



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Race Relations Order 1997 (Amendment)
Order (Northern Ireland) 2012

30 May 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr William Humphrey
Mr Danny Kinahan
Mr Alex Maskey
Mr Francie Molloy
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
Dr Denis McMahon	Office of the First Minister and deputy First Minister

The Chairperson: Here from the Department are Aideen Donnelly, Ken Fraser and Denis McMahon. Thank you very much for attending. Denis, do you want to give us a brief verbal update on where we are?

Dr Denis McMahon (Office of the First Minister and deputy First Minister): Thank you very much. We are pleased to come back to talk about this issue. The first thing to say is that we understand the very real sensitivities around this issue. Even though the level of scrutiny that we are having requires us to provide more information, we very much welcome it because some of these issues need to be teased out properly.

You have asked us four questions, which my colleagues will answer. The key point is that we will need to think carefully, based on the Committee's views, about how we take this forward as a Department, given the need to ensure that, on one hand, we comply with EU law, and, on the other, we leave scope to address all the issues through this legislation or a subsequent process. Ken will take forward our answers to your four questions.

Mr Ken Fraser (Office of the First Minister and deputy First Minister): Thank you very much, Mr Chairman. I hope that the Committee has had a chance to read the letter, so I will not go through it verbatim. I do not want to be more boring or overburdensome than necessary. I stress, up front, that the Ministers have written:

"We consider that Committee members are right to be concerned about infraction proceedings".

That is a very real concern. We have had a letter that effectively puts us on notice that, if we do not comply in the very near future, the next stop will be the escalation of infraction proceedings to the Court of Justice.

The Committee had asked for further information on why the Office of the First Minister and deputy First Minister (OFMDFM) decided to extend protection only to nationals of the European Economic Area (EEA) and designated states. OFMDFM decided, as did the Department for Transport in England, that a balance needed to be struck between the costs that we imposed on our domestic shipping industry and the rights of workers who were not EEA nationals or nationals of designated states. To have gone beyond what EU law strictly required would have resulted in Northern Ireland shipping being placed at an additional competitive disadvantage. It is also worth pointing out that, if we go beyond what the proposed amending regulations state, we will be at a competitive disadvantage with shipping in GB. There is a very real possibility that ships that currently have their home ports in this part of the world will want to move across the Irish Sea.

The Committee also wanted confirmation of the estimated cost of extending protection to all nationalities and information on how that estimate is calculated. I will not go through this in any detail. I hope that you can see that the Ministers have been sufficiently clear on this matter in the letter that they sent to you.

The Committee sought further information on how other EU states and regions have achieved compliance with the treaty obligation in question. The amending regulations that the Committee has been considering are not a new requirement. They have been brought forward not because of a new EU law but because we did not implement the original law properly in the first place. So, we are playing catch-up on that. We received a reasoned opinion that said that we were not complying. The UK did not contest that reasoned opinion, as there is no basis in law for doing so. The problem of establishing how other EU member states are complying is fairly substantial — it would require a detailed knowledge of their canons of equality law or detailed conversations with them. I am afraid that we have not had time to do any of that. The Chamber of Shipping, however, is on record as saying that differential pay was standard practice across EU member states and internationally. That is what it stated in the consultation that was carried out by the Department for Transport in the UK.

The Committee is aware of the threat of infraction proceedings against the UK/NI and requested further information on the timescale for infraction proceedings and the timescale and level of any possible fines. Tomorrow, I have to get a form of words for Ministers to send back to the United Kingdom Permanent Representation to the European Union (UKRep) to say what we are actually doing on that and to give our plans for the very near future. Otherwise, the Commission's patience will have worn so thin that I am sure it will be contemplating the Court of Justice as the next stop.

As I said at my previous appearance here, the proposed penalty payments that may be levied upon us are fairly substantial. They take account of the GDP of the member state in question. The minimum lump-sum fine that could be imposed is €8,992,000, and the maximum daily fine is €653,000. As I said before, the European Commission has shown itself to be understanding of the need for time to amend the law both in GB and here. However, there are very definite signs that its patience is wearing thin and that an escalation of infraction proceedings is being contemplated.

It should be noted that any proposal to amend the law differently to that proposed in the amending regulations that are before the Committee would require considerably more time. Any proposal to go beyond what is required by EU law would mean that we would have to reconsider the legislative base of the proposal. It would also mean that we would need to consult again. The delay that it would involve would certainly lead to a referral to the Court of Justice.

If the Committee is of the opinion that protection should extend to all seafarers, regardless of nationality, that could be examined in the context of our ongoing legislative programme. That is the suggestion from the Ministers and me. So, if the Committee can bring itself to clear this proposal pro tem to avoid the eye-watering fines that I just mentioned, we will have the possibility of revisiting the issue with a slower and more considered timescale. That is what I propose that the Committee may wish to do.

Mr Clarke: The reasoned opinion that you referred to was from January last year. When did your Department receive that?

Mr Fraser: We received it shortly after that. There were issues around the consultation, of course, and around us waiting to see what they do in Britain before we jumped on this one to maintain parity.

Mr Clarke: I appreciate that, but I assume that the Department would always be thinking in the same way as the Committee, which is to look at other member states, as opposed to just one. That is why I am surprised that you did not have the time from January last year to almost June of this year to look at what other member states have done. Although it is useful in this case that you have looked at England, and although many of us would prefer to look at that model as opposed to others, sometimes it is useful to see how other member states have got past the anomalies. So, I am a wee bit disappointed that the Department has dragged its feet. We are now being held to ransom; we have to get this done or we are going to incur, as you described it, eye-watering fines, which none of us want. It would have been useful, given the length of time that the Department has been holding this, for the Department to have all the information and furnish us with it to make our decisions much easier.

Dr McMahon: We cannot really argue with that. With all of these cases, it certainly would have been better to have been able to look at the broader picture and the different options. One of the things that we sometimes tend to do, as you know from the work that we did in the Department of the Environment (DOE), is work on the basis of what will maintain parity so that we are not seen to be gold-plating. I take the point. We should —

Mr Clarke: I also sit on the Agriculture Committee, and there is a perception that we do gold-plate here. For that reason, I would prefer us to be looking at other member states to see how we could find avenues so that we are not gold-plating. In agriculture, there is a wide perception among the general public that everything that we have got is gold-plated. So, just to look and follow Britain's model for dealing with EU legislation is not necessarily always a good thing. Just because they gold-plate does not mean that we have to gold-plate. Some of us are very interested in how the Republic has got past some of the things that we do not have to implement here. If it is something that is better for us here, regardless of where it has come from, that is the model that I would prefer — something that is going to cost us less.

The point I am making about time is that your Department has sat on this since January last year. Ken said that you have not had time to look at other models. I just cannot accept that. January 2011 to almost June 2012 is an unacceptable length of time. We sit here today faced with no option probably other than to go with the UK because of parity. No other options have been presented. We are only doing that because we are forced into a position, and we are forced into that position because the Department has not furnished us with as much information as some of us would have liked.

Dr McMahon: In response to that, Chair, I cannot argue with the fundamental point. We would certainly prefer to be in a position where we had more detailed information or a broader range of comparisons. However, there are some fundamental issues around parity that you raised. There are some fundamental issues about ensuring fairness for all seafarers, and, at the same time, making sure that we do not inadvertently put in place legislation that could impact in ways that we do not expect it to. For example, one of the impacts you might not expect if we broadened out the legislation to all seafarers might be that it could price people out of the market who are currently able to get work from other countries. Issues like that need to be teased out and explored, and I think it is good that they have been raised. We are open to looking at those in the Department and taking them forward.

Mr A Maskey: I do not like the use of the term "parity" and what it conjures up. It has not been explained to me that it is on the same parity level as the Department for Social Development (DSD), welfare reform, benefits, and so on. Parity, in the context of welfare and benefits, is a different animal from what I think you are talking about. I do not like the use of the term "parity" in the same context, because you might want to stay the same as Britain for competitive reasons and other reasons, but not parity. I just want that on the record. It is not the same thing at all.

I do not want to rehearse what Trevor said or make things more difficult for any official or Minister, but it is not good enough for us to be sitting waiting for a year for somebody else to make up their mind about something. It is just not good enough. Hopefully, it will not happen again. I do not think it is an acceptable excuse for me to have to listen to. I do not care if somebody sat on it for a year because of something else; they have to explain that, not me.

There are two particular questions that I would like addressed. If, for example, we decide that we need more time to consider this — you outlined that we might need more consultation and to take

other things on board, and I can understand and appreciate that that takes time — surely the Commission would acknowledge that we are not likely to be in the time frame for infraction just because we are careless. Surely it would recognise that we are doing a substantive piece of work. I would imagine the Commission would say, "Fair enough, you are doing that piece of work with a time frame attached to it, so, go and do that." I imagine so; I may be wrong. It may come back and say no and then clobber us with a fine of eight million quid, or six-hundred-and-fifty grand a day. I do not know; it might do that. I have not heard that yet, so, is it possible to not risk the infraction, but to go and talk to the Commission on the basis that we are doing a quantitatively different bit of work here? What might the time frame be? I accept entirely that it is difficult to get some of the information because what we got were widely fluctuating guesstimates of the costs. I appreciate that you might have to go back to somebody else, the industry, other Departments or here for further consultation. The big question for me is about whether we can or should be extending out the rights the same as anywhere. Are you talking about three months or six months? My instinct would be to go back to the EU and say that we know we are out of time, but we are doing this in a particular way, and there is our time frame, we are doing A, B, C and D, and it will take us three months or it will take us six months, and look for an extension to do that so that we are not incurring an infraction.

Dr McMahon: I suppose we can certainly communicate with the Commission and see where that gets us. Obviously, it is not in our control to stop it moving to infraction. If we get into that territory, it is not a great place to be. We are happy to take the Committee's views on that. The key point is that we certainly accept the need to do the work anyway. If we were to extend this beyond the EU, it would probably be worth doing a piece of work over and above this anyway. From a tactical point of view, the only question that the Committee might want to consider is whether you want to do that piece of work within this context or whether you want us to come forward with a further piece of work that avoids infraction but ensures that we are coming back to you within an agreed timescale with a policy paper with some proposals and options.

Mr A Maskey: Denis, I appreciate the way that you outlined that. My preference is that we tell the EU that we are going to do this piece of work and ask for an extension so as not to incur infraction fines. I do not want us to incur infraction fines, neither do I want to put the industry at such a disadvantage that it might go under. By the same token, it is an important principle to take forward. Can you establish whether we can have an extension to do the work without incurring any infraction fines and, if not, how long the work might take? You say in the letter from the Ministers that it can be examined in the context of an ongoing legislative programme. Can you, if the EU says we cannot have an extension, give us a time frame? If I, my party colleagues or anybody else around the table decide that we have to cut our losses and possibly vote for it as it is, how long can we have to get around the table again?

Mr Kinahan: It is right for us to consider how we look at workers from the whole world. We have to look at what we need to know here. I am concerned about what Ken said about all the jobs moving to ports across the UK. Our prime concern is keeping jobs in Northern Ireland, and we have to find the balance. I like the route of finding out where we sit in Europe, but another point that Ken made implied that the other countries in Europe are not necessarily all following these rules either and that, therefore, infractions may be queuing up for everyone else. We need to find out why it should be us who pay the fine. We should maybe be working more in Europe to find out how we take this forward. I then would be concerned that we are also going to cause problems on the jobs in Europe, because all the shipping will go out and employ people from the rest of the world. It does not seem as if it has been thought through properly.

The Chairperson: Denis, I will make two points to close. I think that you are getting the sense that the Committee feels that we are being forced into a decision. If the decisions of this Committee, your Department and the devolved Government are going to be dictated by the fear of EU infraction fines, there really is not any point in having a devolved Government. We need to have the opportunity to make informed decisions, and Trevor eloquently made the point that the opportunity that was there over the past year and a half and was lost.

Secondly, it needs to be said that, when it was first brought to us, we were told that the likely cost locally was around £750,000 per annum. When it was reviewed, it had gone to over £6 million. Today, we are being told that the infraction fine could be a minimum lump sum of around €9 million and then a daily fine of around €650,000. Previously, we were told that the infraction fine could be 0.5% of the United Kingdom's GDP. In the first quarter of 2012, the United Kingdom's GDP was £351,276 billion. If my maths are correct, 0.5% of that is £1.76 billion a day, so we would write off the block grant in a working week. It is not anything like that, although it is a big sum of money.

Mr Fraser: I am sorry, Mr Chairman. We were badly misinformed by colleagues on that particular one.

The Chairperson: Which colleagues?

Mr Fraser: In GB. We sat down and did the maths ourselves, and found out that it would put us in a Greek situation just from fines on that basis. My apologies for that. We misinformed the Committee, but we were misinformed ourselves. This is now the real deal.

The Chairperson: Will you stand over that?

Mr Fraser: Yes.

The Chairperson: Maybe we will close with "not the finest hour" as a parting thought. Thank you very much indeed.

Members, I do not think we are entirely in the one place here, and we still have the issue between rights and this infraction.

Mr A Maskey: I agree with you entirely, but, by the same token, let them come back next week and tell us. I do not think that they are going to be rushing and waiting on the report of the Committee meeting this afternoon. The information will come to us in the very near future. What is the very near future: tomorrow or next month? It is not a high-risk gamble; it is another week to get a bit of information.

Mr Clarke: It is a serious game of chicken we are playing here.

Mr A Maskey: Nobody is actually saying that we need to do it. The OFMDFM letter, which has had all the press, does not say that we need to do it today.

Mr Clarke: As I read it, I thought that it did say that.

Mr A Maskey: Next week is next week.

The Chairperson: I will take views, but I think it is a high-wire act, because the down side is €8,992,000, please. The alternative, Alex, is to say that we will let it go through, but we want to reinvestigate whether there is more that can be done, because it only covers EEA nationals.

Mr A Maskey: I cannot interpret what Denis was saying, but he was saying that we will take it back and go and ask. He did not say that he will ask, but that we are running to the wire.

The Chairperson: Ken figures he would have the report tomorrow.

Mr Humphrey: He said that he would have the letter tomorrow. I agree with members. I think that there are a number of things in that presentation, and none of them were positive. First of all, the fact that we are being given what looks like Hobson's choice, because they have kept the information, is not acceptable. There is also the fact that they then reported that, if we do not do it, we will have a fine. They will fine; they fined over agriculture — £60 million. The truth of the matter is about the opportunity cost of what the £8 million could be used for.

I am very concerned, as Danny also outlined, that this could decimate the County Down fishing fleet and industry. However, it is not just fishing; it is food processing as well. We export prawns, for example, all over the world, right out to the Middle East and even, ironically, to Japan. That could have serious detrimental effects.

I take the point that you make on parity, and I agree with you, but I think that, given the time that we are in, we do not have any option in the timescale that is put before us. We have been presented with a Hobson's choice. The difficulty around the whole issue is that, frankly, if we do not pay it, there will be implications. Again, I agree with what Danny and Trevor said. There are countries that flagrantly disregard those things, and nothing seems to happen. If you look at the attitude that the French take

to agriculture and fishing, and that the Spanish take to fishing, which you will never understand until you go to France and see how important agriculture and food production is there and why they take that attitude, you never hear of detrimental things. Sometimes, we take things to the nth degree as regards Europe, and perhaps people need to stand up to it on this issue. However, that cannot be done by the Assembly alone; all the devolved Administrations and the national Government in Westminster would also need to do that.

The Chairperson: William, the problem with that is that it seems that the fact that the UK Government have had that reasoned opinion for so long means that the process has begun. If we had not reached that point, there may have been grounds for a fight. However, there is a process that we cannot necessarily stop or, indeed, control.

Mr Clarke: Last week, Alex Maskey and Caitríona Ruane talked about the other countries that are not included in this. As it stands today, if we go for the minimum, there will be a cost to industry, as William said. If we do that as a bare minimum, most of the people who are employed will no longer be employed and they will bring in the ones that Alex wants to bring if the legislation was widened. The flip side of widening the legislation is that it would close industry, because no one will be competitive. If no one else has brought them into the equation, they cannot be competitive. No matter what we do, we are in a damned situation: we are damned if we do and we are damned if we do not.

Mr A Maskey: It is one of those things. I do not believe that we do not have another week. No one has actually said to me that it has to be done, and I think that we have a week.

I also think that the way that we have been treated is very shabby. Ken was not going to acknowledge that he had made a massive blunder until you pulled him. It was almost as if he was saying, "Forget about that, we gave them misinformation." However, it is a fairly serious offence to give misinformation to an institution like this and to only be reminded of it by the Chair.

Notwithstanding that, there has obviously been a delay and that might have been the practice of it. I think that people have got a bit of a wake-up call from the Committee. At the very minimum, we will get a time frame. If people feel that they have to report that the regulation will come in — even if they do not like it — in a short time frame by next week, the least that they can expect from the Department is a better time frame or a time frame for when it will take it forward. There is nothing that tells me that it will take it forward at all. No harm to anyone, and sure my own party colleagues are in there. That is not the point. The point is that we are left in a situation where we are up against the wire, and no one wants to jeopardise the industry or risk infraction.

I think that we are entitled to ask them to come back next week and tell us whether they have gone to Europe and sought an extension. If they cannot get an extension, we should ask them whether they can tell us reasonably how long it will take them to go back and reconsider. I would want that as a minimum, and I think that we can get that next week.

The Chairperson: To some extent, Alex, was that not the point of point 4 in last week's letter?

Mr A Maskey: Based on experience, I know that Europe will pass that regulation and you will hear no more about it. That is what will happen. There is no compulsion on them to do anything.

The Chairperson: I cannot imagine that anybody around the table has any confidence in the process that has got us to where we are now. I do not particularly mean that as a criticism of individuals, but of the process, the facts and the facts that turned out not to be facts. That has not filled me with confidence. The official said that he has to contact Europe tomorrow, and, if he says that the Committee has yet again failed to address the issue, I think that it poses a real risk of a European official asking how long we want to address it.

Mr Clarke: It depends on how he communicates that. We have not failed. We are still discussing it.

Mr A Maskey: That is right.

The Chairperson: We have no control over that.

Mr A Maskey: Chair, do you not accept that Denis, who is a senior official, said that he would go back and communicate that?

Mr Humphrey: Chairman, is that the same Denis McMahon who is coming back in?

The Chairperson: It is.

Mr Humphrey: Let us start off by making that point to him if we can. We are dealing with information that was given to us, and, in fact, that information on the figures changed during the presentation. We are dealing with information that is absolutely fresh to the Committee.

The Chairperson: Shall we call Denis back in on his own first?

Ms Ruane: Sorry, Chair. We also asked about what the different countries are doing. We do not have that information. Do we?

Mr Clarke: They just told you that they do not have time to do it.

Ms Ruane: I could nearly go on a computer to find that out.

The Chairperson: It took them over a year to get what they had to us. To ask them for that additional information in a week —

Mr A Maskey: We need to get that. They agreed to go off to Europe and relay that. They were asked to do that.

Mr Clarke: We are better having the Committee's decision on record.

The Chairperson: Can we get Denis back?

Mr Kinahan: Chair, the other infraction fine debates in the Assembly demonstrated that, as long as we can show that we are considering doing things and keep negotiating, it seems that you can keep pushing them off.

Ms Ruane: Exactly.

Mr Kinahan: I hate doing that, but —

The Chairperson: Denis, we are still on the Race Relations Order. If we did want to take a week to find out, is that possible and doable? Is there a downside and a risk to that?

Dr McMahon: I do not like coming to the Committee and saying that there is huge fine hanging over our heads, but the honest position is that the sorts of letters that we are getting from the Commission suggest that we are very close to infraction territory. I am genuinely worried about that. We would be very happy to go back to the Commission to try that to see whether there is any scope. Being blunt about it, I suspect that the Commission could turn around to us and say that it does not care in the same way that you might say to someone that you do not want to hear their reasons.

The Chairperson: So, there is a possibility, which we cannot quantify, that waiting for one week would result in the Commission pressing the button on infraction proceedings.

Dr McMahon: There is a possibility of that. That is all I can say. I would not want to overstate it, and I am not trying to talk it up.

The Chairperson: It could be a 10 to one possibility, or it could be a million to one, for all you know. You cannot put a figure on it, but it is a possibility.

Mr A Maskey: It is not a case of going back to ask the Commission simply for more time. It is a request for more time to do a specific piece of work. That is a qualitative difference. We would be looking for a delay.

The Chairperson: We cannot force the official in Brussels to accept that that is a qualitative difference.

Ms Ruane: Based on my experience of Europe, I know that Alex makes an important point. We are asking to go beyond the EU. So, from the EU's point of view, it would be seen as a forward step. We are not just doing the minimum. My experience of the European Commission and officials is that, when you show a genuine willingness to do something, there is a very good chance that they view you in a positive light. Danny made that point. Fines are for those who are straggling. It is important that we get this right. We should not have a situation where people —

Dr McMahon: In response to that, it is funny because, when we were standing outside, we were talking about how we would play this in writing to the Commission. That is the sort of line that we would propose to take. The only issue with that would be over whether the Commission would believe us.

The Chairperson: What, exactly, would we be putting to the Commission?

Dr McMahon: Based on today's discussion, we propose to say to the Commission that Ministers and the Committee are very keen to implement this directive fully and that we already have got some draft legislation that is being scrutinised by the Committee as we speak. We propose to say that the Committee has, however, raised an issue about whether the legislation goes far enough and that it wants to consider other options. I am talking off the top of my head.

Mr Clarke: Denis is saying exactly what has been rehearsed when he was here previously. However, it makes me nervous, because, even when this piece of work is done, I will not be happy with it. In a sense, it is just going to finish this altogether. We are in the position where we have to go for the bare minimum. There has already been an offer for others who want to do work in the future once we get this passed so that an amendment can be made at a later date. As I sit today, I will not vote for something that will cost the industry four times as much as it is costing already for the minimum that we have to do. I am concerned that, even if that were to satisfy the Commission, it would realise after it was over that we had taken it on a merry dance. I assume that this is never, ever going to pass the Committee. I can only speak for my colleagues, but our line will certainly be that way.

Dr McMahon: I will add one point that might be worth thinking about. As it stands, we can do this under section 2(2) of the European Communities Act 1972. If we were to go beyond that, we may well need, in any case, to go for primary legislation.

The Chairperson: And consult.

Dr McMahon: And consult. I am not throwing that in as an excuse. I am just making the point that we might have to do that anyway. For example, if there was an amendment and then the order was suddenly agreed in the morning but we went ahead regardless, there could be a problem.

Mr A Maskey: Trevor is outlining that he does not want to support even the minimum of the requirement, and that is his prerogative. The way you outlined the request to Europe does not say that we will do A, B or C, because it is being considered. It will come to a vote very quickly, because everybody agrees that we are not going to risk infraction; we are not going to risk an infringement. We are looking for that one-week extension for ourselves. When it comes to a vote here, I do not know what it will throw up. I do not know whether your party will have a line on it or what will happen, because people have their views, but I cannot predict how the vote will go based on what you are saying at the minute. However, the Committee will vote anyway. The information that I am looking for is without prejudice to the vote of any member around this table. We should get the information and then vote.

Mr Clarke: Can I clarify something, because I think Alex picked me up wrong. I will be voting for the bare minimum. I think Alex thought I would not be voting for the bare minimum; I will.

The Chairperson: Denis, thank you for coming back. We will discuss this further.

Mr A Maskey: I am just saying that the information we get may help us to make our minds up.

Mr Humphrey: I am not against getting the information; the more we have, the more informed we will be in making a decision. The difficulty is whether we have the time to get it.

Mr A Maskey: It is only a week. One week to deal with it.

Ms Ruane: The paper says we have two weeks.

The Chairperson: I will make a suggestion. First, no one is able to say with absolute certainty that the week's delay will not trigger infraction proceedings. That is a risk. It might be tiny; it might be a million to one; it might be two to one. If, for example, we said that we were recommending this, it has to go through the Assembly. That is not going to happen next week. If we said that we were going along with it today but fresh information emerged in the next two weeks, we could give our views to the Assembly.

Ms Ruane: It would be very difficult for us to support it at this point. The fourth paragraph of the letter requests the information within two weeks of receipt.

Mr Clarke: Which was 15 May.

Ms Ruane: Well, they can go and tell the Department we will have a response next week. On the third page of the letter, it states that the European Commission has shown itself to be understanding of the need for time to amend the law in England, or in GB and here. It states that there are very definite signs that its patience is wearing thin. Please do not tell me that a week is going to make a difference.

The Chairperson: I cannot tell you that, Cairtriona.

Ms Ruane: I do not believe that it will.

Mr Clarke: The point that I was trying to make earlier was that, whether it is a week or a fortnight, as things stand, our party will not vote for something that will cost four times more than even the minimum. We are doing a piece of work, and we are seeing another stalling tactic.

Ms Ruane: It is not a stalling tactic; it is getting information.

Mr Clarke: The information can come later. The offer is there for the Department. If there is a way to overcome this in the future, that can be introduced at a later date.

Mr Humphrey: It is crucial is how the letter — or the e-mail, if we are sensible — is worded. If there is an email, there can be indications this week, I would have thought. The Assembly is not sitting next week. We have to balance getting clarification, which is common sense, if time allows, with what the official said: if the letter is dated 15 May, and today is 29 May, the deadline has arrived. Denis said that today could trigger the infraction, and that is the problem. We are in an impossible position, and the wording of the letter is crucial. Whether the name at the bottom of the letter is yours, Chair, as opposed to an official's is appropriate, I do not know. However, that may show that this is being taken seriously and perhaps give more weight to it.

The Chairperson: If we were trying to do our best to mitigate the risk of infraction, we would probably want the imprimatur of the First Minister and deputy First Minister on the letter to show that we are taking this extremely seriously.

Mr A Maskey: As William said, you could offer, if it helps, a letter from the scrutiny Committee, if you were happy to endorse that approach.

Mr Clarke: Are we are going in this direction on the basis that we are going to go further?

The Chairperson: At some point, we are going to have to make a decision on one or other of these forms of words:

"That the Committee has considered the Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012, and recommends it be affirmed by the Assembly."

Or:

"That the Committee has considered the Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012, and recommends it not be affirmed by the Assembly."

Mr Clarke: I propose the former.

The Chairperson: We are going to end up there, whether it is today, next week or the week after.

Mr Clarke: I suggest that we are there today.

Mr A Maskey: I will not support that today. I possibly could next week. Who knows? I want the information first. If there needs to be a formal amendment to that proposal, I propose that we defer the decision until this day week, pending any further information that we get from the Department. The information that we get would be without prejudice to anyone's decision.

Ms Ruane: Seconded.

Mr Buchanan: I think that it is much too risky to defer for another week. Today is the deadline. We have no choice but to go for it. We may well have been pushed into it, and we are well aware of that, but the facts are before us, and that is the reality. If we do not do it, we are playing into the hands of Europe. They could fine us £8 million. I am sure that they have a hole for £8 million.

The Chairperson: It seems to me that we have had a proposal, seconded by Caitríona, to delay for a week.

Mr Clarke: I made a proposal first. I proposed that we agree to lay it before the House.

Mr G Robinson: I second that.

Mr A Maskey: Your proposal is to take the decision today. My amendment is to defer that until next week, or else a direct negative proposal.

Mr Kinahan: I do not see why we have to make the decision today. With everything else that we have been involved in with infractions, even pressing the starting button takes ages, and then it looks like they let you off if you do the right thing at the end. It goes into negotiation. I do not know why we are putting ourselves through this torture. I am going by the Strangford lough situation, where it seemed like there were years when we should have been doing something, but did not. Now we are about to be fined, and we are still negotiating.

The Chairperson: It is the uncertainty, Danny, that I am extremely uncomfortable with. I do not care if it is long odds; it is big money.

Mr Molloy: This Committee's view is one opinion, but, at the end of the day, OFMDFM will have to sign off on it. That is where the decision will be made. We can talk about this all week. If we get a note from Westminster saying that we have to sign off on this next week, or today, it will be done.

Mr Humphrey: And parity will exist.

Mr Molloy: No. Whatever direction given will have to be followed. We had the same situation in agriculture in relation to Strangford lough. Departmental officials advised that it would have a devastating effect on industry. The Agriculture Committee took the position of not supporting the proposal. That all had to be reversed. A week will not make a difference one way or the other. At the end of the day, if OFMDFM get a ruling that it will have to implement it, and that Westminster will implement it, we will just have to roll in behind that.

The Chairperson: We have had a formal proposal from Trevor, seconded by George:

"That the Committee has considered the Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012, and recommends it be affirmed by the Assembly."

Mr A Maskey: My proposal is just a direct negative. I would be prepared to propose an amendment to defer the decision until next week, but it looks as though that would fall. I do not want to waste people's time, but I am prepared to put an amendment to defer any decision for a week.

The Chairperson: We will vote on the amendment first. The Question is that the Committee defer its decision for one week.

Ayes 4; Noes 5.

AYES

Mr A Maskey, Mr Kinahan, Mr Molloy, Ms Ruane.

NOES

Mr Buchanan, Mr Clarke, Mr G Robinson, Mr Humphrey, Mr Nesbitt.

The Chairperson: The amendment falls. The Question is that the Committee has considered the Race Relations Order 1997 (Amendment) Order (Northern Ireland) 2012, and recommends it be affirmed by the Assembly.

Ayes 5; Noes 4.

AYES

Mr Buchanan, Mr Clarke, Mr G Robinson, Mr Humphrey, Mr Nesbitt.

NOES

Mr A Maskey, Mr Kinahan, Mr Molloy, Ms Ruane.

The Chairperson: The motion is carried.