Committee for Employment and Learning

Report on the Employment Bill (NIA Bill 73/11-16)

Ordered by the Committee for Employment and Learning to be printed
27 January 2016
Report: NIA 300/11-16 Committee for Employment and Learning

Remit, Powers and Membership

The Committee for Employment and Learning is a Statutory Departmental Committee of the Northern Ireland Assembly established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48 of the Northern Ireland Assembly. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Employment and Learning and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister for Employment and Learning.

The Committee has eleven Members, including a Chairperson and Deputy Chairperson, with a quorum of five. The Membership of the Committee is as follows:

Mr Robin Swann (Chairperson)[1] [2]

Mr Thomas Buchanan (Deputy Chairman)

Mr Sydney Anderson[3] [4]

Mr Gerard Diver[5]

Mr Alex Easton[6]

[1] With effect from 19 February 2013 Mr Basil McCrea is no longer Chairperson nor a member of the Committee
[2] With effect from 27 February 2013 Mr Robin Swann became Chairperson of the Committee
[3] With effect from 28 January 2013 Mr Alastair Ross replaced Mr George Robinson
[4] With effect from 01 December 2014 Mr Sydney Anderson replaced Mr Alastair Ross
[5] With effect from January 2016 Mr Gerard Diver replaced Mr Pat Ramsey
[6] With effect from 05 October 2015 Mr Alex Easton replaced Mr William Irwin

Mr Phil Flanagan[7]

Mr David Hilditch[8]

Ms Anna Lo[9]

Mr Fra McCann[10]

Ms Bronwyn McGahan[11]

Ms Claire Sugden[12]

[7] With effect from 10 September 2012 Mr Phil Flanagan replaced Ms Michelle Gildernew

[8] With effect from 01 October 2012 Mr David Hilditch replaced Mr Sammy Douglas

[9] With effect from 29 September 2014 Ms Anna Lo replaced Mr Chris Lyttle

[10] With effect from 06 February 2012 Mr Fra McCann replaced Mrs Sandra Overend

[11] With effect from 21 January 2013 Ms Bronwyn McGahan replaced Mr Barry McElduff

[12] With effect from 12 May 2014 Ms Claire Sugden replaced Mr David McClarty

List of Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
CBI	Confederation of British Industry
CEJ	Council of Employment Judges
DEL	Department for Employment and Learning
EEF	Engineering Employers Federation Northern Ireland (EEF NI)
EQIA	Equality Impact Assessment
ERO	Employment Rights (Northern Ireland) Order 1996
FET	Fair Employment Tribunal
FETO	Fair Employment and Treatment (Northern Ireland) Order 1998
FSB	Federation of Small Businesses
ICTU	Irish Congress of Trade Unions
IT	Industrial Tribunal
ITO	The Industrial Tribunals (Northern Ireland) Order 1996
LRA	Labour Relations Agency

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Report

Executive Summary

1. The purpose of the Employment Bill is to make provision for early resolution of workplace disputes and create a neutral assessment service. The Bill also introduces significant reform to the law around public interest disclosures. Finally, the Bill permits the Department to deal with the provision of careers guidance and apprenticeships and traineeships through regulations.
2. As set out by the Department for Employment and Learning, the provisions of the Bill will:

   i. provide that, in most cases, a prospective claimant must first have submitted the details of their claim to the Labour Relations Agency before they can lodge the claim at an industrial tribunal or the Fair Employment Tribunal;

   ii. extend confidentiality provisions to ensure that the full range of the Labour Relations Agency dispute resolution services is appropriately protected;

   iii. contain enabling provisions that allow for a neutral assessment service to be operated by the Labour Relations Agency;

   iv. convert the Department's power to amend the qualifying period, for the right to claim unfair dismissal, from confirmatory to draft affirmative procedure; provide for more accurate rounding when annual changes, in line with inflation, are applied to the maximum amount of an unfair dismissal award and other employment rights related payments; and empowers the Department to modify these sums if a draft order is approved by the Assembly;

   v. alter the effect of the good faith test; the issue of good faith will now be considered by a tribunal in relation to remedy, rather than liability;

   vi. introduce a test to close the loophole in public interest disclosure legislation;

   vii. introduce a power to allow the Department to make regulations requiring regulators and other bodies prescribed for the purposes of Article 67F of Employment Rights (Northern Ireland) Order 1996 (as recipients of whistleblowing disclosures) to report annually on disclosures of information made by workers;

   viii. include public interest disclosure protections for student nurses and student midwives;

   ix. introduce a power to amend, by subordinate legislation, the definition of worker in public interest disclosure legislation;

x. legislate for employers to be vicariously liable if an employee who makes a protected disclosure subsequently experiences detriment from colleagues;

xi. amend enabling powers to allow for procedural changes to be made to regulations concerning Industrial Tribunals and the Fair Employment Tribunal;

xii. permit the Department to deal with the provision of careers guidance by way of regulations; and

xiii. empower the Department, by regulations, to deal with the provision of apprenticeships.

Introduction

1. The Employment Bill was referred to the Committee in accordance with Standing Order 33 on completion of the Second Stage of the Bill on 13 January 2016.

2. The Minister for Employment and Learning made the following statement under section 9 of the Northern Ireland Act 1998:

> *The Bill will make provision relating to conciliation and other matters in connection with industrial tribunals and the Fair Employment Tribunal, including power to refer to chairmen as employment judges; to amend the law relating to protected disclosures; to confer power on the Department for Employment and Learning in connection with careers guidance and apprenticeships; to correct references relating to statutory shared parental pay; to make other provision relating to employment; and for connected purposes.*

3. The Bill sets out a legislative framework allowing for the early resolution of workplace disputes through the creation of an early conciliation and neutral assessment service. The Bill also introduces significant reform to the law on whistle-blowing. It also permits the Department to deal with the provision of careers guidance and apprenticeships through regulations.

4. During the period covered by this report, the Committee considered the Bill and related issues at eight meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1 and the Minutes of Evidence at Appendix 2.

5. At its meeting on 2 December 2015 the Committee agreed a motion to extend the Committee Stage of the Bill to 26 February 2016. However, the Committee concluded its scrutiny on time and did not move the motion.

6. The Committee had before it the Employment Bill and the Explanatory and Financial Memorandum that accompanied the Bill. The Committee wrote on 24 November 2015 to key stakeholders to alert them that the Bill was to be laid soon. On 7 December 2015 public notices were placed in the Belfast Telegraph, Irish News and the News Letter seeking written evidence on the Bill by 21 December 2015.

7. A total of ten organisations responded to the request for written evidence and a copy of the submissions received by the Committee are included at Appendix 3.

Consideration of the Bill

8. The Employment Bill has 27 Clauses and 3 Schedules. It consists of:

Industrial Tribunals – Clause 1 to Clause 5

9. These 5 clauses relate to Industrial Tribunals and cover three main issues:

- early conciliation;
- neutral assessment; and
- powers to require the payment of a deposit.

Fair Employment Tribunal – Clause 6 to Clause 9

10. These 4 clauses relate to the Fair Employment Tribunal and cover three main issues:

- early conciliation;
- neutral assessment; and
- powers to require the payment of a deposit.

Employment Judges – Clause 10 to Clause 11

11. This consists of two clauses making provision for members of the panels of Industrial Tribunals and the Fair Employment Tribunal to be referred to as employment judges.

Protected Disclosures – Clause 12 to Clause 16

12. This consists of five clauses covering:

- the 'public interest' test;
- good faith disclosures;
- reporting requirements;
- vicarious liability; and
- extension of the meaning of 'worker'.

Careers Guidance – Clause 17

13. This clause introduces a power to make regulations concerning careers guidance.

Apprenticeships – Clause 18

14. This clause introduces a power to make regulations about arrangements for providing apprenticeships.

Miscellaneous – Clause 19 to Clause 23

15. This has five clauses concerning:

- the indexation of amounts;
- disclosure of information held by the Labour Relations Agency;
- variation in procedures for certain orders and regulations;
- statutory shared parental pay; and
- references to tribunal jurisdictions referenced in the Employment (Northern Ireland) Order 2003.

Supplementary – Clause 24 to Clause 27

16. This contains four clauses including repeals and commencement dates.

Schedules 1, 2 and 3

17. Schedule 1 outlines the minor and consequential amendments;

18. Schedule 2 concerns the extension of limitation periods to allow for conciliation; and

19. Schedule 3 outlines repeals.

20. The Committee first considered the proposals on 25 April 2012 when the Department for Employment and Learning set out the policy context and its' plans to consult on employment law. The main themes of the Department's consultation were to include early resolution of disputes; efficient and effective employment tribunals; and measures to reduce the regulatory burden of employment legislation.

21. The Committee welcomed the proposals concerning the early resolution of workplace disputes and effective employment tribunals. The Committee sought reassurance that the Department was not making life easier for businesses at the cost of encroaching on the rights of employees. The officials explained that the Minister was keen to strike "the right balance between encouraging investment in job creation, reducing the regulatory burden and protecting the rights of employees."

22. On 4 June 2014 the Department returned to the Committee to communicate the responses to its consultation on the review of employment law in Northern Ireland. The Department advised that stakeholders were very positive about the early resolution of disputes proposal and the creation of an early conciliation service within the Labour Relations Agency and that this could have the potential to avoid unnecessary tribunal cases and create speedier and less costly resolution of disputes.

23. At this briefing the Committee was informed that there was strong support for the introduction of the 'public interest' test and vicarious liability provisions, which would make employers liable for detriment caused to an employee who makes a public interest disclosure. The Committee also welcomed the proposal to extend the definition of 'worker' to include student midwives and student nurses under the scope of protection.

24. On the 10 September 2014 the Minister briefed the Committee on his work programme for 'The Term Ahead' and confirmed that the most significant reforms the Department were looking to address were the issue of early conciliation; the routing of all claims through the Labour Relations Agency (LRA); and the provision for a neutral assessment service. The Minister, at the time raised his intention to amend secondary legislation on unfair dismissal so that any change happens through affirmative resolution.

25. The Department for Employment and Learning officials formally briefed the Committee on the Bill and its proposals on 13 May 2015. The Department confirmed that in recognition of the Committee's Inquiry it was proposing to introduce a statutory duty for the provision of impartial careers guidance. The clause, as drafted, will introduce a regulation-making power in relation to careers guidance. The Committee strongly welcomed this proposal.

26. At that briefing the Committee asked the Departmental Officials to explain what increase in capacity will be provided to the LRA as a result of the Bill for it to take on the additional roles and duties. The officials outlined that the Department would compose a business case in order to determine the appropriate funding for the early conciliation model and the neutral assessment service. They assured the Committee that the consultees were also very keen to ensure that the LRA resources would continue to be supported. The Committee noted that the Explanatory and Financial Memorandum states that the service will be cost neutral. However, concerns have been raised over this both from the Committee and written submissions to the Committee and the Department have confirmed that it's already engaging on this issue.

27. The officials confirmed that the Department will amend the law on public interest disclosure to introduce a public interest test in order to clarify that disclosures must be in the public interest. The Committee noted its support for further protection to be given to whistle-blowers by making employers vicariously liable if any employee who makes a protected disclosure subsequently experiences detriment from colleagues. Moreover, the Committee again confirmed its support for the extension of the protection to include NHS workers.

28. The Department confirmed that given that there was no great desire for change in the consultation responses, they would not be taking any action to amend the unfair dismissal qualifying period in Northern Ireland. However, the Committee was content with the Departments proposal to seek an amendment to the enabling power so that any changes to the qualifying period will be subject to the draft affirmative procedure in order to ensure a debate on the issue in the Assembly.

29. The Department also confirmed that the Bill will introduce regulations which will seek to define the core components of an apprenticeship in Northern

Ireland. The officials advised the Committee that this would complement the Department's Strategy on Apprenticeships 'Securing our Success which was published in June 2014.

30. The Department briefed the Committee on 2 December 2015 regarding the revisions to the Employment Bill. At this briefing the Committee requested that the Department amend the wording of clause 17 relating to careers guidance, so that it would read 'shall' make arrangements to provide careers guidance, instead of 'may' make arrangements to provide careers guidance to ensure that the Department have an intention to act.

31. The Department took the Committee's concerns on board and on 18 December 2015 communicated their agreement that they would make the change.

32. The Committee raised concerns regarding the changes brought in by clause 11 whereby the chairmen of tribunals will be known as 'Employment Judges' instead of Tribunal Chairperson. The Committee advised the Department such a change in terminology would transform tribunals from the 'people's court' to something more legalistic.

33. Finally, the Committee asked for an explanatory note on Clause 22 of the Bill to clarify the technicalities of the amendment to Statutory Shared Parental Pay. The Department responded on 10 December 2015 explaining the three subsections of the clause.

34. The Employment Bill was formally introduced to the Northern Ireland Assembly on 7 December 2015. The Committee for Employment and Learning went out to consultation on 7 December 2015 with a closing date for written submissions on 21 December 2015.

Written responses

35. The Committee received 10 responses to the Bill.

36. The 10 submissions were from:

- Irish Congress of Trade Unions (ICTU)
- Confederation of British Industry (CBI)
- Labour Relation Agency (LRA)
- Northern Ireland Commissioner for Employment and Skills
- Law Centre NI
- Federation of Small Businesses (FSB)
- Donnelly & Kinder Solicitors
- Engineering Employers Federation NI (EEF)
- Council of Employment Judges (CEJ)
- Bar NI

37. The Committee also received correspondence from the Employment Lawyers Group advising that it was broadly content and would not be making a formal response.

38. ICTU advised that it was broadly content with the substance of the Bill. However, it made the point that the claim of relaxing the employment protection laws will increase employment and economic growth is not backed up by empirical evidence. ICTU also believe the Bill was an opportunity to improve worker's rights but this opportunity has not been taken.

39. CBI advised that it was broadly content with the substance of the Bill but noted that there would be resource implications for the LRA.

40. The CBI also believed that more could be done by the LRA to ensure that vexatious claims are weeded out and the process speeded up.

41. The CBI believed that the Bill was a missed opportunity to extend the qualification period for unfair dismissal to two years and reducing collective redundancy consultation periods from 90 to 45 days for consultations involving over 100 employees. Both of which would have brought Northern Ireland into line with Great Britain.

42. The LRA responded on the clauses of the Bill that apply to its work (Clauses 1,2,3,4,6,7,8 & 20). On these clauses the LRA advised that it was content that the clauses meet their policy intent. However it cited a number of challenges and points out that sufficient time is required to get ready for the changes outlined in the Bill and that the Commencement date for the legislation should reflect this. The LRA also raised its concerns about the resourcing of the changes.

43. The Northern Ireland Commissioner for Employment & Skills focused his comments on clauses 17 and 18.

44. The Commissioner pointed out that, in Clause 17, careers guidance should be backed up by unbiased evidence and that it should begin ideally at primary 6.

45. The Law Centre stated that there is a need to ensure that the system proposed for early conciliation is not unduly burdensome on claimants and on vulnerable claimants in particular.

46. The Law Centre believes that conciliation is most effective when the parties both have access to legal advice and that the provision of expert advice for workers and small employers would make a significant contribution to the resolution of employment disputes.

47. The Law Centre welcomed the introduction of a system of neutral assessment but questioned how this will sit with the early case evaluation by an Employment Judge which has been developed and extended within the tribunal system.

48. The Law Centre welcomed the provisions in the Bill on protected disclosures.

49. The Law Centre felt that zero hours contracts should have been dealt with in the Bill and suggested the option to introduce an enabling clause into this Bill that would allow the Department to bring forward regulations to address zero hours at a later stage.

50. There are a number of broader issues that the Law Centre recommends the Committee raises with the Department These included:

- Adjudication for straightforward or low value claims;
- Non-payment of tribunal award

51. The Law Centre (NI) argued that too many tribunal awards go unpaid and that this undermines confidence in the whole tribunal process. The Committee asked for more information on this.

52. The FSB in Northern Ireland welcomed the proposed LRA early conciliation and neutral assessment services and was content that settlement agreements already take place so there was no merit in renaming the practice as compromise agreements.

53. The FSB said clear guidance and tailored advice is needed for small employers who need to have difficult conversations with some employees, and would like to see the LRA's role in this regard promoted and targeted towards micro and small employers.

54. FSB Northern Ireland was disappointed that the qualifying period was not extended to 2 years to ensure Northern Ireland's competitiveness and that the Department did not recognise the benefits of a cap, which would provide employers with more certainty of the limits of the potential penalty to them.

55. Donnelly & Kinder welcomed the early conciliation service but suggested that non-binding conciliation should include a costs risk at the Tribunal to a party who refuses to accept the recommendation of the conciliation officer.

56. Representation during the conciliation process should be limited to the parties and lay representatives, namely trade union officials, Human Resource managers and a McKenzie Friend. Legal representation at the conciliation stage should not be permitted. However they also believed that the extension of time limits to allow conciliation appeared to be somewhat confusing and could create an additional burden for the parties who are utilising the process.

57. Donnelly & Kinder proposed that consideration should be given to a mechanism by which some complex discrimination cases could be referred to the Tribunal.

58. The Engineering Employers Federation (EEF) NI was disappointed that the opportunity has been missed to reduce the Collective Consultation period from 90 days to 45 in line with Great Britain.

59. It was also concerned that the additional burden to be placed on the LRA in delivering the Early Resolution Model will dilute its other services if not sufficiently funded.

60. The CEJ believes that provisions in Clause 4 and 8 did not appear to be enabling provisions but rather contain provisions expressly giving the LRA an express statutory power and that there had been a failure to provide any provision for how the power is to be exercised.

61. The CEJ argued that the absence of this detail made it very difficult for it to provide relevant and meaningful submissions to the Committee.

62. On the 6 January 2015 the Committee received evidence from four organisations who had previously submitted written evidence. The Committee also heard from Departmental officials, firstly, to brief the Committee on the Bill and later in the meeting to give a response to the issues raised by both the Committee and stakeholders.

63. The Departmental officials advised the Committee that they were in consultation with the Minister about introducing enabling regulations regarding zero-hours contracts. The Committee questioned the officials as to whether Executive approval would be required for such an amendment. The officials confirmed that Executive approval would be required for the introduction of a new policy or any changes to an existing policy.

64. ICTU highlighted their concerns to the Committee about the need for the early conciliation service to be subject to a review concerning its functioning. The Law Centre also mirrored these concerns, suggesting a 12 month interim review and a subsequent 3 year full review should be introduced. The officials agreed that a review was an important part of setting up a new early conciliation service and confirmed that they would bring the suggested timescales for review back to the Minister. The Committee, in echoing the concerns of both organisations, asked the officials if the proposed early conciliation model would be following the ACAS (Advisory, Conciliation and Arbitration Service) model in Great Britain. The officials confirmed that they would be using the ACAS model as a way to assess what lessons they can learn from its usage in Great Britain, in order to tailor it for the new early conciliation model in NI.

65. ICTU also raised their concerns regarding the changes to 'public interest' disclosure legislation. They advised the Committee that they were concerned about the potential reduction in tribunal awards as a result of a disclosure being found to be in 'bad faith'. To remedy these concerns they wished to know if the discretion of the tribunal would be under review. The Committee raised their concerns with the officials later in the meeting. The officials advised the Committee that the reduction in bad faith was important to ensure that employees did not withhold important information in malice.

66. ICTU representatives suggested that the 6 categories of 'public interest' disclosure should be extended to 7 so as to include 'financial irregularity' or instead create a 'catch-all' statement. The Committee questioned the officials as to whether there would be any challenge by including a 'catch all' statement.

67. The Departmental officials replied to this concern by stating that they had not consulted on this but would take the Committee and ICTU's concerns back to the Minister. The Department responded on 12 January 2016.

68. The Committee questioned the officials on why negative resolution was used, for enabling powers relating to tribunal deposits, instead of affirmative procedure. The officials advised the Committee that they would bring the Committee's suggestion of affirmative procedure back to the Minister. The Department advised the Committee on 20 January 2016 that they had proposed a draft amendment to change the process from negative resolution to affirmative procedure.

69. The Committee raised their concerns regarding the renaming of tribunal chairmen to Employment Judges. They were troubled by the legalistic impact of this change in terminology. ICTU wished to have the Department's assurance that this change was purely in name alone and did not alter their job description. The officials acknowledged that in responses to the consultation on Employment Law Review there had been a mixture of opinions on the change, with some organisations echoing the concerns of the Committee. The officials defended the name change as a matter of consistency and to reflect the legal expertise of those employed in the role. They also confirmed that it was purely a change in terminology and that the role of Employment Judges would remain the same.

70. The Law Centre highlighted that whilst they were broadly content they wanted clarity on several features of the Bill. They wanted the Department to clarify the time limits involved in the early conciliation service to ensure that claimants were not running out of time with regards to their tribunal applications.

71. The Law Centre was also concerned about the lack of information regarding what stage in a dispute a neutral assessment would start. The Committee also wanted to know when guidance about the neutral assessment service would be released. The officials advised the Committee that given the novel nature of the neutral assessment service, the exact details were still to be confirmed but it was likely that it would not commence until 2017/18. The officials also advised the Committee that neutral assessment would only be initiated after litigants had first undergone the early conciliation process.

72. The Law Centre raised the issue of the need for personalised legal advice relating to employment disputes. The officials confirmed that it is important that this role remains with the specialised advice centres such as the Law Centre and the Citizens Advice Bureau. It highlighted that whilst the LRA could not give personalised advice, so as to maintain their impartiality, they could alert employees as to what their rights were in the dispute. Further, the officials emphasised the role of Early Neutral Evaluation run by the Tribunals Service.

73. The LRA highlighted their concerns about the simultaneous commencement of two new schemes, early conciliation and neutral assessment. The officials reassured the Committee that the early conciliation service would be embedded first, in line with an appropriate review of the LRA's Statutory Arbitration Service. The Committee queried that time scale of the Review of Arbitration Services and the officials confirmed that they are hopeful that the review would take place over this next year.

74. The Northern Ireland Commissioner for Employment and Skills communicated his disappointment to the Committee that more had not been done with relation to the provision of Apprenticeships in Clause 18 of the Bill. The Department official responsible for the Apprenticeship strategy confirmed that the focus of Clause 18 was to support apprenticeships.

75. The Committee also raised the issue of non-payment of tribunal awards. The Department provided statistics on the prevalence of the non-payment of tribunal awards on 12 January 2016 and provided a further explanation of the date on 19 January 2016.

76. Finally, the officials highlighted that they were aware of the issue of resourcing the LRA for the purpose of the early conciliation and neutral assessment service and were in discussions with the Minister concerning this matter.

Examiner of Statutory Rules

77. The Examiner of Statutory Rules has reported on the Bill with respect to the subsequent regulations and noted that he was content.

78. The Committee considered the Report on its Scrutiny of the Bill on 27 January 2016 and ordered for the Report to be printed.

Consideration of Key Issues

79. The Committee has considered a number of issues in its scrutiny of the Bill.

Early Conciliation

80. Donnelly & Kinder Solicitors submitted that failure to accept an early conciliation recommendation should be associated with a costs risk.

Department's response

81. Early conciliation is intended to establish the offer of LRA conciliation as the first port of call when a dispute cannot be resolved by internal workplace efforts alone. However parties will be under no obligation to accept that offer. A legal remedy will remain available for those who want to pursue it, either because they do not want to engage in conciliation or because conciliation does not succeed.

82. The Department has no intention of diluting continued access to the tribunal system by placing new preconditions on access to it and is of the view, based on stakeholder engagement to date, that such a proposition would not command necessary consensus.

83. Donnelly & Kinder also believed that there should be a mechanism to refer some complex discrimination cases not suited to early conciliation to tribunal.

Department's response

84. Public consultation on the early conciliation proposal showed that there was general support for wide jurisdictional coverage for early conciliation, including complaints relating to unlawful discrimination. While the Department freely acknowledged that some such cases are not readily resolved within the short time window for early conciliation and in some cases there may be matters of legal principle at stake which mean that early conciliation is not taken up, it is reasonable to offer early conciliation and leave it to the parties to decide whether or not to accept the offer. The Department will work with the LRA to monitor the effectiveness of early conciliation and is open to reviewing the list of jurisdictions to which it applies if feedback suggests that this is warranted.

85. Donnelly & Kinder argued that the proposals for extending time limits to allow for early conciliation need to be straightforward.

86. *Department's response*

87. The Department accepts this and will work with the LRA and the Office of Industrial Tribunals and the Fair Employment Tribunal to ensure that guidance is clear and consistent.

88. The Law Centre (NI) submitted that early conciliation should not be unduly burdensome; should take into account the needs of vulnerable claimants in particular; and should use the same form as that used to start a tribunal claim to avoid problems arising from differences between two separate forms (Law Centre (NI)).

Department's response

89. The Department accepts that the interface between early conciliation and tribunals will need to be as straightforward as possible. The needs of vulnerable people will be considered in its development.

90. The Department does not consider it appropriate for the early conciliation form to deal with the detail of a complaint. The required information should only be that which is necessary to enable the LRA to make a timely early conciliation offer. There will be nothing preventing the conciliation officer from obtaining, in conversations with the parties, more detail about the dispute. The existing LRA pre-claim conciliation arrangements, which do not require written details of a dispute, demonstrate that this approach can work.

91. It is understood that a consequence of this approach may be that a prospective claimant may include on a subsequent tribunal claim form a matter not raised during early conciliation. The tribunals, however, will not be required to check what has been discussed at early conciliation; they will merely need confirmation that there has been compliance with early conciliation requirements. The Department will work with the LRA and the Office of Industrial Tribunals and the Fair Employment Tribunal to monitor the implementation of early conciliation and address any difficulties identified.

92. The Committee also raised concerns about the high number of unrepresented litigants in the tribunal system and problems surrounding access to services.

Department's response

93. The Department accepts these concerns. It highlights that a consultation was carried out between July and September 2015 on new tribunal rules and procedures and part of the review will look at the accessibility of the system. At present the Department funds the Law Centre to provide assistance to vulnerable claimants, but in that consultation, there was a wider look at the position of vulnerable people and how they access the system. The Department recognises that we need to look more broadly at the guidance and information available to people.

94. The Committee also requested further information from the Department about circumstances in which the early conciliation service is not applicable.

Department's response

95. The circumstances in which LRA early conciliation is not applicable will have to be specified in regulations developed once the enabling powers in the Employment Bill are in place. These circumstances will be finalised following engagement with stakeholders during the coming months. However, the initial assessment set out in the public consultation was that jurisdictions where a very short period exists for presenting a claim or where a settlement would be inappropriate should not be subject to early conciliation requirements.

96. In addition, there are certain circumstances in which there would be little sense in requiring prospective claimants to submit the details of their claim to the LRA and, if early conciliation is introduced, the Department has proposed to provide a number of exemptions, including those listed below: prospective claimants who are part of a multiple claim, where another person who is part of the multiple claim has complied with the early conciliation requirement by submitting details of the claim to the Agency; prospective claimants where the prospective respondent has contacted the Agency and asked it to conciliate the dispute; prospective claimants who are lodging proceedings on issues where the Agency has no conciliation role; and prospective claimants

who intend to bring a claim against the Security Service, the Secret Intelligence Service or the Government Communications Headquarters.

97. The Committee were concerned about the Department's rationale for making provisions relating to tribunal deposits subject to negative procedure instead of affirmative procedure.

Department's response

98. The Department took on board the Committee's concerns and confirmed that the Minister had drafted a proposed amendment to ensure that tribunal deposits are subject to affirmative procedure.

Neutral Assessment

99. The LRA believed that the introduction of neutral assessment may be best considered in light of the development of early neutral evaluation within the tribunal system and the review of the LRA's statutory arbitration scheme.

100. The Law Centre (NI) argued that there is a need to consider how the system of neutral assessment will interact with the process of early neutral evaluation operated by the tribunals. There is also a need to consider in the context of the proposed review of the arbitration scheme.

101. *Department's response*

102. Setting in place an effective early conciliation service will rightly be the LRA's first priority in the near future. The Department's intention has never been to require the implementation of a new system of neutral assessment without a full consideration of what the process should involve and how it relates to other dispute resolution options. The Department acknowledges that there is a need to take account of the forthcoming review of the Agency's statutory arbitration arrangements and learning from the early neutral evaluation initiative that has been successfully piloted by the tribunal service.

103. The CEJ believe that Clauses 4 and 8 are not enabling powers but rather in themselves confer statutory authority on the LRA. There are potential implications for their legal interpretation. There is no detail on how the neutral

assessment power would be exercised, in particular in relation to time limits; the legal standing of neutral assessment; whether it is to be confidential; its relationship to tribunal proceedings; and any right of appeal.

Department's response

104. The Department's objective is to establish broad legislative authority to develop neutral assessment following the review of the LRA arbitration scheme, taking account of lessons from the system of early neutral evaluation that has been successfully piloted by the tribunals. This non-prescriptive approach is similar to that governing the LRA's conciliation service.

105. The Department however does take on-board the points made and is considering whether there is merit in introducing an amendment to enable the Department to set out in subsequent regulations how neutral assessment should operate.

106. To answer specific points, it is envisaged that neutral assessment would be in confidence and subject to the same legal admissibility tests as conciliation. An assessment would be an expert view with no legal standing and no implications for tribunal proceedings. A pause in tribunal time limits to allow for neutral assessment is not envisaged. As the process would have no legal standing and no implications for tribunal proceedings, a right of appeal against an assessment is not contemplated.

107. The CEJ submitted that there was potential overlap with existing tribunal processes, at additional cost.

Department's response

108. Neutral assessment is intended as a distinct and separate dispute resolution option for parties who agree to pursue it. It is not intended to replace or duplicate tribunal procedure and could in the Department's view run in parallel.

109. However the Department accepts that there are judicial concerns and the Minister has agreed to meet the President of the Tribunals to explore these.

110. The neutral assessment proposal is novel and the Department will seek urgently, whether through amendment of the Bill or otherwise, to address outstanding matters to ensure that the tribunal process is not compromised.

111. The CBI argued that, neutral assessment could "do much to demystify common misconceptions that exist amongst parties regarding the level of awards that are available via the tribunal".

Department's response

112. There is no clear evidence that there are widespread misapprehensions about the level of tribunal awards. However the Department does accept that if more can be done to address cases where misperceptions arise, then it should be done. It will work with Office of Industrial Tribunals and the Fair Employment Tribunal to ensure that clearer information is provided on this issue.

Labour Relations Agency Resourcing

113. The LRA raised concerns that they were not provided with the initial impact assessment regarding resourcing the early conciliation and neutral assessment service. The CBI and EEF also both highlight the importance that the LRA is appropriately resourced in order to operate both services.

Department's response

114. The initial impact assessment was based, pro rata, on the corresponding assessment in Great Britain of the potential cost of early conciliation. Now that the Employment Bill has been introduced and detailed discussions with the LRA are on-going in relation to delivery of the proposed service, there is an opportunity for the Agency to set out very clearly how it envisages the service being delivered, based on the ACAS experience and the anticipated demands of Northern Ireland users.

115. The Department is open to considering the provision of additional resource to support the service on the basis of a robust business case from the Agency which it expects to receive shortly.

Employment Judges

116. The Bar of Northern Ireland and ICTU expressed their concerns about the change in terminology from 'Tribunal Chairperson' to 'Employment Judges'. They argued that this would result in a more legalistic tribunal system and could be intimidating for prospective claimants. The Committee sought reassurance that a three person panel would still be required when tribunals were conducted.

Department's response

117. The Department discussed the concerns over the terminology change on a range of different occasions and sought to reassure the Committee and stakeholders that the change would be one in name only. Further, they confirmed that there would be no change to the number of persons presiding over a tribunal.

'Public Interest' Disclosures

118. ICTU raised concerns about the fact that 'financial irregularity' was not included as one of the 6 categories of 'public interest disclosure'. The Committee asked the Department to provide an explanation as to why this was the case and also suggested introducing a 'catch all' statement that would cover 'financial irregularity'.

Department's response

Whilst the Department did not consult on the categories of 'public interest' disclosure, the UK Government did carry out a consultation and their research found that the majority believed that the categories covered the majority of issues including financial queries. However, we are open to expanding this in the future if it was felt that it needed to be looked at again. In our consultation on public interest disclosures, there was a section where people were invited to comment in general about the legislation and no comments were raised at the time about the categories.

Careers Guidance

119. The Committee advised the Department that they wanted a stronger requirement on the provision of impartial careers guidance. They suggested changing the word 'may' to 'shall'.

Department's response

The Department accepts this change. We received technical drafting guidance on this change and can confirm that it will be amended from 'may' to 'must'.

Unfair Dismissal: Maximum Level of Award

120. FSB NI submitted that it is disappointing that a cap is not being introduced on tribunal awards in unfair dismissal cases. The expectations of claimants and respondents are unrealistic. It is anomalous that the cap has grown by more than median earnings.

Department's response

121. As part of the consultation on the employment law review, the Department sought views on the UK Government's introduction of a power to place a maximum limit equating to the value of 12 months' pay on the compensatory award that a tribunal may make in respect of a finding of unfair dismissal (current cap: £78,400).

122. There was no clear consensus on whether a similar power should be introduced in Northern Ireland. Substantive evidence was not presented that claimants pursue unfair dismissal claims because they have unrealistic expectations about award levels. Few tribunal claims result in the maximum award being made; however, the Department does accept that if there is any possibility of false perceptions then that issue can be addressed through clearer information and guidance.

123. Unfair dismissal is a breach of employment law with very serious socio-economic and health implications. Making a change of this kind without clear support would send out the wrong messages about the seriousness with which this issue should be taken.

Unfair Dismissal: Qualifying Period

124. CBI submitted that the Department has missed an opportunity to extend the qualifying period for unfair dismissal to remain competitive with rest of the UK and the Republic of Ireland. This places NI at a competitive disadvantage with regard to foreign direct investment and recruitment. A two-year qualifying period would give employers more time to train and assess new employees.

125. FSB NI believed that a longer qualifying period would allow better assessment of performance and suitability and ensure that there are sufficient resources to fund a given post in the longer term. The Department has ignored the view of small business owners that this would encourage recruitment.

Department's response

126. 188. There is no consensus on any potential changes in this respect. The Department was unable to establish any causal link between the unfair dismissal qualifying period and employment growth, inward investment and volumes of tribunal claims, but retained an open mind, seeking evidence from the consultation on the issue. A shift to the two-year qualifying period could realistically only be justified by convincing evidence that substantial improvements in each of these areas would be likely to be forthcoming. Benefits must be considered in light of the impacts that could arise from reducing the effectiveness of an important employment right. The Department acknowledges that some employers and employer representatives believe that the qualifying period is an issue of perception and that increasing it to two years may have the potential to create a more business-friendly environment for employers to create jobs. This issue can be revisited in the future if a sufficient consensus for changes was forthcoming.

Collective Redundancies

127. CBI and EEF (NI) both believed that there has been a missed opportunity to reduce the collective redundancy consultation period from 90 to 45 (or fewer) days, in respect of consultations involving over 100 employees.

Department's response

128. The Department accepts that it is the quality rather than the length of consultation which is of most importance; and also appreciated that NI is not aligned either with practice in Great Britain or the Republic of Ireland. However, as the Committee is aware, it had been the Department's intention to include a measure effecting this change within the Bill. However, inclusion of the measure was unable to command necessary political consensus and so the Bill takes no steps in relation to this issue. However, the Department will issue guidance on good practice in respect of collective redundancies and on the meaning of 'establishment'.

Trade Union Law

The Irish Congress of Trade Unions argued that the employment law review did not consider burdens on the trade union movement.

Department's response

129. In its response to the employment law review the Northern Ireland Committee of the Irish Congress of Trade Unions highlighted legislation dating back to the 1980s which, it was suggested, restricts unions' ability to perform functions and imposes significant costs, such as the requirement to use postal ballots, reforms to picketing and restrictions on closed shops.

130. The Department did not review this legislation but the Minister has ruled out replicating further restrictions as contained in the Great Britain Trade Union Bill.

131. The Minister has subsequently engaged with members of the trade union movement to discuss their concerns.

Zero hours Contracts

132. The Law Centre (NI) felt it was disappointing that the Bill does not address zero hours contracts. One option might be to include an enabling provision.

Department's response

133. This is an issue on which it has been difficult to secure consensus. The Department is reviewing options around zero hours contracts and will let the

Committee know as soon as any amendments, if developed and agreed, are forthcoming.

134. The Department subsequently confirmed that they would not be bringing forward any amendments related to zero hours contracts.

Dispute Resolution General

135. The Law Centre (NI) believed that there should be the option of adjudication for straightforward low value claims.

Department's response

136. The Department is aware of this proposal from the Law Centre and is open to considering its potential as part of the proposed review of the LRA's arbitration scheme.

137. The Law Centre (NI) was concerned about the non-payment of tribunal awards to parties who are owed them.

Department's response

138. The Department is aware that some parties who are not paid tribunal awards which are owed to them find it problematic to secure payment via the present process of enforcement through the courts. Evidence on the matter was sought as part of the Department's consultation between July and September 2015 on developing more modern tribunal rules and procedures and responses are currently being considered. Longer term policy work on the extent of the problem and potential solutions will be required.

Better Regulation

139. FSB NI submitted that current employment law is problematic for small businesses given that they are expected to meet the same requirements as large employers.

Department's response

140. The Department accepts that it can be problematic for small businesses without dedicated HR support to grasp the requirements of employment law

and is considering options to improve information for small employers. Already the nibusinessinfo.co.uk web portal is a useful online resource but The Department will consider how content can be strengthened and is happy to engage with SMEs on this. The Department continues to discuss these challenges with the LRA and is encouraged to note that the Agency is committed in its present business plan to developing a SME and micro employer support strategy.

141. FSB NI also stated that clear guidance is needed on 'difficult conversations'.

Department's response

142. The Department intends to commission the development of guidance for employers on the handling of what are commonly referred to as 'difficult conversations'.

Building Better Employment Relations

143. The Northern Ireland Commissioner for Employment and Skills submitted that there are benefits to be realised from promoting effective employee engagement and facilitating better working relationships between trade unions and employers to promote best practice and skills.

Department's response

144. The Department continues to pursue the promotion of skills as a key objective.

145. The LRA Employment Relations Roundtable is a positive example of the kind of work that is being done to bring together trade unions and employers to focus on issues of common interest.

Clause by Clause Consideration of the Bill

146. The Committee deliberated on the Clauses of the Bill and on the issues raised by stakeholders on 13 January 2016 and at its meeting on 20 January 2016 the Committee formally considered the clauses of the Bill.

Industrial Tribunals

Clause 1: Conciliation before and after institution of proceedings

147. Clause 1 requires prospective claimants to submit the details of their claim to the Labour Relations Agency before they can lodge the claim at an industrial tribunal. A LRA conciliation officer will be required to try and achieve a settlement to the dispute within a prescribed period of time. If this period expires or a settlement is not possible, the officer must issue a certificate to the prospective claimant which permits them to lodge a claim with an industrial tribunal. Without this certificate a claimant will not be able to lodge a claim with the tribunal. The conciliation officer may attempt to promote either reinstatement or re-engagement of the individual. There is a further duty on the LRA to promote settlement in certain cases where proceedings have already been instituted.

148. The Committee agreed that it was content with Clause 1 as drafted.

Clause 2: Extension of limitation periods to allow conciliation

149. This clause gives effect to Schedule 2, which sets out how the relevant time limits for bringing a claim to an industrial tribunal will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged.

150. The Committee agreed that it was content with Clause 2 as drafted.

Clause 3: Extended power to define "relevant proceedings" for conciliation purposes

151. Clause 3 amends Article 20 of the ITO 1996 to provide that orders made by the Department may add to or remove proceedings from the list in Article 20(1) ITO 1996.

152. The Committee agreed that it was content with Clause 3 as drafted.

Clause 4: Assessment of likely outcome of any proceedings

153. Clause 4 provides a power for the LRA to ask a person, appointed by the LRA for the purpose of assessing the likely outcome of proceedings, for a view on the case. This assessment would be non-legally binding.

154. The Committee agreed that it was content with Clause 4 as drafted.

Clause 5: Power to require party to proceedings to pay deposit

155. Clause 5 amends Article 11 of the ITO 1996 to provide the Department with the power to prescribe by regulations requirements, in addition to those already in statute, which parties may be required to meet as a condition of continuing to participate in particular IT proceedings.

156. The Department advised the Committee that it had proposed a draft amendment to Clause 5. This amendment will ensure that such regulations will be subject to the draft affirmative procedure as opposed to negative resolution.

> ***Clause 5****, Page 5, Line 12*
>
> *At end insert-*
>
> *'(2) In Article 25 of that Order (regulations and orders)-*
>
> *(a) in paragraph (1), for "All" substitute "Subject to paragraph (1A), all";*
>
> *(b) after paragraph (1) insert-*
>
> *"(1A) Regulations which include provision under Article 11(2)(a) shall not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.".'*

157. The Committee agreed that it was content with Clause 5 subject to the Departmental amendment.

Fair Employment Tribunal

Clause 6: Conciliation before and after complaint to Fair Employment Tribunal

158. Clause 6 inserts new Articles 88ZA and 88ZB into the FETO 1998. These Articles will require prospective claimants to submit the details of their claim to the LRA before they can lodge the claim at the FET. An LRA conciliation officer will be required to try and achieve a settlement to the dispute within a prescribed period of time. If this period expires or a settlement is not possible, the officer must issue a certificate to the prospective claimant which permits them to lodge a claim with a FET. Without this certificate a claimant will not be able to lodge a claim with the tribunal. There is a further duty on the LRA to seek to promote settlement in cases where proceedings have already been instituted and the conciliation officer may continue to offer support after proceedings have commenced.

159. The Committee agreed that it was content with Clause 6 as drafted.

Clause 7: Extension of time limit to allow conciliation

160. Clause 7 inserts Article 46B into the FETO 1998. This sets out how the relevant time limits for bringing a claim before the FET will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged.

161. The Department advised the Committee that it had proposed a draft amendment to Clause 7. This amendment would remove any obsolete references to statutory dispute resolution procedures from current legislation.

> ***Clause 7**, Page 7*
>
> *Leave out line 37 and insert 'for "to Article 46A" substitute "and to Articles 46A and 46B"'*

162. The Committee agreed that it was content with Clause 7 subject to the Departmental amendment.

Clause 8: Assessment of likely outcome of any proceedings

163. This clause is comparable to Clause 4 which provides a power for the LRA appoint an individual to assess the likely outcome of proceedings, for a view on the case. This assessment would be non-legally binding.

164. The Committee agreed that it was content with Clause 8 as drafted.

Clause 9: Power to require party to proceedings to pay deposit

165. This clause is comparable to Clause 5 which amends Article 84B of the FETO 1998 to provide the Department with the power to prescribe by regulations other requirements in addition to those already in statute, which parties may be required to meet as a condition of continuing to participate in particular FET proceedings.

166. The Department advised the Committee that it had proposed two draft amendments to Clause 9. The first would amend the current Clause 9 by ensuring that the regulations would be subject to draft affirmative procedure as opposed to negative resolution.

> ***Clause 9****, Page 8, Line 39*
>
> *At end insert-*
>
> *'(2) In Article 104 of that Order (regulations and orders)-*
>
> *(a) in paragraph (1), after "101(1)" insert "and no regulations which include provision under Article 84B(2)(a)";*
>
> *(b) in paragraph (2), after "Schedule 1" insert "and regulations which include provision under Article 84B(2)(a)".'*

167. The Committee agreed that it was content to note Clause 9 as drafted.

168. The second Departmental amendment would insert a new Clause 9A into the Bill. This new clause seeks to replace Clause 4 and Clause 8 and concerns the assessment of matters relating to tribunal proceedings.

> ***New Clause***
>
> *After clause 9 insert-*

"Assessment of matters relating to tribunal proceedings

Assessment of matters relating to tribunal proceedings

***9A**.-(1) The Department may by regulations make provision for a prescribed person to provide relevant parties with an assessment in accordance with the regulations of prescribed matters in connection with any tribunal proceedings which might be or have been instituted by one or more of those parties.*

(2) In this Article-

"prescribed" means prescribed by regulations under this section;

"relevant parties" means such persons as may be prescribed;

"tribunal proceedings" means prescribed proceedings before an industrial tribunal or the Fair Employment Tribunal.

(3) Regulations under this section are subject to negative resolution.".

169. The Committee agreed that it was content with Clause 9A subject to the Departmental amendment.

170. The Committee has also proposed two new clauses to be inserted after Clause 9. The first would insert a new Clause 9B. This clause would place a requirement on the Department to systematically review the operation of the early conciliation service.

After Clause 9A insert

'New Clause 9B

Review of early conciliation

9B.—(1)

The Department must review the operation of-

(a) Articles 20 to 20C of the Industrial Tribunals (Northern Ireland) Order 1996;

(b) Articles 46B and 88ZA to 88ZC of the Fair Employment and Treatment (Northern Ireland) Order 1996; and

(c) the amendments made by Schedules 1 and 2,

at the end of the period of one year beginning with the commencement of this section.

(2)The Department shall, having consulted with relevant stakeholders including employers, lay the findings of this review in a report to the Assembly.

(3) The report shall in particular include -

(a) a synopsis of consultation responses;

(b) an assessment and evaluation of the effectiveness of these provisions;

(c) the number of cases overall, the number dealt with by early conciliation, the length of time taken for each and the outcome of each;

(d) any savings directly attributable to the introduction of these provisions.

(4) The Department shall also review and report as in subsections (2) and (3) at the end of the period of three years beginning with the coming into operation of early conciliation..

171. The Committee agreed that it was content with Clause 9B as drafted.

172. The second would insert a new Clause 9C. This clause would place a requirement on the Department to systematically review the operation of the neutral assessment service.

After Clause 9B insert

'New Clause 9C

Review of neutral assessment

9C.—(1) The Department must review the operation of

(a)Article 20D of the Industrial Tribunals (Northern Ireland) Order 1996; and

(b) Article 88ZD of the Fair Employment and Treatment (Northern Ireland) Order 1998.

at the end of the period of one year beginning with the commencement of this section.

(2) The Department shall, having consulted with relevant stakeholders including employers, lay the findings of this review in a report to the Assembly.

(3) The report shall in particular include -

(a) a synopsis of consultation responses;

(b) an assessment and evaluation of the effectiveness of these provisions;

(c) the number of cases overall, the number dealt with by neutral assessment, the length of time taken for each and the

outcome of each;

(d) any savings directly attributable to the introduction of these provisions.

(4) The Department shall also review and report as in subsections (2) and (3) at the end of the period of three years beginning with the coming into operation of neutral assessment.

173. The Committee agreed that it was content with Clause 9C as drafted.

Employment judges

Clause 10: Employment judges: Industrial Tribunals

174. Clause 10 makes provision so that members of the panel of chairmen of industrial tribunals as well as the President and Vice-President of the Industrial Tribunals and the Fair Employment Tribunals may be referred to as employment judges.

175. The Committee agreed that it was content with Clause 10 as drafted.

Clause 11: Employment judges: Fair Employment Tribunal

176. Clause 11 makes provision so that members of the panel of chairmen the Fair Employment Tribunal may be referred to as employment judges.

177. The Committee agreed that it was content with Clause 11 as drafted.

Protection disclosures

Clause 12: Disclosures not protected unless believed to be made in the public interest

178. Clause 12 inserts a 'public interest' test into the ERO 1996. This ensures that, in order to benefit from protection, whistleblowing claims must, in the future, satisfy a public interest test and disclosures, which can be characterised as being of a personal rather than public interest, will not be protected.

179. The worker must also show that the belief that the disclosure was in the public interest was reasonable in the circumstances.

180. The Committee agreed that it was content with Clause 12 as drafted.

Clause 13: Power to reduce compensation where disclosure not made in good faith

181. Clause 13 seeks to remove the requirement in the ERO 1996 that disclosures must be made in good faith in order to be a protected disclosure and benefit from whistleblowing protections. In addition, the clause amends the ERO 1996 to provide industrial tribunals with the power to reduce an award of compensation by up to 25%, where a protected disclosure has not been made in good faith.

182. The clause provides industrial tribunals with the power to reduce an award of compensation by up to 25%.The issue of good faith will now be considered with regard to remedy, not liability.

183. The Committee agreed that it was content with Clause 13 as drafted.

Clause 14: Protected disclosures: reporting requirements

184. Clause 14 permits the Department to produce regulations requiring a prescribed person to produce an annual report on disclosures made by workers. This would promote systematic processes in how such disclosures are handled and ensure that there is consistency across the sector.

185. The Department advised the Committee that it had proposed a draft amendment to Clause 14. This amendment has been drafted to the effect that where a report relates to functions of a body in the reserved field, then that report will be sent to the Secretary of State for laying before Parliament rather than being sent to the Department for laying before the Assembly. Members of Sinn Féin indicated their concern at this proposed amendment.

> ***Clause 14****, Page 10, Line 28*
>
> *After 'Assembly' insert 'or to the Secretary of State for laying before both Houses of Parliament'*

186. The Committee agreed that it was content with Clause 14 subject to Departmental amendment.

Clause 15: Worker subjected to detriment by co-worker or agent of employer

187. The effect of this clause is to introduce a vicarious liability provision so that where a worker is subjected to a detriment by a co-worker done on the ground that the worker made a protected disclosure, and this detriment is done in the course of the co-worker's employment with the employer, that detriment is a legal wrong and is actionable against both the employer and the co-worker.

188. Employers are able to rely on the defence in new paragraph (1D) of Article 70B of the ERO 1996 if they have taken all reasonable steps to prevent the co-worker from subjecting the whistle-blower to a detriment. If the defence applies the employer will not be liable for the actions of the co-worker.

189. The Committee agreed that it was content with Clause 15 as drafted.

Clause 16: Extension of meaning of "worker"

190. Clause 16 extends the meaning of "worker" so as to include student nurses and student midwives who undertake work experience or training. The clause also introduces a power which allows the Department to amend, by order, the definition of "worker". This can be used to increase the scope of protection but can only be used to remove categories of individuals where in the opinion of the Department no such individuals exist.

191. The Committee agreed that it was content with Clause 16 as drafted.

Careers guidance

Clause 17: Careers guidance

192. Clause 17 introduces a power which allows the Department to make regulations in relation to arrangements for providing impartial careers guidance.

193. In line with the Committee's request to strengthen the power of the regulations, the Department advised the Committee that it had proposed a draft amendment to change 'may' to 'must'.

***Clause 17**, Page 11*

Leave out from line 43 to the end of line 6 on Page 12 and insert-

' "(4) The Department must make arrangements under this section for providing careers guidance for such persons as the Department considers appropriate.

(5) The guidance must be-

(a) provided in an impartial manner; and

(b) be in the best interests of the person receiving it.

(5A) The Department may by regulations make such provision concerning arrangements under subsection (4) as the Department considers appropriate, including provision requiring the guidance to be delivered or otherwise provided by a person who has such qualifications as the Department may determine." '.

194. The Committee agreed that it was content with Clause 17 subject to the Departmental amendment.

Apprenticeships

Clause 18: Apprenticeships

195. Clause 18 introduces a power which allows the Department to make regulations in relation to arrangements for providing apprenticeships.

196. The Department advised the Committee that it had proposed an amendment to Clause 18. This amendment makes provision for traineeships.

***Clause 18**, Page 12*

Leave out line 18 and insert 'must be made under this section for providing apprenticeships and traineeships'

***Clause 18**, Page 12, Line 20*

At end insert-

'(8) Regulations under subsection (7) may make provision as to the components of apprenticeships and traineeships.'

197. The Committee agreed that it was content with Clause 18 subject to the Departmental amendment.

Miscellaneous

Clause 19: Indexation of amounts: timing and rounding

198. Clause 19 establishes a time for orders, made under Article 32(2) and (3) of the ERO 1999, to come into operation and amending the calculation which is to be used to increase or decrease the relevant limits. This means that future changes to relevant limits are to be made on 6th April each year rather than (as currently) as soon as practicable. All limits remain linked to the RPI. This clause also changes the rounding calculation so that all limits are rounded up or down to the nearest pound. The Department may also at any time make an order increasing or decreasing sums dealt with under Article 33.

199. The Department advised the Committee that it had proposed a draft amendment to Clause 19. This amendment means that the limits will not be reviewed twice in a calendar year as was originally proposed. This amendment also allows the Department to make an order, at any time, increasing or decreasing sums dealt with, under Article 33 of the Employment Relations (NI) Order 1999, without reference to the RPI. This gives the Department flexibility to review rates in a more fundamental way, but with any order making such provision having to be laid in draft before, and approved by, the Assembly before becoming operational.

> ***Clause 19**, Page 12, Line 36*
>
> *After 'Assembly' insert-*
>
> *'(8) An order under paragraph (7) may exclude the application of paragraph (2) in relation to any sum increased or decreased by the order for such period as may be specified in the order.'*

200. The Committee agreed that it was content with Clause 19 subject to the Departmental amendment.

Clause 20: Prohibition on disclosure of information held by the Labour Relations Agency

201. Clause 20 establishes a new provision which prohibits the LRA, or persons appointed by the LRA, from releasing information relating to a worker, employer of a worker, or a trade union, that they hold in the course of performing their functions. There are excepted circumstances in which this prohibition does not apply.

202. The Department advised the Committee that it had proposed a draft amendment to Clause 20. This is a minor amendment to wording which would provide the PPS with increased flexibility in taking cases of this kind forward. The change will allow the Director to institute prosecutions, a power that can be and has been delegated.

Clause 20, Page 13, Line 31

At end insert 'by or'

203. The Committee agreed that it was content with Clause 20 subject to the Departmental amendment.

Clause 21: Variation in procedures for certain orders and regulations

204. Clause 21 amends Article 251 of the ERO 1996 so that the Department's powers to amend certain legislative provisions are made subject to the draft affirmative procedure before the Assembly. These include powers relating to the qualifying period for unfair dismissal and certain of the new public interest disclosure provisions inserted into the ERO 1996 by the Bill.

205. The Committee agreed that it was content with Clause 21 as drafted.

Clause 22: Statutory shared parental pay: correction of references

206. Clause 22 corrects a small number of references in the Social Security Contributions and Benefits (Northern Ireland) Act 1992, dealing with statutory shared parental pay, which were introduced by the Work and Families Act (Northern Ireland) 2015.

207. The Committee agreed that it was content with Clause 22 as drafted.

Clause 23: References to tribunal jurisdictions to which Articles 17 and 27 of the Employment (Northern Ireland) Order 2003 apply

208. Clause 23 updates legislative references in Schedules 2 and 4 of the Employment (Northern Ireland) Order 2003 ("EO 2003").

209. The Committee agreed that it was content with Clause 23 as drafted.

Supplementary

Clause 24: Repeals

210. Clause 24 gives effect to the repeals of statutory provisions set out in Schedule 3.

211. The Committee agreed that it was content with Clause 24 as drafted.

Clause 25: Interpretation

212. Clause 25 provides that for the purpose of this Bill any reference to "the Department" means the Department for Employment and Learning.

213. The Committee agreed that it was content with Clause 25 as drafted.

Clause 26: Commencement

214. Clause 26 provides that the Department may make commencement orders bringing the provisions of the Act into operation on one or more dates. This is except for those set out in clause 25 (Interpretation), clause 26 (Commencement) and clause 27 (Short title).

215. The Committee agreed that it was content with Clause 26 as drafted.

Clause 27: Short Title

216. Clause 27 provides for the Short Title of the Employment Act (Northern Ireland) 2015.

217. The Committee agreed that it was content with Clause 27 as drafted.

Schedules

Schedule 1: Conciliation: Minor and Consequential Amendments

218. The Committee agreed that it was content with Schedule 1 as drafted.

Schedule 2: Extension of Limitation Periods to Allow for Conciliation

219. The Committee agreed that it was content with Schedule 2 as drafted.

Schedule 3: Repeals

220. The Department advised the Committee that they had proposed a draft amendment to Schedule 3. This is a minor amendment which seeks to update references to out-dated legislation.

> ***Schedule 3**, Page 24, Line 21*
>
> *At beginning insert in the second column-*
>
> *'Article 38(1A).*
>
> *In Article 46(1), the words*
>
> *from "and to any*
>
> *regulations" to "2003""*
>
> ***Schedule 3**, Page 24, Line 33*
>
> *At end insert in the second column-*
>
> *'In Schedule 5, paragraph 4(1) and (2).'*

221. The Committee agreed that it was content with Schedule 3 subject to the Departmental amendment.

Appendix 1: Minutes of Proceedings

Wednesday, 25 April 2012	Committee for Employment and Learning Departmental Briefing on the Review of Employment Law	View Online
Wednesday, 4 June 2014	Committee for Employment and Learning Departmental Briefing on the Summary of responses on the Employment Law Consultation	View Online
Wednesday, 10 September 2014	Committee for Employment and Learning Ministerial Briefing on the Term Ahead	View Online
Wednesday, 13 May 2015	Committee for Employment and Learning Employment Bill: Departmental Briefing	View Online
Wednesday, 2 December 2015	Committee for Employment and Learning Employment Bill: Departmental Refresher Session	View Online
Wednesday, 6 January 2016	Committee for Employment and Learning Employment Bill: Departmental Briefing and Stakeholder Evidence Session	View Online
Wednesday, 13 January 2016	Committee for Employment and Learning Employment Bill: Informal Clause by Clause	View Online
Wednesday, 20 January 2016	Committee for Employment and Learning Employment Bill: Formal Clause by Clause	View Online
Wednesday, 27 January 2016	Committee for Employment and Learning Employment Bill: Consideration of Draft Report	View Online

Appendix 2: Minutes of Evidence

Wednesday, 25 April 2012	Committee for Employment and Learning Departmental Briefing on the Review of Employment Law	View Online
Wednesday, 4 June 2014	Committee for Employment and Learning Departmental Briefing on the Summary of responses on the Employment Law Consultation	View Online
Wednesday, 10 September 2014	Committee for Employment and Learning Ministerial Briefing on the Term Ahead	View Online
Wednesday, 13 May 2015	Committee for Employment and Learning Employment Bill: Departmental Briefing	View Online
Wednesday, 2 December 2015	Committee for Employment and Learning Employment Bill: Departmental Refresher Session	View Online
Wednesday, 6 January 2016	Committee for Employment and Learning Employment Bill: Departmental Briefing (1)	View Online
Wednesday, 6 January 2016	Committee for Employment and Learning Employment Bill: Departmental Briefing (2)	View Online
Wednesday, 6 January 2016	Committee for Employment and Learning Employment Bill: Northern Ireland Commissioner for Employment and Skills	View Online

Wednesday, 6 January 2016	Committee for Employment and Learning Employment Bill: Labour Relations Agency	View Online
Wednesday, 6 January 2016	Committee for Employment and Learning Employment Bill: Law Centre (NI)	View Online
Wednesday, 6 January 2016	Committee for Employment and Learning Employment Bill: Irish Congress of Trade Unions	View Online
Wednesday, 13 January 2016	Committee for Employment and Learning Employment Bill: Informal Clause by Clause	View Online
Wednesday, 20 January 2016	Committee for Employment and Learning Employment Bill: Formal Clause by Clause	View Online
Wednesday, 27 January 2016	Committee for Employment and Learning Employment Bill: Consideration of Draft Report	View Online

Appendix 3: Written Submissions

The following submissions have been received by the Committee in relation to the Inquiry:

- Confederation of British Industry
- Council of Employment Judges
- Donnelly & Kinder Solicitors
- Engineering Employers Federation
- Federation of Small Business
- Irish Congress of Trade Unions
- Labour Relations Agency
- Law Centre NI
- Thompsons Solicitors NI
- Bar NI

Appendix 4: List of Witnesses

Department for Employment and Learning	Dr Stephen Farry MLA Mr Colin Jack Mr Raymond Kelly Mr John McKeown Ms Margaret O'Hare Dr Alan Scott Ms Deidre Walsh
Irish Congress of Trade Unions	Mr Brian Campfield Mr Kevin Doherty
Labour Relations Agency	Mr Tom Evans Mr David McGrath
Law Centre (NI)	Mr Daire Murphy Ms Ursula O'Hare
Northern Ireland Skills Advisor	Mr Mark Huddleston

Appendix 5: Correspondence

19 January 2016	Departmental proposed amendments and outstanding issues.	View Online
19 January 2016	Departmental draft amendments.	View Online
12 January 2016	Departmental response to Employment Bill and outstanding issues.	View Online
4 January 2016	Departmental analysis and response to stakeholder issues.	View Online
18 December 2015	Departmental response regarding Clause 17 of the Employment Bill.	View Online
11 December 2015	Delegated Powers Memorandum.	View Online
10 December 2015	Departmental response to Committee regarding Clause 22 of the Employment Bill.	View Online
26 November 2015	Departmental response to the Employment Law Review Consultation.	View Online
8 May 2015	Departmental response to Employment Law Review and Employment Bill.	View Online

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