



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Draft Race Relations Order 1997
(Amendment) Order (Northern Ireland) 2012:
Statutory Rule

23 May 2012

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Colum Eastwood
Mr William Humphrey
Mr Alex Maskey
Mr George Robinson
Ms Caitríona Ruane

Witnesses:

Ms Aideen Donnelly	Office of the First Minister and deputy First Minister
Mr Ken Fraser	Office of the First Minister and deputy First Minister

The Chairperson: We welcome Ken Fraser and Aideen Donnelly. We will cut to the chase, Ken. We recognise that this is European law and not to implement it would put us into infraction proceedings and all the rest. I do not think that there is any will other than to be fair and to not discriminate. Our concern is the cost to the local fishing fleet, and whether it is an existential threat to the fleet, boat owners and jobs. Our concern is that the estimate, which was originally under £1 million, now sits at over £6 million. Is there any way of nailing that down from an estimate to something nearer to a definitive figure?

Mr Ken Fraser (Office of the First Minister and deputy First Minister): I think that we would have grave difficulty. It is quite clear that the calculations of the Department for Transport in London have all sorts of caveats built in to say that it is impossible to say. Therefore, it is done very much on a best estimate basis. I am afraid that we are not in a position to provide anything more definitive than that.

It does not apply to fishermen who are recruited locally. It comes into play only for fishermen who are recruited outwith the territorial waters here or for those who are brought in on contracts, such as the Filipinos. I am sorry; I recognise that that is not very helpful, but there is a limit to how much one can estimate these things.

The Chairperson: The fleets are not that big. The numbers are not huge, are they?

Mr Fraser: No. We checked out the numbers of local fishing fleets, and lots of them are day sailing. They leave in the morning, do their fishing and go back to the port at night. Therefore, the question for me is whether there is actually any employment of people who could be paid lower wages.

The Chairperson: Can you not give us any estimate of whether you think a boat, or a number of boats, would be forced out of business?

Mr Fraser: I do not believe that this would push them out of business. There are other factors that are much more germane in respect of the limit on the fisheries.

Mr Clarke: My reading is that there are 40 boats. Therefore, I imagine that to increase the salary costs to £6 million would be a fair degree of cost to any fishing boat. I was intrigued by an earlier answer. Maybe I am wrong, but the first estimate was £1 million, and it is now £6 million. If there was more work to be done, could it reach £8 million or £9 million?

Mr Fraser: No.

Mr Clarke: I will put it to you a different way: how come we got it so wrong that £1 million became £6 million?

Mr Fraser: I am afraid that I must hold my hand up to that one. The initial process for working out how much it would be was done on a pro rata basis per head of population. That was not defensible. We have now got something that is much more defensible, and we are not hiding anything at this stage. We believe that this is the best estimate that we can get, but it is no more than a best estimate. It was thanks to the Committee's pushing us the last time round that we went off, took a further look at it and came up with this best estimate.

Mr A Maskey: If we pushed you again, could you get a lower estimate? *[Laughter.]*

The Chairperson: If it is 40 boats and £6 million, that is about £150,000 per boat per annum.

Ms Aideen Donnelly (Office of the First Minister and deputy First Minister): Yes, it is £159,000 per boat. That is based on the figure that the GB impact assessment came up with per vessel.

The Chairperson: I did not think that fishing was so profitable that £159,000 would be neither here nor there.

Mr Eastwood: Would that be right even if it was day fishing, or is that £159,000 based on people who are going out for longer?

Mr Fraser: It depends entirely where and under what circumstances the people have been recruited. I do not have any evidence as to —

Mr Eastwood: Would wage costs be greater on bigger vessels? How do you work out that average? If we are talking about mostly small vessels, how do you work out the average of £159,000?

Ms Donnelly: The Chamber of Shipping provided estimates in GB's impact assessment consultation. It based that on a variety of vessels of different sizes. That was the average per vessel. Smaller and larger vessels were included in the estimate.

Mr Eastwood: Are you confident that it is applicable here, given that we have such a small fleet?

Mr Fraser: Yes. The Chamber of Shipping is a UK-wide body.

The Chairperson: Do we know the position in the Republic of Ireland?

Mr Fraser: Honestly, we do not. I have not done any research on the Republic.

Mr Clarke: It would be nice to hear about that.

The Chairperson: It is not specific to the Republic. If we bring it in, that will make it UK-wide, because it is already in GB. Will that make our fishing industry less competitive?

Mr Fraser: No. European law requires us to put this in place. That would apply equally to the Republic of Ireland.

Mr Clarke: That is just it, Chairman. It might be equally compelling for the Republic to do that, but it will be interesting to see what has actually been done. In my short time in this Assembly, I have learned that, in the case of some European law, the Republic seems to find ways of doing it slightly differently. We seem to gold-plate everything that comes here. It will be interesting to know how the Republic has managed this.

The Chairperson: Is that something you can do for us, Ken, or do we need to do that ourselves?

Mr Fraser: I stress that we are not proposing covering every nationality, which was a possibility. In essence, we have a binary option. We could cover every nationality, or we could cover only those nationalities that we were strictly required to under EU law. We have taken the latter option. So, we have tried to minimise costs in whatever way we can. I am fearful that, if we delay much longer, we will run into very real trouble with the EU over infraction proceedings and potential fines that could be levied on the UK Government, which would, no doubt, find their way directly to us.

Mr Eastwood: Do you have any idea of the size of those fines?

Mr Fraser: The fines would be potentially substantial, I think —

Ms Donnelly: Fines could be 10% of GDP.

Mr Fraser: It could be 10% of GDP, as my colleague tells me. Whatever it is, it is not £60 and three points on your licence. It is something that would make your jaw dangle open.

Ms Ruane: First of all, I think that people should be treated with respect. I know we have to look at cost, but I do not think that a cost should be put on rights. I also note that we are looking at the absolute minimum of what Europe is saying. I am concerned about the people we are leaving out. Give me an example of a country that is not included under EU law.

Mr Fraser: The Philippines.

Ms Ruane: So, a Filipino fisherman or woman on a ship will earn less than somebody Europe is saying we have to include?

Mr Fraser: For instance, a Polish national.

Ms Ruane: That is terrible. It is so unfair. I know that the least we have to do is abide by EU law. From my point of view, it is not about money but about rights and treating people with human dignity.

I was going to ask about infringement costs. Presumably there are also potential court cases that we would have to defend if we fail to implement this.

Mr Fraser: If we fail to implement, infraction proceedings will be taken to their conclusion and the fines will start. The UK Government would be fined, and that would no doubt find its way into the Northern Ireland block grant settlement.

Ms Ruane: That is one element, but another element is that we leave ourselves open to litigation and cases. We would be spending a fortune defending cases in the European Court.

Mr Clarke: How long have we had this? When did this start?

The Chairperson: Did it come to us in March? At this Committee, do you mean?

Ms Donnelly: I think it was at the end of February.

Mr Clarke: From February to the end of May. Would it not be in order to get a wee bit more work done on what the Republic is doing?

Mr Lyttle: I am sure that you could find that out extremely quickly.

Mr Clarke: You could; yes.

Mr Fraser: The idea of following what happens in the Republic, rather than following what happens in England, would be an entirely new one on this.

Mr Clarke: Some people want an all-Ireland strategy in here anyway. I am happy to join them in this particular aspect if it works better and if it is to the benefit of citizens here.

Mr A Maskey: If you are asking us to agree a rule that says that we will upgrade certain categories, for example, someone from Poland, but we will leave the Filipino guy working on the same deck, on the same day, with less pay, I could not support that. How could anybody with a conscience say that if two people were on a boat doing exactly the same job, one of them should be paid less than the other? I would not support that.

Mr Lyttle: Did the Northern Ireland Council for Ethnic Minorities (NICEM) raise that issue with the Committee?

Mr Clarke: Yes. Alex raised that point when they were here.

Mr Eastwood: I do not know where competence comes in. We just have to do this. It is the right thing to do, and it is the economical thing to do for a whole lot of reasons. It is just the right thing to do. However, with regard to Alex's point, if this comes in, there is the potential that we will find a lot of Filipinos working on the boats and very few Polish people if we do not look at the issue around other nationalities. Polish people might end up losing their jobs.

The Chairperson: There is a very real risk of displacement of employment.

Mr Eastwood: On the back of that, my argument is that we follow Alex's line. It is not for us to do today, but we should look into standardising everybody's rights, no matter where they come from.

The Chairperson: That would be local legislation.

Mr Clarke: What would that cost?

Ms Ruane: No. Ken, if I understood you correctly, you said that there are a couple of different options that we could take with regard to European law.

Mr Fraser: Two options were presented, one of which was a factor of four more expensive than the other. One was to level up to the same standard for all nationalities, regardless of whether they were from the EU, European Economic Area (EEA) or designated states.

The Chairperson: Who made the decision to go for the former?

Mr Fraser: We were following the decision that had been taken by GB to maintain parity of legislation.

The Chairperson: Who is "we"?

Mr Fraser: The Department.

The Chairperson: So, the Department could have chosen the latter.

Mr Fraser: The Department could have chosen the latter, and it would have been more expensive by a factor of four, according to GB figures. It would have been £24 million, or thereabouts.

Ms Ruane: When you say, "the Department", who was it in the Department? Was it at ministerial level?

Mr Fraser: It was at ministerial level, yes.

Ms Ruane: Were they made aware of the potential discrimination against —

Mr Fraser: Yes.

Mr A Maskey: I propose that we ask the Department to reconsider on the basis that we are not happy at all with the notion that we would legislate to pay two people doing exactly the same job different levels of wages. I understand the issue about displacement. Some of these people are coming over to do a particular job, and then they go away again. I still do not like the idea that I will be standing over the decision to pay one of them less than the other. I understand that there is a cost, but I am sure that we should ask the Department to have a look at this again in the light of this. I am just very uncomfortable with having to stand over that.

Mr Eastwood: Maybe we should invite in the industry as well.

The Chairperson: Members, you have a memo that makes it clear that the timeline is now getting very tight with regard to infraction proceedings.

Mr Lyttle: Can we get a steer on what exactly the timeline is? It sounds to me that this needs to happen.

The Chairperson: A tight timeline in Europe is not necessarily a tight timeline in terms of, "The children need fed". Do you know what I mean?

Mr Fraser: If I may clarify, we are on borrowed time already as it stands. The EU has been escalating this, and I think that we may be running out of time. Certainly, we want to get this in place before the summer recess, which means scheduling a debate sooner rather than later. If I may be so bold, it is open for the Committee to agree to pass this, given the circumstances, but state that it would like to have further work done on the issue of those fishermen who are not covered by it.

The Chairperson: And further research into the full implications?

Mr Fraser: Yes.

Mr A Maskey: I do not think that the Department needs to take a lifetime to consider this and get it back to the Committee again. At the end of the day, the Department will have to do it. I deal with it all the time, and I am sure that other Committees do it. Every single week, the Department will table statutory rules and put them in the Business Office, whether the Committee wants to agree with them or not. They have to do it. We try to make sure that we have a proper discussion around them and all the rest of it.

Mr Lyttle: I am not sure whether it is significant, although it might be for others, but we should try to get a clear indication of the scale of those infraction fines. That might reassure some people.

The Chairperson: Is it 10% of GDP?

Ms Donnelly: It is definitely a percentage of GDP. I am not sure what percentage it is.

Mr Lyttle: That is vastly superior to the cost of doing this.

Ms Donnelly: Every week that you do not have it in, you get fined.

The Chairperson: Infraction costs tend to be —

Ms Ruane: Can we get the information for next week? I think we need to feed back to the Department our concern about potential discrimination against nationalities. We want to know the options available and the costings of each option, and let us deal with it next week.

The Chairperson: Can we let Ken and Aideen go? Are we all content that we have the information that we seek?

Mr Eastwood: Can we also get a breakdown of the existing nationalities and numbers? *[Inaudible.]*

The Chairperson: We would have a solid number for the cost. Ken and Aideen, thank you very much.

Mr Clarke: Was there a reference to parity as well in this one?

The Chairperson: In what sense?

Mr Clarke: Did Ken make reference to parity with GB with regard to the statutory rule (SR) that is before us, as opposed to changing that?

The Chairperson: Is the SR that we are being asked to approve the same as —

Mr Fraser: It is modelled on that which is in GB, yes.

The Chairperson: Modelled? Does that mean it is the same?

Mr Fraser: It is the same, yes, *mutatis mutandis*. Sorry, please do not ask me. I am not a lawyer.

The Chairperson: Ken and Aideen, we will say thank you very much at this point.

Well, that has complicated it, rather, has it not?

Ms Ruane: In some ways it has made it simpler for me.

Mr A Maskey: Let us be honest with each other. Without prejudice to people or, ultimately, to the vote on this, I would like to explore the option of making sure that everyone who works on those vessels gets the same wages. No one in this room would justify paying a Catholic lad and a Protestant lad differently for doing the same work. You would be laughed out of court.

Mr Clarke: It depends which one you are paying more to.

Mr A Maskey: Well, that is true.

Mr Eastwood: It has been justified before; that is what all the bother was about.

The Chairperson: I think that we should go into closed session now.