DÁIL ÉIREANN

AN COMHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Dé Máirt, 23 Bealtaine 2017

Tuesday, 23 May 2017

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Niall Collins,	Paul Gavan,
Tom Neville,	James Reilly.
Maurice Quinlivan,	
Bríd Smith.	

Teachta / Deputy Mary Butler sa Chathaoir / in the Chair.

The joint committee met in private session until 3.40 p.m.

Banded Hours Contract Bill 2016: Discussion (Resumed)

Chairman: I remind members, visitors and those in the Visitors Gallery to ensure their mobile phones are switched off or left in flight mode for the duration of the meeting as they interfere with the broadcasting equipment, even when left in silent mode.

I welcome Dr. Michelle O'Sullivan, lecturer in industrial relations, Dr. Juliet McMahon, lecturer in industrial relations and human resource management, Dr. Jonathan Lavelle, senior lecturer in industrial relations and human resource management and Dr. Caroline Murphy, lecturer in employment relations, from the University of Limerick to our last meeting on the Banded Hours Contract Bill 2016.

Before we commence, in accordance with procedure, I am required to read the following. By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I remind our guests that the presentation should be no more than five minutes in duration. The presentations submitted by today's attendees have been circulated to members. I now ask Dr. O'Sullivan to begin the presentation to the committee.

Dr. Michelle O'Sullivan: I have copies of the opening statements here because they could not be emailed last week.

Chairman: We will circulate them to the members.

Dr. Michelle O'Sullivan: We thank the Oireachtas committee for the invitation to discuss the Banded Hours Contract Bill 2016. We briefly touch on the specific matters which are under consideration by the committee.

On the matter of problems caused by casualisation of work, the University of Limerick, UL, report found the existence of zero hours work operationalised through if-and-when contracts. These contracts provide no guaranteed hours of work and workers have a contractual right to accept or refuse work offered. The key difficulties of if-and-when contracts for workers are an unpredictable number of working hours, unpredictable scheduling of hours, variable income, difficulties making care arrangements and a need for State income supports. International academic research identifies similar outcomes for workers in casualised work. We welcome efforts to provide more certainty to workers about their hours.

There is a critical legal issue concerning if-and-when contracts which requires policy action largely centred around if-and-when clauses in these contracts. There is no mutuality of obligation between employers and workers on if-and-when contracts, thus these workers are not legally defined as employees. This means that they do not have rights under most employment legislation, including the Organisation of Working Time Act 1997. Employment status is a key difference between those on if-and-when contracts and those on zero-hour contracts as defined by the Act. The UL report found evidence of people working under if-and-when contracts on a zero hours basis who have no protection under working time legislation, but little evidence of people working on a zero hours basis under contracts of employment, that is, as employees, who do have rights under the Act. We note that International Labour Organization Recommendation 198 states that national policy should provide guidance on effectively establishing the existence of an employment relationship. The Bill proposes to cover "workers" and this requires further discussion.

A second critical legal issue arises in relation to continuity of employment. Some employment laws, such as those on unfair dismissals and redundancy, stipulate employee service requirements. Similarly, the Bill proposes rights for a worker with no less than six months' continuous employment. However, there can be difficulties in identifying when someone in a zero hours job has started his or her employment as his or her work can be intermittent. Therefore, the issue of calculating continuous employment for someone doing zero hours work should be addressed.

On the matter of whether zero-hour contracts should be banned, we emphasise here that the term zero hours work should be used rather than zero-hour contracts. Zero-hour contracts of employment are legislated for already but they have been narrowly defined and working time legislation does not cover the wider practice of zero hours work, that is, if-and-when contracts. A simple so-called "ban" on zero hours work alone would not solve the problems experienced by workers. For example, hypothetically, an employer who gives a worker just one guaranteed hour a week would satisfy a "ban" on zero hours work. Additional regulations on working hours would be required to actualise a real ban on zero hours work.

On the matter of administrative implications of the Bill, any legislation which has regulations on working hours may result in some administrative responsibilities but employers are already required to have pay and hours records. We suggest consideration be given to the Bill making exception for working hours arrangements made in employment regulation orders, sectoral employment orders and registered employment agreements.

On the fourth matter, should workers on low and zero-hour contracts be allowed a minimum set of hours and the right to request more hours, we should distinguish here between contracts. A low hours contract has no universal meaning and could refer to a regular part-time contract where people have guaranteed hours. For if-and-when contracts, the absence of guaranteed hours places workers in a legally precarious situation.

There are two questions concerning a request for more hours: should people be allowed the right to request more hours than is in their contract and should people be allowed the right to request more hours than they actually work? This distinction is necessary because those on if-and-when contracts may work regular hours but this may not be reflected in their contracts and there are examples of this in Labour Court cases. The UL report recommended those doing zero hours work should have guaranteed contractual hours based on the reality of hours worked. A right to request more hours than actually worked may be seen as beneficial to those who are underemployed and the EC directive on part-time work noted that employers should give con-

sideration to requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise.

In regard to whether the Low Pay Commission should review proposals on banded hours contracts for those on low pay, we are not clear on what is being suggested here exactly. There is an argument that setting minimum wages should go hand in hand with examining hours but the Low Pay Commission would require sufficient data on working hours and banded hours if it had some remit in this regard.

We note other points on the Bill. These are that the Bill does not contain anti-victimisation or compensatory measures, and it does not seem to provide for the option of mediation in the Workplace Relations Commission following a complaint, as per the Workplace Relations Act 2015.

Chairman: I thank Dr. O'Sullivan. We will start with some questions. Who would like to begin?

Deputy Tom Neville: In regard to their research, does Dr. O'Sullivan have any statistics on how many businesses they researched to show how broad the research was?

Dr. Michelle O'Sullivan: There were two parts to the research. One was to look at the quantitative side and to conduct interviews with stakeholders. We would very much like to have done a national survey if it was at all possible, but it was not possible in the six-month timeframe that we were given.

We mentioned in the report that there are difficulties in terms of there being no national data currently collected on how many do zero hours work. That is an important point because even if we had started collecting data at the very beginning of our research, we would not have found the problem of zero hours work. The experience is similar in the UK where significant numbers of people are now seen to be on zero-hour contracts. The big increases have been partly explained by the statistics office in the UK by the fact that people did not realise they were on zero-hour contracts until media attention focused on them. There would have been problems even from the beginning with us asking people if they were on a zero-hour contract. It would not have captured the level of zero hours work that occurs. A particular feature of zero-hours work internationally is that there is a variable element to the working hours and we looked at data on that. In terms of zero-hours work, we conducted interviews with 82 representatives across civil society organisations and trade unions. The civil society organisations, which represented the unemployed, migrants, women and the youth, as well as the trade unions all expressed significant concern about the use of zero-hours work through if-and-when contracts. We have examples of contracts from different types of companies which show that the use of if-and-when contracts is a problem.

Deputy Tom Neville: Were any particular industries or locations targeted?

Dr. Michelle O'Sullivan: The terms of reference for the report were that we examine hospitality, retail, education and health. Particular concerns were expressed by the organisations I mentioned about hospitality, in particular, and certain occupations or services within the health sector. If one considers the statistics we produced on part-time variable working, for example, the vast majority of all part-time variable work in the country is done in three sectors - retail, hotels and accommodation and health.

Deputy Tom Neville: In what year was the study conducted?

Dr. Michelle O'Sullivan: It was in 2015, so the figures would have related to 2014.

Deputy Tom Neville: The figures are from 2014?

Dr. Michelle O'Sullivan: Yes.

Deputy Tom Neville: Excuse my lack of knowledge, but was that the first time this type of study was conducted?

Dr. Michelle O'Sullivan: It is the first time a national study examined the issue of zero-hours work.

Deputy Tom Neville: In light of the studies, would the economic background or economic conditions have an adverse effect on the type of contracts that would be issued by businesses, be it zero-hour or if-and-when contracts?

Dr. Michelle O'Sullivan: It is possible. If one considers the trends in non-standard work, some of them started before the recession. For example, increases in the incidence of part-time work started before the recession. In the case of reduction in working hours, accommodation and restaurants have seen the biggest drop in working hours since the early 1990s, but most of that drop happened before the recession.

Chairman: Do you envisage any unintended consequences from the Bill as currently drafted?

Dr. Michelle O'Sullivan: With all legislation there can be potential for unintended consequences. On initial reading of the Bill as drafted I thought it would have given some rights to everybody in terms of requesting hours, but I understand from previous committee debates and reading the sponsoring Deputy's Bill that this was not the intention of the Bill and that it was meant for people who have a difference between the reality of work and their contract. There are other measures in it where issues could be clarified. The biggest one, which is related to the opening statement, is trying to clarify who it is protecting. That is the initial definition of the worker, which is extremely important. Unless the issue of employment status is tackled comprehensively, it might have only limited applicability to certain types of workers.

Senator Paul Gavan: I thank the witnesses for their attendance and for their presentation on foot of a very useful report on the issues surrounding if-and-when contracts. The Sinn Féin Bill recommends banded contracts. It recommends six or seven bands. Do the witnesses have a view on how many bands would be useful? They may or may not know that the draft legislation the Government is working on recommends just three bands. Do they see any advantages or disadvantages either way in that regard?

Dr. Michelle O'Sullivan: Obviously, there are advantages and disadvantages. We noted in our report that the optimal way to sort out working hours arrangements is through collective agreements. That is always generally preferable to legislation. In the absence of those there will be complexities with having one-size-fits-all employment legislation. There might be some businesses that the bands suit and others where they would not. The important issues are that people are getting hours in which they are working and that the employment status issue is corrected. If legislation is introduced where there is a focus on the bands rather than on who it is protecting, I would anticipate a significant number of legal cases down the road where there is a question over who it is protecting, regardless of the number of bands. We are then leaving it to the courts, perhaps, to try to interpret who is being protected. We are concerned that, regardless

of the bands, if-and-when workers might not be protected.

Dr. Juliet McMahon: Can I make a point on that?

Chairman: Of course.

Dr. Juliet McMahon: It relates to the category of worker. It is the definition under the Industrial Relations Act 1990 and Dr. O'Sullivan has articulated that. However, the UK has introduced the intermediate category of worker under its 1996 Act. It has not made life easier in terms of the status of workers or the legislation. In fact, it has complicated it. There is a swathe of cases at present to try and determine where people fit, whether they are independent contractors, workers or employees. One finds in some cases that they are both workers and employees. We must examine the status issue because it is fundamental. As Dr. O'Sullivan said, the issue is who it is going to protect, before one gets to the bands. If we do not examine that intermediate category and the effect it has had in the UK, in particular, given that the UK has a similar common law system to ours and similar interpretations of it, we could be creating a set of negative unintended consequences. We must be careful.

Chairman: If anybody else wishes to contribute, they are more than welcome to do so.

Deputy Maurice Quinlivan: I thank the witnesses for their attendance and the presentation. I appreciate it. I also found the report they produced very useful when researching the problem in this area. The report states that zero-hour contracts are unusually prevalent and widely used. However, if-and-when contracts obviously are too and there is an urgent need to address this. That is what the Bill is intended to do. We all have been visited in our constituency offices over the years by people who are on either zero-hour or if-and-when contracts. They do not have any stability around their working time so they do not know what hours they will be working in the following week. It prevents them from planning their daily activities and their household budgets, getting loans from the credit union or applying for loans or mortgages. The Bill put forward by Deputy Cullinane is important and I welcome Dr. O'Sullivan's comment that she agrees the Bill is an attempt to deal with the reality of work and those contracts.

Senator James Reilly: I thank the witnesses for their attendance and for their presentation. Notwithstanding the fact they have identified three areas where they believe this is problematic, did they get a sense of the extent to which this is operating across our economy and of how many workers might be affected? Was that within the remit of what they sought to do?

Dr. Michelle O'Sullivan: It was not possible to quantify the number of people. The collection of that information on an ongoing basis is one of the things we believe should happen. It is highly problematic, first, because people might not realise that they are on those types of contracts, second, because people might have been working regular hours for a number of years and still not realise that they are on an if-and-when contract, regardless of the number of hours they are working regularly, and, third, because Ireland has a narrow definition of zero-hour contracts. What we call a zero-hour contract and an if-and-when contract are together what the UK calls a zero-hour contract. The practice we are seeing is the same as what is in the UK in terms of the types of contracts. That is an issue.

The interviewees from the civil society organisations and the trade unions expressed concern about the hospitality sector, in particular, and certain services in health, such as care work. We also have copies of templates for contracts given by particular employer organisations which provide an example to employers of how to construct an if-and-when contract. We see it as an

indication of some of the guidance that might be given. It is not possible to quantify it other than to say the people on the ground who are representing these people say it is an issue.

Deputy Niall Collins: I thank Dr. O'Sullivan for her presentation. May I offer her an opportunity to reply to the criticism levelled against her report by some of the other presenters that it exceeded the terms of reference which were given in writing? I am interested in Dr. O'Sullivan's comment on that.

Some of the larger employers - some of whom were invited to present to the committee but declined - have concluded agreements with their staff on the issues. Have the witnesses looked at how any of those are playing out since the agreements were entered into between the employer and the employees? Penneys is one example we were given. I am curious if the witnesses looked at the larger employers.

Senator Paul Gavan: Tesco is another example.

Deputy Niall Collins: Did the report look at those agreements and how they played out?

Dr. Michelle O'Sullivan: With regard to the criticism of the work, the report was an examination of zero-hour contracts. The Department was keen to get a picture of what was going on in the country. It was the first study so there was a total lack of knowledge in the area beforehand. The first thing we did as researchers was to try to define what are zero-hour contracts. One definition is in the Organisation of Working Time Act. When one looks at the international experience of zero-hour contracts, what we are talking about is zero-hour work. It would have been irresponsible of us to look at one particular type of contract and not the reality of what is zero-hour work. The intention of the study by the Department was to see if there was a problem in the area and whether protections should be extended to groups of people or not. What we are looking at when we talk about zero-hour work is to what extent the work is precarious. Precarious work is work where there is a lack of income security, job security and where one has a lack of control over one's work. When looking at zero-hour work, to look at just the narrow definition contained in the Organisation of Working Time Act would really only have been half a report because we would have ignored the people who are living the reality of zero-hour work.

We also tried to look at why this work is happening. It is happening because of the narrow definition of zero-hour contracts in the Organisation of Working Time Act. Employers have said in the interviews and report that it is costly for them to produce zero-hour contracts because there is compensation attached to it. That is one of the motivating factors for formulating zero-hour work under a different name. As the first national study, we tried to do that. We made a series of recommendations which would continue that work in terms of data collection.

We understand there are agreements with some larger employers particularly in retail but there has not been any significant national study yet on how they are progressing. There are pros and cons of having banded hour agreements. To focus on just one particular type of employer and one particular type of sector would take away from the picture of other people doing zero-hour work. They have benefits and are one of the types of good practice, which have been used by other companies, that we recommended at the end of our report. Banded hour contracts are a preferable form of working to zero-hour contracts, in which there is very little balance between the flexibility of an employer and that of a worker. Banded hour contracts give an element of predictability to workers. It is the cause of all the problems for people doing zero-hour work.

Deputy Niall Collins: Does Dr. O'Sullivan see any place on the landscape for some form of if-and-when type contracts? I am particularly focusing on examples such as a post office in Castletownbere in the Beara Peninsula or a corner shop in some rural community like the ones we all represent. They are businesses, perhaps family-run, that are struggling. They require a degree of flexibility and have people available to them who are happily working on an if-and-when basis. The big retailers and big hotels can look after themselves. They have the big resource of an in-house HR service. I am not trying to fly a flag for any of those. They have come in here and made their own pitch. What is Dr. O'Sullivan's take on the small, corner shop type, family-run business that needs the flexibility of having one or two staff members to call on if and when they need them?

Dr. Michelle O'Sullivan: When we look at the possible rationale for zero-hour work, there are usually two reasons given. Those reasons are only given by the employers' organisations. They say some workers want these types of if-and-when contracts. They particularly cite young people and women with caring responsibilities. In response, civil society organisations that represent women and young people are very much in disagreement with that statement. They feel that while those groups may want flexibility, they do not want unpredictability. The other rationale that is often given is similar to the one the Deputy mentioned. It is that some employers may not be able to operate without staff doing zero-hour work. To that we say there are times when there can be unpredictable demand but we see it is a poor reason for having total flexibility for workers. Having a banded hour contract provides some level of flexibility. It does not say people have to have a particular number of hours but zero-hour contracts mean total flexibility. Internationally, it is considered to be the far end of the continuum of precarious work; it has all the most significant traits of that kind of work. The issue was probably mentioned in a previous committee debate by Marguerite Bolger. If we introduce legislation that imposes lesser regulation or responsibility on some types of businesses, there is the problem of creating a two-tier set of regulations or protections for people and that will not necessarily tackle the problem of precarious work.

Chairman: Part 3 of the Bill, on the provision of banded hour contracts, states: "A worker, or his or her trade union or a representative acting on his or her behalf, shall be entitled after a period of no less than 6 months of continuous employment with his or her employer, to request in writing of his or her employer to be moved to an increased weekly band of hours." There has been quite a lot of discussion here with all groups of witnesses about the six-month rule. We have had some groups, such as ICTU, who said it should be 18 months. The Union of Students in Ireland feels it should be six months. We have had people suggesting 12 months. What are Dr. O'Sullivan's thoughts on it? We heard that for anybody doing seasonable work, six months would not be suitable and it might have to be extended to nine months or 12 months. What are Dr. O'Sullivan's thoughts on that? It merited much discussion by all the groups that were in.

Dr. Michelle O'Sullivan: We had a similar recommendation on worker protections where we used the six-month timeframe. In that sense there are a number of options available for this type of work particularly when we look at the international context. One is to stop this work from the outset so there is no opportunity for any level of flexible work for that first six months. Some countries ban this type of work entirely. The second option is to become quite restrictive on the number of hours. In France, there are a set number of hours, where part-time workers get 24 hours, for example. On the six-month rule, we tried to strike a balance where there is an opportunity both for the employer and the worker to get a sense of the type or level of work they might be doing for the first six months. I understand the concerns about 12 months and a comment was made about protections available under the Unfair Dismissals Acts for 12 months, but

there are also provisions under the Acts for exemptions, for example, with regard to the national minimum wage or pregnancy related issues. People have raised this as a concern before the committee and said that perhaps there should be an alignment with the 12-month rule.

Chairman: Would Dr. O'Sullivan still recommend six months?

Dr. Michelle O'Sullivan: The six-month rule is still a good one because people should have an indication of what they are doing. We also made another recommendation about people having a more concrete understanding of what their hours are from day one. The European Commission is looking into that and has suggested it may come in down the road in respect of the European pillar of social rights. The expectation that people should have a good understanding of the hours they are doing from day one is being considered at Commission level. We tried to strike a balance where we are giving some opportunity to both, and six months should give an idea to both sides as to what level of hours they are doing.

Chairman: Pregnancy is an issue Dr. O'Sullivan mentioned, which has not come up in our past five meetings. Did women feel more unfairly treated by if-and-when and zero-hour contracts if they were pregnant or did they get what they were entitled to? Did the witnesses delve into that?

Dr. Michelle O'Sullivan: The issue of pregnancy and women did not come up specifically but the issue of women with caring responsibility, whether that is for older people or children, came up because employers felt this type of work suited these women. That was very much disagreed with by the organisations that represent women and trade unions. Pregnancy, however, did not come up.

Deputy Bríd Smith: I am sorry I was late and missed the presentation but I thank the witnesses for their research, which is useful. Have they examined the Government's proposed Bill? If so, what is their opinion of it?

Dr. Michelle O'Sullivan: We read the reports in the newspapers about what it is perhaps looking to do.

Deputy Bríd Smith: The Government has just published the heads of a Bill to amend the Organisation of Working Time Act 1997. There are differences. Dr. O'Sullivan was discussing the six-month rule but the Government wants an 18-month rule and it wants a minimum wage payment of three hours for people who turn up and do not work. A pharmacist is cited. If he or she turn ups and does not work, he or she should not be paid €20 an hour. Instead of applying an average, the Government has gone right to the bottom. Has Dr. O'Sullivan read the draft heads? If so, what does she think of them?

Dr. Michelle O'Sullivan: We have read some of the generalities relating to it. The three hours issue came up in interviews for our report and in international evidence relating to people doing zero hours work. People could be called in and let go easily without any compensation. One of our recommendations is people should get a three-hour minimum payment for procession of work. That is the practice in countries such as the Netherlands and Germany. We are concerned about one or two of the Government's proposals regarding how to address whether someone should be given hours.

Dr. Juliet McMahon: Reference is made to where it is a "genuinely casual" contract, and we have issues with that because that is not much of a change from the current reference to casual contracts in the Organisation of Working Time Act which serves to exclude anyone who

is not an employee. That, therefore, excludes everyone currently on if-and-when contracts. If "genuinely casual" is inserted in the proposed legislation, that will leave the road open for a continuation of the same. It will be a case of *plus ça change* and we are concerned about that.

Deputy Bríd Smith: Dr. O'Sullivan noted that the international practice is to provide a minimum payment for the hours people turn up for and do not work. Does she agree that should be the national minimum wage or a different minimum payment?

Dr. Michelle O'Sullivan: We had two separate recommendations in this regard. First, if people are called into work, it should be for a minimum of three hours. The second related to notice for being called into work and notice if work is cancelled. If someone is called into work but it is cancelled, they should be paid for the hours they would have been paid for, and if they are called in, it should be for a minimum three-hour period.

Senator Paul Gavan: I am interested in the reference to casual work. I am concerned that if-and-when contracts will be replaced with another wide category called "casual work". Would a definition of "casual work" help or are we going down the wrong road by continuing to reference that term?

Dr. Juliet McMahon: The lack of a definition of "casual work" is an issue, even in the part-time work Act. In cases that came before the Labour Court such as Buckley and Sabina Murphy, reference was made to casual workers being excluded from the terms of the Organisation of Working Time Act. Therefore, de facto casual workers are not employees and if "genuinely casual" work is inserted in the proposed legislation, the same situation will be created again. It would be easy for employers to issue an if-and-when contract and say this person is a casual worker and, therefore, not an employee and, therefore, not covered by the legislation.

Senator Paul Gavan: The finest hotel in Limerick issues all its contracts as casual contracts.

Dr. Juliet McMahon: That has proved problematic.

Dr. Michelle O'Sullivan: I mentioned the European Commission's consultations on the European pillar of social rights. It has referred to guidance for countries whereby there should be an end to precarious employment relationships. Does the rationale for having people on totally casual work stand up? If there is a need for flexibility, there are myriad ways of organising working time that do not require staff to have complete unpredictability of work, such as the banded hours agreements in the organisations mentioned earlier. There are other examples. In previous committee hearings, there were discussions about the test that should be used for people if they request hours, including objective grounds, which are used in other forms of employment legislation. That would at least test for whether there is a need or a legitimate aim to have people on certain types of employment rather than having it preordained in legislation that genuinely casual work is a reason for people having no predictable hours.

Senator Paul Gavan: Is Dr. O'Sullivan suggesting that, ideally, legislation should do away with this notion of casual work or strictly define what is casual work?

Dr. Michelle O'Sullivan: There are precedents in other employment legislation. The National Minimum Wage Acts and the Employment Equality Acts have a wider definition of "employee" than the Organisation of Working Time Act. That definition follows the European Court of Justice, ECJ, definition, which is wide. There is no single definition at European level of an employee, but the definition that has been used in ECJ cases is similar to that in the Na-

tional Minimum Wage Acts.

Dr. Juliet McMahon: That would be a person who provides personal service to one employer. The danger is if that intermediate category is created and that definition is used to bring in a category of workers, as happened in the UK, we could create additional problems. Many researchers and legal experts in the UK, such as Keith Ewing and Simon Deacon, and Friedman, have argued that we should get rid of the definition of "employee" that exists now and bring in the definition that has been used in ECJ cases relating to the personal service nexus. That is a wider debate.

Senator Paul Gavan: I thank the witnesses.

Dr. Michelle O'Sullivan: It is welcome to have regulations which at least have some kind of security. At the moment, we pretty much have a zero-sum game with regard to the issue of if-and-when contracts. The notion that there is no other way of organising hours to suit business needs if we do not have if-and-when contracts is quite a narrow way of thinking about the management of working hours when there are other examples in other countries across Europe of how it can be done. We would caution against going down the route of the UK which had minimal regulation, making exclusivity clauses unenforceable. We would caution against that very light form of regulation. Legal experts in the UK say that the idea of stopping someone on a zero-hour contract from working for someone else was never a real problem to begin with, and therefore introducing that kind of regulation has not increased any level of protection for people, and the number of people on zero-hour contracts in the UK has increased. Its definition of zero-hour contracts includes our definition of if-and-when contracts.

Chairman: I thank the witnesses for coming here today to engage with the committee and for all their work to date on zero-hour contracts. One thing they will notice from this committee is that we are all very much aware that there is an issue here. We have done much work trying to tease out exactly where the issues are, so we appreciate the witnesses coming in today. We will now suspend the meeting until the next witnesses take their seats.

Sitting suspended at 4.21 p.m. and resumed at 4.23 p.m.

Chairman: I welcome Deputy David Cullinane and his adviser, Dr. Conor McCabe, to the second session of our meeting today to discuss the Banded Hours Contract Bill 2016.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I remind our guests that the presentation should be no more than five minutes in duration. The presentation submitted has been circulated to committee members already. I ask Deputy Cullinane to begin his presentation.

Deputy David Cullinane: It is nice to be back again. By my calculations, this committee has spent ten hours and five sessions hearing from 39 witnesses about this Bill and the wider issues that are raised in it. That is an impressive amount of time and effort. I thank the committee and the Chairman for the work it has put into this Bill. I also thank all the witnesses for giving their time to evaluate the Bill as well as sharing their insights and analysis. All contributions from all sections, both those who agreed with what the Bill is setting out to do and those who did not agree, have been read by me, those in my office, and Dr. McCabe, who is with me, and we are both thankful for the arguments made.

We have to be clear on one thing from the outset. There is a problem with if-and-when contracts and that problem demands a legislative response. There is no point in witnesses coming into this committee, as some have done, and pretending that the Irish world of if-and-when contracts consists of nothing more than students training to be doctors or lawyers, and employers doing them a flexible favour. The employers' groups did themselves no favours by putting forward such a facetious line. Mr. Tim Fenn of the Irish Hotels Federation, said, "The first thing we would suggest is that this Bill be forgotten about." In the words of Senator Reilly, "there has to be a realisation that there is a problem". We may disagree with how to address this issue, but no reasonable person can dispute that there is an issue and problem that needs to be addressed. The problem the Bill sets out to resolve is that of a person consistently working hours that are not recognised in a contract. As I have said from the beginning, I am happy to see changes to the Bill as it stands so long as that key objective is still realised.

Having gone through all ten hours of transcripts, I feel that there are three core issues raised with regard to the Bill that I believe to be valid and which were put forward in good faith. The first relates to the use of the word "exceeds" in section 3(1). This was raised by Ms Marguerite Bolger, SC, and Ms Cathy Maguire, BCL. Both said that they strongly welcomed the Bill and what it seeks to do. Ms Bolger made the point that the Bill as worded could be interpreted as giving an employee the right to hours in excess of those currently worked. As I have said on numerous occasions, this is most certainly not the intention of the Bill. Ms Bolger suggested replacing the word "exceeds" in line 30 to "reflects" to put it in line with the overall intent. I have reflected on this and I am more than open and willing to support such a change being made if the committee is agreeable.

The second issue relates to the look-back period for calculating the appropriate band for the employee. My Bill gives a period of six months, which is in line with the University of Limerick study recommendation. I understand that representatives of those who carried out that study were here today as well. The committee heard from various witnesses who criticised the six-month look-back period as too short to take into account seasonal factors. Other witnesses thought that anything more than 12 months would be excessive. I accept that the six month look-back period may be too short to take on board seasonal factors. I am willing to see that changed and I suggest that it could be a period of nine months. With that in mind, section 3(1) would then read, "A worker, or his or her trade union or a representative acting on his or her behalf, shall be entitled after a period of no less than nine months of continuous employment with his or her employer, to request in writing of his or her employer to be moved to a weekly band of hours, as per the banding of hours set out in the *Schedule* where the band requested [reflects] the hours average worked weekly in the previous nine month period." I feel this reflects a reasonable balance between the rights of the employee and the rights of the employer. No one is asking for additional hours in this Bill. All that is being requested is a contract that reflects the reality of hours worked.

The third issue raised is that of a refusal of a request for a move to a new band of hours on objectively justified grounds. Again, I feel that the issues raised with regard to how the Bill, as it stands, deals with this have merit, especially with regard to the current test of "severe financial difficulties". As a result, my office and I are working on a formula of words that will move to give the Bill a test on objectively justified grounds, as per the intent in the Long Title. With the Chairman's permission, I will get back to the committee with this formula of words.

One point was raised that I feel does not warrant a change in the Bill. On the issues regarding the obligation to provide information on overall availability of working hours, I believe the

employers' organisations simply showed up their outright opposition to the Bill rather than raising any valid criticism. Section 5 as it stands places an obligation on an employer to display the work roster for the following week "such that the notice is reasonably likely to be understood by the workers concerned". The Bill says that this roster "may" be in English or Irish, and in other languages where required. It does not say "shall" be in English or Irish, and in other languages where required. The key issue is that the notice is such that it is understood by the workers concerned. The obligation is to display a roster that is understood by the workforce. We do not want rosters that are not understood by employees. Unless Irish employees believe in putting up notices that are not understood by workers, a practice that would negate the reason for a notice in the first instance, the purpose of which is to be understood, then I fail to see how this be claimed as such an onerous burden on employers that it would lead to the immediate collapse of the business and-or bankruptcy, as claimed by the employers' representatives, or lead multinationals to flee Ireland for foreign shores, where they presumably would have to put up notices in languages other than English. This type of nonsense approach benefits nobody.

As already stated, I reject the comments made by witnesses that there is no need for this Bill and that if-and-when contracts are all sweetness and light: they are not. There are other issues that were raised in the course of the five hearings, including the need for additional sanctions where an employee is penalised for requesting a move in banded hours, which I am happy to discuss, along with the comments that I have just made.

I thank the committee for its work in scrutinising this Bill and I am happy to take any questions members may have.

Chairman: I thank Deputy Cullinane for his comments. Before I invite members to put their questions, the committee as a whole is in agreement that there is an issue around if-and-when contracts and zero-hour contracts. The fact that the Government has published heads of a Bill on the issue in the past week supports that there is an issue. I agree with Deputy Cullinane that some of the organisations who appeared before the committee were of the view that there is no issue. Every member of the committee agrees that there is a problem in this area. Senator Reilly has asked me to pass on his apologies. He was here for the first session of the meeting but he had to leave to go to the Seanad.

Deputy Niall Collins: I thank Deputy Cullinane for his input. The independent legal experts who appeared before the committee stated that the Bill may be unconstitutional. I presume Deputy Cullinane has read the transcript of previous meetings. Did that register on his radar and, if so, perhaps he would comment on it?

Deputy David Cullinane: The issues they raised were in regard to the "objectively justify grounds" as opposed to "severe financial difficulties". We are open to supporting that, the reasons for which I set out in my opening remarks. There is no Bill that is brought forward by either Government or Opposition that is perfect. On the last occasion I was before the committee I made clear that the intent of this Bill is simple: to ensure that after a reasonable timeframe - I am open to suggestions as to what is a reasonable timeframe - a person's contract would reflect the hours they work. Any Bill, whether brought forward by an Opposition member or by Government, requires amendment to perfect it.

A number of the legal witnesses that have come before the committee were clear on their support for the intent of the Bill. They recognised that the intent of the Bill is genuine and that we are trying to address a problem but they have raised a number of legal concerns in regard to some aspects of it. I have dealt with the three issues that we felt were the most problematic for

them from a legal perspective, namely, "objectively justify grounds", in respect of which we are willing to accept an amendment to deal with that issue; that the word "exceeds" be substituted with "reflects", which again is a reasonable request; and the six months versus nine months timeframe. In regard to the constitutionality of the Bill, for a Bill to pass it has to be constitutional. We want the Bill to be constitutional. Legal experts will have their opinions and have given them. We have accepted some of their criticisms around shortcomings in the Bill and, as I said, we are more than happy to accept whatever amendments might be tabled.

Dr. Conor McCabe: On that point, Ms Bolger referenced section 7 of the Protection of Employees (Fixed-Term Work) Act 2003 as a possible fix. We are more than happy to review the wording of that section to see how it can be adapted to fit within this Bill but we were not in a position to have that work completed for the purpose of this meeting. It was helpful to know that there is strong and robust case law at an Irish and European level in terms of wording that could strengthen this Bill.

Chairman: Is Dr. McCabe referring in that regard to the definitions of "worker" and "employer"?

Dr. Conor McCabe: No. In response to a question from the Chairman Ms Bolger put forward the view that in regard to the objective justification test the Protection of Employees (Fixed-Term Work) Act 2003 might be of assistance. We are aware of other legislative provisions which could be of assistance in regard to the definition of "employee" and "employer".

Chairman: Ms Bolger and Ms Maguire welcomed the Bill. The committee's engagement with them was one of the best we have had. It was very constructive. They stated that the definitions of "worker" and "employer" as currently set out in the Bill are problematic because they are taken from different Acts. In regard to the definition of "worker" and the exclusion in that regard of "all people employed by or under State", is that an issue that will be addressed?

Deputy David Cullinane: We are more than happy to do that. If it is an issue of definition that can be resolved. Ms Bolger and Ms Maguire were very constructive. I suppose they were wearing their legal hats and wanted to ensure the definitions in the Bill are consistent with the definitions set out in other Bills. We took the view that State employees are already covered by collective agreements. We were trying to frame a Bill that would get cross-party support. We would be willing to examine definitions in the Protection of Employees (Fixed-Term Work) Act 2003 or the Minimum Wage Act 2000 around "worker" and "employer". We are flexible on that issue because any change in that regard would not take away from the substance of the Bill. In essence, any-----

Chairman: Was the intention to include or exclude those workers or was it an unintended consequence?

Deputy David Cullinane: It was not so much an unintended consequence, the issue of if-and-when contracts is a problem mainly in the private sector.

Chairman: That is a fair point.

Deputy David Cullinane: That was the reasoning behind that provision. We are trying to avoid a conflict in regard to definitions. The conflict or differences of opinion should not come down to definitions of a worker, employee or employer. We can agree on the definitions issue because that will not take away from the substance of the Bill. It is an issue we do not have a difficulty with in terms of amendments.

Deputy Niall Collins: On the six months versus nine months versus 18 months timeframe in terms of banding, business accounts and budgeting are done on an annual basis. It seems to me that 12 months is the norm in terms of the cycle of most businesses. There is not much difference between nine months and 12 months. Why was the nine months timeframe chosen given business norms are 12 months?

Deputy David Cullinane: When I moved the Bill on Second Stage in the Dáil the view of Government was that there was no need for it because there is no problem and no real issue that needs to be dealt with. As stated by the Chairman, the Government has since produced heads of a Bill to deal with the issue, which recognises that there is need for a solution to this problem. We worked off the University of Limerick study, which recommended a six month look-back period. We developed a Bill which reflected recommendation No. 4 in its study. Since then, there have been multiple hearings on the Bill by this committee, the transcripts of which we have read and so we are aware of the constructive criticisms of the legal experts. My understanding of their observation is that the timeframe should be no longer than 12 months. In other words, 12 months would be the maximum. We felt all along that six months would be appropriate. However, as employers' organisations and others stated six months would be too short, we felt nine months could be a compromise. Again, once we get support for the principle of the Bill, it will be a matter for the committee and its members in the first instance to decide what they believe would be the appropriate length of time. I refer Deputy Niall Collins back to the recommendations made by the University of Limerick. That is where it came from. The university conducted the study which looked at what would be the most appropriate timeframe. Its view was that it should be six months. As I said, the legal representatives were seeking a maximum period of 12 months. I gather there were differences of opinion among some of the other delegates.

Chairman: ICTU actually sought a timeframe of 18 months. As Deputy Cullinane would not have been privy to this, when we met the University of Limerick study representatives, I questioned Dr. Michelle O'Sullivan again on the timeframes of six months, nine months, 12 months and whatever other timeframe might be suggested. She reiterated the figure of six months.

Deputy David Cullinane: For the purposes of clarity, Mandate was supportive of a time-frame of six months. I acknowledge that ICTU had its position, but there is a recognition by Mandate, a union that represents the vast bulk of workers actually in the if-and-when contract bracket.

Deputy Maurice Quinlivan: I agree with the comments made by the Chairman. Every-body involved in the committee who has listened to the delegates recognises that there is a massive problem with if-and-when and low-hour contracts. I thank Deputy David Cullinane for his Bill which is very progressive. He has come back to what he said on the first day that he was open to amendments. A number of issues were raised by previous delegates. Some were genuine, but I think others were not. I agree with the comment made by Deputy Cullinane that the employers' groups had done themselves no favours. I said it to them myself. They said they had a lot of problems with the Bill, but they had come with no solutions to how they would fix them.

I specifically want to mention four issues on which Deputy Cullinane said he was open to change. One is the display. Some of the employers' organisations turned it into a massive prob-lem, as though they would have to have translators in each company or business to make signs. They complicated something that was not that complicated. The words the Deputy used were

not the ones they were using either. I welcome his clarification in that regard.

A timeframe of nine months is probably a change with which most of us could agree. The Deputy had inserted a figure of six months in the Bill. ICTU was looking for a longer timeframe. I know that Mandate also wanted a period of six months. I hope a timeframe of nine months might be acceptable to most of us.

The Deputy clarified that he would change the word "exceeds" to "reflects", which is good. It was causing a lot of concern for some. I am particularly pleased also that the Deputy said he would come back with a formula of words to deal with the financial difficulties of employers. I wanted to make a quick comment on it. I again thank the Deputy for his presentation.

Deputy David Cullinane: I wish to make a general point in response to Teachta Maurice Quinlivan. I recognise the contributions made by the employers' organisations. I know that I made some strong criticisms in my opening remarks. With other members, I attended a briefing given by some of the employers' organisations on the heads of a Government Bill. Similar arguments were made against that Bill that I believe were disingenuous, facetious and an attempt not to recognise that there was a problem. It was Seanadóir James Reilly who made the point in asking what was wrong with somebody having a contract that reflected the hours they worked. It is a simple and basic right to which any employee should be entitled. There now seems to be political support for it which was not the case in the past. I welcome that advance. The employers' organisations are, however, not in a space where they are even able to accept that it is a right workers should have, regardless of whether it is a Sinn Féin or a Government Bill that progresses. We believe our Bill should progress because it has the ability to deal with the issue. Teachta Quinlivan asked if we were willing to work with others and accept amendments. We have demonstrated a willingness to do so.

The logic and the policy, that a worker should have a contract reflective of the hours he or she works, should be provided for in law. At a previous hearing we heard examples from workers. Mandate carried out a survey of workers on if-and-when contracts and the logistical and obvious problems they were causing for them. The findings of the survey were presented to the committee. We know that such contracts have an impact on workers in being able to plan their week and not being able to take out mortgages because it is their contract that is looked at, not the hours they actually work. There can be exploitation and workers can be penalised if they ask for a contract that is reflective of the hours they actually work.

One of the issues raised by the legal people was that we should look at the penalties in place if any worker is victimised. If we provide for banded hours, regardless of how many bands there will be and whatever the length of time, we must ensure employees will not be victimised. That is not provided for in the Bill, but we will amend it to reflect that position also. It was a welcome addition by the legal people who appeared before the committee.

I have dealt with the six-month time period which I still believe is appropriate. Obviously, we are willing to compromise and suggested a figure of nine months if others felt a longer time period would better reflect seasonal hours. Others have argued for a timeframe of 12 months and some have suggested a figure of 18 months. It is a matter for the committee to sort out.

On displaying rosters in a language or a way that is understood by a worker, when one thinks about it, they are just numbers and days. How onerous is it to ask an employer, especially of a large number of staff who might be from the same country, to have a roster that covers seven days? To be frank, some of the issues raised were a little disingenuous and red herrings. They

were an attempt to take away from the substance of the Bill. Again, they are issues that have been raised by trade unions. It is a simple right that workers should know the hours they will work in any given week. People have to organise their lives, make child care arrangements and deal with different issues. The majority of those on if-and-when contracts are women and in low-paid jobs. They deserve certainty. It is not unreasonable for a worker to know in advance the hours he or she will have to work the following week and have them displayed. That is a reasonable request. It is one of the reasons we were insistent on that element of the Bill remaining in place.

Chairman: In order that we are all aware, we will not be taking amendments at this stage. I checked the position again this morning because obviously it is new to me also. The giving of a Second Reading to the Banded Hours Contract Bill was deferred until 7 July to allow the committee to engage in detailed scrutiny. Once that date is reached, the Bill will automatically be passed-----

Deputy David Cullinane: The date is 17 July.

Chairman: I beg your pardon. Once that date is reached, the Bill will be placed on the Order Paper under the heading of Order for Committee Stage. Amendments to the Bill may only be tabled on Committee Stage after the Dáil has referred the Bill to the relevant select committee. It is unusual, as the clerk said to me, that it has come before us after First Stage. I just want everyone to be clear in his or her head that amendments will not be tabled at this stage. At this stage we are engaged in detailed scrutiny of the Bill.

Senator Paul Gavan: It is important to recognise the difference the Bill has already made because, as Deputy Cullinane pointed out, when it was introduced in the Dáil, there was no acceptance across the board that there was a problem. Following the hearings we have held, there is now cross-party acceptance that there is a significant problem that needs to be addressed. That in itself is a significant achievement.

What frustrates me is that looking at the Deputy's presentation, it is clear that the Bill is workable and, most importantly, can be effective. I stress the word "effective". I noted that the representatives of the University of Limerick had a particular concern about the continued use of the term "casual work" in the heads of the Government's Bill and how it could even be defined. I know that the heads of the Government's Bill have only just come out, but does Deputy Cullinane have views on the continued use of the term "casual work" in the Government's Bill? I certainly have a concern that, while we might be doing away with or restricting the use of if-and-when contracts, there will be a new category of contract that will still enable employers to employ people "casually", which would mean that employees would not be protected by the legislation we badly need.

Deputy David Cullinane: I thank Senator Gavan for his support. The issue of casual and precarious work is real. Many issues have come up in the hearings which are not dealt with in this Bill. For example, there is the issue of whether an employee should have the right to seek additional hours. I would support that. However, this Bill is not a miscellaneous, catch-all Bill. It is not trying to solve every problem. It is a Bill that is simply trying to deal with one particular problem, and we were very clear, up front and honest about what that was, which is that a person's contract should be reflective of the hours he or she does. I am supportive of fixing the issue of casual work, how that is defined and how we deal with the issue. It can be solved by policy initiatives and by different forms of legislation. The University of Limerick recommended looking at collective agreements because in some of these sectors they do not exist. There is

also the issue of the right to be a member of a trade union and access to collective bargaining.

There is a whole suite of legislative solutions I want to see put in place to strengthen workers' rights. I have published a report on low pay, casual work, precarious work and a living wage on behalf of this committee in the past, so there are a set of agreed proposals that could be used to examine some of these details. They are all important issues, but not all of them can be dealt with in this Bill.

The issue of casual work is massive. Flexible contracts suit some people, and there are some workers who actually want flexible contracts. We are not telling workers that they cannot have a flexible, short-term contract. We are trying to deal with situations were workers have been exploited by doing, for example, 30 hours a week for three, five or ten years which are not reflected in their contracts. There is a big difference. It is disingenuous to argue that this is an attack on flexible work and flexible contracts. It is not. If a worker wants that, he or she is entitled to it.

Senator Paul Gavan: One of the key points of the Banded Hours Contract Bill was that there were perhaps six or seven bands. I see that the Government's heads of Bill has just four bands. The first band is from one hour to ten hours. Are there any concerns about that? How effective would a Banded Hours Contract Bill need to be in order that a worker could avail of securing the hours he or she works?

Deputy David Cullinane: I have gone through all the transcripts of all the hours of hearings and I do not believe anyone raised a concern on the issue of the bands that are in the Bill. My concern with the Government proposals is that the bands are too broad. What we do not want is a Bill that on balance would negate the value of it and would make it almost irrelevant. I have a concern that we could be presenting a possible solution which is not a solution at all. If there is no disagreement with the range of bands we have proposed, which go up in five-hour increments, why can that not be the way forward? That is a better fix to the problem rather than having bands that are too broad and do not solve the problem for most workers.

Senator Paul Gavan: That is an important point. We might end up with legislation that looks like it is fixing the problem but is in effect toothless. As Deputy Cullinane has said, no one from any of the groups objected to the bands that were in the Bill. It is important that whatever way we move forward - one hopes with Deputy Cullinane's Bill - that we protect the bands that are in place there in order that the legislation is workable from the worker's point of view.

Chairman: The bands did not come in for any discussion whatsoever. The committee has heard from some employment law specialists who considered that a stand-alone Bill was perhaps not the best way forward and that the principle enshrined in the Bill could be incorporated by way of an amendment to existing legislation. Does Deputy Cullinane have a comment on that?

Deputy David Cullinane: My understanding of what they said was that it was not an either-or situation. They were working on the basis of the Bill as it is, which has yet to be amended. If the Bill were amended along the lines that some of the employment law specialists suggested, they would be more supportive of progressing this Bill rather than simply amending an existing Bill. A stand-alone Bill is merited. The logic of this Bill is clear and it should proceed. To be quite frank, if it does not proceed, it will be for political reasons. If there is cross-party support for the principle of it, let us progress this Bill, make the changes necessary, perfect it as outlined by some of the witnesses and get it done for the workers who need to be protected.

Sitting suspended at 4.55 p.m. and resumed at 4.59 p.m.

Chairman: I welcome Minister of State at the Department of Jobs, Enterprise and Innovation, Deputy Pat Breen, and his officials to the last session of our meeting today on the Banded Hours Contract Bill 2016. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I remind our guests that the presentation should be no more than five minutes' duration. The presentation has been circulated to members. I apologise, it has not. I beg the Minister of State's pardon. He may commence.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Pat Breen): Since the presentation was not circulated to members, the Chairman might give me a little leeway.

Chairman: I will, of course.

Deputy Pat Breen: I know the committee has had a very long day and a very comprehensive discussion earlier with the other witnesses as well. I thank the committee for inviting me to attend the committee today to discuss the Banded Hours Contract Bill 2016. I welcome the opportunity to be here with the members. I know the committee has put a considerable amount of work to date into consideration of the Bill and has engaged with a wide range of stakeholders over the course of recent months. The committee is to be commended on the approach it has taken in this regard.

I will first explain the Government position on the Bill. Members will recall from last summer that when it was debated on Second Stage in the Dáil, the Government did not support it for the reasons which I and my colleague, the Minister, Deputy Mitchell O'Connor, explained in detail at the time. In summary, the Bill, as drafted, is flawed, lacks balance and does not achieve its stated aim. Moreover, it would have very significant adverse consequences for employers across the economy, including job losses. In contrast, the legislative proposals recently approved by Government for priority drafting represent a balanced response to the commitment in the programme for Government to address the problems caused by increased casualisation of work and, very importantly, to strengthen the regulation of precarious work. I will elaborate on these proposals later.

Let us start with the Sinn Féin Private Members' Bill. What is wrong with it? The Bill does not focus on low-paid vulnerable workers. Instead, it requires that all workers in every sector of the economy be given additional hours on request, unless the employer can prove severe financial difficulties. Under the Bill, employees could keep asking for more hours every six months. They would have to receive the additional hours until the employer reaches the point of severe financial difficulties. It does not matter if the employer does not have the work. The effect of this provision is that the employers would find themselves having to appear before the Workplace Relations Commission, WRC, and the Labour Court attempting to prove severe financial difficulties. The right to seek more hours kicks in after six months in a job. The six-month reference period is too short to take into account the normal peaks and troughs of a business, including seasonal fluctuations, and it would produce skewed results. I ask the committee to think about someone working during a busy summer season from April to September. At the end of this period, he or she would have the right to get more hours than he or she worked over the summer and get those increased hours for the upcoming low season of October to March. This does not make sense and would cause untold difficulties for many businesses.

One of the problems highlighted in the University of Limerick study was the issue of employees whose contract of employment does not reflect the reality of the hours they work consistently. There may be, for example, employees who have been working 30 hours per week consistently for many years but whose contracts only state ten or 15 hours per week. The Government's proposals include measures to make contracts reflect the hours people actually work. The Sinn Féin Bill does not. Instead, it would require employers to give extra hours to employees that they did not have to begin with. This is totally different and does not address the problem identified by the University of Limerick study.

Further, the Bill makes no allowances for employers in the following situations. First, they may have no more work to give. This Bill would require them to increase hours until they reach severe financial difficulties. Second, they may be worried they might lose contracts due to Brexit, for example. They must give extra hours until they reach severe financial difficulties. Third, they may be setting aside funds to expand. It does not matter. Extra hours would have to be given whether needed or not. I know the committee has already discussed the test of severe financial difficulties at one of its earlier meetings with a number of experienced barristers practising in the area of employment law, one of whom referred to it in the following terms. The severe financial difficulties test "imposes such a disproportionate burden on an employer that there is a real risk that the legislation will be struck down as unconstitutional".

While I acknowledge that the Bill may be well intentioned, I must point out that it will have adverse impacts across the economy and jobs will be lost. I ask the committee to think about an employer with 100 hours of work to give per week and five employees each working 20 hours. Through this Bill, they would have to be put on a higher band if they so request. If they move to 25 hours each per week, that is 125 hours per week, 25 more than the employer has to give. One could expect one of them would have to be made redundant. This pattern could keep repeating itself every six months under the Bill.

The other major issue with the Bill is that it requires every employer covered by it to display notices in their workplaces. These notices have to show the number of hours being allocated to workers in the next week or month and the relevant bands. These notices will have to be in English, Irish and any other languages as required. This is clearly a significant additional burden that would apply to every employer, even if everyone works full-time and there are no rosters. The Bill requires this from every business ranging from the corner shop to the largest multinational.

In addition to the aforementioned flaws, the Bill does not deal with a range of issues encompassed in the Government Bill. Overall, while the Banded Hours Contract Bill 2016 may be well meaning, it is misconceived, flawed and inappropriate. There is a very real danger that employment will suffer and competitiveness be damaged if the Sinn Féin Bill is passed.

Having addressed the Sinn Féin Bill, I wish to outline what the Government proposes to do about banded hours, low-hour contracts, zero-hour contracts and related matters. I think everyone in this room would have empathy with employees who cannot access mortgages or even loans from credit unions because their contracts of employment do not reflect the reality of their hours worked. We would also empathise with people who may be in low-paid, insecure employment and those who are not informed of even the most basic terms and conditions of employment within a reasonable period of starting a new job. Further, we know of people being called in to work but who do not receive the promised hours. These are the key issues which have been identified as needing to be addressed. This is why the Minister, Deputy Mitchell O'Connor, and I brought proposals to Government in this area in response to the commitment

in the programme for Government to address problems in this area. I am very pleased to say the Government approved our draft legislative proposals earlier this month and the draft heads of Bill have been referred to the Office of the Attorney General for priority drafting. It is very important to understand that our proposals are the result of extensive consultations. These include a public consultation carried out by my Department following the University of Limerick study on zero-hour contracts and low-hour contracts as well as a detailed dialogue process with the Irish Congress of Trade Unions, ICTU, and the Irish Business and Employers Confederation, IBEC, over a period of several months.

Regarding banded hours specifically, our draft legislative proposals will ensure employees on low-hour contracts who consistently work more hours each week than provided for in their contracts of employment are entitled to be placed in a band of hours that reflects the reality of the hours they have worked over an extended period. The proposals provide for the creation of a new right for an employee to seek to be placed on a band of hours. However, after much consultation and consideration, we propose a reference period of 18 months. This is sufficiently long to allow for the normal peaks and troughs of businesses, including those subject to seasonal fluctuations. It also reflects that the academic year does not match the calendar year. so those working in the education sector can avail of these proposals also. I note that the definition of "worker" included in the Sinn Féin Bill excludes teachers, which I accept may be accidental. Our proposals also provide a mechanism for a review of the arrangement after a period of 18 months, that is, after the employee has sought and been placed in a band of hours in exercise of his or her right under this proposal.

One provision that our proposals share with this Private Members' Bill is that an employee will be able to seek redress through the WRC. Redress will be limited to being placed in an appropriate band of hours. This is to prevent vexatious claims. The proposals include reasonable defences for employers to refuse an employee's request where the facts do not support the employee's claim, significant adverse changes have impacted on the business such as the loss of an important contract, emergency circumstances, for example, the business has had to close due to flooding, or where the hours worked by the employee were due to a genuinely temporary situation, such as cover for another employee on maternity leave.

Some employers in the retail sector already have banded hours arrangements that work well and the Government does not wish to interfere with them. Therefore, the proposed banded hours provision will not apply to an employer who has entered into a banded hours arrangement through an agreement by collective bargaining with employees.

The bands in our proposals are kept deliberately wide to provide flexibility to employers and employees. Our draft legislative proposals cover much more than just banded hours arrangements. They also address four key issues. First, they ensure workers are better informed about the nature of their employment arrangements and, in particular, their core terms at an early stage of their employment. Currently, 15 terms of employment are required to be given by employers to employees within two months. The UL study recommended that all 15 items be given on the first day. Following consultation, we consider that to be excessive. Instead, it is proposed that employers must inform employees in writing within five days of commencement of employment of five ordinary, albeit core, terms of employment: the full name of the employer and employee; the address of the employer; the expected duration of the contract regardless of whether the contract is temporary or fixed-term; the rate or method of calculating pay; and what the employer reasonably expects the normal length of the employee's working day and week will be.

This proposal is a better solution than putting rosters in prominent places in the workplace in both Irish and English as suggested in the Sinn Féin Bill. Under our proposals, an employee will have to be told early in his or her employment what the working day and week will be. The proposals also provide for the creation of a new offence where an employer does not provide the proposed statement of the five core terms of employment within one month of commencement of employment. Strengthening the sanction for non-compliance will help to promote better work practices and provide greater clarity around the essential elements of the employment relationship for both the employer and the employee.

Second, our proposals strengthen the provisions around minimum payments to low-paid, vulnerable workers who may be called in to work for a period but not provided with that work. It is also intended to introduce a floor payment of three times the national minimum wage or three times the minimum rate set down in an employment regulation order, ERO, to compensate low-paid workers who are called in to work and then sent home without the work promised. Most people in this room would sympathise with a cleaner who got a text to come in to work for a six-hour shift and got the bus in only to be told there was no work for him or her that day. Under our proposals, that cleaner would receive three times the €9.75 minimum wage, which is €29.25. This is to discourage employers from the unscrupulous practice of calling employees in to work unnecessarily and not paying them. However, our proposals are balanced and include reasonable defences for employers, for example, in emergency situations. Unlike the Private Members' Bill, this proposal is specifically targeted at low-paid vulnerable workers.

Third, our proposals prohibit zero-hour contracts in most circumstances. To this end, the proposals will provide that an employer will no longer be able to engage an employee on a contract within the meaning of section 18(1)(*a*) or 18(1)(*c*) of the Organisation of Working Time Act 1997 where the stated contracted hours are zero, unless it is genuinely casual work, emergency cover or short-term relief work for the employer. It is also proposed to delete the phrase "zero hours working practices" from the title of section 18 of the Act. This proposal is to avoid the contagion of an increase in zero-hour practices in this jurisdiction.

Fourth, I note from the transcripts of previous committee meetings that this Private Members' Bill has been criticised because there is no penalisation provision. In our proposals, it is intended to provide against an employer penalising or threatening to penalise an employee for exercising any right under the proposed legislation. Members will be aware that I have referred the draft legislation to the Oireachtas Committee on Jobs, Enterprise and Innovation for consideration as to whether it wishes to engage in pre-legislative scrutiny of the proposed Bill. I appreciate that the committee may not have had an opportunity to consider this question, but I would welcome the opportunity to engage further with members on the Government Bill. In any event, I look forward to the constructive contributions of the committee in advancing these proposals through the Oireachtas to ensure the legislative provisions in this important area of employment rights are enacted as soon as possible.

I cannot support the Private Members' Bill as its provisions are not workable in practice. The Bill would place too onerous a burden on all employers, especially start-ups and microenterprises. As Minister of State with responsibility not just for employment rights matters but also for small business, I am acutely aware of the need to strike a balance between protecting vulnerable workers while encouraging a climate in which businesses can survive and grow. I thank members for their time and look forward to taking their questions on this issue.

Chairman: For the sake of clarity, the committee agreed today to receive a briefing from the Department on the Government's Bill on 20 June.

Deputy Niall Collins: I must leave for a Topical Issue debate in a few moments, so I might speak first. The Minister of State's criticism of the Sinn Féin Bill in the first part of his statement has me confused. My understanding of Deputy Cullinane's Bill is that if a worker works an increased number of hours, the Bill provides in legislation that the worker may request his or her contract to reflect those additional hours. However, the Minister of State seemed to say that an employee can just rock up to an employer and make that request without having worked the additional hours. That has me and probably other members confused. Will the Minister of State clarify?

My second question relates to the reference period of 18 months *vis-à-vis* six months. I put this question to Deputy Cullinane, who appeared at the meeting before the Minister of State as the sponsor of the Sinn Féin Bill. What of the normal business cycle? Businesses prepare their accounts on an annual basis and most budgeting runs on a 12-month cycle, not necessarily the calendar year. Businesses prepare their accounts based on a certain year end, which could be at any point in the calendar year, so their accounting years do not need to run from 1 January to 31 December. Will the Minister of State clarify his criticism of the Sinn Féin Bill? He cited an employer with 100 hours of work to give to five employees at 20 hours apiece and the employees seek to increase that by five hours. It does not seem to make sense.

Deputy Pat Breen: I thank the Deputy for his questions. I will deal with the second issue, the 18-month period, first. The UL study suggested a six-month period. We have consulted significantly with IBEC and ICTU and 48 submissions were received regarding the study. Doing that was important. Most of those who made submissions were players in this field.

We decided on an 18-month period in the first instance because we needed to take account of seasonal fluctuations and normal ups and downs. Take, for example, Waterford, where the Chairman is from, and Tramore. If an employee works at a seaside resort, that may only be on a seasonal basis and he or she might not work in October, November and December. Therefore, using a six-month period would not give a true reflection of the hours that person worked. The same can be said of teachers or others in the education sector whose year is different. We picked 18 months because it takes into account the academic year as well as ups and downs. We believe it gives a true reflection of the hours that person worked over that 18-month period. I think that was accepted by ICTU and IBEC as reflecting the reality of the time the person worked. That is why we stipulated that 18-month period.

The Deputy also asked about the Sinn Féin Bill. I can only state what the Bill provides regarding the six-month period. That person would get extra hours if they wanted to get into a band. It is open to that person to do that every six months. That would put considerable pressure on employers and could put them into severe financial circumstances. They would have to go to the WRC to prove they are not in a position to do so. That is what the Sinn Féin Bill provides for. We believe it is poorly drafted and not what was supposed to be set out. It was supposed to put people in banded hours that would reflect the hours they worked over a prolonged period.

Deputy Niall Collins: Is the Minister of State saying that, based on advice he has received, under the Sinn Féin Bill the employee could simply ask for more hours without actually having to have worked them?

Deputy Pat Breen: Once they can do so-----

Deputy Niall Collins: Is that the Minister of State's interpretation?

Deputy Pat Breen: Yes, that is our interpretation. They can do that after a six-month period. That certainly means they can keep doing that all the time. That would not reflect the reality of the hours they worked because they would be in the higher band all the time.

Chairman: Let me clarify by reading from section 3, to which I referred earlier. It states:

A worker, or his or her trade union or a representative acting on his or her behalf, shall be entitled after a period of no less than 6 months of continuous employment with his or her employer, to request in writing of his or her employer to be moved to an increased weekly band.

It states quite clearly that a worker would have to be in work for six months. The Minister of State would not be privy to this because we discussed it with Deputy Cullinane earlier. Most of our discussions have focused on whether it should be six, nine, 12 or 18 months. Deputy Cullinane accepted that he would move it to nine months. Deputy Niall Collins pushed for 12 months.

I believe stipulating 18 months would have adverse implications for students. A student spending 12 months in Limerick, Cork, Dublin, Waterford or wherever might be on a low-hour contract or an if-and-when contract for 12 months but might end up studying somewhere else the following year and might have to go into employment in another section for another 12 months. For example, my daughter has been in Mary Immaculate College in Limerick for two years. She comes back to Waterford to work at the weekend. If she decided to work in Limerick and then went on for her masters in Cork or Galway, it would have an effect. I agree with Deputy Niall Collins that we should have a 12-month cycle.

Deputy Pat Breen: Our legislation is geared to low-paid workers who are working. I accept what the Chairman says about students who do not have continuous work. That is a reflection of the type of work they are doing. Based on the submissions received and the consultations we had with IBEC and ICTU, there was broad agreement from all sides that 18 months was an acceptable period to assess the reality of the hours people have worked. It is up to students themselves to be placed on a band of hours. Some students like flexibility and some students may go to America. While it is no reflection of the students themselves, it is difficult to assess where they are because they move from job to job. Our legislation is geared to the low-paid workers, the most vulnerable people in our society. To be fair to Sinn Féin, that is what it has tried to do in its Bill. The sentiment of the Bill is to try to look after low-paid workers, but that has not happened in that Bill because it is flawed. We have looked at the Sinn Féin Bill and the UL study.

I apologise that it has taken so long, but we must get the legislation right. Employment legislation, in particular, takes time and cannot just be changed immediately. The consultation with ICTU and IBEC took place between September and March. We believed we needed to get that legislation right and needed to get the main players onside. This is the agreement we came up with. I understand the Chairman's point on students, but this Bill is geared towards people who are in continuous work, the low-paid workers whom we want to protect.

Deputy Maurice Quinlivan: I come back to a comment the Minister of State made about the additional hours. He said:

... all workers in every sector of the economy be given additional hours on request, unless the employer can prove severe financial difficulties. [My problem is with the next bit.] Under this Bill, employees could keep asking for more hours every six months.

That is not stated in Deputy Cullinane's Bill. I would appreciate if the Minister of State could show me that. I have read the Bill and it clearly does not state that. It states that people will get the hours they actually worked previously and not that they will get extra hours. They will get hours that they have proven they have worked over that number of months. The Minister of State is claiming they could then look for extra hours every six months. That is not the case. Where is that stated in Deputy Cullinane's Bill?

Deputy Pat Breen: It is not written directly in the Bill itself, but it is the implication.

Deputy Maurice Quinlivan: This has been raised with the Minister of State previously. It was raised in the Dáil last week.

Deputy Pat Breen: We need to be very careful on this.

Deputy Maurice Quinlivan: I raised this in the Dáil with the Minister of State last week.

Deputy Pat Breen: We had-----

Deputy Maurice Quinlivan: Workers will not ask for extra hours; they will ask for the hours they have worked already.

Deputy Pat Breen: If employees feel they are entitled to extra hours under that Bill, they can do so.

Deputy Maurice Quinlivan: They can do that now.

Deputy Pat Breen: That is the reading we have taken. That is the reading the legal people have taken. Two professional lawyers, who appeared before the committee today, said the Bill was unconstitutional and would be hard to work out. These are the implications of the Bill. That is why it has taken us time to prepare the Bill. We are confident it will not be proven to be unconstitutional, unlike the Sinn Féin Bill.

Chairman: Does the Minister of State think that is an unintended consequence of the Bill?

Deputy Pat Breen: I think it is probably an unintended consequence. Maybe the Bill was rushed and was prepared with undue haste, resulting in these measures not being taken on board. The labour affairs section of the Department had to take on board the input from IBEC and ICTU as well as the UL study. We need to take all these into consideration when preparing employment legislation, which is complex. We need to look at every aspect of it to ensure it is constitutional and provides protection. We need to have a balance to protect employees and ensure employers also have their rights.

Deputy Maurice Quinlivan: I am obviously disappointed that the Minister of State is introducing his own Bill and has decided not to go with Deputy Cullinane's Bill. Deputy Cullinane's Bill stipulates seven bands of hours whereas the Government Bill has four bands. We had extensive consultation with many witnesses. Not one of them raised that as an issue or a problem, changing from seven bands to a lower number of bands or whatever. The Government Bill has four bands. Why did the Minister of State decide to go with four bands? Why are the bands so wide?

Deputy Pat Breen: We believe it is much better to have wider bands. It reflects the reality of the hours worked by employees better than having narrow bands. On the bands, we feel they need to be flexible. This came about as a result of our discussions with ICTU and IBEC. They are the main players in this.

Deputy Maurice Quinlivan: To reduce the bands.

Deputy Pat Breen: These are the people who are representing-----

Deputy Maurice Quinlivan: They work up to seven bands.

Deputy Pat Breen: These are the people who are representing workers; they are also the people who are representing the employees. The bands that we have proposed are the bands that have been worked out and suggested in consultation with the main players. We have listened to everyone, we have taken submissions and looked at the UL study in regard to this. Once one has the employers and union representatives in agreement on this, we feel it is acceptable and this is part of what we propose in the legislation.

Senator Paul Gavan: I want to try to be constructive but I cannot be constructive without first noticing how badly the Minister of State has read the Sinn Féin Bill. I will give one example. From his own written notice here, he quotes from the Sinn Féin Bill and says these notices will have to be in English, Irish and in other languages, as required, when the Bill actually states that the roster may be in English and Irish, and in other languages where required. If the Minister of State cannot even read the Bill properly he is not in a good position to come in here and tell us about how important the details are. It is a complete misreading of the Bill. I will try and be constructive because it is embarrassing for the Minister of State to have put that in writing.

I want to deal with the Minister of State's proposals and I wish to clarify three or four points. The first is can the Minister of State clarify whether this Bill will exclusively prohibit zero-hours working and if there are exceptions, what exceptions these will be? The second point relates to casual work because he references casual work in his heads of Bill. My concern is that the term "casual work" can be used, as it currently is, to effectively stop workers from being protected. I wonder has the Minister of State a definition of the term "casual work". If so, could he share it with us? Would he accept the importance, if he does not have a definition, that it must be very tightly defined?

Finally, the Minister of State did not explain in his last answer why it is better to have four bands rather than seven, particularly when the first band is worthless. The band between one and ten hours does nothing for any worker. I am puzzled because, as the Chairman will confirm, we have had opinions from all parties, left, right and middle, and no one had an issue with the bands in Deputy Cullinane's Bill. Will the Minister of State clarify if he indicated that ICTU was asking for four bands? I can tell him from speaking to ICTU that is not my understanding.

Deputy Maurice Quinlivan: Or mine.

Deputy Pat Breen: On the use of Irish or English, when one puts something into legislation, the interpretation is there, it has to be part of what will be in the workplace.

Senator Paul Gavan: What does "may" mean? Did the Minister of State not see that?

Deputy Pat Breen: That is where the interpretation-----

Senator Paul Gavan: That is okay, we all make mistakes.

Deputy Pat Breen: Obviously Sinn Féin made a fatal mistake by preparing this Bill, which is totally flawed.

Senator Paul Gavan: It is not totally flawed. The Minister of State's interpretation of it is totally flawed. It is outrageous but I would ask him to focus on the positives here.

Chairman: The Senator needs to allow the Minister of State to reply.

Deputy Pat Breen: We have already had employment professionals here today talking about the possibility that Sinn Féin's Bill is unconstitutional. We are not the only one. These are experts who came in here today saying that. We want to be helpful in this. Sinn Féin raised this in the Chamber last year in a Private Member's Bill. We sent it here to the committee to be dealt with but we have taken time to look at his Bill and it is flawed. Why would we make bad legislation? Why would we take the time over the last 12 months to prepare legislation in regard to low hours and zero hours and banded hours without the assistance of the professionals we have? We had the main players involved with this as well. We took submissions - there are 48 submissions - in regard to the Bill. We believe it is good legislation. It has gone to the Office of the Attorney General and it will be drafted and hopefully come back for the Government's approval, which will probably happen in the next few months. On the question of the Irish and English languages and the other languages which may be used, once that is put into a Bill, one can take any interpretation one likes out of it.

Senator Paul Gavan: No, one cannot.

Deputy Pat Breen: One can, of course.

Senator Paul Gavan: It is a legal interpretation.

Deputy Pat Breen: A lot of this is already in force in the workplace in companies. We do not believe it is necessary. On the legislation we are proposing, we are saying that if one wants to protect employees in their employment, on the first day when they get a job, the employer has to provide five pieces of vital information which covers what the Sinn Féin Bill wants to put into the roster. These include the name and address of the company, because one might be working for someone else they do not know about, the length of time they will be working, whether the contract is permanent or temporary and the hours they are working. The employee will have all this information in the first five days of commencing employment with the company.

Senator Paul Gavan: I welcome that.

Deputy Pat Breen: That is more or less covered in what Senator Gavan is talking about in regard to putting notices up in Irish and English. Suppose there are people from 20 or 30 different countries, with different languages working for a company, which is very evident nowadays because a lot of people who work on the minimum wage are people of other nationalities. That can happen a lot. It would be confusing the situation. It puts more work on the employers when they could be doing better things. We believe the fact that the employees are getting this information at the commencement of work is the proper way to deal with the type of business that the Senator has referred to.

There are a lot of interpretations of what is meant by the term "casual work". I cannot define casual work as it is at the moment. There was not that much reference to casual work in the submissions we received.

On the exemptions in the zero hours, the Senator spoke about general casual work. That is for emergency situations where somebody has been called in and they are needed for an extreme emergency and also short-term employment relief. We have to have faith in the WRC

in all this, and the Labour Court as well. That is important. They will not be fooled by an employer incorrectly stating that the work is casual. There are various different areas. If one looks at if-and-when contracts, there are different interpretations of what is meant by that, and what is regarded as casual work. Take the example of the hospitality sector, which is something with which we are all familiar. Take a wedding in the Senator's area where they employ casual workers. They might have to give them 24 or 48 hours' notice to come in for a wedding or funeral, for example. They would be regarded as casual workers. They would not be full-time employees for that company. That is what they are.

Senator Paul Gavan: That is why the definition of casual work is so important in the legislation that the Minister of State is proposing.

Deputy Pat Breen: There are times when these people are not working. These people cannot have the same rights if they are casual workers and they might only work two days in the week.

Senator Paul Gavan: That is not what I am suggesting. I am suggesting there needs to be a definition.

Deputy Pat Breen: Is the Senator saying they should be paid for?

Senator Paul Gavan: I am asking a valid question.

Deputy Pat Breen: I have answered it as best I can.

Senator Paul Gavan: With respect, the Minister of State has not. I am asking if he would accept that a definition of casual work is very important in terms of this legislation because otherwise unscrupulous employers could drive a coach and horses through it.

Deputy Pat Breen: I am telling the Senator about casual work. As he will know, in the UL study, the definition of casual work is complex but as we have it, there is plenty of legislation to deal with that. We have the Labour Court and the WRC to look at it.

Senator Paul Gavan: What legislation do we have at the moment that deals with it?

Deputy Pat Breen: There is lots of legislation.

Senator Paul Gavan: Name it for me, please.

Deputy Pat Breen: It is referred to in the Organisation of Working Time Act. That is something that we have been looking at.

Senator Paul Gavan: That is where the problems arise at the moment.

Deputy Pat Breen: Currently there is no definition of casual work.

Senator Paul Gavan: That is my point.

Deputy Pat Breen: That is what I am saying.

Senator Paul Gavan: So could the Minister of State provide one in this legislation?

Deputy Pat Breen: I am saying that it is complex. There is no definition of casual work.

Senator Paul Gavan: I accept that but I am asking the Minister of State, and it is a reason-

able point, does he accept the importance of providing a definition in this legislation? To be fair, the Bill has some very good points.

Deputy Pat Breen: The issue that the Senator has raised is for another day. It is not an issue for this Bill because there is no definition of casual work at present. In universal terms it is broadly accepted that the definition is included in the Protection of Employees (Part-Time Work) Act.

Senator Paul Gavan: I worked in industrial relations for ten years prior to this job and I must tell the Minister of State that he is wrong about the definition. I do not want to fall out with him today.

Deputy Pat Breen: The Senator will not fall out with me.

Senator Paul Gavan: I formally request, as part of this exchange of views, that the Minister of State gives consideration to the importance of including a definition of casual work to protect the good points in the Bill.

Deputy Tom Neville: What does the Senator think is a good definition of casual work?

Senator Paul Gavan: It needs to be tightly defined.

Deputy Tom Neville: Sinn Féin wants the definition included in this legislation. Why was it not included in the original Sinn Féin Bill?

Senator Paul Gavan: In fairness, we are talking about two separate types of Bills.

Deputy Tom Neville: Yes.

Senator Paul Gavan: We had a different approach in the Banded Hours Contract Bill. That is still my preference because the Minister of State made reference to casual work and exceptions in the heads of the Bill. I accept his point that people who come home for a wedding or a funeral should not have the same rights. I want a clear definition so that unscrupulous employers, which unfortunately exist, do not drive a coach and horses through the term "casual work".

Chairman: In fairness to everyone here today, we are trying to conclude deliberations on Sinn Féin's Banded Hours Contract Bill. The Minister of State has spoken about the heads of the Bill that the Government will bring forward. Officials from the Department will come forward and we will have an opportunity to debate the other Bill. Earlier today Dr. Caroline Murphy from the University of Limerick mentioned casual workers. She said that she felt there could be an unintended consequence from casual work not being mentioned. We will have plenty of time to debate the issue because the current Bill has only begun its journey. There has been a lot of toing and froing but we have not scrutinised the new Bill.

Deputy Pat Breen: As Senator Gavan will know, the people who prepared the University of Limerick study have said that casual work is a complex issue. In theory, there is no definition of casual work. However, it is generally accepted that it forms part of the Organisation of Working Time Act. The issue can be dealt with on another day as it does not come under the remit of this Bill. We should deal with the contents of this Bill.

Chairman: Does Deputy Neville wish to comment? No. Does anyone else wish to comment? No.

We are not discussing the new Bill today but I have a query about the rate or method of calculating pay. The Minister of State mentioned five points that are very good for a new employee. Will the information provided to a new employee state whether he or she is working a week in hand, a fortnight in hand or a month in hand? Sometimes new employees are confused by the fact that that aspect is not clearly stated. I ask the Minister of State to consider the matter in terms of his Bill. The five points of information provided include the full name of the employer and employee; the address of the employer; the expected duration of the contract; what the employer reasonably expects the normal length of the employee's working day and week will be; and the rate or method of calculating pay.

Deputy Pat Breen: I will clarify the matter for the Chairman.

Chairman: New employees can feel shy about asking whether they must work a week in hand or two weeks in hand. In some cases they must work a month in hand. I ask that the information is stated in the terms and conditions of employment given to employees in their first week.

Deputy Pat Breen: The employer must provide all of that information within five days.

Chairman: Yes.

Deputy Pat Breen: If the employer does not do so and inspectors check the situation after a month then an employer can be prosecuted or reported to the Labour Court. Employers will be given some time to ensure that an employee has the information. All of us must ensure that employees have the information within five days. We think it is not a big thing for the employer to do. The employer must provide 15 elements within a two-month period. We are saying these five points are basic issues. There are no cost implications for the employer. Some employer representatives have argued that five days is too short a period. Again, the period has come from the consultation process. I must emphasise that we consulted ICTU and IBEC and found all of the submissions very useful.

Chairman: I thank the Minister of State, Mr. Sheridan and Ms Mannion for attending. That concludes our discussion on the Bill under consideration for now. I am sure we will have more discussions on the Minister of State's Bill.

I remind the members of the select committee that we will discuss two Bills at 6 p.m. I urge them not to go too far away.

Deputy Pat Breen: That is a long day for members.

Chairman: Yes.

The joint committee adjourned at 5.45 p.m. until 4 p.m. on Tuesday, 4 July 2017.