



Northern Ireland
Assembly

COMMITTEE
FOR EMPLOYMENT
AND LEARNING

OFFICIAL REPORT
(Hansard)

**Draft Agency Workers Regulations
(Northern Ireland) 2011**

29 June 2011

NORTHERN IRELAND ASSEMBLY

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FOR EMPLOYMENT
AND LEARNING**

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Members present for all or part of the proceedings:

Mr Basil McCrea (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Sammy Douglas
Mr Barry McElduff
Mrs Sandra Overend

Witnesses:

Mr Conor Brady) Department for Employment and Learning
Mr Tom Evans)

The Chairperson:

I welcome Tom Evans. I have checked with some colleagues who are not here, and there are a couple of issues. You are going to talk about the agency workers regulations, and I want to find out the bits that you have done that are a bit different. I noticed that there was some stuff about maternity rights, and the Committee would like to hear more about that. If there are some things that we are not able to do, we want to know about them. It is really for information, because we have had the debate.

Mr Tom Evans (Department for Employment and Learning):

I have prepared a couple of points that address the issues. Obviously, the SL1 is the Minister's

view on the proposals, having taken account of the Committee's evidence sessions, the consultation and the take-note debate. The issues of particular interest were around the social partner agreement. A lot of comments were made about the Northern Ireland Committee, Irish Congress of Trade Unions (NICICTU) not being involved in that — the regional partners. The Minister is minded to move forward on the basis of the Trades Union Congress (TUC) and Confederation of British Industry (CBI) social partner agreement. Legal advice has determined that. The Minister understands the Committee's and NICICTU's concerns. He agreed, and I think gave a commitment in the Assembly, to write to his counterpart in the Department for Business, Innovation and Skills (BIS) to say that there needs to be early and appropriate consultation with the regional partners and even the Department on future directives. We will be fully involving NICICTU in the guidance that will be developed over the summer and will talk them through that. We have good consultation links with NICICTU. That is something that we will work to. We have proposals about how to develop the existing consultation arrangements with NICICTU, and we will take that forward.

The Law Centre and others raised issues about the definition that was being used in the consultation document. We talked with BIS colleagues and there seemed to be a lack of clarity about a danger that agency workers would not benefit from the intended additional provisions in the directive. The Minister agreed to seek an amendment to the regulations. That is happening in GB, and we have been in discussions with them.

You raised the issue of maternity rights. The Minister listened to the arguments, some of them very strong, about giving agency workers the full rights enjoyed by an employee, such as contractual maternity leave, pay, pensions and whatever. Going back to the directive, the Minister believes that that would start to blur the difference between an agency worker and an employee. However, it was noted that, particularly in Committee but also in debate, concerns were raised about time off being available for antenatal appointments after 12 weeks. The Minister has asked for legal advice, and, if it is feasible in legal and practical terms to do so, the Minister will seek to amend the legislation. He awaits legal advice on which to base such a decision. The question is whether we can legally disentangle and disengage one aspect of the regulations without risking properly transposing the directive.

We wrote to the Committee about issues that were raised about the inspectorate. One member wrote to us about issues around NICICTU, and we replied. The Committee also expressed

concern about what it thought was the absence of Northern Ireland data on which we based the policy decisions. We included in the SL1 that some detailed research was conducted by Millward Brown. The Committee has the link to that research proposal. That report informed the policy development.

The SL1 identifies the financial implications, and the motion in the Assembly briefed the Minister to be mindful of agency workers' needs, while recognising that we are in difficult times and that he should minimise the regulatory burden. The Minister believes that he has done that.

I suppose that the last thing to say is that we are at a crucial time. The directive must be transposed by 5 December. The Minister intends to take it to the Executive before the summer recess. We are happy to take questions.

Mr McElduff:

Our party expressed concern in the Assembly debate that the Northern Committee of ICTU was never properly consulted on the directive at the appropriate stages and that the TUC was deemed adequate for this social partnership agreement. It is alarming that somebody from a union would write a letter to say that the TUC has had no remit since 1893. Therefore, why was the TUC deemed appropriate or adequate for consultation purposes regarding this region? That makes no sense to me. Then —

The Chairperson:

Just hold your thought. You are still on.

Mr Evans:

The reality is that the social partnership is at member state level, and that was the TUC and CBI. The Minister understands that and believes that, in future, there should be early consultation between the social partners at national and at regional levels. The Minister is committed to writing to BIS on that issue. We will do everything in our power to ensure that the views of —

The Chairperson:

May I ask for clarification of that point? I understand that ICTU was part of the consultation, but, because of discussions that it was having in the South, it was unable to reach a conclusion; therefore, it then came back to relying on the national agreement.

Mr Conor Brady (Department for Employment and Learning):

For clarity, there needs to be separation of the role that we look to NICICTU to fulfil. There is a difference between what constitutes a social partner at a national level and the alternative role — fully accepted by the Department and the Minister — which is that NICICTU represents the views of workers in Northern Ireland. From the outset, NICICTU was not involved in the development of the social partner agreement. It was, however, involved in the consultation on the transposition of the directive in Northern Ireland, to the point where the Department tried to engage NICICTU and CBI Northern Ireland to try to establish a regional social partner agreement when we were working on previous legal advice.

Chair, you are absolutely right to say that NICICTU wanted to see what the position was in the Republic of Ireland with regard to ICTU's views on the directive. When those views were not forthcoming, there was not much further engagement in purely consultation terms other than a meeting between the previous Minister and officials with NICICTU on the issue. However, it is not fair to say that NICICTU was not involved in the consultation on the transposition. It is fair to say that it was not involved in the development of the social partner agreement. There needs to be clarity between those two separate points.

Mr McElduff:

If social partnership agreement is essential to all this, there is not a valid social partner agreement. In the passage of the regulations, what rights have been enhanced from the recommended version to the version that we have today? Did the Department for Employment and Learning enhance the rights of agency workers in any way, based on listening to the Assembly, its Members or the Committee?

Mr C Brady:

The one point that we are looking at is the disaggregation of the right to antenatal appointments. Again, that will be dependent on legal advice, which we are seeking at the moment. We need to be sure that we can disaggregate the provision for antenatal appointments from other maternity-based provisions. That is because the directive is very specific on what constitutes a day-one provision. Bearing in mind that we have the agreement on which we are working for a 12-week derogation, we have to seek legal advice on whether those other rights that would normally come into effect after 12 weeks can be put into effect from day one. Potentially, the 12-week social

partner agreement would be undermined if we were effectively to cherry-pick some rights that should come into effect after 12 weeks and put them into position after day one.

The Chairperson:

That is useful, Barry, in that it establishes a precedent, if it is possible to do. We also agreed that, should we need to amend the regulations in the future, we can do so. We have asked the question and done quite well. A number of other things have happened, such as the discussion on the definition of an agency worker, but they were happening anyway. We will look at that. Barry, my understanding from listening to Members from your party in the Chamber is that they understand that we are where we are on issues such as the 12-week agreement. We will look again to see how that works, but we made a difference on antenatal care.

Mr Evans:

In the correspondence that the Minister will send, he will make it clear that there were real frustrations across the piece, including from the parliamentary Committee and the trade union movement, and that we need to move forward on that.

The Chairperson:

I am not sure who we write to on Barry's point. The Committee Clerk might whisper that it my ear in a minute. There is an issue about who the relationship is with where you have a national agreement and devolved governments. I know that it is a matter of law, but, if this is a devolved power, that is the question. We have no relationship with the TUC.

Mr Evans:

It is a wider structural issue. The TUC should have been much more proactive in engaging with NICICTU. The Minister will raise it. I do not know whether it is possible for the Committee to raise it at Westminster. The tension between national agreements among member states and a devolution strategy that is being rolled out in England, Scotland and Wales is a more fundamental structural issue.

The Chairperson:

That will be noted in the Hansard report. We have asked the question, rather than writing to you. It is a wider issue for the Assembly and others to address what constitutes a social partner in a devolved Administration.

Mr Douglas:

At the previous Committee meeting, a number of us raised the issues that NICICTU raised when it came to the Committee. I was quite surprised that their representatives did not know that they were supposed to make a presentation. There was some kind of breakdown of communication between NICICTU and whoever. We still do not have a formal response. It is quite difficult to put its case forward if it does not make formal proposals to the Committee and the Department. I was very disappointed with that.

The Chairperson:

OK. That has been noted, Sammy. However, good work was done. We highlighted certain issues and we expect them to be addressed on a number of fronts.

Mr Evans:

Chair, can I just check that you are referring to the formal response from NICICTU rather than from the Department?

The Chairperson:

Yes.

Mr Douglas:

I am not saying that it is our fault. There was some breakdown in communication with NICICTU. It appeared before the Committee, but we have not received its formal response.

The Chairperson:

The issue has been noted and we will look at how we deal with it. That is the point that I was making earlier.

Does Tom or Sandra wish to add anything?

Mr Buchanan:

No, I am happy with the discussion that has taken place.

The Chairperson:

Are Committee members content that the Department proceeds to make the statutory rule?

Members indicated assent.

The Chairperson:

I was just checking that we have agreement on that.

Mr McElduff:

I was trying to work out whether I agreed or not. *[Laughter.]*

The Chairperson:

It will go to the Executive anyway, so you are OK.