have not. They are simply settling the issue. I suppose that that was the one change I had most clearly in mind when I talked about cosmetic changes.

Mr Douglas: Finally, I want to go back to Jim Allister's point, which I thought was a very good point. Say a company wants to invest in Northern Ireland. There is a lot of trade between Northern Ireland and the rest of the United Kingdom, but there is also quite a bit of trade between Northern Ireland and the Republic of Ireland. Will you be looking at the impact that that will have on the economy and growth?

Mr Jack: We have already had some engagement with our Dublin counterparts to take stock of where they are on employment law issues. In fact, they are looking at some slightly different issues in respect of rationalising the number of different tribunals that they have. They have learned from what we do, and we have had a very productive engagement with them. We will certainly look at how things differ between North and South under employment law. Indeed, we are also keen to learn from good practice elsewhere. In a couple of weeks, we will have an opportunity to find out about how they do things in New Zealand, but alas we will not be going there. *[Laughter.]*

Mr Evans: Our arbitration scheme is being stimulated by the kind of work that is done by the rights commissioners. It does not actually replicate it but takes on board some of the learning from it.

The Chairperson: I will give a brief synopsis. If there is a way of improving legislation procedures, schedules or whatever that is to the benefit of all concerned, we would certainly be interested in putting some effort into that. There is a slight suspicion that this may just be the Minister wishing to say that we will not have a knee-jerk reaction and follow what happens in the United Kingdom. According to some people around the table, that would not necessarily be a good thing. An argument needs to be made to us about why we should invest time in this issue. Thank you very much for your submission.