



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Transfer of Undertakings (Protection of
Employment) Regulations (Northern Ireland)
2006: DEL Briefing

21 November 2012

anticipated that that will issue before the end of the year, or at least early in 2013. It will be a UK-wide consultation and will focus on consideration of the following points: a repeal of the service provision changes that were introduced in 2006; a repeal of the provisions on employee liability information; possible changes to post-transfer harmonisation; changes to the economic, technical and organisational reasons that restrict changes to terms and conditions following a transfer; provision of guidance on the position of agency workers in TUPE transfers; changes to the provisions on information and consultation concerning transfers; amendments to recognise that, when services are transferred outside the UK and the EU, the existing provisions are unrealistic; and, finally, guidance on a number of issues, including the interrelationship between TUPE and the rules on collective redundancy. It is anticipated that these will be the main themes of the consultation, although they are still subject to ministerial agreement in BIS and in our Department. We are still working with BIS on the details of the formal consultation paper.

BIS timescales require the consultation to be published before the end of the year. As this will be a UK-wide consultation, our Department hopes to publish the consultation by the end of the year as well, and we will ensure that an advance copy will be given to the Committee before it is published in Northern Ireland. Once the consultation findings have been analysed, there will be a number of options with regard to legislation. Any changes could be taken forward by BIS and/or DEL on a UK-wide basis. If the Executive and Assembly were to consider that a different course of action were more appropriate in Northern Ireland from that recommended in Great Britain, there could be divergence in the position of the two jurisdictions.

That is an overview of where we are in the process. I am happy to take questions.

The Chairperson: Thank you very much. I appreciate the fact that the Department has given us a heads-up on the issue before the official consultation. That is very useful.

Mr P Ramsey: The consultation is UK-wide. Why are we not doing our own work on the matter and not relying on others? I want to tease that out. Prior to the handing out and formal launch of the outline consultation document, is it normal courtesy that you have discussions with trade union bodies, the Labour Relations Agency and other bodies?

Mr C Brady: I will take your second point first. It is not the normal process to engage with either employer representatives or employee representatives prior to the launch of a consultation document. In this case, it is slightly different because we have already issued a call for evidence so, in some respect, we have engaged with the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC ICTU) as well as employer representatives to get an overall sense of the effectiveness of the regulations. However, it is not the normal process to engage with them on the detail of a formal consultation, mainly because that is the purpose of a consultation period. During that period, we engage with them directly and get more formal views on the concrete proposals.

The Chairperson: In fairness, Conor, the Department is undertaking a fundamental review of employment legislation, and the Department dealt with that by issuing a discussion paper first. That included TUPE.

Mr C Brady: I will answer that and try to take Pat's first question. In a sense, the way in which we are looking at TUPE is outside the formal review of employment law in Northern Ireland. The reason for that is the complexity and nature of the TUPE regulations and the fact that, with the exception of the service provision change element, they are on a UK-wide basis. Based on the responses that were given to us during the call for evidence, the same issues were being raised by employer and employee representatives from Northern Ireland as were being raised in the rest of the UK.

The regulations exist on a UK-wide basis, so it makes sense to at least look at the consultation on a UK-wide basis. That is not to say that Northern Ireland cannot and should not differ from the rest of the UK as a result of what emerges from the consultation period.

Mr P Ramsey: I feel a sense of frustration, and I am not happy with the situation. That is the point that I was getting to, and the Chair quite rightly noticed the track that I was going down. It is not right that, in any circumstances, we take proposed legislative changes off the shelf and bring them into Northern Ireland. That is why I commend the Minister on the employment law review. He sees the uniqueness of Northern Ireland and the differences in employment law, which is why he is taking this road. Will the consultation paper that you are proposing to share with the Committee prior to formally launching it be the same paper that is being launched in Scotland, Wales and England?

Mr C Brady: Effectively, but it will have —

Mr P Ramsey: So really and truly, all we are doing is taking something off the shelf.

Mr C Brady: I do not believe that is the case because the point of the consultation is to seek the views of Northern Ireland stakeholders as well as those in the rest of the UK. It is not for us to pre-empt the outcome of the consultation, but if the Minister and the Executive believe that a different solution is required for Northern Ireland, that is what we will take forward.

Mr P Ramsey: You conceded that you will share that information with the Committee prior to a formal launch.

Mr C Brady: Absolutely.

Mr P Ramsey: Will that sharing be part of a consultation with the Committee?

Mr C Brady: I am not sure what you mean by that.

Mr P Ramsey: Will you consult the Committee on the paper for its ideas, thoughts or amendments?

Mr C Brady: We would be happy to do that during the consultation period, of course.

Mr P Ramsey: Prior to the main document going out?

The Chairperson: If you take Conor's point, Pat, you probably will not change the consultation document per se, but we will have an opportunity to engage with the Department. That has been flagged, and Conor has been very good in bringing the issue forward. You will not change the consultation document, but we will look at the answers that come in. As a statutory body, we have a different relationship with the consultation document in any case. Conor has already said that he will take on board the views of the Committee and share the information with us. As a Committee, we can collectively decide how we want to influence it. Would that be accurate?

Mr C Brady: That is a fair assessment.

The Chairperson: So you can come back if you need to, Pat.

Mr Hilditch: Over the past few years, more and more people have been coming to constituency offices with different TUPE issues. The documentation mentions the European dimension of TUPE and what happens in other member states. Why do you think so many respondents have looked to Europe in relation to TUPE?

Mr C Brady: I think that they have looked to Europe simply to see the operation of TUPE. The TUPE regulations in the UK transpose the European acquired rights directive, so a number of prerequisites in that directive have to be applied in every European state. As is always the case with the transposition of directives, however, there can be flexibility for individual member states to amend the way in which they transpose the requirements of the directive.

TUPE can, certainly for larger organisations, exist on a trans-regional basis, so there may be TUPE moves between European nations. Business interests in particular are looking to other European nations to see how the machinations of their equivalent of TUPE regulations work, simply to see whether they provide greater clarity, greater regulation or better guidance. It is simply looking for a better, or potentially worse, operation, merely as a point of comparison.

Mr Hilditch: Are respondents seeing a more practical situation in other member states?

Mr C Brady: There is not a great deal of clarity or a unified voice on whether things are done better in other countries. We have not received representations that Germany or France, for example, are doing better than we are and that we should follow their model. Such responses, framed in that way, have not been forthcoming.

The Chairperson: We would appreciate it if we could be given a heads-up before the consultation document goes out so that we can look at it and then decide on the best way forward. Thank you very much.

Colleagues, I was going to suggest that we send a copy of the Hansard report to the major trade unions in Northern Ireland, advising them that the regulations are coming up to see whether they want to make an informal input to us.

Mr P Ramsey: The Labour Relations Agency is a key stakeholder.

The Chairperson: We could send it to Unite, UNISON and NIPSA.

Mr P Ramsey: That is reasonable.

Mr C Brady: There were six respondents from Northern Ireland to the original call for evidence. We will send a copy of any future consultation directly to them, including NIC ICTU, the Law Centre and the Labour Relations Agency.

The Chairperson: Conor, I do appreciate your contribution. Andrew, I am sorry that you did not get to say anything.

Mr Andrew Dawson (Department for Employment and Learning): That is fine by me.

The Chairperson: We appreciate the heads-up and the way in which the Department is dealing with the regulations. Obviously, there will be issues, but this is a good way to proceed, so thank you very much to the Department on that.