

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT EMPLOYMENT RIGHTS
(MISCELLANEOUS AMENDMENTS)
REGULATIONS 2019

DRAFT AGENCY WORKERS (AMENDMENT)
REGULATIONS 2019

DRAFT CONDUCT OF EMPLOYMENT AGENCIES
AND EMPLOYMENT BUSINESSES (AMENDMENT)
REGULATIONS 2019

Wednesday 6 March 2019

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Sunday 10 March 2019

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The Committee consisted of the following Members:

Chair: IAN AUSTIN

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| Black, Mhairi (<i>Paisley and Renfrewshire South</i>) (SNP) | † O'Brien, Neil (<i>Harborough</i>) (Con) |
| † Campbell, Sir Alan (<i>Tynemouth</i>) (Lab) | † Pow, Rebecca (<i>Taunton Deane</i>) (Con) |
| † Cartlidge, James (<i>South Suffolk</i>) (Con) | † Smith, Owen (<i>Pontypridd</i>) (Lab) |
| † Davies, Chris (<i>Brecon and Radnorshire</i>) (Con) | † Stephens, Chris (<i>Glasgow South West</i>) (SNP) |
| † Freeman, George (<i>Mid Norfolk</i>) (Con) | † Tolhurst, Kelly (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| † Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>) (Lab) | † Vara, Mr Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| † Hair, Kirstene (<i>Angus</i>) (Con) | Zeichner, Daniel (<i>Cambridge</i>) (Lab) |
| † Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Bradley Albrow, <i>Committee Clerk</i> |
| † Kyle, Peter (<i>Hove</i>) (Lab) | |
| † Lucas, Ian C. (<i>Wrexham</i>) (Lab) | † attended the Committee |

Seventh Delegated Legislation Committee

Wednesday 6 March 2019

[IAN AUSTIN *in the Chair*]

Draft Employment Rights (Miscellaneous Amendments) Regulations 2019

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kelly Tolhurst): I beg to move,

That the Committee has considered the draft Employment Rights (Miscellaneous Amendments) Regulations 2019.

The Chair: With this it will be convenient to consider the draft Agency Workers (Amendment) Regulations 2019 and the draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019.

Kelly Tolhurst: It is a pleasure to serve under your chairmanship, Mr Austin. These three statutory instruments contain five measures to clarify and extend workers' rights, taking forward the Good Work plan—the biggest boost to workers' rights in over 20 years. They demonstrate this Government's firm commitment to upholding and improving workers' rights as we leave the European Union.

The first SI is the draft Employment Rights (Miscellaneous Amendments) Regulations 2019. It would extend to workers the right to a written statement of employment particulars. Currently, only an employee is entitled to a written statement, and only after a month with the same employer. The current written statement provides an employee with information on the main conditions of their employment, such as their job title and a description of their work, how much and how often they will be paid, and the hours of work. Matthew Taylor's review recommended greater transparency for extending to workers the right to a written statement. All workers should have the same clarity of information from which employees currently benefit.

We also laid the Employment Rights, Employment Particulars and Paid Annual Leave (Amendment) Regulations 2018 in December, which made written statements a day one right and extended the content of the written statement to include paid leave details, such as maternity and paternity leave, where applicable—specifics of when a worker is expected to work, whether the work is variable, and the benefits beyond pay for which the worker is eligible.

The changes that will be implemented by the draft Employment Rights (Miscellaneous Amendments) Regulations 2019 and the Employment Rights, Employment Particulars and Paid Annual Leave (Amendment) Regulations 2018 are crucial to achieving Taylor's recommendation for

“greater transparency around the employment law framework to help ensure that legal rights and responsibilities are not misunderstood or exploited.”

The second measure in the draft Employment Rights (Miscellaneous Amendments) Regulations 2019 would amend the Information and Consultation of Employees Regulations 2004, lowering the threshold for a request to set up an information and consultation arrangement in the workplace from 10% to 2% of the total number of employees. The Government agree with Taylor that engaging in dialogue is key to good work. The draft regulations would make it easier for workforces to request employers to be more open about what is happening in their workplace.

It is important to note that this SI would not change the important rights that the information and consultation representative has, including paid time off and protections against detriment. There would also be no change to the number of employers in the scope of the Information and Consultation of Employees Regulations: they would apply to employers who have 50 or more employees, and a minimum of 15 employees would be required for a request to set up an information and consultation arrangement.

Good employers engage regularly with their workforce. To quote Taylor:

“Well-run companies recognise the importance of the people who work for them. They invest time and effort in good management relationships”.

The third measure in the draft Employment Rights (Miscellaneous Amendments) Regulations 2019 would increase the maximum penalty available to employment tribunals where there has been an aggravated breach of workers' rights. The maximum penalty of £20,000 would be applicable from 6 April 2019, quadrupling the current amount. The current maximum penalty of £5,000 does not always reflect the higher-value awards. The new maximum would align with the current maximum penalty per worker for non-payment of the national minimum wage. It is important that all parties are aware of this penalty. We have published guidance to increase awareness and highlight how tribunals can make use of these powers.

This measure is targeted at businesses that breach the law deliberately or maliciously. Compliant businesses will welcome this detriment against anyone seeking advantage by exploiting workers. The increased penalty is part of a wider package to deter repeated employment law breaches. We are committed to legislate to oblige employment tribunals to consider imposing additional sanctions against employers that repeatedly breach workers' rights. We are also helping workers to receive tribunal awards promptly through the Department for Business, Energy and Industrial Strategy penalty scheme, which has recovered more than £1.5 million of unpaid awards so far. We will now also name employers that are not paying employment tribunal awards.

The draft Agency Workers (Amendment) Regulations 2019 would abolish the Swedish derogation. This reform has been welcomed across the House. It is a fundamental shift in agency workers' rights, entitling all agency workers to the same pay as a permanent employee after 12 weeks in the same role with the same hirer. At present, agency workers can opt out of the entitlement to equal pay in return for pay between assignments through a Swedish derogation contract. Matthew Taylor highlighted that Swedish derogation contracts can be exploitative, and that workers sometimes do not receive the equal pay that they are entitled to. Our 2018 response to the Taylor review included a consultation on the Swedish

derogation. That and earlier BEIS research uncovered cases in which pay between assignments was not given. We concluded that agency workers are not benefiting from the Swedish derogation, and we are therefore taking action.

The Joint Committee on Statutory Instruments drew the special attention of both Houses to this instrument, on the grounds that one aspect required clarification. My Department provided that clarification to the Committee. The instrument relies on powers in section 2(2) of the European Communities Act 1972. The Committee asked how the instrument would survive exit day, given that section 2(1) of the European Union (Withdrawal) Act 2018 saves legislation made under section 2(2) of the 1972 Act, as it has effect in domestic law immediately before exit day and this instrument does not come into force until after April 2020. The answer to that question is that this instrument would be on the statute book immediately before exit day and is due to come into force in April 2020. That effect is preserved in section 2(1) of the withdrawal Act, so the instrument will still come into force as intended.

The Committee accepted that that is one possible interpretation. It is the clear view of the Government that instruments such as this will come into force as intended. That can also be seen from the explanatory notes to the withdrawal Act, which confirm that legislation referred to in section 2(1) includes legislation that has been passed or made but is yet to be in force. The repeal of the Swedish derogation will make a significant positive difference to agency workers in the UK. We have listened to agency workers' concerns and have taken firm action in response.

The draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 would introduce a key facts page for agency workers who sign up to an employment business from April 2020. The Taylor review identified transparency of information, particularly around pay, as an issue of engagement with agency workers. The different ways that they can be paid are often confusing. Taylor was concerned that some workers were being exploited as a result. This regulation therefore requires a key facts page that will give agency workers more clarity over their pay, and some other key facts, before signing up with an employment business.

That reform was welcomed by unions, businesses and workers alike in our consultation. Employment businesses will give a key facts page to all agency workers signing up from April 2020. It will contain a number of largely pay-related facts, presented clearly. In particular, if an agency worker is paid through a third-party umbrella company, the key facts page will reflect that, including information about deductions that the umbrella may take and how they are calculated. That means that agency workers will have more information about who is responsible for paying them and how much pay they will receive for an assignment, enabling them to make better-informed decisions before they agree to take the work on. The regulation means that, before signing on with an employment business, agency workers have the information they need to make an informed choice.

With the exception of the quadrupled aggravated breach penalty, the measures I have outlined take effect from April 2020. That gives time for employers to adapt their systems, and time for individuals to understand the increased transparency and their rights.

I commend these three sets of regulations to the Committee.

2.40 pm

Gill Furniss (Sheffield, Brightside and Hillsborough) (Lab): It is a pleasure to serve under your chairpersonship, Mr Austin.

I will set it on the record that we do not oppose these statutory instruments, despite their narrow scope and their utter failure to address the grotesque and growing inequality in the quality of work, and increasing insecurity and low pay in the UK. They implement some of the few actions contained within the Government's Good Work plan, which makes some very limited improvements to workers' rights but does not address the crisis of work in this country, where millions are struggling to make ends meet, and where work is certainly no longer a preventer of poverty.

Mr Shailesh Vara (North West Cambridgeshire) (Con): When the hon. Lady refers to a "crisis" in the workplace, is she aware that we now have record employment, with more people in employment than ever before in the history of the United Kingdom?

Gill Furniss: I certainly am aware of that. I am also aware that many of my constituents are in low-paid work or on zero-hours contracts, when they would rather be in good, well-paid, full-time work.

Mr Vara: Just for the record, it is worth noting that it was under Tony Blair that zero-hours contracts began.

Gill Furniss: I am quite aware of that fact, but I think the hon. Gentleman will find that they were small in number at that time; they have most certainly increased under this Government. I will try to move on.

Any improvement in the rights of workers is welcome, but it is an absolute travesty that these changes are so limited, and the Government seem intent on ignoring the scale of the crisis for many working people. The Government have described their Good Work plan as the

"largest upgrade in a generation to workplace rights".

What a damning indictment that is of their previous lack of ambition.

If the Minister really wanted to improve the rights of workers across the country, she would introduce legislation to allow trade unions access to workplaces and promote collective bargaining, and to rule out the reintroduction of employment tribunal fees, which it must be stressed have only been removed following union legal action that resulted in their being found unlawful. She would also ban zero-hours contracts and give all workers access to day one employment rights, as Labour will.

Before addressing each of the SIs, I want to put on the record my concerns that the Government have said that they intend to legislate to "clarify" the existing case law around employment status. Legislation in that area could make it easier for employers to avoid honouring workers' rights, and unpick recent union victories in the employment tribunals. I should be grateful if the Minister would confirm that that will not be the case.

[Gill Furniss]

The draft Employment Rights (Miscellaneous Amendments) Regulations 2019 propose three main areas of change. The proposed strengthening of employment tribunals' power to increase sanctions on employers who breach employment law is overdue and welcome, and it should certainly be made easier for employees to trigger information and consultation rights in their workplaces. However, it is clear that the changes being proposed to the Information and Consultation of Employees Regulations 2004 will fall short of the action needed to facilitate meaningful consultation between an employer and their workforce. All the evidence shows that collective bargaining is the best way of achieving that. Trade unions are the collective voice of workers, and a collective voice is stronger than an individual one. Trade unions are the best way of ensuring that the interests of the many are prioritised in the workplace and in the wider economy. So, can the Minister explain why this legislation and the Good Work plan completely ignore trade unions and do nothing to strengthen their rights in the workplace?

Why does the Minister think the proposed ICE reforms should not cover agency workers and other casual workers? Under these proposals, such workers will miss out on important information and consultation rights. The SI provides that workers will be entitled to a written statement of particulars of employment from day one in their job. However, people on zero-hours contracts and workers in the insecure economy need much more than a weak right to request a contract and more predictable hours. As the General Secretary of the TUC, Frances O'Grady, has stated:

"The right to request guaranteed working hours is no right at all. Zero-hours contract workers will have no more leverage than Oliver Twist."

Why are the Government treating workers with such a Dickensian attitude?

I welcome the draft Agency Workers (Amendment) Regulations 2019. After years of campaigning and pressure from trade unions, the regulations will effectively close the Swedish derogation loophole, which has been used by employers and recruitment agencies to avoid their obligations to provide pay parity for agency workers. However, why has it taken the Minister so long, and why do agency workers have to wait over a year—until 2020—for the regulations to come into force?

Although any increase in the information to which workers are entitled is welcome, the draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 are barely an improvement on the status quo. If I was the Minister, I would be embarrassed to present them. The proposals allow agency workers to be signposted to further documents, rather than having all the information in one place as Taylor recommended—undermining the Government's stated objective of making key information more transparent and easily accessible.

Why does the key facts sheet not include all relevant information? Why has the Minister not introduced it immediately, instead of after a year's delay? Importantly, who will enforce the new requirement? The employment agency standards inspectorate employs just 16 people to

cover an agency sector that includes hundreds of thousands of workers. Without enforcement, the legislation is meaningless.

Only one in six low-paid workers in the last 10 years managed to secure a full-time job with better pay, meaning that many workers face a lifetime of being trapped in low pay and poverty. Issuing workers with a key facts page about their workplace rights will do nothing to address such a systematic crisis. Why is the Minister not embarrassed by the empty rhetoric of that response?

Labour is committed to giving all workers equal rights from day one. Why are the Government not committed to that? Wider reforms are needed to ensure effective information and consultation in the workplace. Labour believes that the law should presume that a worker is an employee with full employment rights unless the employer can prove otherwise. Why have the Government failed in these statutory instruments to take up the Taylor review recommendation to shift the burden of proof, where the status of the worker is in dispute, from the worker to the employer?

TUC research shows that the number of people facing insecure work has risen by 27% over the last five years under this Government. The Good Work plan and these weak SIs do nothing to address the growing crisis. It is clear that only a Labour Government will take decisive action and ensure that working people get the rights to which they should be entitled. For more than 60 years, the UK, like most other countries in the world, had a Ministry of Labour. We will restore it, to give workers and trade unions a voice at the Cabinet table. The new Ministry will ensure that workers' rights are enforced with proper resources and tough sanctions for those who do not meet legal standards.

Labour has set out a 20-point plan for equality and security at work, including banning zero-hours contracts, giving all workers equal rights from day one, doubling paid maternity leave, increasing maternity pay and banning unpaid internships. If the Government were serious about improving the lives of workers, they would implement those policies, not announce superficial tweaks via secondary legislation that will not come into effect until 2020, and that barely scratch the surface.

2.48 pm

Kelly Tolhurst: I respect the comments made by the hon. Member for Sheffield, Brightside and Hillsborough. I like to think that when I work with her in her role as shadow Minister we have quite good communication. I respect her position, and thank her for the tone in which she always presents her comments in Committee.

I am not embarrassed to be standing here today as the Minister; I am very proud to be the Minister responsible for labour markets, and to be introducing these three SIs on the back of announcing our Good Work plan at the end of 2018. In my view, as a 40-year-old woman—*[Interruption.]* Yes, everybody knows my age now. Most of my days in employment were under a Labour Government. I had a lot of different experiences, and saw what it was like to be a young person trying to follow a career. I then ran my own business, and I am now in a Conservative Government, looking at these matters. I am proud of this Government's record in bringing forward the Good Work plan and in initiating

the work that went into the Taylor review, to get to where we are now. To move to where we are going is a big step change. The initiatives that we have announced in the Good Work plan go further than before. We have expressed our intentions about what we would like to do going forward. These SIs are limited in scope to give us the ability to move quickly and make changes that enable our ambitions to be realised as soon as possible.

George Freeman (Mid Norfolk) (Con): I echo the Minister's comments. Many of us in this Palace, and all of us here today, care passionately about this issue—I do not think there is any disagreement about that—and bitterly resent the few examples of terrible employment practices that the Government are moving to clamp down on. I thought the shadow Minister's comments were slightly old-fashioned. Those of us who have had a career in starting technology businesses—fast-growing businesses with modern workforces, where many women want flexible hours—understand that this is not about the trade union rep in a company with six employees. It is about good employers, good regulations and good standards in the modern workplace. We have moved on a bit from the 1920s.

Kelly Tolhurst: I thank my hon. Friend for his comments; I concur with them. Ever since I have had this role I have been committed to making sure that our workers are put at the centre of what we are doing around business, and making sure that, quite rightly, we listen to workers, businesses, unions and all kinds of representatives when we are formulating—hopefully—good legislation for the future.

We have, I believe, been seen to have a good record in what we have done in recent times. We have got a record-breaking number of people in work, and 80% of jobs created since 2010 were full-time jobs. We are continuing with our commitment to increase the minimum wage, with the new increased rate starting in April, when it moves to £8.21. We are committed to, and on track to meet the 60% of median earnings target.

I will turn to the questions that I was quite rightly asked by the hon. Member for Sheffield, Brightside and Hillsborough. She is quite right about employment status. That is something that came from the Taylor review and has been outlined in the Good Work plan. We are committed to aligning employment status with tax. There is evidence to suggest that that is what we need to do. We need to get it right, to consult properly and to make sure that anything brought in is done in the right way. The engagement that I have had with businesses and workers shows that they welcome this move. It has to be done correctly and in the right way. It has been expressed in our Good Work plan and it will be consulted on further.

On the unions and the Information and Consultation of Employees Regulations 2004, I make it clear to the Committee that the new regulations strengthen workers' ability to request consultation in the workplace.

Peter Kyle (Hove) (Lab): I am grateful to the Minister for giving way. It is interesting to listen to her. Her Department is running a series of adverts at the moment, under the headline, "Holiday pay: it comes with the job". Underneath that is a photograph of a Deliveroo rider. Could she confirm that even after these regulations

have been passed, Deliveroo riders and other people in the gig economy who are self-employed will not be entitled to statutory holiday pay?

Kelly Tolhurst: I thank the hon. Gentleman for his question. It is not a picture of a Deliveroo driver. As Members will be able to see, it does not say the word "Deliveroo".

Peter Kyle: If somebody is wearing the uniform of a Deliveroo rider, has a backpack on their back that is identical to that of a Deliveroo rider, and is riding a bike, as Deliveroo riders do, does the Minister agree that most reasonable people looking at that advert will assume that it indicates that Deliveroo riders will get statutory holiday entitlements?

Kelly Tolhurst: I stand by what I said: it is not a Deliveroo driver. The hon. Gentleman may believe that it is a Deliveroo driver, or cyclist, but there are a number of players in that particular market.

Peter Kyle: Name them.

Kelly Tolhurst: I am not going to name them here, because I am not here to talk about Deliveroo drivers—or any driver, for that matter. The essence of what the hon. Gentleman is trying to get at is that I will defend an advertising campaign by my Department to make it clear to people that they are entitled to holiday pay, which we are committed to delivering. Part of that is about making employees aware and raising the profile of that. I will defend our campaign, even though I dispute that the driver in the ad is a Deliveroo driver.

The Chair: I am glad we have cleared that up.

Kelly Tolhurst: To move back to union representation, about which the hon. Member for Sheffield, Brightside and Hillsborough feels strongly, it is true that the changes that we are making to the thresholds will ensure that workers are able to get consultation with the organisations in which they work. It is correct that in some workplaces there is contention relating to unions, and they are not necessarily representative of the whole workforce, so there is already a system in place—a threshold within unions, separate to what we are talking about with the ICE. Obviously, that is a different system. The changes that we are making will give people who are not part of a union the ability to have a conversation and consultation with the companies that they work for.

I personally feel very strongly about zero-hours contracts. I have seen many, many examples, as a constituency MP and in the working world, of zero-hours contracts being a perfect solution for people who want to be able to work. They give people the flexibility that they are unable to get in other forms of employment. It is a fallacy that every organisation that uses zero-hours contracts is bad, and that all zero-hours contracts are weighted against the worker. I can name a number of examples of where employers go much further to aid individuals and enable flexibility. The 80% increase in jobs has been in full-time employment. The Taylor report identified that keeping that flexibility in the workplace is really important. I understand that people have concerns about zero-hours contracts, but our intention

[Kelly Tolhurst]

is to strengthen them where we can. My narrative is that they are a good option for a lot of people who want to work. They are not always one-sided.

Gill Furniss: I just want to put it on the record that this obsession with zero hours seems very weird to me, because there are many other options for making jobs flexible. There are things like job shares and part-time appointments. It does not have to be a zero-hours contract. I would like the Government to take a look at that, rather than clinging on to the notion that zero-hours contracts are the only way of offering flexibility. In my book, they certainly are not.

Kelly Tolhurst: I actually agree with the hon. Lady. They are not the only way of offering flexibility. That is why we are bringing forward the proposals that we set out in the Good Work plan. We are moving towards giving workers the right to request a more stable contract and stable hours. Less than 3% of our workforce use zero-hours contracts, and there are many other ways to do it. In my view, the narrative that zero-hours contracts are all weighted against the employee is not always the correct interpretation of how they are used. However, we have tried to outline that, as a responsible Government, where we see any potential difficulty or breaches, we will always seek to close those gaps where appropriate.

I understand the hon. Lady's concern about the timescale. She will be pleased to know, in the light of debates that we have had on certain other SIs, that impact assessments have been carried out. Because an impact has been assessed to business, these measures will come into force on 6 April 2020, giving businesses 12 months to prepare, giving us time to work with businesses on guidance and implementation, and giving workers an opportunity to understand what is coming forward.

The key facts page is a step forward, particularly for agency workers. When the regulations come into force, workers will be entitled not only to a written statement of rights but to key facts. The whole point of that is that when individuals go to agencies, they will be able to ask questions and make decisions about whether to take on work in an informed way, which we hope will ensure that there is no concern in the future. Also, where there are workplace issues, that will give individuals something on day one with which to hold their employer to account at a later date. It is a great way forward; it gives workers better information and provides transparency. Obviously, we will be working with employers over the next year to ensure that those key facts pages are implemented.

I like to think that the regulations show that we are absolutely committed to improving workers' rights following the Taylor review. I would like to put on the record my gratitude to Matthew Taylor and his review colleagues, Greg Marsh, Diane Nicol and Paul Broadbent. I thank them for all their work in this area. It has been a pleasure to work with them over the last 12 months, even though I have only been in post since July.

As we set out in our industrial strategy, flexibility is an important UK strength. Over the past year, the UK has experienced its highest rates of economic activity and employment. The employment rate was estimated at 75.8%, the highest since comparable estimates began in 1971. We have also experienced the lowest rate of unemployment since the mid '70s. There are now 32.53 million people in work. The strength of the jobs market in the past eight years means that over 3 million more people are in work, unemployment is lower in all regions and nations of the UK than in 2010, and wages are growing at the fastest pace possible.

The regulations implement the recommendations of the Taylor review. They will directly benefit all workers by giving them transparency about their rights on day one. We are removing the opt-out from equal pay for agency workers and giving them clear information to make informed choices about who they sign with. We are making it easier for the workforce to establish formal engagement processes for information and consultation, and we are empowering employment tribunals to impose greater penalties against the worst employers.

Members will know that the regulations are not the extent of our plans, as I hope I have laid out. Many of the other commitments in the Good Work plan are being taken forward. Last week, we launched the holiday awareness campaign, which was beautifully alluded to by the hon. Member for Hove. Our scheme to name employers that fail to pay employment tribunal awards is now live. Many of our ambitious reforms will require primary legislation, and I look forward to having further discussions with Members across the House as we bring forward further measures.

I commend the statutory instruments to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Employment Rights (Miscellaneous Amendments) Regulations 2019.

DRAFT AGENCY WORKERS (AMENDMENT) REGULATIONS 2019

Resolved,

That the Committee has considered the draft Agency Workers (Amendment) Regulations 2019.—(*Kelly Tolhurst.*)

DRAFT CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES (AMENDMENT) REGULATIONS 2019

Resolved,

That the Committee has considered the draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019.—(*Kelly Tolhurst.*)

3.5 pm

Committee rose.