

FROM THE MINISTER



Department for  
**Employment  
and Learning**  
[www.delni.gov.uk](http://www.delni.gov.uk)

Jo Swinson MP  
Minister for Employment Relations  
and Consumer Affairs  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Adelaide House  
39/49 Adelaide Street  
Belfast  
BT2 8FD  
Tel: 028 9025 7791  
Fax: 028 9025 7919  
email: [private.office@delni.gov.uk](mailto:private.office@delni.gov.uk)

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Dear *To*

## **GOVERNMENT REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UK AND THE EU**

I refer to your letter of 29 October 2013 regarding the above review, which was issued to the Northern Ireland First Minister and deputy First Minister. The case has been forwarded to me for a response, which I am coordinating on behalf of the relevant Departments in the Northern Ireland Executive. The following commentary is offered in respect of the key elements of the review of the Social and Employment Balance of Competences:

### Working Time Directive

The Department for Employment and Learning (DEL) has recently completed a review of Working Time legislation in Northern Ireland, which is currently identical to that in force in GB. DEL has since drawn up a consolidated version of the Regulations, and plans to bring these into operation during 2014. DEL continues to liaise closely with BIS on developments in relation to the implementation of *SiMap* and *Jaeger*, as well as CJEU case law dealing with the interaction of annual leave with sick leave and parental leave (*Stringer/Pereda*, etc).

### Agency Workers Directive

DEL has commissioned researchers to carry out a review of the Agency Workers Regulations (NI) 2011, and the final stages of that review are nearing completion. The review is seeking to properly assess the impact of the Regulations, as well as the reasons for any difficulties encountered by agencies and hirers in meeting their obligations under the legislation. The review is also seeking to gauge how many agency workers there are in Northern Ireland, and their profile.



It is expected that the review will indicate the uptake by agencies of the 'pay between assignments' derogation, and the experience of workers who have signed such contracts. DEL is keen to ensure that its review of the Directive in Northern Ireland will be reflected in any UK input to the EU Commission's review of the transposition of the Directive across all Member States.

#### Posting of Workers Enforcement Directive

BIS officials have worked closely with DEL on the drafting and progress of the Enforcement Directive, and comments and inputs have been sought throughout. The Department appreciates the manner in which it has been consulted in this regard, as it has allowed for necessary approvals to have been obtained from the NI Executive on these proposals. The input of the devolved administrations to the development of EU proposals is crucial, and it is important that sufficient time is given to devolved administrations to allow for meaningful input to be contributed by the NI Assembly.

#### Pregnant Workers Directive

Northern Ireland law is compliant with the requirements of the Pregnant Workers Directive. However, DEL would have concerns about the affordability of any substantial increase that may be proposed at EU level to the amount of paid leave available to new mothers. Whilst supportive of extending greater flexibility and choice to working parents, DEL wishes to ensure that businesses are not faced with additional burdens in a challenging global economic context.

#### Collective Redundancies Directive

DEL has just closed its public consultation on the Northern Ireland employment law review. The consultation explored the following options in regard to collective redundancies:

- maintaining the current arrangement (for redundancies of 100 or more employees: 90 days, and 30 days for redundancies affecting between 20 and 100 employees) ;
- adoption of either the UK or ROI (30 days for all sizes of redundancies) consultation periods; or
- applying minimum consultation periods for all sizes of proposed redundancies, of either:
  - 30;
  - 45; or
  - 60 days.

Policy recommendations have not yet been agreed, but initial indications are that a reduction in consultation periods may be appropriate.

#### Acquired Rights Directive

During January to April 2013, DEL, in conjunction with BIS, conducted a public consultation on proposed amendments to the TUPE Regulations, which transpose the Acquired Rights Directive, to address employers' concerns that the provisions are too burdensome on business. The Department is currently finalising its response



to the consultation, which will outline the legislative proposals to be brought forward in Northern Ireland, and the related timescales.

#### Parental Leave Directive

Following a process of public consultation, DEL this year extended the maximum unpaid parental leave entitlement from 13 to 18 weeks, in compliance with Directive 2010/18/EU. The Department is currently proposing, as part of a wider review of entitlements for working parents, to enable parents to avail of unpaid parental leave until a child's eighteenth birthday; a position that would be in advance of the Directive's requirements.

#### Mutual Recognition of Professional Qualifications (MRPQ) Directive

DEL has been fully engaged with the UK response to the Commission's Green Paper on the modernisation of the MRPQ Directive, and co-ordinated the final Northern Ireland response to BIS, which was supportive of the approach being taken.

Northern Ireland is a unique region in the UK, in that it has a land border with another EU member state, namely the Republic of Ireland, making the MRPQ Directive particularly relevant here.

DEL welcomes the modernisation of the MRPQ Directive which will continue to facilitate the mobility of professionals across the EU, provide for easier and faster recognition of qualifications and remove unnecessary administrative burdens, whilst also guaranteeing protection for consumers and citizens by ensuring that high standards are maintained in the recognition process.

DEL believes that the movement of qualified professionals across EU member states does bring significant benefits, and that anything that can be done to remove difficulties encountered by UK professionals who wish to work in other member states is to be welcomed.

Whilst DEL has an interest in systems supporting the recognition of qualifications across the EU, it is of the view that the UK competent authorities, which are responsible for receiving applications from EU citizens with professional qualifications and implementing the Directive, are best placed to comment on whether the cost of existing or future European rules in this area is proportionate to the benefits.

The above legislative provisions, which have their basis in EU Directives, comprise a significant proportion of all employment relations statutes in Northern Ireland. It is therefore critical that Northern Ireland and UK Government officials maintain a close working relationship, and open lines of communication, in relation to the development of all EU-level legislation.

In respect of employment legislation, Northern Ireland simply does not have the capacity to take forward its own interests on each separate issue directly with the European Institutions. We are therefore heavily reliant on UK officials and UKREP to work with us in this respect. We are also dependent on UKREP and UK officials to inform us about discussions which are taking place on each emerging and

developing Directive/Regulation, and would strongly urge regular and early reporting back on all developments and working group discussions to devolved administrations.

### EURES

Until recently, DWP has represented Northern Ireland at a European Level in respect of the EURES programme. However, DEL's Employment Service has been actively engaging with DWP officials in order to strengthen links with European forums.

We value the opportunities this engagement provides to build stronger relationships and share best practice with other European Public Employment Services. Stronger links with DWP, as well as other European PES, facilitate the development of future business in our Employment Service and we highly value the opportunity to benchmark against similar organisations.

In June 2013, the Northern Ireland Department for Social Development carried out a consultation on the *Internal Market: Free Movement of Persons* strand of the Review, which addressed the operation of the social security coordination rules. The Northern Ireland Minister for Social Development, Mr Nelson McCausland, is therefore satisfied that his Department has no comments to make in relation to the present consultation.

Health and safety at work in Northern Ireland is the responsibility of the Department of Enterprise, Trade and Investment (DETI). DETI has confirmed that its Minister, Arlene Foster MLA, has asked the Northern Ireland Health and Safety Executive (HSE) to liaise with their Great Britain HSE colleagues, to try to ensure that the call for evidence secures an accurate assessment of the position across the UK.

Yours sincerely



**DR STEPHEN FARRY MLA**  
**Minister for Employment and Learning**

cc: First Minister and deputy First Minister  
Minister of Enterprise, Trade and Investment  
Minister for Social Development