DÁIL ÉIREANN

AN ROGHCHOISTE UM GHNÓTHAÍ FOSTAÍOCHTA AGUS COIMIRCE SHÓISIALACH

SELECT COMMITTEE ON EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

Déardaoin, 17 Bealtaine 2018

Thursday, 17 May 2018

Tháinig an Roghchoiste le chéile ag 10 a.m.

The Select Committee met at 10 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
John Brady,	
Joe Carey,	
Joan Collins,	
Pat Deering,+	
Regina Doherty (Minister for Employment Affairs and Social Protection),	
Tony McLoughlin,*	
Willie O'Dea,	
Bríd Smith.	

* In éagmais / In the absence of Deputy Maria Bailey.

+ In éagmais le haghaidh cuid den choiste / In the absence for part of the meeting of Deputy Tony McLoughlin.

I láthair / In attendance: Deputies Clare Daly and Willie Penrose.

Teachta / Deputy John Curran sa Chathaoir / in the Chair.

Business of Select Committee

Chairman: I wish to first deal with the circulation of the imeachtaí of 9 November when the select committee dealt with the 2017 further Revised Estimates, and the 27 March 2018 when we considered the Revised Estimates. Are the imeachtaí agreed? Agreed.

Employment (Miscellaneous Provisions) Bill 2017: Committee Stage

Chairman: I welcome the Minister Employment Affairs and Social Protection, Deputy Regina Doherty, and her officials to this meeting for consideration of the Employment (Miscellaneous Provisions) Bill 2017. The Bill was referred to the select committee by Dáil Éireann on 15 February 2018.

Any Member acting in substitution for a committee member should formally notify the clerk now if he or she has not done so. Divisions on the Bill will be taken as they arise. Members attending the meeting in accordance with Standing Order 95(3) should be aware that, pursuant to Standing Orders, he or she may move his or her amendments but may not participate in the votes on them. I turn now to the amendments and we will work through them as efficiently as possible. We will start with amendment No. 1 in the name of Deputy O'Dea.

Deputy John Brady: A substantial number of amendments have been ruled out of order. They are very important amendments, a number of which have been tabled by me and Deputy Cullinane. Can we get an explanation now or as they arise?

Chairman: As they arise. The potential charge to the State has been the reason, but I can give the explanation to the Deputy as we come to each amendment, if he wishes. Amendment No. 1 is in order.

SECTION 1

Deputy Willie O'Dea: I move amendment No 1:

> In page 5, line 22, after "provisions" to insert "but not later than 12 months after the passage of this legislation by both Houses of the Oireachtas".

Section 1(2) says "This Act shall come into operation on such day or days as the Minister may appoint by order". We have been waiting a long time for this legislation to materialise. The reason for the legislation is because a large cohort of employees in the State have suffered exploitation due to their circumstances and the fact that they on these types of if-and-when contracts, short-term contracts and so on. The exploitation continues and will do so until such a time as the Bill is enacted, comes into effect and deals with the exploitation to some extent. It is important to bring the legislation into operation at the earliest possible opportunity. My amendment seeks to put a 12-month deadline on the period after the Bill is passed.

It seeks to ensure that the Bill will be in operation 12 months after its passage through both Houses of the Oireachtas, at the latest.

Deputy John Brady: While I agree with the sentiment of Deputy O'Dea's Bill, workers have been waiting for this issue to be dealt with for a long time. We know that if-and-when contracts, flexi-hour contracts and zero hour contracts are very common all across the State. Other pieces of legislation were brought forward previously. My colleague, Deputy Cullinane, brought forward legislation in June 2016 on foot of serious concerns that workers had been experiencing and elaborating on over many years. The situation reached boiling point when the Dunnes Stores workers had to go on strike in April 2015. Workers have been waiting for a long time to end the exploitative practices of some employers.

This legislation has to be put in place, but I believe that 12 months is too long to wait for its enactment. I would like to see it enacted within three months, and if Deputy O'Dea could agree to that-----

Chairman: To clarify, 12 months is the maximum period for enactment. There is nothing in the Bill that precludes its immediate enactment. The phrase "not later than" is used. It could be enacted immediately.

Deputy John Brady: That could be changed to "not later than three months". It gives too much latitude and flexibility to Government in this area. We owe it to workers. I signed a charter recently in which Sinn Féin declared that it wanted an end to the exploitative practices in place. Allowing 12 months flexibility is far too long and I believe it should be reduced. If Deputy O'Dea agreed to that amendment, I would row in behind it.

Deputy Joan Collins: I agree with the point made that the enactment period be defined, but perhaps at the next stage we could agree the timeframe, whether it is six months or three months.

Deputy Willie Penrose: I acknowledge the reason Deputy O'Dea has proposed this amendment, and I believe it is reasonable. I also see where Deputy Brady is coming from. Perhaps we could agree on a period of six months; the legislation will require a period of time to bed in. I signed that charter as well, and I am very eager that some of the exploitative practices that occur be ended, and this amendment helps to do that. The Minister has brought forward worthy legislation, and various amendments have been put forward today that would strengthen the legislation and make a big impact for workers. I believe six months is a reasonable period for the enactment of this legislation.

Deputy Clare Daly: The amendment seeking that the legislation be enacted in no more than 12 months is the only amendment we have before us. We should accept this amendment, with the understanding that the general feeling is that the timeframe for implementation should be lowered when it gets to Report Stage. The amendment must be passed now to allow us to do that.

Deputy Regina Doherty: I am going to disagree with all the Deputies, although I agree with their sentiments. The reason this legislation is before the House is because we all want the same thing. I take on board Deputy Penrose's words to the effect that changes made today may well enhance the legislation. The legislation is very important to all of us, and there will be absolutely no delay in its being brought forward, but the only reason I oppose this amendment is that it questions the constitutionality of the process we have, which existed long before we were here and will be here long after we are gone.

The Bill contains the standard provision dealing with commencement that is normally used

in legislation. That commencement formulation is used in every single piece of legislation. I went so far as to check some of the Private Members' Bills brought forward by Deputy O'Dea, and he has used exactly the same commencement order in all of them. That was done, I imagine, for the correct reason, being that it cannot rule out the constitutional process that includes the President, the Council of State and the referral of the Bill to the Supreme Court. Hopefully that will not happen in this case, but that is what the Constitution allows for, and I do not believe we can put an amendment in the Bill that contravenes what is allowed for in the Constitution.

I will put it on the record, and give the members my absolute guarantee, and a guarantee on behalf of my staff, that there will be no delay in commencing this Bill. If we clear up these amendments today we will have Report Stage next week, and then the matter will go to the Seanad. I want this Bill to pass before the summer, and there is no reason the President cannot sign it into law the day after it is sent to him.

Deputy Willie O'Dea: I suggested that the legislation be enacted in no more than 12 months as an absolute outside limit. We want it to be operational within 12 months at the very latest. I take on board the points made, and I would be prepared to change it to six months on Report Stage. I am sure we could find a wording to accommodate the objection of the Minister. I am thinking out loud, but perhaps the legislation could provide that it be enacted within six months, provided that it can be done within the terms of the Constitution.

On the point made by Deputy Clare Daly, is it the case that we have to pass this amendment in order to discuss the matter further onReport Stage? I believe I can bring a separate amendment back at that stage to provide for the six-month limit. Is that correct?

Chairman: I assume the amendment is carried.

Deputy Regina Doherty: In that case it will not be brought back on Report Stage.

Deputy Willie O'Dea: Do we have to pass the amendment to bring it back on Report Stage?

Deputy Regina Doherty: No.

Deputy Willie O'Dea: In that case I will withdraw the amendment on the basis that I will bring it back onReport Stage with appropriate wording and providing for a six-month limit.

Amendment, by leave, withdrawn.

Section 1 agreed to.

SECTION 2

Question proposed: "That section 2 stand part of the Bill".

Deputy John Brady: I would appreciate some clarity on section 2. From my reading of the section, it would remove any legislative obligation to set rates for trainees. If the Minister has some intention to bring in further provisions to allow for better rates for trainees that would be fine. However, simply removing this and not replacing it gives latitude to employers to set rates for trainees and would be deeply concerning. Can the Minister provide a brief explanation as to what the intention behind this section is? Is there going to be provision made to ensure that rates for trainees are set on a legislative basis?

Deputy Regina Doherty: The recommendations from the Low Pay Commission are dealt with in other sections, so it should become clear.

Question put and agreed to.

NEW SECTION

Deputy Regina Doherty: I move amendment No. 2:

In page 5, after line 27, to insert the following:

"Repeals

3. The following are repealed:

(a) paragraphs (a), (b), (f) and (g) of section 3(1) of the Act of 1994, and

(b) section 16 of the National Minimum Wage Act 2000.".

Section 3(a) repeals the essential terms of the employment listed in section 3(1) of the Terms of Employment (Information) Act 1994. Section 6 inserts them into section 3(1)(a) of the same Act so that they are required to be provided within five days of commencement of employment, in reference to section 6 of the Bill. The terms to be provided for on or by day five focus on what is important for employees, including, for example, the identity of their employer, how much they will be paid and what their hours of work will be. Section 3(1) of the 1994 Act requires employers to provide 15 terms of employment within two months of commencement of employment. Employers will still be required to provide the remaining terms of those 15 items of employment listed in section 3(1) of the 1994 Act, that is, the terms not repealed by this section, to employees in writing within two months. If this section is enacted, employees may pursue a case to the adjudication division of the Workplace Relations Commission if the terms of employment, under 3(1) or 3(1)(a) of the Terms of Employment (Information) Act 1994 are not provided in writing once the employees are in continuous employment for one month.

Section 3(b) is a consequential amendment to amendment No. 49. When Second Stage of this Bill was discussed I advised that I would bring forward an amendment at Committee Stage on foot of the recommendations of the Low Pay Commission in relation to the current sub-minimum rates of the national minimum wage. The existing rates provide for reduced rates to be paid in certain circumstances to particular groups, for example, young workers and trainee workers. Having examined the issue and consulted widely, as well as having commissioned research by the ESRI which examined international best practices, the Low Pay Commission's recommendations were that the existing training rates be abolished and that the rates for younger workers be retained and simplified. This amendment provides for the repeal of the section permitting the payment of training rates. Rates for younger workers will be dealt with via another amendment later in the Bill. The report of the Low Pay Commission sets out clear evidence, based on rationale, for its recommendations on training rates, including the fact that the rates are not widely used. There is a clear lack of definition around training and a lack of a formal system of notification of the use of training rates, which leaves those rates more open to possible abuse. There is also a belief that employees should not receive less than the statutory minimum wage unless they are part of an apprenticeship programme approved by the State in which they genuinely receive structured and fundamental training, with a stated outcome at the end. All available evidence is that training rates are not used widely, with less than 0.5% of employees having indicated that they are on the training rate. The number of employers likely

to be disadvantaged due to the abolition of this rate will be tiny.

The Low Pay Commission's recommendation on this was supported by every single member. It is the first time this has happened, due to the composition of that group. All nine members, both employer and employee interests along with the independent members of the commission, agreed with this recommendation. I ask members of the committee to recognise the concerted agreement among that body that we collectively have charged with the responsibilities in this area, and to support this amendment.

Amendment agreed to.

Chairman: Amendment No. 3, tabled by Deputy Penrose, has been ruled out of order.

Deputy Willie Penrose: Why? This is the real meat of the issue. I made it clear during my Second Stage contributions to the Bill that this matter was very germane to the whole question. Our contention has always been that the real issue around precarious work is not a proliferation of zero-hour contracts, but if-and-when arrangements, and this Bill does nothing to address this running sore.

Together with several colleagues, I had put it to the Minister that she had, in effect, excluded casual work for the purpose of creating a loophole which would mean that if-and-when contracts will become the contract of choice for bad employers, of whom there are not many but there are those out there who continue to engage in exploitation. The University of Limerick study identified that in if-and-when arrangements, there was no mutuality of obligation so it is debatable as to whether a contract is in place at all. This goes to the heart of what we are trying to fix. We want all workers, including those in casual and if-and-when arrangements, to be able to enjoy the benefits of the proposed new laws, which is the right to have the reality of their working hours reflected in an appropriate band in their written terms and conditions, after a 13 rather than an 18-month period.

This amendment was tabled for that purpose. The Minister now argues that is a charge on the Exchequer. The Chairman has set that out clearly.

Deputy Regina Doherty: I did not rule it out of order, to be clear.

Chairman: It has been ruled out of order. If the Deputy wishes, I will explain because we cannot have a full debate on it. To be helpful to Deputy Penrose, I will read the note:

> This amendment proposes inserting a new section in the Bill providing for amendment to the First Schedule of the Minimum Notice and Terms of Employment Act 1973 in relation to the computation of continuous service and providing that the period between the two periods of service may, for the purposes of the said First Schedule, be deemed to have been a period of lay-off. This could have the effect of bringing a casual employee's service up to the two year cumulative continuous service requirement to be eligible for statutory redundancy payments against an employer. The amendment therefore has the potential to impose a charge on the revenue in terms of the State as an employer, for example, substitute teachers, and therefore must be ruled out of order in accordance with Standing Order 179(3).

It is out of order and I do not want a substantial debate on it. We have many amendments to deal with that are in order.

Deputy Willie O'Dea: I strongly support this amendment. I was minded to put down a similar amendment myself but saw that Deputy Penrose had put this down already. There are

two ways to do this, the way that Deputy Penrose has proposed and perhaps a statutory instrument to set out exactly what casual work is and the instances where casual work occurs.

I take the point that it is a charge on the Exchequer and the Opposition cannot impose a charge on the Exchequer, however the Government may. It is only a minimal charge on the Exchequer. Would the Minister consider amending this legislation on Report Stage, which she has the power to do? Any amendments which the Minister puts down will not be ruled out as a charge on the Exchequer. Will she consider changing the Bill on Report Stage to incorporate what Deputy Penrose is trying to achieve, either in the manner he seeks to achieve it or otherwise? That would strengthen the Bill considerably. There is a real fear that if one exempts casual work and provides a loophole for casual work, it will become a backstop for employers. This casual work will either be deliberately manufactured to come within the exemption or used as an excuse.

Chairman: We are not having a debate on it as it is out of order, but does the Minister wish to address Deputy O'Dea's point?

Deputy Regina Doherty: I do not share the Deputy's fears and nor do the Workplace Relations Commission or the practices of the Labour Court. I am mindful that the definition that we use as a State and all the agencies and bodies of the State involved in dispute resolution are quite happy and comfortable with the definition of casual work as it stands and I am loath to fix it. The only thing that I am willing to concede to the Deputy, not knowing how long I will be Minister, is that if his fears are realised we will come back here and sort it out. I do not think that the Deputy's fears are grounded, and nor does the Workplace Relations Commission or the Labour Court.

Amendment No. 3 not moved.

Section 3 deleted.

NEW SECTION

Deputy Regina Doherty: I move amendment No. 4:

4. In page 6, between lines 2 and 3, to insert the following:

"PART 2

AMENDMENT OF UNFAIR DISMISSALS ACT 1977

Amendment of Unfair Dismissals Act 1977

4. Section 8 (amended by the Workplace Relations Act 2015) of the Unfair Dismissals Act 1977 is amended, by the insertion of the following subsection after subsection (12):

"(13) (a) An adjudication officer may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice to give evidence in proceedings under this section or to produce to the adjudication officer any documents in his or her possession, custody or control that relate to any matter to which those proceedings relate.

(b) A person to whom a notice under paragraph (a) is given shall be entitled to the

same immunities and privileges as those to which he or she would be entitled if he or she were a witness in proceedings before the High Court.

(c) A person to whom a notice under paragraph (a) has been given who—

(i) fails or refuses to comply with the notice, or

(ii) refuses to give evidence in proceedings to which the notice relates or fails or refuses to produce any document to which the notice relates,

shall be guilty of an offence and shall be liable, on summary conviction, to a class E fine.”.”.

On Second Stage I signalled the intention to bring forward an amendment to section 8 of the Unfair Dismissals Act 1977 to allow for stronger enforcement of this legislation by the Workplace Relations Commission. The Workplace Relations Commission, through my colleague, the Minister for Business, Enterprise and Innovation, Deputy Humphreys, asked that this be included in the Bill because the Workplace Relations Commission is under the aegis of her Department.

Currently, adjudication officers of the Workplace Relations Commission do not have the powers to compel witnesses to attend hearings to give evidence in relation to cases taken under the Unfair Dismissals Act 1977. The Workplace Relations Commission has powers of witness compellability under other employment rights legislation and our intention is to remedy the situation and put unfair dismissals legislation on the same footing as that which applies under other employment rights legislation.

I hope Deputies will appreciate the importance of this amendment. Not every witness comes willingly to the Workplace Relations Commission. While compelling a witness is a power that the adjudicating officers have at present, it does not always happen. It is necessary to ensure that the adjudication officers hear both sides when trying to settle a dispute, especially in a case where there is serious consequences such as dismissal.

The amendment provides that the evidence that a witness gives at an unfair dismissals hearing at the Workplace Relations Commission or the Labour Court is privileged, that is, that it cannot be used for defamation purposes after the hearing. However, it also provides a person who is compelled to attend the hearing, or provide relevant information and does not do so, can and will be liable for prosecution.

Deputy Willie O’Dea: I welcome this amendment as, for the first time, it enables witness summonses to be issued. However, it demonstrates the ludicrous position that this committee is in. It is a valuable amendment and a necessary addition to the law but if the Opposition had proposed that amendment it would have to be withdrawn on the basis that it is a charge on the Exchequer. We will have to re-examine this rule about what is or is not a charge on the Exchequer, and what are the rights of the Opposition in this regard. Reading through the amendments that have been ruled out of order as a result of this long-standing and now outdated rule, our capacity to make meaningful amendments to this Bill is severely restricted.

Chairman: I do not disagree with the Deputy. However, the committee cannot overrule the Standing Order of the House; we are bound by it. Standing Order 179 is a matter for the House.

Amendment agreed to.

Sections 4 and 5 agreed to.

SECTION 6

Chairman: Amendments Nos. 5 and 6 are related and may be discussed together. They are in the names of Deputies Cullinane and Brady.

Deputy John Brady: I move amendment No. 5:

In page 6, lines 17 and 18, to delete "not later than 5 days after" and substitute "before".

These two amendments may seem quite simple but they are important. They amend the section that states that only after someone has taken up employment, five days after that, the employer must issue the contract to the employee. We want to amend that. The contract should be issued prior to the person starting employment.

There is no reason an employer cannot do that. It is a simple amendment that is not controversial and I hope it will be supported. It is deleting reference to "not later than five days after" the employee takes employment that the employer has to issue the contract and rather requiring the employer to issue it before the employee starts.

Deputy Regina Doherty: I will respond to both amendments together. To require employers to provide a written statement on the core terms before commencement of employment would have implications in a number of areas. The Bill seeks to protect the employment relationship between a new employee and the employer. The Bill has been a long time in the making and has been based on co-operation between all parties and us. We need to respect the amount of work and extensive consultation that has gone in to shaping it which obviously includes the University of Limerick study that was commissioned by Senator Nash when he was in this role. It included detailed discussions with the ICTU, IBEC and all the relevant bodies. We have all heard and reflected upon their reaction to what I believe is a very significant change from the practice we have at the moment. We are going from potentially two months down to five days.

The amendment could give rise to some possible unintended consequences. For example, a person could apply for a job that they potentially had no intention of ever taking up and seek compensation for not being given a written statement of their terms of contract before they started. Providing the essential terms of employment by the fifth day is new. It will be an administrative burden, but employers will have to learn to live with it given that so many people have not been given their terms of employment within the current required two months.

Before an employee even starts work and before that employer-employee relationship begins, it would be too onerous with the risk of unintended consequences to accept this amendment. If the Deputy's amendment were accepted, it would make it very burdensome for any employers to take on new employees. I ask Deputies to remember that we are moving the requirement on employers from two months to five days. We are moving it to five days and making it a criminal offence, despite the objection of many employers organisations, because I feel very strongly, as I know the Deputy does, that within the first couple of days of forming that relationship, the most basic piece of information that employees are entitled to should be taken seriously by employers in their obligation to their employees. Having a criminal penalty if they do not produce that information within five days of somebody starting is sufficient to ensure we get what we all want out of the Bill. I ask people not to accept these amendments.

Deputy Willie O'Dea: As the Minister will be aware, an EU directive in this area covers

such matters. What does that oblige us to do? I accept that five core terms are now being provided within the first five days instead of two months as was the case heretofore. What will the EU directive compel us to do?

Deputy Regina Doherty: The difficulty is that the EU directive is only under negotiation. As the Deputy knows, those negotiations can take years. I cannot speculate on the outcome of that on the basis that I would like this legislation passed within the coming weeks. Obviously if we get a directive-----

Deputy Willie O'Dea: I apologise for interrupting the Minister. Some of her officials appeared before the joint committee recently and they speculated as to what would happen on many matters. We did not discuss this particular part.

Deputy Regina Doherty: In that case they are better at speculating than I am because I am not willing to put into legislation what is not directed by the EU. The Deputy knows there are difficulties with regard to directives. We all sit down and move an inch here and an inch there. We are far from issuing a directive within the EU. I am not prepared to take speculation from negotiations that are going on in Europe and enshrine them in legislation we are introducing. If the directive comes within the next month, six months or year and contravenes what we are doing here, we will obviously have to come back. Right now, we are all focused on this legislation and we will assess the impact of the directive when it comes.

Deputy John Brady: I do not buy the Minister's explanation as to why this amendment cannot be accepted. I welcome the change which is a huge change from what is in existence. It is a sizeable move in the right direction. I do not buy the argument that it would add some administrative burden on the employer to issue a contract five days sooner than the Minister is proposing. Employers will not buy that argument either.

The Minister has spoken about relationships between the employer and the employee. Those relationships have developed before the employee takes up employment and this will add to those relationships. An employee should know exactly what his or her contract states before he or she starts employment. I do not buy the Minister's argument and will press the amendments. They are reasonable and measured and the arguments opposing them do not stack up.

Deputy Bríd Smith: There is a difference between a job description and a contract of employment. Obviously a job description informs a prospective employee of what the job will be like. I would have thought that on the day an employee starts they should be handed their contract of employment. That would be a reasonable halfway house between what Deputy Brady is saying and what the Minister is proposing. In my experience it is not out of the ordinary to be handed a contract on the day an employee starts. It is quite normal for an employee to be shown where to sit and given their contract. If that is normal, why does it not apply in law? I propose the halfway house of requiring it on the day an employee starts.

Deputy Joan Collins: I acknowledge the mandate of members of the committee, keenly listening to the debate this morning. I agree with Deputy Bríd Smith on this. I remember the first day I walked into my job. I was told where to start, went for training and was handed my contract. That process should be the case. That is normal and should be provided for in legislation.

Deputy Willie O'Dea: Deputy Smith's proposal is not unreasonable. It is quite reasonable that a person should get their contract on their first day in the job. I know of very few cases

where people are told they are starting immediately or the following day. There is time to put this together. If Deputy Smith introduces an amendment on Report Stage, we will support it.

Deputy Bríd Smith: Yes.

Deputy Willie Penrose: Deputy Smith's proposal is constructive and deals with the situation. At interview the broad terms and obligations of the employment contract are set out. Prospective employees leave such an interview knowing the nature of the job, the wage rate and everything else associated with it. Surely it is not too big a burden on anybody to be in a position to be able to hand the employee the conditions and terms produced in writing on the morning they arrive for their job. That is simple and it is not an imposition on anybody. Even little grocery shops have to have things up now. They only get 24 hours and they have to have them up. The National Employment Rights Authority, NERA, and other bodies are imposing such obligations even on small employers. Some of those small employers have a section of their companies devoted full time to human resources. A lot of this is kind of thing is automatic. Employees should have full knowledge of what they are entering into on the morning they arrive.

Deputy Regina Doherty: This is employment rights legislation and is exceptionally important. It has to strike a balance and not impinge on the ability of people to hire employees. It is a long time since anyone in this room was 18 or 19. Many young people apply for a job and are asked to come in and start on Saturday. Five days for the employer to be able to give that person their basic standards and conditions is a major change from what is in legislation.

The majority of employers provide contracts before employees arrive on the first day. That is the norm. What we are trying to do is catch those few rogues who do not bother their barney looking after people. However, we also need to ensure we do not stop young people from going for an interview and being told to start the following Saturday. We need to give an employer, be it the local SuperValu, Centra or grocery store, to which Deputy Willie Penrose has referred, a reasonable amount of time in which to give the young person the terms and conditions of their contract. Five days is entirely reasonable. The kick in the ass is that if the employer does not do it within five days, he or she will be charged with a criminal offence. I am asking everybody to be reasonable. I understand this is employment rights legislation. We want to ensure people will be looked after properly by the few rogue employers. However, we have to recognise that people are running businesses. We want to allow them flexibility to take somebody on and take those few days to make sure they adhere to their obligations under the law. If they do not, we will have absolutely no problem in coming down with the full rigour of the law and pressing criminal charges against them.

Deputy Bríd Smith: In my experience using the full rigour of the law is never adequate when it comes to the exploitation of workers. I make a basic point to the Minister. There is a relationship between somebody who is buying a worker's labour and the worker selling it. When someone is selling his or her labour, he or she needs to know under what conditions he or she is doing so. What happens on day one matters. It is generally custom and practice for a worker on day one to be handed his or her contract. I am assuming that I can table an amendment in the future. All we are saying is that what is custom and practice in what are considered to be decent jobs should be custom and practice for all jobs. As such, I seek to amend the Bill.

Chairman: At this stage I call Deputy John Brady who must make a few decisions on his amendments.

Deputy John Brady: I take on board the views expressed my colleagues. I am certainly not going to push the amendment. I will seek to amend it and bring it forward again on Report Stage. If it was something along the lines of a provision that the contract would have to be issued before or no later than the day of commencement of employment, I could accommodate it. I will bring forward an amended amendment on Report Stage.

Deputy Regina Doherty: Would the Chairman mind if I made a very brief comment?

Chairman: On the amendments specifically.

Deputy Regina Doherty: Yes. The premise of this part of the legislation is to make sure we will have a sledgehammer to hit people over the head if they do not adhere to it. We are giving them a reasonable amount of time - five days - in which to provide the five pieces of information and they are very simple. The sledgehammer will be used. If we were to change that requirement and the number of days from five to one, I would have no choice but to remove the criminal offence. What we would then have is entirely meaningless legislation.

Deputy Bríd Smith: Why?

Deputy Regina Doherty: I am letting the committee know that I cannot make it a criminal offence without giving employers a reasonable amount of time and one day is not reasonable.

Deputy Bríd Smith: It is perfectly reasonable.

Amendment, by leave, withdrawn.

Chairman: Deputy John Brady has withdrawn amendments Nos. 5 and 6. Amendment No. 7 in the name of Deputy Willie O'Dea has been ruled out of order, as have amendment No. 8 in the names of Deputies David Cullinane, John Brady and Róisín Shortall and amendment No. 9 in the name of Deputy Willie Penrose.

Amendments Nos. 6 to 9, inclusive, not moved.

Question proposed: "That section 6 stand part of the Bill."

Deputy Willie O'Dea: I know that the amendments have been ruled out of order, but I wish to make an observation in passing. Everybody agrees that the correct thing to do is to totally eliminate zero-hour and if-and-when contracts, which have been a means of engaging in huge exploitation, some of which I have witnessed. The way to eliminate them is to provide for a guaranteed minimum of three hours' work per week. We are seeking to do this, but we are being told that it is contrary to the rules. I really impress on the Minister that if we want to eliminate zero-hour and if-and-when contracts once and for all, this is the way to go. I urge her to take on board our amendment on Report Stage. She could do so within the rules.

Deputy John Brady: I would like to hear the explanation. If it is the need for a money message-----

Chairman: Yes. Does the Deputy want me to give the explanation now?

Deputy John Brady: Perhaps if we were given the explanation, I could then respond to-----

Chairman: To be fair to the Minister, she did not rule the amendments out of order. I will give the explanation, if it is of any assistance.

Amendment No. 7 in the name of Deputy Willie O'Dea, amendment No. 8 in the name of Deputy John Brady and amendment No. 9 in the name of Deputy Willie Penrose propose to insert a new provision in section 6 of the Bill to provide that normal hours of work per working week for an individual would be not less than three hours. Section 6 introduces the requirement that an employer must provide employees with a written statement containing five core terms within five days of the commencement of employment. It does not deal with the laying down of a minimum requirement in respect of the number hours of work to be provided by an employer. Not every job requires a minimum of three hours per week for 52 weeks of the year. Requiring the State, as an employer, to guarantee a minimum of three hours' work per week per employee, for example, for substitute teachers, would have the potential to impose a charge on Revenue. Therefore, the amendments must be ruled out of order in accordance with Standing Order 179(3). That is the explanation. It is not the Minister's ruling, notwithstanding the points made. We cannot discuss the amendments, but Deputy John Brady may make a quick comment.

Deputy John Brady: That is extremely disappointing because the intention of the Bill is to do away with zero-hour and if-and-when contracts. A minimum of three hours' work per week is a reasonable expectation to have. If an employer pays someone the national minimum wage, €9.15 or whatever it is, and there was a minimum of three hours' work per week, that would be €27 a week. I do not think there is any employer who would not be able to afford that and it would protect workers. A one-hour contract is not a contract. It is disappointing. I hope the Minister will reflect on this issue and perhaps consider accepting my amendment on Report Stage.

Chairman: I will let the Minister comment, but others want to make a brief comment on the same issue.

Deputy Bríd Smith: I am baffled as to why the Department is using substitute teachers as an argument. Substitute teachers are contracted by the State under a different arrangement. I know many of them. Members of my family are substitute teachers. I am sure everybody in the room knows some of them. It is not the same as being on the contract with which we are trying to deal. What the State requires of a substitute teacher is that he or she put his or her name down, register with the union and the Department. They are called on to fill blocks of work such as when someone is on maternity leave or out sick. Everybody knows that it is a different arrangement. The explanation does not compare like with like and uses substitute teachers employed by the State as a means of undermining the potential to protect all workers. That is not what we are getting at. It is not the arrangement the State has with substitute teachers, albeit I defend their right to have a minimum income per week, too. However, that is not what this is about. I am sure we could look at how substitute teachers are employed and use it to argue against what the Government is doing.

Deputy Joan Collins: This is a fundamental issue for workers in the retail sector. Dunnes Stores' workers went on strike in 2015 to achieve secure hours and better pay. We should at least give workers a minimum of three hours' work. I cannot see how it would be a huge imposition on the State, even if that was to be the comparison, although I take on board the points made by the previous Deputy. For retail workers, however, this is a very important issue. If one is on a zero-hour contract, one is in a very precarious position. Imagine working on a zero-hour contract. Would any of us want our daughter or son or even ourselves to be on a zero-hour contract where one could be called on at any time and not be given any secure hours? To me, this is a fundamental issue. I would like the Minister to see how we could insert this into the Bill. It is morally wrong and bad employment law.

Deputy Willie Penrose: It is in line with a recommendation that emanated from the report of the University of Limerick. It is the kernel of the issue. The Irish Congress of Trade Unions has noted that the provision which seeks to pay a worker for a minimum of three hours' work, whether he or she is required to work, is in line with the recommendation made. Most of us are motivated by that. Deputy Collins made the point in regard to retail workers. Notwithstanding my support for the Bill, it highlights the fact that the prohibition of zero-hour contracts excludes casual workers. That is the whole issue and why the last amendment about which Deputy O'Dea and I spoke is so important. That is why, in the absence of the significant or the principal amendment being accepted, this three hour minimum would be the very minimum. I ask the Minister to devise a way to include this in the Bill which would be strengthened immeasurably by its inclusion.

Chairman: The Minister can respond but the amendments have been ruled out of order. The Minister can address the points that members made.

Deputy Regina Doherty: I want to respond to Deputy Smith briefly to say that the example was used in the ruling out of these amendments was not my example. I did not use it. It is the Chairman's example. I have no problem being charged with explanations when they are mine but it was not mine and I would not have used it.

I refer to Deputy Penrose's comments. It is not in line with the report from the University of Limerick. The report told us that we do not have a prevalence of use of zero-hour contracts in the country. Notwithstanding that these amendments cannot be passed, I am proposing to amend section 18 of the Organisation of Working Time Act to try to get us to a situation where nobody is brought in, told on a Tuesday that he or she has work, sent home again and told on a Friday that he or she has work. We want to ensure people have a consistency within the bands of hours and the contracted agreement between the two parties and the standard terms and conditions of that contract. That will be reflected in other sections of the Bill.

Chairman: I thank the Minister.

Question put and agreed to.

Sections 7 and 8 agreed to.

SECTION 9

Deputy Willie O'Dea: I move amendment No. 10:

In page 7, between lines 28 and 29, to insert the following:

" "6B.(1)The Minister may, draw up, amend or revoke, in relation to determining the employment or self-employment status of an individual, one or more than one, codes of practice for determining said status.

(2) The Minister shall, within six months of the commencement of the Employment (Miscellaneous Provisions) Act 2017, publish a code of practice for determining the employment or self-employment of an individual.

(3) The code referred to in subsection (2) may be based on the "Code of Practice for Determining Employment or Self-Employment Status of Individuals 2007", and shall be drawn up in conjunction with the following bodies—

(a) Department of Business, Enterprise and Innovation;

(b) National Employment Rights Authority;

(c) Department of Employment Affairs and Social Protection;

(d) Department of Finance;

(e) Irish Congress of Trade Unions;

(f) Irish Business and Employers Confederation;

(g) Small Firms Association;

(h) Construction Industry Federation; and

(i) Revenue Commissioners.

(4) It shall be an offence for an employer to fail to comply with a code of practice published under this section.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a class A fine.”.”.

Amendment No. 10 is to deal with bogus self-employment. I put down the amendment simply to draw the Minister’s attention to this phenomenon one more time and to try to ascertain what the Government is proposing to do about it.

As the Minister knows, this phenomenon of bogus self-employment is a reality now in the workplace and it is something that has been growing. If one looks at the figures on people who are classified as self-employed without employees, it used to be confined to certain sectors, largely confined to construction, but it is spreading into other sectors. It amazes me that there are volumes of tax case law to ascertain for tax purposes what a self-employed person is and what an employee is. It would appear that in this country, any employer can choose to set aside all that legislation and learned opinion on a whim and simply deem somebody who is clearly an employee to be self-employed.

This has a number of consequences. First, the statutory protections which employees now enjoy and which have been hard won and built up over a number of years, are set at nought at the stroke of a pen. Second, and I know this will be of interest to the Minister, there is a huge loss of revenue to the State which could be spent in many useful ways. I got a document from the Revenue Commissioners that was published by them but drawn up by another body. It is a code of practice in determining employment status and, to be honest, if it was not so serious, it would be laughable. In the introduction, it says that an important consideration in this context will be whether the person performing the work does so as a person in business on his or her own account - in other words, is the person a free agent with an economic independence of the person engaging the service? It sets out loads of criteria that one would look at. It says that generally speaking, a person should be considered an employee if he or she is under the control of another person, only supply his or her labour, receives a fixed wage, cannot subcontract out the work, does not supply materials for the job, etc. If one goes through all those criteria from beginning to end, I know a lot of people in my constituency who meet all those criteria who are taxed and treated for employment law purposes as being self-employed. People are working on construction sites in Limerick doing labouring work who are, as far as I can see, classified as self-employed. We have people working in the retail business who are clearly just working for

an employer. They are classified as self-employed because it suits the employer to do it.

This phenomenon has been growing, as I have said to the Minister, and I know that she has been looking at it and has done certain work on it. In putting down the amendment, I am suggesting that we redo the code and we make it an offence for an employer to breach the code. Maybe the Minister has something different in mind. I do not know but I want to know where we are as a country in tackling this scandal.

Deputy Clare Daly: We definitely will not get an answer to that question in this session. That is for sure but the question needs to be asked. I fully support the amendment being included in this Employment (Miscellaneous Provisions) Bill 2017 because this is a scourge on our society. I will not go on about it because we could be here all day. Deputy O'Dea read out the list of the conditions and they are laughable. I have taken cases to the Revenue Commissioners recently where I have demonstrated in black and white that a certain person would meet all of the criteria as an employee and they did not want to know because in situations where the Revenue Commissioners are getting the money out of a worker, they are happy. They are moneys that should have been paid by their employers. It is absolutely appalling. If we factor in the Supreme Court decision, which correctly and finally has led to a scenario where people in direct provision are allowed to access the labour market, we know the Government put in an interim scheme which means that somebody has to get a job with pay of €30,000 in order to be allowed to work. Given that public servants are not even getting that, the chances of that are slim to none but they are also entitled to self-employment. Since that limited, bad enough, scheme as it is, only one person has got a job but there have been hundreds of self-employment applications from people in direct provision so this is a backdoor way around of avoiding even paying the minimum wage. Let us be clear about it. If we do not get something into a Bill like this, and unless we address this, there is no point talking about banded hours and security of income. It is a bit aspirational but it is very meritorious that it is here and it should be supported.

Deputy Bríd Smith: The root of this is the definition of what a worker is. It is people who sell their labour or who own their labour and use it for their own benefit because self-employment would imply that people are doing it for themselves. When they are selling their labour, they are creating wealth and profit and doing things for somebody else, namely, the employer. We need to look at how we define what a worker is in all of this because people who are defined as self-employed are clearly not. People on building sites, delivering food or driving public transport for various companies are clearly not self-employed and are clearly generating revenue and profit for others. That needs to be challenged at a definition level.

Deputy John Brady: The issue of bogus self-employment is rife. Different committees have looked at this and there have been different reports. I note that the Department and the Minister have brought forward an awareness campaign which is just paying lip-service to the issue. Bogus self-employment is rife in the construction sector and even in our State broadcaster. In fairness, Mr. Philip Boucher-Hayes has covered the issue extensively and he says that it is rife within RTÉ. People are doing essentially the same job, some on a full contract and others being classed as self-employed. The only explanation workers and I can see is the hammering down of terms and conditions and for people to get away without paying their obligations in terms of taxes, PRSI contributions and so on. The amount on which the Exchequer is losing out has been calculated. We are talking about multiples of millions of euro that could - and rightfully should - go into other schemes and projects. We should look at all of this. I am concerned that we are going to put in place a code of practice that is too weak. What is proposed does not go far enough. We need a legal definition as opposed to a code of practice. That is up to the

Minister. I know that different items of legislation are coming through to deal with the whole issue of bogus self-employment. I appreciate from where Deputy O'Dea is coming and also his intentions but a code of practice is too weak. We need a legal definition of "self-employment" and "self-employed".

Deputy Willie Penrose: This has been a recurring plague. I know the Minister is eager to get her teeth into this matter and I anticipate that she will address it. From a legal perspective, the critical aspect of any analysis is the type of contract engaged in and the classification of it. That is important because when people are employed as ordinary employees, they attract the full corpus of legislative protection vindicating and advancing workers' rights. Employers are using this to divest themselves of their obligations in respect of taxes, PRSI contributions, holiday entitlements and, more importantly, pension contributions. I refer to a whole host of various rights in this regard.

Establishing the employment status of an individual is key. As Deputy O'Dea said, the courts have laid out a strong basis on how to do that. It includes not just employment law but also that relating to Revenue. This has been a scam to defeat workers' rights and it is time it was brought to an end. The crucial aspect of this - the Chair referred to it in the Dáil - is that when people reach pension age and look for their contributions records, there is a hole in the bucket. This is a major problem. In the current situation, people suffer because they have no protection. In the old days, we used to have wet time rates but they have disappeared. People had to stand out there or otherwise they got nothing and nothing to bring home to their families at weekends.

This is critical in the context of what is available. The Minister is taking on a big job regarding pensions. Well done to her on that. The dichotomy to which I refer is very important in that context. Several of us have raised this in the Dáil. I know the Minister has a study which says it is not as widespread as suggested but people are flying under the radar somewhere. The Minister is trying to find out what is happening and we will all assist her in trying to resolve this conundrum.

Deputy Regina Doherty: I thank Deputy O'Dea for raising this point. I share his concerns. Correctly classifying work as either employment or self-employment impacts on the benefits people receive and also on their entitlements under legislation relating to employment rights. As the Deputy pointed out, there is also a loss to the Exchequer. I get all of that. The committee will be aware that I launched a campaign recently in respect of allowing people to have their classification changed if they are in any doubt as to whether they are employed or self-employed. The take-up rate and the number of people who have contacted us are a lot greater than I would have expected. We will go through all of those cases in the same format that we have done for other people before.

The committee has the current guidelines - it is only a code of practice - and I appreciate that they are long and varied. The reason for their being long and varied is because Mr. Justice Ronan Keane, in the Supreme Court case of Henry Denny and Sons (Ireland) Ltd. *v*. the Minister for Social Welfare, said that each case has to be confirmed and determined in light of the particular facts of that person. Given that more than 1 million people in this country have declared themselves to be self-employed, there are dissimilarities across the board. That is why the code of practice has to be as wide and varied as it is. I agree that it needs to be updated. However, the reason I will be opposing this particular amendment is that a code of practice is something that people commit to adhering to. It is also there to be used in determining the outcome of cases where there is disagreement between people. To make it a criminal offence to fail to adhere to a code of practice would be a step too far for me.

The committee will be aware that I am working on these issues. It is not as simple as firming up exactly what self-employed versus employed means. This is because, within the self-employed context, we could have 50 people ticking all of the boxes but not being self-employed, either in my view or in those of the Deputies. For me, the driver has to be that a person needs to want to be self-employed and, as Deputy Bríd Smith said, actually making money for himself or herself and not for somebody else. We need to determine that. There are, however, many people who want to be self-employed for the simple reason that they can make money for themselves.

That is still incurring a loss to the Exchequer. We need, perhaps, to look at a third category or some other way of determining those people who either work for only one dedicated contractor or who do 70% or 80% of their work with such a contractor and imposing a charge on them to ensure that the Exchequer does not lose out. There is also a need for a classification in order that these people can benefit from the employment rights that every other person with employee status enjoys. It is only on that basis that I am not accepting this amendment. Perhaps we might do it by means of a statutory instrument. We can have a look at the code of practice, strengthen it and make it simpler and less varied than is currently the case. To make it a criminal offence for people not to adhere to a code of practice is not something to which I can sign up, particularly in view of the fact that I am exploring other options to address the challenge of the number of people who, potentially, are declaring as self-employed but who are not really self-employed.

Deputy Willie O'Dea: I take the point that every case depends on its own facts. Of course it does; that is why we have an objective to measure facts against. I also know that many people want to be self-employed. We are not worried about such people, however, we are concerned with those who do not want to be self-employed but who, against their wishes, are designated as being self-employed. I take Deputy Brady's comment on the Minister's point about legal definition. A legal definition of "employee" versus a definition of "self-employed" would be very long and would, more or less, use the same terminology that contained in the code of practice. Perhaps we could change the wording of the amendment for Report Stage in order to seek to define the matter legally. I will look at that and, therefore, I will not press the amendment. I will bring it back in a different guise on Report Stage.

Amendment, by leave, withdrawn.

Deputy Regina Doherty: I move amendment No. 11:

> In page 7, line 34, after "employee," to insert "or who is reckless as to whether or not false or misleading information is provided,".

This amendment inserts additional text into the offence provision of section 10 in order that an employer who deliberatively or recklessly provides misleading information will be guilty of an offence. It emerged during the consultation process that some employers misrepresent their name to avoid litigation by employees. If the employee does not know the correct legal name of his or her employer's company, he or she cannot pursue a case. I am sure Deputies will agree that this is obnoxious. I am going to ensure that it is stamped out. That is why I propose to make it an offence to misrepresent any term that is required within the first five days of somebody starting employment. In the Bill as drafted, the Workplace Relations Commission, WRC, would have to prove beyond reasonable doubt that an offence of giving false or misleading information was committed deliberately. Following publication of the Bill, we suggested that the relevant provision should be expanded to read "deliberately and recklessly". This formulation would alleviate the need on the WRC to have to prove that an employer

set out to provide false or misleading information. It would be sufficient that the employer did not exercise sufficient care to ensure that the information was accurate and took a risk that it might be false or misleading. The offence provision will be stronger because of this amendment.

Amendment agreed to.

Question proposed: "That section 9, as amended, stand part of the Bill."

Deputy Willie O'Dea: I oppose the section because it provides that if the employer, for whatever reason, fails to provide a statement of core conditions on time, which we all accept is very important, he or she will be guilty of a criminal offence with the possibility of a class A fine or a term of imprisonment. Looking at this as objectively as I can, while taking the point the Minister made earlier about a sledgehammer, I think this is overkill. I am very uneasy with the idea of criminal sanctions being imposed in labour law. There is a better way to deal with this. There are several amendments in my name and the names of various other Members that put the onus of disproving the allegation on the employer. The way to do this is to have a civil or administrative remedy, as we have in all other aspects of labour law. If an accusation is made, the onus must be put firmly on the person against whom the accusation is made, that is, the employer, to rebut it. We must also strengthen the penalisation provisions. Amendments have been proposed by various Opposition Deputies, which would do just that. Employers and unions agree with me that it would be better and more balanced legislation if we included those changes that are proposed in other amendments, rather than having the shadow of Mountjoy hanging over every small business person in the country.

Deputy Joan Collins: The fact that the amendments have been ruled out of order leaves us in a difficult position. The Government is not accepting the alternatives proposed. I acknowledge the point being made by Deputy O'Dea that it is a very strong statement to make to criminalise a person but I do not have a problem with it. That said, if the Irish Congress of Trade Unions, ICTU, and individual unions are saying that the legislation should be more balanced and that the four weeks should be extended to 104 weeks in the context of remuneration, in those circumstances, I support section 9 on the basis that the alternatives to it have been ruled out of order.

Chairman: On the section, does Deputy Penrose wish to comment?

Deputy Willie Penrose: I also oppose the section and agree with Deputy O'Dea. There are lots of employers out there, some of whom are very small and we must take a balanced view on this. Deputy Joan Collins is correct in pointing out that if some of the other amendments had been accepted, we certainly would be wholeheartedly opposing section 9. The problem, when one starts introducing criminal sanctions, is that small shopkeepers who are doing their best, for example, who are employers according to the definitions in the Bill could be dragged into court over a small matter that can be sorted out more easily. As Deputy O'Dea suggests, it could be dealt with on an administrative basis with the employer being obliged to disprove the allegation or presumption. We all agree that a written record of the core conditions should be provided on the day employment starts but if there is a one-day delay in that, the employer could be subject to a criminal sanction. There is no provision for discretion or leeway. I know that ICTU was not excited by section 9 as it stood. Maybe the Minister can review it before Report Stage. She said earlier that she wants to bring down the hammer on anyone who deviates from the standards she is trying to implement and I understand that. Our problem is that some of the things we would like to have seen included in the Bill are not included. Therefore, we are in a catch-22 situation in respect of this section.

Chairman: I will come to the Minister in a moment but will take the other contributions first. Deputy Bríd Smith is next.

Deputy Bríd Smith: I have a question for the more experienced Deputies and the Chairman. If we do not pass section 9 now, can we amend it again on the next Stage? I am innocent as to how all of this works procedurally. I do not disagree with the Minister imposing criminal sanctions but we might lose out by not considering amendments that have been ruled out order. I do not disagree with what she is trying to do but would like to know if we can amend it later if we refuse to pass it now. Will we get another bite of the cherry?

Chairman: Deputies can indicate that they will be proposing amendments on Report Stage but those amendments will have to be in order and not be ruled out of order. The same Standing Orders will apply on Report Stage as on previous Stages.

Deputy Bríd Smith: The same Standing Orders will apply but could we come at it differently?

Deputy Willie Penrose: Any proposed amendment must arise from discussion here-----

Chairman: Yes, it must arise from the discussions and be indicated but if an amendment that has already been ruled out of order under Standing Order 179 on Committee Stage is presented again, it will be ruled out of order again. Any amendment will need to arise from the discussion but not be out of order.

Deputy Bríd Smith: Okay.

Chairman: Does the Minister wish to comment on the section before I put the question?

Deputy Regina Doherty: I am adamant that people are entitled to get the five simple pieces of information within five days of commencing employment. The vast majority of people in this country who employ others treat them well and look after them. A small number of people do not do so and this legislation is aimed at them. Five days is a reasonable amount of time within which to give employees the information. If employers do not give it within that timeframe there will be a large penalty. The reaction from industry and from the unions whose members will be affected by this is very interesting. The argument that they put forward is that a criminal offence should not be introduced into employment law but I would point out that this is not the first time that criminal offences have been included in employment law. This is certainly not new. Criminal sanctions have been handed down under the Organisation of Working Time Act 1997, the National Minimum Wage Act 2000, the Employment Permits Act 2003, the Workplace Relations Act 2015 and the Payment of Wages Act 1991. All of those who break the law should be subject to the law. We are introducing a new law here to ensure that people who are in precarious and mostly low-paid employment will get the most basic information to which they are entitled. If employers want to make sure that they are not charged with a criminal offence, they must give the five pieces of information required within five days. It is very simple. I cannot suggest to the committee that I can undo this or take out the criminal offence provisions because five days is enough for employers to provide five small and simple pieces of information to employees, to show them the dignity and respect they deserve. I do not think that is too harsh.

Deputy Willie Penrose: The Minister did say that she would take the criminal offence aspect out if we insisted that employees be provided with the information on day one.

Deputy Regina Doherty: Yes, because I must be reasonable. I do not think one day is reasonable. Five days to give the five simple pieces of information that empowers people and enables them to know what they are doing, where they are working and for whom they are working, is reasonable. I do not think one day is reasonable but we can have that discussion on another day.

Deputy Bríd Smith: Does the Minister think that three days is reasonable? Or three and a half days? Will we haggle?

Deputy Regina Doherty: We can certainly try to accommodate each other.

Chairman: We have had the discussion on the amendments already. The question at this stage relates to the section and I must put the question.

Deputy Willie O'Dea: It is a bit ironic that we are compelled to sign up to section 9 because the Minister is steadfastly refusing to introduce, on her own initiative, reasonable amendments that will strengthen the Bill. We cannot put forward such amendments because we have been ruled out of order. We are in a position where we have no option but to accept section 9 as it stands.

Deputy Bríd Smith: If we do not accept it, can we revisit it on Report Stage? Can we table different amendments and come at it from a different philosophical perspective, rather than just focus on the wording?

Deputy Willie O'Dea: I am subject to correction but it is my understanding that if we vote against section 9 today, the Minister can reintroduce it as an amendment on Report Stage. Does that give us time to submit appropriate amendments to the amended section?

Deputy Bríd Smith: I ask the Deputy to tell me as he has been in this place for a long time.

Deputy Willie O'Dea: It depends on when the amendments are published but it will be a very short timescale.

Chairman: To be helpful, I cannot give the Deputy the timescale but the Minister indicated that she was anxious that it would go to Report Stage sooner rather than later. I take it that the Deputy would like to see it taken in the week following the conclusion of Committee Stage and, therefore, the time will be short.

Question put and agreed to.

SECTION 10

Deputy John Brady: I move amendment No. 12:

> In page 9, lines 6 to 9, to delete all words from and including "any" in line 6 down to and including "employment" in line 9 and substitute "any adverse treatment of an employee by his or her employer".

The amendment seeks the substitution of the words from "any act or omission" to "his or her employment" with "any adverse treatment of an employee by his or her employer". The Bill is not strong enough in this regard and I propose a definition that is in previous legislation, which will strengthen it. The definition has been recommended by a number of organisations.

Deputy Regina Doherty: I acknowledge what the Deputy is trying to do but the amend-

ment would weaken the provision rather than strengthen it because it will restrict rather than protect an employee. The amendment confines adverse treatment of an employee to actions by the employer and under the Bill, penalisation includes adverse treatment by anybody acting on behalf of an employer. This could exclude agency workers. If an employer gets somebody else to do his dirty work and treats an employee badly as a result of invoking rights under the legislation, the employee is protected by the penalisation in it regardless of who is engaged in the bad treatment. That would not the case if the amendment were passed. The text in the Bill is taken from the Protection of Employees (Temporary Agency Work) Act 2012 and it is the strongest anti-penalisation provision in employment rights legislation.

Anti-penalisation provisions were a new departure in the Terms of Employment (Information) Act 1994. An employee was not previously protected from being penalised for asking for a contract of employment in writing beforehand and I am not disposed to accepting the amendment on the basis that it weakens what we are trying to do, which is to protect employees and assert their right under this legislation to protection from anybody who treats them badly, whether it is the employer or anybody acting on his or her behalf.

Deputy John Brady: I will press the amendment because the 1997 Act provides for this definition and it will strengthen the legislation. I do not agree with the Minister's comments.

Amendment put.

The Committee divided: Tá;, 2; Níl, 6.	
Tá;	Níl;
Brady, John.	Carey, Joe.
Collins, Joan.	Curran, John.
	Doherty, Regina.
	McLoughlin, Tony.
	O'Dea, Willie.
	Smith, Bríd.

Amendment declared lost.

Chairman: I remind colleagues that we will work right up to the voting bloc in the Dáil and, if not concluded today, we will continue next Tuesday. Amendments Nos. 13 and 14 are related and may be discussed together.

Deputy Willie O'Dea: I move amendment No. 13:

In page 9, line 19, to delete "intimidation."." and substitute the following:

"intimidation.

(6) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that this section has been contravened the onus shall be on the respondent to prove the contrary."."

Section 10 contains various provisions for the penalisation of an employer who acts incorrectly to the workers' detriment or adversely, as Deputy Brady's amendment No. 12 stated. We are simply putting in a provision that if an accusation is made by the worker, the onus should

be on the employer to rebut it and that there would be a presumption that what the worker is saying is correct. I must say I am not as enthusiastic about the amendment now, even though I am proposing it, as I was hitherto, in view of the fact that section 9 is part of the Bill. I had envisaged we would be getting rid of section 9.

Chairman: Is the Deputy withdrawing the amendment?

Deputy Willie O'Dea: I will leave it there to be discussed.

Deputy John Brady: Amendment No. 14 contains the same argument as that of Deputy O'Dea's amendment and it is an important amendment. Certainly I concur with what Deputy O'Dea has said on section 9. I will push it. The two amendments are similar. Four Deputies are pushing the amendment No. 14, so perhaps Deputy O'Dea will withdraw his amendment for the one that has been tabled by four Deputies. They are both the same really.

Deputy Joan Collins: This amendment is linked to the replacing of four weeks with 104 weeks. Given that section 9 is included, it is not key. I am also speaking on behalf of Deputy Shortall, who cannot make the meeting this morning. She will probably be here later.

Deputy Regina Doherty: I must point out the penalisation provision in the Bill provides that when an employee makes a complaint, it is presumed until the contrary is proven that the employee concerned has acted reasonably and in good faith in making the complaint because otherwise why would they make it? There is very strong protection for the employee. Then it goes over to being a matter for the employer to respond to the complaint and for the independent adjudicator from the Workplace Relations Commission to consider both sides of the argument. It is very fair and reasonable that both sides get an independent hearing and that there is not a presumption that the outcome will be of a particular way before that independent arm of the State gets to adjudicate on it, and it does it well, obviously. Section 7 of the existing Terms of Employment (Information) Act provides that a decision of an adjudication officer shall declare that the complaint was, or maybe was not, founded, and these provisions taken together achieve what I think Deputies might be trying to achieve by these particular amendments.

Section 10 defines penalisation in broad terms and even includes the threat of being penalised. As I stated, section 10 mirrors the updated and more comprehensive penalisation provisions used by more recent employment statuses. Three penalisation provisions are well settled, and there is no evidence that the relevant provisions are lacking in anything with regard to the protection for an employee. It is also worth noting that many practitioners and other stakeholders have been critical in the past about the lack of uniformity of comparable provisions across a very large number of employment statuses and regulations. To accept this amendment would change the tried and tested penalisation provisions and I am not sure it would add anything other than grist to the mill.

I am sorry, but the best way for me to proceed is to ask the Deputies to come back and discuss it on Report Stage. On this basis I ask them to withdraw the amendments. I know what they are trying to achieve, but there has to be fair and due process, and this is why we have the independent authority that is the Workplace Relations Commission. The penalisation measures we have put into the Bill to protect people from being penalised for the threat of taking further action are strong enough to be able to support employees in the way I think the Deputies are trying to do with these provisions.

Deputy Willie O'Dea: At the end of the case she made there, the Minister said she does not think this will effectively add anything to the Bill. In other words, she said it will not make any

difference. I believe it would make a difference and that it would be a better Bill for the inclusion of the amendment. Just because I am not as enthusiastic about it as I was at the beginning does not mean I do not support it still.

Amendment put and declared carried.

Amendment No. 14 not moved.

Section 10, as amended, agreed to.

SECTION 11

Deputy Willie O'Dea: I move amendment No. 15:

In page 9, to delete lines 25 to 29 and substitute the following:

"section 3(1A) unless the employee has been in the continuous service of the employer for more than 1 month.", ".

I will be withdrawing this amendment. I put it forward on the basis that section 9 would be deleted. It is rather irrelevant.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 16 and 17 are out of order.

Amendments Nos. 16 and 17 not moved.

Question proposed: "That section 11 stand part of the Bill."

Deputy John Brady: I would imagine it is the same rationale as that given in the case of the previous amendments that have been ruled out of order and the same arguments countering that stand. The argument as to why they are ruled out of order is a dubious one. These are important amendments. Unfortunately, there are employers willing to take a hit where there is a penalty of four weeks' compensation. I dealt with an individual recently and the employer quite-----

Chairman: I am not disagreeing with this but the amendment is out of order. It is not the issue that the Deputy is dealing with but the amendment.

Deputy John Brady: I know. The argument would seem to be out of order.

Chairman: We cannot put the amendment.

Deputy John Brady: The argument as to why they have been ruled out of order does not stack up. I would like a written response as to why all these amendments have been ruled out of order. The Minister stated that she does not necessarily agree with or would not use the argument that has been provided by the Ceann Comhairle's office.

Deputy Regina Doherty: I did not say that. I stated it was not my argument.

Deputy John Brady: It is not the Minister's argument.

Deputy Regina Doherty: I did not state I did not agree with it. I only stated it was not my argument.

Chairman: I would make the point that these have been ruled on by the Ceann Comhairle's office. They are not in order to be moved. I can give Deputy Brady the explanation here and I would gladly have a written copy sent to the Deputy afterwards.

Deputy Clare Daly: We all got a written letter about the amendments being out of order.

Chairman: I just wish to help in terms of the explanation. Those amendments Nos. 16 and 17 propose inserting a new provision in section 11 to amend the Terms of Employment (Information) Act 1994 in relation to contraventions of the Act and to increase the level of redress that may be payable to an employee from the current four weeks' salary to 104 weeks, that is, two years' salary. These amendments have potential cost implications for the State as an employer and, therefore, the amendments must be ruled out of order in accordance with Standing Order 179. We cannot put those.

Deputy Willie O'Dea: It is most unfortunate. This is a fundamental part of the Bill. If somebody is employed only 12 months and is dismissed, he or she can take a case to the unfair dismissals tribunal and get a maximum of 104 weeks' salary in compensation. If the person is employed for 11 months, he or she can get a maximum of four weeks' compensation. That seems wrong.

I plead with the Minister to think about this between now and Report Stage. The provisions in this Bill will generally be used by workers on low pay. There is an incentive for an employer to let the matter go to the WRC and be appealed to the Labour Court which in all would take 15 months. Who will wait 15 months for four weeks' compensation, or at most eight weeks, if, for example, the worker makes a complaint that he or she did not get the proper information or whatever and was dismissed as a result of making the complaint? We are talking about a maximum of 104 weeks' compensation. We are not saying that 104 weeks' compensation should be paid in every case.

Chairman: The Deputy has made the point, but unfortunately the amendments cannot be put. The amendments are not in accordance with the Standing Orders of the House.

Question put and agreed to.

Sections 12 and 13 agreed to.

SECTION 14

Chairman: Amendments Nos. 18, 19 and 21 are related and may be discussed together.

Deputy Joan Collins: I move amendment No. 18:

In page 10, line 29, after "hours')," to insert "or".

Amendment No. 23 would probably have been linked in with amendments Nos. 18, 19 and 21 because it substitutes greater hours.

Chairman: Amendment No. 23 is out of order.

Deputy Joan Collins: I know it is out of order. It would have been part of that group if it had not been.

Chairman: The Deputy has three amendments that are in order.

Deputy Joan Collins: Those three were all linked to the prohibition of zero-hour working

practices in certain circumstances and minimum payment in certain circumstances. It was to take out section 18(1)(b) "as and when the employer requires him or her to do so, or", to change paragraph (c) to paragraph (b), and then that the number of hours concerned would be greater than three hours. Other Deputies had two. As the latter is the part that is out of order, I will have to withdraw them for the moment.

Deputy Regina Doherty: Are they withdrawn?

Chairman: Deputy Joan Collins does not have to withdraw. They can be made.

Deputy Regina Doherty: The purpose of these amendments Nos. 18, 19 and 21 seems to be to abolish if-and-when contracts of employment altogether. It is important to state, because maybe nobody else will, that flexible working arrangements are not bad when they suit those who are involved. In certain sectors, the arrangements can help satisfy a peak demand and fill staffing gaps on a short-term basis. Such arrangements suit some employees. If we were to pass any or all of these amendments, it would exclude those workers who find these arrangements suitable to their own circumstances as they would not be able to use them anymore. I refer, for example, to students working during the summer holidays, individuals who need to work around their responsibilities to care for their children or parents, and the semi-retired who wish to make themselves to work on a flexible basis. If we were to abolish all if-and-when contracts completely, it would mean that one would not be able to use such arrangements to cover annual leave, holiday leave, sick leave or some of the stuff that workers want to do.

I understand what the Deputy is trying to do but there are some who want to have the flexibility to be able to work as they are working. If we deploy these amendments, they would not be able to do so. The Deputy is trying to ensure that nobody can take advantage of somebody, but what we need to try to find is the balance where those who want to work in a flexible situation that suits them can do so while ensuring that no employer can act unscrupulously to make a person work in an inflexible or unstable environment. The rest of the provisions in the Bill, while not perfect, go a long way to ensuring, particularly when we get to talk about the amendments on the banded hours, that those who want stability and consistency will get it, but I would be afraid that those who genuinely want to work a couple of hours here or there at Christmas or Easter will not be able to do so in the future if we pass these amendments.

Deputy Clare Daly: We would all agree with flexibility where the employee would choose to have that option, but this Bill is designed to eliminate exploitation. The point is one can have a flexible working arrangement and yet get the minimum of three hours. Nobody wants it so flexible that he or she will get less than three hours' pay.

It is correct to say that these were linked with the other groups but that is something that we are not being allowed put forward at this stage. If the Minister is serious about getting the balance right between the option of the employee with a desire for flexibility and the need to eliminate exploitation, then the recommendation of the University of Limerick was that an employer can call somebody in but he or she must get a minimum of three hours' pay. The Minister needs to incorporate that somewhere now to get over that. I am aware why our amendments were ruled out of order but the findings of the University of Limerick report must be introduced somehow. If we cannot do it, the Minister has to do it. It does not negate the separate argument the Minister makes about flexibility.

Deputy Joan Collins: I agree with Deputy Clare Daly. I have no difficulty with providing for flexibility. There are obvious reasons that workers need flexibility. That balance has to be

protected for the employee, and providing for a minimum of three hours does not go beyond that concept. It is in the University of Limerick report. We could look at providing for flexibility on Report Stage in the form of possible compensation of three hours. I will press these anyway.

Chairman: I will let the Minister respond.

Deputy Regina Doherty: I ask Deputy Joan Collins not to press them and for us to discuss it offline before the Report Stage. If the Deputy presses them, she will be removing the protection offered currently to employees with if-and-when arrangements under section 18 of the Organisation of Working Time Act 1997. It means that when those employees were called into work, they would not receive the three hours. Currently, if someone is mistakenly called in on a Tuesday, that mistake will not be made again because the employer would have to pay the person for three hours. If these amendments are pressed, that person will not get those three hours. An unintended consequence of the amendments is that such people will be excluded from the working time directive, which ensures that they get the three hours. I know what the Deputy is trying to do, but we-----

Chairman: Is the Deputy happy to withdraw the amendment now and discuss the matter with the Minister to see what can be drafted?

Deputy Joan Collins: Yes.

Chairman: Amendments Nos. 18, 19 and 21 will be withdrawn subject to that discussion.

Amendment, by leave, withdrawn.

Deputy Joan Collins: I move amendment No. 19:

In page 10, lines 30 and 31, to delete line 30 down to and including "(c) both" on line 31 and substitute "(b) both".

Amendment, by leave, withdrawn.

Deputy Willie Penrose: I move amendment No. 20:

In page 10, to delete "so," in line 32 down to and including line 37, and in page 11, to delete lines 1 to 3 and substitute "so.".

This amends section 18 of the Organisation of Working Time Act, which originally dealt with zero-hour contracts. At least, it tried to. The amendment is designed to ensure a minimum number of working hours, the prohibition of the use of zero-hour contracts and the strengthening of protections around if-and-when arrangements. The Minister discussed this matter in the Dáil. Section 18 sets out the floor for minimum pay entitlements for someone whose actual hours in a given week do not match up to his or her hours on call. It also sets out compensation and other various measures, for example, the 25% of the 15-hour provision. However, the Act does not deal with a contract with few or no guaranteed hours of work and no requirement to pay employees to make themselves available on call outside of guaranteed contractual hours. Many workers are encountering these types of terms and conditions, in which companies are under no obligation to provide work to the worker and the worker is under no obligation to accept any work offered by the company at any time. The Minister suggested on Second Stage that this was rare, but I remember raising in the Dáil the matter of a copy of a contract of a significant multinational catering company, one that had done work

for the State, that imposed certain conditions.

I know what the Minister will say about the amendment - I am waiting for it - but perhaps she could examine whether some of the thrust of what was said on Second Stage and today could be incorporated in a way that would strengthen the Bill. She is trying to achieve a balance, but there is no harm in redressing the fact that employees bargain from a position of weakness. For the courts, there is no ambiguity regarding the person who writes the contract, but there is ambiguity regarding the person in the weaker position. However, contracts should be construed in favour of the person in the weaker condition. In this context, that means casual workers and the like who are suffering. Can we do something to ensure that the balance is tilted somewhat back in their favour?

Deputy Regina Doherty: There is probably nothing worse to say to a woman than she is predictable, but the Deputy knows that my answer will be similar to what I said to Deputy Joan Collins. There genuinely are some people who want the flexibility of dipping in and out whenever it suits them. The Deputy is trying to strengthen the position of people in that situation, but all of the Bill's other provisions go a long way towards strengthening the hand of those who are being ill-treated or maligned.

Only a small number of people are involved, but the amendment would affect all students who work seasonally. It would also affect people with caring responsibilities who only want to be able to work when their kids are off on holidays. Whatever flexible arrangements exist currently would not be able to exist in future because of this and the previous amendments.

As I did with Deputy Collins, I will ask Deputy Penrose whether we can take this amendment offline, have a conversation between now and Report Stage and try to do something that keeps both of us happy.

Deputy Willie Penrose: Yes.

Amendment, by leave, withdrawn.

Deputy Joan Collins: I move amendment No. 21:

In page 11, line 5, to delete "paragraphs (a) and (c)" and substitute "paragraphs (a) and (b)".

Amendment, by leave, withdrawn.

Chairman: Amendment Nos. 22 to 28, inclusive, are out of order.

Amendments Nos. 22 to 28, inclusive, not moved.

Section 14 agreed to.

SECTION 15

Deputy John Brady: I move amendment No. 29:

In page 13, line 5, to delete "2 months" and substitute "4 weeks".

As opposed to the Minister's proposal of two months, this would give an employee the right to be placed on a band within four weeks. There is no reason not to put someone on the appropriate band much earlier than two months. An employer should be able to do it. All the employer would need to do would be to examine the look-back period, which we will address

shortly.

Deputy Regina Doherty: I apologise for speaking while the Deputy was talking, but I had to ask a new question.

I would have opposed this amendment because it would create an onerous situation for some employers. If one person asks to have a reflected look-back, four weeks would probably be too long and the employer should be reverting to him or her within a week or ten days. If 21 people in Spar in Navan ask for it on the same day, though, there might not be the capacity to handle all of those requests in such a short time. If the Deputy withdraws his amendment, we will consider the question of weeks versus employee numbers in a company. For argument's sake, a company like Dunnes Stores has staff in a specific HR department who are employed to do this work. In smaller organisations, the boss might be the person who has to do everything. I know what the Deputy is trying to do, in that we do not want people sitting around for weeks just because their employers are of a particular view, but there are also employers who are the bosses of everything in their company, and I do not want to establish a requirement that they cannot meet through no fault of their own. Could we examine the wording?

Chairman: Does the Deputy wish to press the amendment or withdraw and discuss it with the Minister?

Deputy John Brady: The Minister's argument does not stack up. What is she proposing? She will examine the matter and do what?

Deputy Regina Doherty: If the Deputy presses the amendment, I will have no choice but to object to it because the legislation will apply to everyone, be it a company that employs 10,000 people or one that employs ten people. I would object to the amendment on the basis that, if a large number of people came forward in a small organisation that did not have dedicated staff to perform the look-backs, only the boss, four weeks would be too onerous a period. We need to give such people the time to adhere to the law. We do not want to create a law to which people cannot adhere, be it because of seasonality or because 21 employees rush to be put on a certain band of hours once we pass this law. We must understand the burden on certain employers. That said, I also do not want someone being left for two months just to annoy him or her. I am trying to strike a balance. I cannot say "Yes" to what the Deputy is asking, but I want to try to help him do what he believes needs to happen.

Deputy John Brady: I-----

Chairman: Actually, I will allow Deputy Daly to contribute for a moment.

Deputy Clare Daly: While I accept the Minister's bona fides as regards examining this matter, if the boss of a small company is doing all of the work and his or her 21 employees come forward on the same day, he or she might need to diversify and employ a few more to share the burden.

Deputy Regina Doherty: That is very true.

Deputy Clare Daly: Those numbers do not stack up because a small employer de facto means a small number of employees. It is grand if the Minister is considering a balance, but she must take that point on board, too.

Deputy Regina Doherty: Yes.

Chairman: I need an answer from Deputy Brady. Actually, I am sorry. I call Deputy O'Dea.

Deputy Willie O'Dea: In view of the fact that my amendment No. 30 has been ruled out of order, it would encourage me strongly to support Deputy Brady's amendment if he wished to press it.

Deputy John Brady: I will be pressing the amendment.

Amendment put and declared carried.

Chairman: Amendment No. 30 in the name of Deputy Willie O'Dea has been ruled out of order.

Amendment No. 30 not moved.

Chairman: Amendments Nos. 31 to 35, inclusive, are related. Amendments Nos. 32 and 33 are physical alternatives to amendment No. 31. Amendment No. 33 is a physical alternative to No. 32. Amendment No. 35 is a physical alternative to No. 34. Amendments Nos. 31 to 35, inclusive, may be discussed together and then taken in numerical order.

Deputy Willie Penrose: I move amendment No. 31:

> In page 13, to delete lines 24 to 26 and substitute the following:
>
> "(7) An employee placed on a weekly band of working hours shall work hours the average of which shall fall within that band until such time as a further review of hours determines that the employee concerned should be placed on a different band of working hours.".

This amendment is being proposed in order to prevent an employee being placed on a lower number of hours after 18 months while a further review is under way. That is the thrust of it. Deputy Joan Collins will probably be speaking on Deputy Róisín Shortall's proposal. We debated this *ad nauseam* on Second Stage. I do not want to delay the committee. It is self-explanatory. I am sure the Minister will accommodate one of our amendments at this Stage.

Chairman: The amendments will be taken in sequence but they are all related. I will come to everybody.

Deputy Willie O'Dea: I strongly support Deputy Penrose's amendment on the basis that it has the same wording as the first part of my amendment, which was ruled out of order because of the second part. I will be supporting it.

Deputy Joan Collins: I will be formally moving Deputy Shortall's amendment.

Deputy John Brady: Our amendment seeks to decrease the reference period from 18 months to 12 months. This is in line with a number of recommendations. The University of Limerick actually recommended that the look-back should happen after six months. I note that the Minister initially spoke about 18 months and is now willing to compromise and move down to a 12 month look-back period. That has to be welcomed. Our amendment stands.

Deputy Joan Collins: On our amendment No. 32, I welcome the fact the Minister and the Department have come back to the 12 months and are not pushing the original 18 months. It is hugely welcome.

Deputy Regina Doherty: Can I speak to all the amendments as they are grouped together?

Chairman: Yes, they are all related.

Deputy Regina Doherty: Deputies will recall that the length of the reference period in section 15 of the Bill came in for particular scrutiny and attention during the debate on Second Stage. The general consensus was that a period of 18 months was too long and many Deputies suggested shorter periods. I indicated at that Stage that we would consider addressing the concerns that were raised. We are now introducing an amendment to reduce the reference period to 12 months. The reference period was selected for a number of reasons. It is the normal length of an annual business cycle. It should be sufficiently long enough to take account of the seasonal fluctuations and normal peaks and troughs of most businesses. It is easy to deliver so it should be an easily workable solution for both employers and employees. The reference period recommended by the Joint Committee on Jobs, Enterprise and Innovation in its report following scrutiny of Sinn Féin's Bill proposed the introduction of the banded hours arrangements and we have reflected on that. I note from the amendments tabled by others that there is considerable support for the 12-month reference period and I thank the Deputies for that. What we are proposing today is in line with the views of Deputies David Cullinane, John Brady, Joan Collins and Clare Daly.

I appreciate Deputy Willie Penrose's amendment No. 31. It obviously has good intentions but I am not sure that it improves matters for the employee. I know the Deputy has more practical daytime experience on this particular issue than I do but the amendment would significantly weaken the position of an employee who has been placed on a band of hours in exercising his or her rights under the section because there is no date for the review given in the Deputy's proposed amendments. An employer could potentially review the banded hours arrangement the day after an employee had been put on a band of hours and revert to the employee's previously contracted band of hours, if that is what the employer wanted to do. I know that is not what the Deputy means for the amendment to do. What we included in the original draft of the Bill is meant to ensure that the look-back and the look-forward are established so that once a person is put on a band of hours, he or she can stay on that banded hours contract for a significant length of time. The Deputy's amendment might serve to allow a person to be put on a band of hours today but for that band to be reviewed tomorrow or next week and the person put right back to where he or she was, which is not what any of us wants. I will not be able to accept the Deputy's amendment, but I will be pressing my amendments Nos. 32 and 34.

Chairman: Did Deputy Brady want to comment or are the members happy for the amendments to be put?

Deputy John Brady: I welcome the fact the Minister has agreed that a 12 month look-back period is appropriate. She touched on previous legislation that my colleague, Deputy Cullinane, had brought forward in which he had suggested a look-back period. We know there was a lengthy process. The Joint Committee on Jobs, Enterprise and Innovation looked at this issue extensively. It brought in expert witnesses and brought forward a report. It recommended a 12 month look-back period so it was surprising that, after that committee's report, the Minister came in with 18 months. It was contrary to all of the evidence that had been heard and the position that had been adopted by the joint committee. This proposal is in line with legislation on unfair dismissals. A 12 month look-back period is the most appropriate. Again, I welcome the Minister's support for the amendment.

Deputy Willie O'Dea: My amendment is slightly different from that of the Minister. I pro-

pose 13 months, as does Deputy Penrose. I do not have any difficulty accepting the Minister's amendment. The only reason I put in 13 months was that some of the trade union representatives I spoke to indicated that 13 months might be preferable to 12 because if people want to get the opportunity to bring a case for unfair dismissal the time limit might be too short. I will not go to war over it, but I propose 13 months.

Deputy Joan Collins: I very much welcome this development. This was a call by Mandate. It was originally for six months, the committee changed that to nine months and Mandate put forward the 12 months. I am delighted that is what will be implemented. I want to make one point about the retrospective look-back. The Minister is ensuring that the period will not begin post-enactment. The period will not be 12 months from the enactment of the Bill, but will apply retrospectively from the time the Bill comes in.

Deputy Regina Doherty: Yes.

Deputy Willie Penrose: I am quite happy to accept the 12 months. The suggestion of the Irish Congress of Trade Unions and it members had been 13 months. I am quite happy to accept that. On my other amendment, it is obviously not the intention to place people in a lesser position than they would be in under the legislation without the amendment. I would like to look at that and see what implications it might have. I will be withdrawing amendment No. 33 and may return with it on Report Stage.

Chairman: If the Minister is happy I will move on with the amendments. I need to do this in sequence because they are all related. I hope members will bear with me in order to ensure I do it correctly.

Amendment, by leave, withdrawn.

Deputy Regina Doherty: I move amendment No. 32.

In page 13, line 26, to delete "18 month" and substitute "12 months".

Amendment agreed to.

Amendment No. 33 not moved.

Deputy Regina Doherty: I move amendment No. 34:

In page 14, line 15, to delete "18 months" and substitute "12 months".

Amendment put and declared carried.

Amendment No. 35 not moved.

Deputy Joan Collins: I move amendment No. 36:

In page 14, between lines 20 and 21, to insert the following:

"(15) In the event of hours becoming available an employer shall be required to offer any surplus hours to existing part-time employees first.".

This is a very important amendment. It is based on the Directive 97/81/EC on part-time workers, which this country has not implemented yet. I noted earlier on that the Minister said that she is not prepared to put into legislation directives which have not been passed by the

EU. This was passed. I will explain exactly what it proposes. It says:

As far as possible, employers should give consideration to:

(a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment;

(b) requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise;

(c) the provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa;

That means that if a worker was working for eight hours a week, resigned and moved away, those eight hours would go to the other employees in the establishment. They could apply to have those eight hours added to their 12 hours, or, for example, if someone wanted to move from 20 hours to eight, the hours would become available within the establishment such that someone could increase his or her hours. It is part of the European part-time work directive and we should seriously consider providing for it.

Deputy Clare Daly: This amendment is why I am sitting through this committee meeting. It is critically important and would be an enormous addition for many in the State who are underemployed. The study of the prevalence of zero-hour contracts revealed the prevalence of part-time workers who were not part time out of choice. When we look back and consider other payments that have been changed by the Department, including the cuts to the one-parent family payment introduced by Deputy Joan Burton who said it was being done to encourage single parents to look for more hours and allow them to avail of more hours, rather than having the luxury of all of the extra money in social welfare. That is partly a different argument. The point is that nobody has a legal right to access extra hours to fulfil that objective. We should be doing it and it would be far better and in line with the EU directive. It would give far greater security. We hear slogans about people getting up in the morning and such like, but it is not just unemployment that pushes people into poverty. It is also low paid and inadequate hours and underemployment which we need to tackle from the point of view of providing security for workers. In that context, an employer should be obliged to offer hours to a current worker who is seeking more to give him or her access to more income if needed. It would also reward loyalty and not be too onerous. It would be a move forward in places such as Dunnes Stores in which over 80% of the workforce are women, many of whom are the main earner in a family. They have a desire to be given more hours but often cannot get them. That can be manipulated if an employee stands up for himself or herself. That is the key.

Deputy John Brady: I fully support this key amendment. We have heard all of the evidence. We have heard the horror stories from employees, particularly in Dunnes Stores and elsewhere. We know the difficulties in accessing finance and loans. Mortgages are non-existent for many of the workers affected.

Deputy Willie Penrose: Any good employer would implement this provision. It does not have to be part of legislation. There is the existing corpus of employees. Employers know who they are and the hours they work. As Deputy Clare Daly said, the extra hours are critical for those who need them to survive. It is not a matter of taking out a mortgage or anything else but of putting bread on the table. It is so obvious that one anticipate that employers would not have to be compelled to do it or think along the lines of doing something else. This is a reasonable

amendment, but it would be hard to police as large employers can construct all sorts of excuse for why they are not doing something. However, if they have work available, surely somebody who is already working 15, 18 or 20 hours could be given an extra five or six hours that would be critical to his or her well-being and economic capacity to earn a livelihood? This provision should be inserted into legislation. The Minister spoke about guiding employers with a stick. This might be similar. It would be instructive on how we view this matter from inside the Oireachtas as regards what has been ongoing for a number of years.

Deputy Willie O'Dea: I will not rehash all of the arguments made, but as I said, the category of workers the Bill seeks to protect is generally those on lower pay. From that point of view, it seems that the amendment is eminently sensible. As the legislation would be better for it, I will support it.

Deputy Regina Doherty: I ask Deputies Joan Collins and Clare Daly to withdraw the amendment to enable us to meet tonight, tomorrow or as soon as we can for one reason. Deputy Willie O'Dea hit the nail on the head; the Bill is specifically to address issues felt by people who are in precarious employment, particularly low paid workers. The outcome will affect every worker in the country. What is being proposed to fix what I agree is an issue would have an impact on the entire working population and could be overly onerous and restrictive for some businesses and people's ability to run them. Can we meet and talk about how we could word it to address the specific issue the Deputies are trying to address? If one runs a business and has extra hours available, rather than having to employ somebody new and meet all of the associated costs, why not just give the extra hours to someone? There are specific industries which are so mean-spirited that they specifically do not do so. I would like to be able to address that issue without penalising other businesses in being able to take on somebody extra with a different skillset who they might need. We will have a look at the wording in order that we can address the specific issue the Deputies are trying to address without imposing restrictions on other businesses which are not mean-spirited because the specific amendment would have an impact on every employer, as opposed to the ones the Deputies are trying to address.

Chairman: I thank the Minister. The question for Deputies Joan Collins and Clare Daly is whether they should go ahead and press the amendment or whether they want to address the issue with the Minister afterwards.

Deputy Clare Daly: We can choose to take different options. I know that I am not a member of the committee, but I would be inclined to bag the result now. If we want to tweak the amendment later and work with the Minister to change the wording before Report Stage, that would be another way to do the same thing. That would be my instinct. However, this is so important that I would be inclined to have the amendment passed now, but we will absolutely meet the Minister tomorrow or whenever else to come up with something better if she believes there is something better.

Chairman: Is Deputy Joan Collins happy with that approach?

Deputy Joan Collins: It is one of the key parts of the Bill. It has been an EU directive since 2004. Other countries have implemented it as part of their employment legislation. I would be inclined to put it.

Deputy Regina Doherty: Perhaps it might be teased out this morning, but it will reflect how I vote now. How do the Deputies propose that the amendment be implemented? Would there be a notice on the notice board? How would I prove that an employee saw it? How would

it work in practical terms? If an employee did not see the notice offering extra hours, how would it be enforced?

Deputy John Brady: The key word in the amendment is that they would have to offer, not give. There is a distinct difference. We would not be forcing any employer to do so. We are saying they would have to offer additional hours to part-time staff if there were additional hours available.

Deputy Regina Doherty: I am asking how it would be enforced.

Deputy Clare Daly: That is how it would operate. Most sensible employers would operate the system because it would benefit them as much as it would their employees. It would be precisely for those who would not be of a mind to do so and who - let us be honest about it - have victimised people who might have been the most outspoken in employment and so on and used it in a manipulative sense. That is what happens in most areas.

Deputy Regina Doherty: How would they have to offer it? Would it be something as ridiculous as putting it on the notice board? Is it going to be something as ridiculous as sticking it up on the notice board? Are we going to imply that employers have to write to all staff-----

Deputy Clare Daly: We do not prescribe how any employer carries out his or her business to adhere to the law.

Deputy Regina Doherty: How are we going to ensure they do it?

Deputy Clare Daly: Generally speaking, the provision would be objected to if someone had a problem with it. If my boss came in to ask the three of us about it and I did not really care anyway, I would not make a complaint about it. I am not going to decide to go to the Workplace Relations Commission the first time it happens because I am sick of it. Instead, I would make the point to my boss that he is supposed to offer me work but he did not and brought in his son instead, although those extra hours were supposed to be given to me. It is about changing behaviour as well.

Chairman: We have had the discussion and the point has been made. The amendment is in order. The option to withdraw it was offered and not accepted. I have to put the amendment now.

Amendment put and declared carried.

Chairman: Amendments Nos. 37 to 43, inclusive, are related and may be discussed together. We probably do not need an extensive discussion. The amendments relate to the various hours. They are all similar but with variation in the numbers of hours in the various bands. They will be taken in the order in which they have been presented in the Order Paper.

Deputy Clare Daly: I am keen to make a technical point. Maybe my office should have flagged it but the wording I submitted is identical to the wording submitted by Deputies Cullinane and Brady. I have the email I submitted to the Department. It is listed as a separate amendment.

Chairman: What number is the amendment?

Deputy Clare Daly: My amendment is amendment No. 42. I have the email. The wording we submitted was identical.

Chairman: What amendment is the same as amendment No. 42?

Deputy Clare Daly: My amendment No. 42 is the same as amendment No. 39. I have the proof of the paper. I have no wish to withdraw it but I recognise the issue.

Chairman: I will explain it you this way, Deputy. If we agree on amendment No. 39, then amendment No. 42 cannot be agreed. They will be taken in the sequence they are listed. Does that make sense?

Deputy Clare Daly: Yes.

Deputy Regina Doherty: I move amendment No. 37:

In page 14, to delete lines 24 to 27 and substitute the following:

A	1 hour	7 hours
B	8 hours	15 hours
C	16 hours	24 hours
D	25 hours	34 hours
E	35 hours and over	

Deputies will recall that the width of the bands in section 15 were the subject of major focus during Second Stage discussions. The general consensus was that the bands were too broad and needed to be narrowed. I indicated during the debate that we were open to considering Committee Stage amendments to address this issue on the basis that any amendment has to strike a fair balance for employers and employees. Deputies will note that I have brought forward an amendment today to reduce the bands. The bands are being narrowed considerably from those in the published Bill. Deputies might note that bands proposed in the Government amendment are narrower at the lower end of the scale rather than at the higher end of the scale. This is consistent with the focus of the Bill. The aim is to focus on those most in need who are in need of greater protection, including low-paid and vulnerable workers. The band's width ranges from six hours to nine hours, representing a significant change to the Bill.

The bands I am now proposing are significantly narrower than those proposed originally by ICTU when the Department first engaged with the congress on discussions on the draft heads of the Bill in 2016. I appeal to Deputies to reflect on that.

I call on Deputies to remember that the banded hours provisions will apply to every employer in every sector of the economy and not only to the sectors in which banded hours are a normal part and practice of the working environment. It is critical, therefore, that the bands are sufficiently broad to allow some degree of flexibility.

The bands proposed in the Opposition amendments are too narrow. They appear to be based on the banded hour arrangements that operate with individual companies in the retail sector. The narrow bands are a result of collective bargaining in that sector. They are based on individual businesses. Those banded hours work for that particular company in that particular sector. However, I believe it would be a major mistake to take those bands and impose them on every employer in the country.

Let us consider the hospitality sector. There are fluctuations in the work that the employer and employee know of, expect and cater for during seasons and the year. However, the narrow bands will not allow for those fluctuations to be catered for. How will it work in pubs? Such

businesses are subject to fluctuations when a big match is on a Wednesday night, for example, when there is good weather and people come out or when there are seasonal changes in spots in the west coast or east coast. Having large numbers of narrow bands will make it difficult for employers and employees. Therefore, I urge Deputies to reflect carefully on the bands we have offered. I look forward to having a conversation with them and to hearing their comments.

Deputy Willie O'Dea: I appreciate that the Minister has come some distance from the Bill as originally drafted in narrowing the bands. We will never get perfection in this case and there is no magic solution. However, I believe the bands proposed by the Minister are still too wide. I believe it is important to have the bands as narrow as possible for several reasons. I realise the administration and the difficulty this will give rise to. However, we are dealing with legislation that has been long delayed and anticipated. It has been designed to deal with exploitation of part-time workers and those in precarious employment. There is a large number of such workers in the country and it is increasing.

Let us consider the bands proposed by the Minister. An employee in band A will work between one hour and seven hours. It would mean that if an employee was working six hours per week and proved troublesome or whatever, the employer could keep that person in the same band but reduce work to one hour per week. The same applies to someone in the band between eight to 15 hours. An employee who is working up to almost 15 hours per week can have the work, and the associated income, halved by the employer. Band C covers those working between 16 and 24 hours per week. The income of a worker in that band will be paltry enough in many cases but it could be reduced by keeping such a person in the same band. That could be done while the employer fulfils his obligation under the law and yet the conditions, pay and hours of the affected workers could be reduced by one third. That could make a vast difference to someone on low pay.

I realise that if that happened, the employee could make a complaint and say that the change was not related to the conditions of the business or whatever and seek penalisation. However, that is something not many employees will take on. Who wants that hassle? Such a person would be putting himself in greater trouble with the employer. That is not something an employee should be forced into.

The second point relates to people looking for credit. Let us consider person in the 16 to 24 hour per week band who goes looking for credit. Let us assume the person is working 22 hours per week. The credit union or bank will reckon that the person is guaranteed no more than 16 hours per week since that is the start of the band. Therefore, there is no guarantee that the person will be earning anything in excess of the 16 hours per week and that person's credit will be determined on that basis. I realise that if the bands are narrower again the same situation wold apply, but to a far lesser extent. While I welcome the distance the Minister has come, I believe we need to go a little further.

Deputy John Brady: I acknowledge the Minister has made some changes but they do not go far enough. The bands are far too wide and sparse. I fundamentally oppose amendments Nos. 37 and 38 for several reasons. First, the bands in amendment No. 37 are too wide. Second, the first band ranges from one hour to seven hours. I have made the argument previously that there should be a minimum of three hours provided to employees. That is reflected in the amendment myself and my colleague, Deputy David Cullinane, have put forward.

The amendment put forward by Deputy O'Dea refers to six hours. I believe that is too high. There may be a flaw in this, which I hope has been unintentionally overlooked. It is a

serious loophole which gives a get-out to unscrupulous employers. In respect of the bands, the Minister's proposal is for a band of between one and seven hours and the next of between eight hours and 15 hours but a full hour in between is unaccounted for. If an employer was to bring forward a contract for 10.5 hours per week, that would give the employer an out for this. My amendment caters for this in having a minimum of three hours. If any employer cannot pay a member of staff for three hours, we need to ask questions. I propose going from three hours or more to less than six hours, while band B goes from six hours or more to less than 11 hours. The bands are much tighter and cut out any potential exploitation or a loophole by which an employer can bypass the intention of this Bill, which is to bring an end, once and for all, to the use of if-and-when and zero-hour contracts, with the repercussions these things have for employees in precarious and low-paid employment.

I believe my amendment No. 39 is the strongest of the amendments as it caters for all the pitfalls that have been left there and I will be pushing the amendment.

Deputy Joan Collins: I will withdraw my amendment No. 41 and will support the amendment of Deputies Cullinane and Brady. We are not only trying to deal with low-paid workers. we are also trying to deal with secure hours, and that is the issue here. The difference between 25 and 34 hours is nine hours and that is quite a lot for an employer to reduce if they want to. It involves a lot of money for people who are depending on it every week to pay the bills, such as the telephone bill or the rent. The gap between 16 and 24 hours is also too wide as it would mean going from €240 to €160 on €10 per hour. The proposal put forward by Deputies Brady and Cullinane is much tighter and protects the security of hours. It also prevents the hour to which Deputy Brady referred being unaccounted for.

Deputy Clare Daly: The superiority of amendment No. 39 is linked to three things. It eliminates the gaps that exist in the others, it starts with the premise of three hours, which is totally in line with the recommendations of the University of Limerick as a minimum that anyone should get, and it deals with the fact that the gaps in the Government's bands are way too big. The Minister is effectively allowing for a scenario in which somebody could have a drop in income of some 33%, which would be a massive drop in weekly income and would create havoc, as it does at the moment for a load of people, especially those who need to factor in childcare.

Chairman: I will put the series of amendments after the Minister has replied.

Deputy Regina Doherty: I welcome Deputy O'Dea's statement that he recognises that multiple and narrow bands of hours place an administrative burden on businesses because that is what this is going to do. We were cognisant of all the points that were raised on Second Stage, on which we reflected and in respect of which we have moved. The band of hours provides the security for which people are looking but also the flexibility to allow businesses to adhere to them, to manage them and to work with them. Anybody who feels penalised when on a band of hours with a nine-hour difference between the beginning and the end is protected from being marginalised or maligned by all the other penalisation clauses in the Bill. If anybody is on 24 hours and the boss gets a pain in a butt with them and puts them down to 16 hours, all the other provisions in the Bill ensure they have recourse to action and that the employer cannot do it.

This legislation is not just about protecting people's rights, although that is a massive part of it. It is also about making sure the legislation is workable in practice. We have to ensure we do not provide something to industry that is not workable in practice and costs money which, ultimately, will cost the State jobs. We need to have a happy medium and I ask members to reflect on that. We need to provide people with security of tenure in their weekly and monthly

working arrangements and to make sure it is practicable for businesses. It must not just apply to one specific industry. This legislation will impact on every single sector in Irish society and not just the retail sector. If we wanted to reflect on the retail industry we would have to talk about industry-specific legislation, but this legislation will empower, engage and inform every single business in the country.

Chairman: The amendments are similar but different.

Deputy John Brady: I pointed out what I see as a serious flaw in the Government's amendment and in other amendments, although they are slightly different as regards bands. There is a serious concern that an hour is unaccounted for, which will give employers a loophole which some will exploit to bypass everything we are trying to achieve. If an employer gives 7.5 hours, that is a serious loophole which the Minister has not-----

Chairman: The Deputy has raised that point. I do not know if the Minister wants to address it. Two of the amendments stood out in the way they addressed the hours, with references to "more than" and "less than".

Deputy Regina Doherty: We do not accept that this loophole exists and neither do the industry partners with whom we engage.

Deputy Joan Collins: I wish formally to move Deputy Róisín Shortall's amendment.

Deputy Willie O'Dea: As regards my amendment, I accept the point that I should have started at three hours. Why I started at six hours I do not know, because my intention was to start at three. The Minister said a loophole does not exist in the view of industry but it would be no harm to make certain, so I would prefer something drafted along those lines to tie it down. I will withdraw my amendment but we will return to it on Report Stage. We have to start at three hours but the wording of Deputy Brady's amendment is preferable because it ties it down.

Deputy Regina Doherty: The original document of congress, which still stands, had a banded hours agreement in which band A was the statutory minimum up to ten hours, band B was 11 to 20 hours, C was 21 to 30, D was 31 to 39 and E was 40. To put the Deputy at ease, there is no loophole.

Deputy Willie Penrose: I also have an amendment. This exercised everybody's attention on Second Stage. The Minister has made some progress on the bands and has explained her rationale. The Minister said we can bring in something that will apply to every employee other than the cohort in precarious employment who are vulnerable and so on. One can understand that rationale but the Minister could improve on what is there.

I subscribe to what Deputy Brady said. I do not think there is a lacuna. In the court, any ambiguity would be construed in favour of the person in the weaker position. I have no doubt but that legally it would be sound. In order to have a belt and braces, however, and leave no room for ambiguity, I am quite happy to support Deputy Brady's amendment. I tabled mine late which might well reflect the fact that the three hours would be ruled out. The three hours are paramount.

We have to consider people's ability to engage in normal economic activity at an earlier stage and try to deal with financial institutions and so on. If they are very wide there is great scope for the employer to swoop in and reduce the hours very easily. I am happy to withdraw my amendment in favour of Deputy Brady's if that is the general view.

Deputy Clare Daly: We have to be absolutely sure in law. I would be more reassured by something in the legislation than by listening to the submission from congress, which I did not know was infallible but I am interested that the Minister thinks it is.

Deputy John Brady: I spoke to congress too and have read its amendments and what it has proposed. I am not for one second suggesting that it is purposely leaving a potential loophole but I have spoken to employment law experts and they have said there is a potential loophole there. That is why I brought forward this amendment, that is, to ensure that any potential loophole will be closed off so there is no ambiguity for employers. There will be a few employers seeking to tear this apart because by their very nature they exploit employees. That is their business and their legal people will forensically dissect this for any loophole. I propose closing off any potential loopholes.

Chairman: Colleagues need to pay attention because amendments 38, 40 and 41 have been withdrawn. If any amendment is agreed to, the following ones cannot be moved. They are in sequence. The first amendment to be put is amendment No. 37 in the name of the Minister.

Amendment put.

The Committee divided: Tá;, 3; Níl, 4.	
Tá;	Níl;
Carey, Joe.	Brady, John.
Deering, Pat.	Collins, Joan.
Doherty, Regina.	Curran, John.
	O'Dea, Willie.

Amendment declared lost.

Deputy Willie O'Dea: I move amendment No. 38:

In page 14, to delete lines 24 to 27 and substitute the following:

A	6 hours	10 hours
B	11 hours	15 hours
C	16 hours	20 hours
D	21 hours	25 hours
E	26 hours	30 hours
F	31 hours	35 hours
G	36 hours	

Amendment, by leave, withdrawn.

Deputy John Brady: I move amendment No. 39:

In page 14, to delete lines 24 to 27 and substitute the following:

A	3 hours or more	less than 6 hours
B	6 hours or more	less than 11 hours

C	11 hours or more	less than 16 hours
D	16 hours or more	less than 21 hours
E	21 hours or more	less than 26 hours
F	26 hours or more	less than 31 hours
G	31 hours or more	less than 36 hours
H	36 hours and over	

Amendment put.

The Committee divided: Tá;, 4; Níl, 3.	
Tá;	Níl;
Brady, John.	Carey, Joe.
Collins, Joan.	Deering, Pat.
Curran, John.	Doherty, Regina.
O'Dea, Willie.	

Amendment declared carried.

Amendments Nos. 40 to 43, inclusive, not moved.

Section 15, as amended, agreed to.

SECTION 16

Chairman: Amendments Nos. 44 and 45, in the names of Deputies Brady, Cullinane, Joan Collins and Shortall, are related and may be discussed together.

Deputy John Brady: I move amendment No. 44:

In page 14, line 30, to delete "following section" and substitute "following sections".

This amendment is to tidy up one of the previous amendments. It is to delete the number "18" referring to the 18 months look-back period and substitute it with "12" to reflect a 12-month look-back period.

Deputy Regina Doherty: Are we on a different section?

Chairman: We are on section 16, amendments Nos. 44 and 45.

Deputy Regina Doherty: That is what I am on but what is the Deputy speaking to?

Deputy John Brady: Hold on.

Deputy Regina Doherty: I do not think it is the right one.

Chairman: Section 16, amendments Nos. 44 and 45. The amendment is also in the name of Deputies Joan Collins and Shortall.

Deputy John Brady: It deals with a small typo.

Chairman: Does the Minister wish to comment?

Deputy Regina Doherty: Would the Chairman like me to take them together?

Chairman: Yes. We are discussing the two amendments together. The question on them will be put separately.

Deputy Regina Doherty: I thank the Chairman. The anti-penalisation provisions that previously existed in the Organisation of Working Time Act were drafted in 1997. The Bill uses the language from the Protection of Employees (Temporary Agency Work) Act 2012 to reinforce the provision. It is the strongest anti-penalisation provision in employment law in this jurisdiction.

Taken together, amendments Nos. 44 and 45 would weaken rather than strengthen the position of employees in their position. The Deputies will note that the penalisation provision as drafted in the Bill provides that penalisation should include a change in working hours whereas the Deputies' amendments are proposing that the penalisation would be restricted to a reduction in working hours. I am not sure if that has been fully thought through. I know what the Deputies want to do is make sure that employees cannot be penalised but a penalty could simply be bringing somebody in for a 12-hour shift on Christmas Eve, as opposed to doing what they are trying to do, which is to ensure that nobody gets fewer hours than what they are on heretofore. That is why we have been flexible insofar as we are saying there cannot be a reduction in hours but also there cannot be a change in the hours because increasing somebody's hours on a particular shift is a penalty equally as much as reducing somebody's hours on a shift. On that basis, we do not propose to accept these amendments.

Chairman: Is the Deputy pressing the amendments?

Deputy John Brady: I will press them.

Amendment put and declared lost.

Deputy John Brady: I move amendment No. 45:

In page 15, line 21, to delete "or change in working hours".

Amendment put and declared lost.

Chairman: Amendments Nos. 46 to 48, inclusive, are related and will be discussed together.

Deputy John Brady: I move amendment No. 46:

In page 15, line 24, to delete "intimidation."." and substitute the following:

"intimidation,

(6) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that this section has been contravened in relation to him or her, it is for the respondent to prove contrary."."

Deputy Willie Penrose: Amendment No. 47 is in my name. Deputy O'Dea moved a similar amendment earlier on. The penalisation measures need to be strengthened by the insertion of the amendment. I am easy about the other amendments in the group. We are concerned at the prospect of a reduction in hours being used as a weapon against an employee who may, for example, have taken a case against an employer to the Workplace Relations Commission, WRC. In cases such as that and in the context of the amendment, the onus would be on the

employer to prove that the reduction of hours is justified on objective grounds and is entirely unrelated to the processing and adjudication of the complaint. Deputy O'Dea made a similar point earlier about the onus being on the employer to deal with the situation. It is an administrative issue rather than something to be criminalised and it would deal with the situation on the ground. I hope the Minister can deal with the amendment positively.

Deputy Willie O'Dea: The amendment would enhance the Bill.

Deputy John Brady: My argument is the same and I will not reiterate it.

Deputy Regina Doherty: With regard to amendments Nos. 46 and 47, the penalisation provisions in the legislation provide that where an employee makes a complaint arising from any penalty against them, it shall be presumed until the contrary is proven that the employee concerned acted and acts reasonably and in good faith when making a complaint. That is a strong protection for the employee and it is then a matter for the employer to respond to the complaint in written submissions and by direct evidence. It is only at that stage that the independent adjudicator of the WRC considers both sides of the arguments before deciding whether the case is well founded. We have to ensure that there is no presumption before an independent adjudication and it is important that both sides get a fair hearing and that there is not a presumption. It would make the independent adjudication process invalid if we have decided on one arm as opposed to the other arm beforehand. The text is the same in section 10 and in most modern statutes. Many practitioners and other stakeholders have been critical in the past of a lack of uniformity of comparable provisions across employment legislation and accepting the amendment would change the tried and tested penalisation provisions that are well renowned in the State.

In a similar vein, amendment No. 48 uses a defence of objective justification, which is generally applied in age discrimination. Importing that language from a statute serving an entirely different purpose and use it for the purpose of the penalisation provisions in this Bill would not be appropriate. The point I made about consistency of provisions in employment law applies in this regard as well. I will not accept the amendments.

Amendment put and declared lost.

Deputy Willie Penrose: I move amendment No. 47:

In page 15, line 24 to delete "intimidation."." and substitute the following:

"intimidation.

(6) Without prejudice to the generality of subsection (5), where —

(a) an employee has made a complaint under the Workplace Relations Act 2015 of a failure to comply with section 18A, and

(b) the hours of work of the employee are subsequently reduced by the employer,

it shall be presumed until the contrary is proved that that the employer has penalised the employee and it shall be for the employer to show that the reduction in hours is justified by an objective factor unrelated to the making of the complaint.".

Amendment put and declared lost.

Deputy John Brady: I move amendment No. 48:

In page 15, line 24, to delete "intimidation."." and substitute the following:

"intimidation.

26A. Without prejudice to the generality of section 26 penalisation shall be taken to have occurred where the hours of work of an employee who had made a complaint under the Workplace Relations Act 2015 in respect to a matter referred to at section 18A are reduced unless the reduction is justified by an objective factor unrelated to that employee having made the complaint and it shall be for the employer to show that such justification existed."."

Amendment put.

The Committee divided: Tá;, 4; Níl, 3.	
Tá;	Níl;
Brady, John.	Carey, Joe.
Collins, Joan.	Deering, Pat.
Curran, John.	Doherty, Regina.
O'Dea, Willie.	

Amendment declared carried.

Section 16, as amended, agreed to.

NEW SECTION

Deputy Regina Doherty: I move amendment No. 49:

In page 15, between lines 24 and 25, to insert the following:

"PART 4
AMENDMENT OF NATIONAL MINIMUM WAGE ACT 2000

Amendment of National Minimum Wage Act 2000

17. The National Minimum Wage Act 2000 is amended—

(a) by the substitution of the following section for section 14:

"14. Subject to sections 15, 17, 18 and 41, an employee shall be remunerated by his or her employer in respect of the employee's working hours in any pay reference period, at an hourly rate of pay that on average is not less than the national minimum hourly rate of pay.",

(b) by the substitution of the following section for section 15:

"Prescription of percentages of hourly rates of pay

15. (1) The Minister shall prescribe a percentage of the national minimum hourly rate of pay in relation to employees—

(a) who have not attained the age of 18 years,

(b) who are 18 years of age, and

(c) who are 19 years of age.

(2) Subject to sections 17, 18 and 41, an employee to whom subsection (1) relates shall be remunerated by his or her employer in respect of the employee's working hours in any pay reference period at an hourly rate of pay that on average is not less than the percentage of the national minimum hourly rate of pay prescribed under that subsection in relation to that employee.

(3) In prescribing percentages under subsection (1), the Minister shall have regard to the condition of the labour market, the costs of employment, levels of youth employment and levels of youth unemployment.

(4) In prescribing percentages under subsection (1), the Minister shall not prescribe a percentage that is—

(a) in the case of employees who have not attained the age of 18 years, less than 70 per cent,

(b) in the case of employees who are 18 years of age, less than 80 per cent, and

(c) in the case of employees who are 19 years of age, less than 90 per cent,

of the national minimum hourly rate of pay.".".

I am proposing this amendment on foot of the recommendations of the Low Pay Commission in respect of the current *sub minima* rates of the national minimum wage. This aspect relates to changes in the *sub minima* rates for younger workers. The current system allows for reduced rates for those under 18 years and for those over 18 years in the first and second years of their employment.

I have already mentioned the formal consultation process and research commissioned by the Low Pay Commission and its examination of the *sub minima* rates for younger workers. The commission's recommendations with regard to the age-based and first employment rates were that they should be retained but on a simplified basis to improve compliance and make the provisions easier to operate.

The report of the Low Pay Commission sets out the evidence base and rationale for its recommendations to retain the age-based rates for younger workers. The report acknowledges the statutory restrictions that apply in respect of working hours and conditions for employees under 18 years of age and also the need to ensure access to the labour market for our younger people. The simplification of the rates to a purely age-based system will assist employers in that it will be administratively simpler to operate. It will also benefit slightly older employees, for example, those moving into a first job while in or on leaving university between 20 and 30 years of age, in that they will no longer be subject to *sub minima* rates.

In making these amendments, I am also making provision to allow that the percentages at which the *sub minima* rates are set may be adjusted in the future by statutory instrument. This

will allow for the percentages to be adjusted depending on labour market conditions at the time. I believe this provision will permit possible further upward adjustment of the rates in a controlled manner, while the possibility of any negative impacts on employment for younger people can be monitored and assessed. I mentioned that the Low Pay Commission's recommendations in this matter for the first time were supported by all nine members of the commission, including employer, employee and independent members.

Amendment agreed to.

Section 17 agreed to.

TITLE

Deputy Regina Doherty: I move amendment No. 50:

In page 5, line 12, after "Organisation of Working Time Act 1997;" to insert "to amend the Unfair Dismissals Act 1977; to amend the National Minimum Wage Act 2000;".

This is a technical amendment to alter the Long Title to the Bill to include the amendments to the Unfair Dismissals Act 1977 and the National Minimum Wage Act 2000.

Amendment agreed to.

Title, as amended, agreed to.

Chairman: I thank the Minister and her officials for their attendance and colleagues for staying on a little later to conclude this legislation. I understand Report Stage will be taken fairly shortly.

Deputy Regina Doherty: It will be taken as soon as possible. I thank the Chairman and my colleagues.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Employment Affairs and Social Protection has completed its consideration of the Employment (Miscellaneous Provisions) Bill 2017 and has made amendments thereto.

The select committee adjourned at 1.15 p.m. *sine die*.