



Northern Ireland
Assembly

Committee for Finance and Personnel

**OFFICIAL REPORT
(Hansard)**

**Superannuation Bill: Northern Ireland
Human Rights Commission**

9 May 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)

Mr Dominic Bradley (Deputy Chairperson)

Mr Roy Beggs

Mr Leslie Cree

Mr Paul Girvan

Mr David Hilditch

Mr William Humphrey

Mr Paul Maskey

Mr Mitchel McLaughlin

Mr Adrian McQuillan

Witnesses:

Dr Nazia Latif

Northern Ireland Human Rights Commission

Dr David Russell

Northern Ireland Human Rights Commission

The Chairperson: I welcome Dr David Russell, the deputy director of the Human Rights Commission (HRC), and Dr Nazia Latif, a policy worker for the Human Rights Commission. We have your paper before us. I invite you to make some opening remarks, and I will then allow Committee members to raise some issues and ask questions.

Dr David Russell (Northern Ireland Human Rights Commission): Thank you, Mr Chairman and Committee members. As you know, under the Northern Ireland Act 1998, the commission is charged with advising the Assembly on whether Bills are compliant with human rights obligations. In accordance with that function, we welcome the opportunity to give evidence to the Committee. In our evidence, we will draw the Committee's attention to the relevant human rights obligations that have been ratified by the UK Government and will take the opportunity to remind the Committee that those obligations lie with the Westminster Parliament and the devolved Administrations.

The commission is aware that the Superannuation Bill, in large measure, replicates similar provisions that are provided for elsewhere in the UK by the Superannuation Act 2010. However, we want to draw the Committee's attention to four particular issues in the Bill that require consideration from a human rights perspective. Those are the issue of parity with the Superannuation Act 2010 as applied elsewhere in the UK; the proposed removal of the existing requirement on government to seek trade union consent to any changes in the compensation scheme, and the replacement of that with a duty to consult; the concern that the changes to the current compensation scheme may be introduced in line

with changes made for Civil Service staff elsewhere in the UK, and that that would be to the detriment of Northern Ireland Civil Service staff; and the proposed duty under clause 2 of the Bill to lay a report before the Assembly on consultation with the trade unions.

I will begin with the issue of parity. The commission is aware of the dichotomy that parity presents to Civil Service pay and compensation arrangements. On the one hand, parity has been largely beneficial to civil servants in Northern Ireland in the past, whereas the current proposal will be of detriment. The disempowering of trade unions and the changes that will follow as a result of the legislation represent a step back for trade union rights and those of their members. On the other hand, not to maintain parity on the issue could result in better arrangements for Northern Ireland civil servants but may have detrimental consequences in financial terms for the Executive. Given the current economic climate, the potential financial costs cannot be taken lightly, and Dr Latif will address some of those. From the commission's perspective, the single issue of concern is the proposed changes and how they will impact on human rights protections in this jurisdiction. In that regard, the commission is of the view that, as a consequence of the proposals, less protection will be afforded under a range of treaty obligations. I will pass over to Nazia to talk about the detail.

Dr Nazia Latif (Northern Ireland Human Rights Commission): I will first deal with the proposal to remove the duty on government to seek trade union consent. The international human rights treaty monitoring system is cognisant of the economic climate within which states must meet their human rights commitments, and the concluding observations and recommendations of the treaty monitoring bodies evidence an awareness of the difficult decisions faced by Governments today. However, although we acknowledge the financial pressures, our briefing draws the Committee's attention to the relevant human rights obligations and the jurisprudence of the monitoring bodies. As Dr Russell said, those obligations must be met by the Northern Ireland Executive and the Westminster Government in their legislation, policy and practice.

As you will see in the paper, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), everyone has the right to form and join trade unions for the promotion and protection of their economic and social interests. Trade unions also have the right to function freely and to strike. The UK is also party to a number of international labour organisation conventions that enshrine the right to collective bargaining. Furthermore, the European Social Charter enshrines the rights to collective bargaining, to organise and to strike.

All those treaties and commentary from the monitoring bodies promote the importance of co-ordinated collective bargaining for good labour relations and the prevention of costly labour disputes.

The commission's concern is that the change from a duty to seek trade union consent to a duty only to consult with trade unions may risk being a retrogressive step in human rights protection for trade union members. Although it was stated that treaty monitoring bodies take into account the economic climate, any regressive measures must be justified in the strongest terms by national Governments.

The Bill is based on an assumption that trade unions would never consent to schemes that would be financially detrimental to their members, but that is not always the case. Social dialogue with relevant partners, such as trade unions, can lead to viable alternatives that serve the interests of employer and employee.

A bit like human rights law in public authorities, the relationship between trade unions and employers is often seen as inherently adversarial, but that does not always have to be the case. International research cited by the International Labour Organization (ILO) suggests that in times of economic crisis, trade unions are a vital social partner in weathering the crisis and that co-ordinated collective bargaining arrangements are more likely to lead to less inequality as well as lower and less persistent unemployment, and fewer and shorter strikes, than countries that have weak collective bargaining arrangements. The Republic of Korea is one such example. In the round, the commission asks whether the views of trade unions should not be given more weight rather than less and whether this is not the time to work with them rather than implement measures that alienate and possibly antagonise. That is just a question that we put to the Committee based on the international research that I mentioned.

The scheme needs to be taken in the round of the current economic situation. Although there may be no large-scale redundancies planned for the Civil Service, non-departmental public bodies (NDPBs) are facing substantial cuts, which may impact on employment. Therefore, for employees of those bodies, the possibility of increased redundancies is real, and that is matched with fewer job opportunities and far-reaching changes being planned to welfare. In human rights terms, the totality of government proposals cannot be detached from the current one, and here the right to an adequate standard of living is engaged. In particular, the possible impact of the Bill on low-paid employees needs to be considered as does, again, whether the Bill may represent a retrogressive measure under the obligation to provide an adequate standard of living.

You may be aware of the case that was taken under the Human Rights Act 1998 by the Public and Commercial Services Union (PCS). The gist of the case was that rights to redundancy pay and the compensation scheme amounted to possessions, and, therefore, the changes to the scheme were an interference with those possessions. The union's claims were dismissed under protocol 1 of the European Convention on Human Rights (ECHR). However, Mr Justice McCombe in his ruling did not say that compensation did not amount to possessions nor that changes to the scheme did not amount to interference. That test that was applied in that case, and that must be applied in all human rights cases, is whether the interference be justified and whether it is in accordance with the law. Is it in pursuit of a legitimate aim and has a fair balance been struck between the persons affected and the community as a whole?

That is the test that needs to be applied in human rights-proofing this legislation. We would say that the answers may not be the same for the devolved Administration here as they were for the Whitehall Department. For example, a legitimate aim in that case was reduction of the national deficit. At this point, however, thankfully no large-scale redundancies are planned in the Northern Ireland Civil Service. Therefore, it cannot be assumed that the same argument applies here. Another question that needs to be asked is whether a fair balance has been met between the interests of those NDPB employees possibly facing redundancy and the interests of the community as a whole.

Therefore, the savings to the public purse, and the socio-economic situation facing the people of Northern Ireland, are very different from those in Great Britain. The legislator here, therefore, must be satisfied that this is a proportionate and legitimate response to the problem that the Bill is attempting to address. It is noteworthy that the Joint Committee on Human Rights (JCHR) in its consideration of the Bill found that it was an undue interference of people's possessions.

The Assembly needs to ensure a robust role for itself as a protector of human rights. Should the legislation reach statute as it is, the Assembly ought to ensure a robust role for itself in considering the report that has to be laid before it. The international treaty and monitoring system, although live to the current economic situation, still needs to be assured that the tests of legitimacy, reasonableness and proportionality have been met in any changes to the existing legislative arrangements and the compensation scheme that follows from it.

The Chairperson: So that I can be clear, are you suggesting that the legislation may be challengeable in court? Do you mean that the Bill itself is challengeable, the removal of the consent process from the unions or the outworkings of the compensation scheme for recipients or people who would otherwise have benefited?

Dr Latif: The outworkings and the terms of the compensation scheme was the subject of the case that was taken in Great Britain by the PCS. The point that the commission makes is that that case could still be taken. The test that would be applied would have to be satisfied in the context of Northern Ireland. To say that the case was dismissed in the context of the UK Civil Service does not automatically guarantee that there would be the same outcome in Northern Ireland, given that the legitimate aim and proportionality tests might arrive at different conclusions.

The Chairperson: Was any case taken on the removal of consent from the unions?

Dr Latif: No. Part of that case was that the removal of consent was an interference with the right to freedom of expression. That was dismissed by the courts in Great Britain. The international standards,

such as the International Covenant on Economic, Social and Cultural Rights, are not enforceable in our domestic courts. However, it is still a legal obligation on the UK and the devolved Administrations, and the Geneva-based treaty monitoring bodies very much see it as such.

The Chairperson: Were you consulted on the process?

Dr Latif: Not that we are aware of.

The Chairperson: Leslie, you have a question that you asked in the previous evidence session.

Mr Cree: I will try it again. Dr Latif, you said that the deficit problem that applied at Westminster does not apply here? Have I picked you up correctly?

Dr Latif: In the case of making changes to the compensation scheme, the legitimate aim that was put forward by the Whitehall Department was that the changes were needed to reduce the national deficit. What I am asking is that, although no large-scale redundancies are planned in our Civil Service, what are the anticipated savings to the national deficit? Those arguments will have to be put forward separately in Northern Ireland, and the answers will be different to those given in a GB context.

Mr Cree: Do you not agree that it is the same national deficit?

Dr Latif: It is the same national deficit, but is this legislative change going to address that problem? That is the question that would be asked.

Mr Cree: I think that the answer given would be the same as that applied to the GB legislation.

Anyway, I will rehearse my other argument. Article 11 of the ICESCR makes for quite refreshing reading, although it is a bit utopian:

"The right to an adequate standard of living."

I have had trouble for years with the Inland Revenue, or Her Majesty's Revenue and Customs (HMRC), as it is now called. It takes money off me all the time, yet I have no redress. Do you think that I have a possible action, or is this not just pie in the sky?

Dr Latif: Taxation, in and of itself, does not necessarily infringe the right to an adequate standard of living. We are talking about things such as the right to food, shelter, heating — those sorts of basic accommodations. We mean food and clothing issues rather than taxation, which Governments are legitimately entitled to take.

Mr Cree: I can tell you that taxation has a very big effect on all of us.

Dr Latif: Yes, it does. I do not dispute that.

Mr McLaughlin: Thank you very much for your presentation. By way of opening, are there any appeals notified in the legal process in Britain?

Dr Latif: Not as yet. The case has not gone any further.

Mr McLaughlin: There is still time. That could become relevant if we end up with a Court of Appeals position. It would certainly have a significant effect on courts here.

Dr Latif: Absolutely, yes.

Mr McLaughlin: I raise that only because the process may not have reached the end of its course.

I am interested in the comment in your briefing paper:

"the proposal to remove the duty to seek trade union consent risks regression ".

As a statement of obvious consequence, I understand that. To what extent do you think that that would be the case? This is a particular set of circumstances that does not apply in all staff/management relationships and negotiations that seek to find agreement. That is probably the norm, as opposed to the exception. To what extent could we stand over that as being a serious risk of regression?

Dr Latif: The standard has been set by the UK legislature already, and it has now stepped back from that. It may not be the trade union arrangements in other public sector bodies across the world. Once the UK has arrived at a certain piece of legislation, there needs to be a very good reason for it to step back from it. The treaty monitoring system would want to know the reasons, what the legitimate aim was, whether it was proportional, and what the impact has been on the people affected. Given all those circumstances, this risks being a regressive measure. The UN committee would want to be satisfied that there was no other way of meeting the legitimate aim than the change to the legislation.

Mr McLaughlin: Are there any other examples in European human rights legislation of where trade union agreement is required before a Government can act, or is this unique?

Dr Latif: I am not aware of it being in other jurisdictions, but it is not something that I have looked into. We could certainly provide that information to the Committee.

Dr Russell: At the minute, the standard is set. Consent, obviously, is a higher threshold than consultation or negotiation. The commission is also mindful that the state report on the International Covenant on Economic, Social and Cultural Rights is due in June. The Executive will have to input into the report. As this is a live issue, it will be highlighted and under consideration for the UK as a whole. The precedent has already been set in the UK, so there is an opportunity for Northern Ireland to look again at what has been proposed and choose whether it wants to go in the same direction.

Mr McLaughlin: I am quite certain that there will be views on this issue around the table, and I would be surprised if there were unanimity. There is a prevailing culture across a fairly wide geographical canvass. There is the suggestion that a previous Labour Administration tried to introduce the change in the standard that had been set. It was so far back that I cannot remember who introduced it, but I suspect that it was an earlier Labour Administration. The current coalition Government have taken another run at it. It appears that there is a prevailing wind in Westminster and that the measure will enjoy cross-party support and, in effect, will change the current arrangements.

You are not politicians, of course, but I have to set it out in those terms because that then puts the Executive and the Assembly in a particularly difficult position. I suspect that many people will be very interested in taking a more enlightened approach to protecting retirement rights as well as employment rights. The issue of parity has had interference, even when trying to get agreed positions among the parties on issues that might otherwise be candidates for that type of cross-party agreement. In the circumstance that you are talking about, the Executive will have to dip into their pocket if they break parity and decide to protect the position currently enjoyed by civil servants, when all the signs point to that position being changed significantly in Britain. It is a point of departure and a choice that would be very difficult. That is not your issue, but you will be asked to comment on it, because other human rights could be affected by the Executive's inability to fund their wider range of programmes if they have to ring-fence some of those finite funds to maintain the status quo in the superannuation arrangements, and so on. I am quite certain that you will be asked to comment.

Dr Russell: We have already made some comments in our submission. We recognised the issue of parity and the fact that, in the past, it has been of benefit to the Civil Service here, and that, as a consequence now, to follow parity would be of detriment. That is accepted by the Commission.

You are right; we cannot make the decision. All we can point out is the level at which trade union rights have been recognised to date in the jurisdiction and the suggestion that the removal or reduction

of those rights would be retrogressive in human rights terms. We totally accept that there is a balance to be struck and that, ultimately, it is a political decision.

Mr McLaughlin: It is entirely my fault; I did not get to the point as clearly as I should have. You mentioned the risk of regression of existing rights. As human rights advisers, that is entirely appropriate. I am suggesting that, in circumstances where finite funds are impacted by a decision taken in Britain, to adopt a different decision here, say, to support the status quo, will reduce funding and programme delivery in some other areas, which may also raise other human rights issues.

Dr Latif: It is important to detach the context of the Bill from the scheme that is to follow. The scheme has yet to be agreed and consulted on, and the Bill, although removing the duty to seek consent, places a duty to consult with the relevant trade unions.

The scheme itself has yet to be negotiated and agreed; so what it will involve financially has yet to be determined. It is important to detach the two; first, the duty to seek consent is being removed, which, as I said, is based on an assumption that the unions will not agree, and secondly, the scheme itself is still to be agreed.

It is important not to pre-empt the outcome of that consultation and negotiation with the trade unions. The commission would be more concerned if the effect of the Bill were to say that there will be consultation but that the trade union movement will get nothing other than that which has already been agreed in Great Britain.

Mr McLaughlin: I can see that that negotiation will be an interesting one, particularly from the trade union side. It illustrates in a very particular way that the issue of parity needs to be considered very carefully across a whole range of issues.

Mr Beggs: In your written submission, you say:

"The implications of the Bill must be considered in light of the socio-economic situation of Northern Ireland."

Your presentation this morning has been peppered with the phrase: "the socio-economic situation of Northern Ireland." What aspect of human rights must be considered in the socio-economic situation of Northern Ireland? Is it the human rights of the civil servants or those of the citizens who may be affected adversely by cuts in health and education and programme delivery in disadvantaged areas? Whose human rights are you talking about?

Dr Latif: We are talking about everybody's human rights. Civil servants are also citizens; their rights are indivisible from and equal to anyone else's. That is the point that we are trying to make. These cuts need to be seen in the round. There is a balance to be struck, and human rights law is very aware that the people who may be affected adversely by these changes must be considered in light of the effect that it will have on the community as a whole. Human rights bodies and the courts need to be satisfied that a fair balance has been struck between those rights. The socio-economic rights that I talked about today are not absolute. There is a realisation that resources are not infinite and that there is a limit on them, but this is also about legitimacy, proportionality and striking the right balance.

Mr Beggs: Do you accept that involving human rights in socio-economic issues such as this is hugely problematic and hugely political, and that there is a danger that the public will be worse off? The public are paying for you to make a presentation here today. They will pay for legal aid taken on some sort of human rights grounds and for the defence, if it ever got to court. Do you accept that, at this time in Northern Ireland, this is not an issue that would be handled in a court?

Dr Russell: The commission can advise only on treaties that are ratified by the UK Government. The International Covenant on Economic, Social and Cultural Rights has been ratified by the UK. It is a binding obligation on the UK Government, so it is completely relevant to considerations in this issue. The proportionality of the decision made in balancing one set of rights with another is a political

discussion that has to take place and, as Nazia said, has to be considered. However, it is perfectly correct for the commission to give advice on economic and social rights.

Mr Beggs: In your opinion.

Dr Latif: I would add that the UK has ratified the convention; it has entered into an international obligation.

Mr D Bradley: From the trade union point of view, this is quite a radical shift from the current position of strength, in which its consent is required, to one in which only consultation will be required. After that, when the Bill is brought to the Assembly, there will be no need for Assembly assent. So, there will no longer be any safeguard in this for the unions. I note your point that the Administration here are responsible for the protection of human rights, and your suggestion that the Assembly should have a more robust role in dealing with this order. I am inclined to support that position. May I presume that you think that Assembly assent should be required for the Bill or for any changes made as a result of it?

Dr Latif: That would be one possible model. The Assembly is an institution that reflects democratic rights. Therefore, it would be proper for the Assembly to have to assent, and possibly go a step further and ask the employer to re-enter negotiations if the Assembly is not satisfied that constructive negotiation has taken place.

Mr McQuillan: Would breaking parity on this give the Westminster Government more leverage to introduce regional pay rates that would be more detrimental to the Northern Ireland Civil Service?

Dr Latif: First, this advice is not grounded on the commission's opinion; it is grounded in the international obligations to which the UK is a party. We are aware that the parity issue is complex. We say that it is not about finding the lowest common denominator or about a race to the bottom. If there is a worse deal on offer to people in Great Britain in any setting, there should not be an automatic rush to get Northern Ireland there. Every situation has to be considered in light of the impact that it will have in Northern Ireland. There are other political realities that must be taken into account, but the commission is not in a position to comment on those.

Mr McQuillan: Would the introduction of the Bill affect your organisation directly?

Dr Latif: No. As a Northern Ireland Office-sponsored body, the commission is already affected.

Mr Girvan: I disagree with what Dominic said about agreeing to go back to negotiate with the unions on this and give them the opportunity to consent to it. I believe that even by saying that we accept that, we would be indicating that they could come back in and negotiate. By doing so, we would effectively be breaking parity.

Mr D Bradley: Chair, I did not actually say that. Dr Latif said that. To be accurate, I said that requiring Assembly assent for anything that resulted from the Bill would be an extra safeguard.

Mr Girvan: Fair enough. I take that on board. As far as I am concerned, I think that we would be setting the Executive and the Assembly up for incurring severe costs that we cannot fund and will not be in a position to fund. In doing so, we would be going down the very route that Adrian mentioned: by doing it in one area, we open the door to breaking parity in a number of others. That could ultimately create major problems for us in areas such as equal pay throughout the UK. It is vital that we do not do that. I appreciate that you have a job to do; one that you are here to highlight. I take on board that you are here to articulate your role, but we do not necessarily have to accept that. We understand exactly where you are coming from on the issue, but, unfortunately, that is where we stand — or where I stand, anyhow. I know that that is not always the message that you want to hear.

The Chairperson: OK. I will not ask the witnesses to respond.

You talked about the court case in Britain, and you said that the outcome there did not necessarily apply here because there may be a different set of circumstances. The outcome of the case that was deemed acceptable there was based on planned redundancies in Whitehall. If a similar prospect of planned redundancies arose, are you aware of, or can you advise us about, a material difference in circumstances here? The outcome was deemed acceptable because it was to achieve a particular outcome in Whitehall, whereas you seem to suggest that another court may consider the circumstances applying here to be different.

Dr Latif: I am just saying that the same outcome would not be guaranteed in Northern Ireland. The same human-rights-proofing would have to be gone through here, in light of the circumstances here. The unions' claims were dismissed in that case, but it cannot be assumed that the same outcome would result here.

The Chairperson: Was the case dismissed on the basis of the planned redundancies in Whitehall?

Dr Latif: It was dismissed on the basis that the interference was legitimate because the aim was to reduce the national deficit. The judge said that to comment any further would be to go into macroeconomic policy, which as a judge he was not inclined to do.

The Chairperson: So, it was a broader issue than just the specific plan for Civil Service redundancies in Whitehall.

Dr Latif: The legitimate aim, the reduction of the national debt, was the crux of the case.

The Chairperson: In the absence of any other questions, thank you very much for that very helpful evidence.