



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Private International Law (Implementation of
Agreements) Bill Legislative Consent Motion:
Department of Justice

12 March 2020

the transitional period, it has to take steps by the end of September, and it needs the Bill to do that. The Ministry of Justice is working on the basis that they will have Royal Assent for the Bill by early September, and Second Reading is expected on 17 March.

I am happy to take questions.

The Deputy Chairperson (Ms Dillon): That is fair enough, Jo. Thank you very much for giving us an outline of that.

I have concern that we would give the power to make regulations to Westminster afterwards. The briefing paper states, "Westminster, or", but who would decide that, and why, if it can be done here, would we give that power to Westminster? Do we have to leave that in?

Ms Wilson: It can be done only with our consent. The Secretary of State can act in respect of Northern Ireland only with the consent of a Northern Ireland Department. A similar provision will apply in respect of the Scottish Ministers if the Secretary of State were to act on behalf of Scotland.

This is a technical area of law. Most of the law that applies domestically in the UK applies on a UK-wide basis. We would consider each case on its merits: for example, if we did not want to make parallel amendments to a UK-wide statute, it may make more sense for the statute reader that the Secretary of State would act on behalf of Northern Ireland, but it would be only with our consent — the consent of the Northern Ireland Department. We would take into account all the issues that would normally be taken into account in deciding whether we should legislate here or whether it should be done on a UK-wide basis.

The Deputy Chairperson (Ms Dillon): I am sure that other members will have questions on this as well. Yes, it would be only with the Department's consent, but we are the Committee: where is our part in that? Where do we get the opportunity to ensure that we are content that the Department is doing the right thing by giving consent? That is not to say that we would have any issues with it, but we do not know unless these things are in front of us.

Ms Wilson: This is the type of decision that we would expect the Minister to engage with the Committee on.

The Deputy Chairperson (Ms Dillon): How do we enforce that? That is my concern. We are not talking about just the current Minister — it is clearly not anything specific in relation to the current Minister — but we are relying on anyone who is in the position of Minister to engage with us. Does the Minister have to engage with the Committee, or would that be at the Minister's discretion? I know that the smart thing to do would be to engage with the Committee.

Ms Wilson: If time allows, normal procedures, including normal engagement procedures, will apply.

Mr Frew: I have read this, and I am quite content and relaxed about the whole thing. There will be international agreements that, really, only the sovereign Government can negotiate and implement. However, even if Westminster implements something, will we not still need an LCM here?

The Deputy Chairperson (Ms Dillon): Not for subordinate legislation. That is the issue, and that is my concern. I know what you say about engagement with the Committee, but the Assembly would have no role and there would be nothing to force the Minister to take the Committee's view on it. Jo, I understand that you might be looking at it and saying that, in the Department's mind, this is very straightforward and should not be an issue. However, I have to respect the working of the Committee and the entire Assembly. Sorry, Paul, do you want to finish your point?

Mr Frew: I take your point. I thought that there was going to be an LCM process to get the House's approval on all measures that would be changed. So, yes, we should be exploring the principle of that. I still bring the Committee back to my point that these are international law agreements, so, really, the sovereign Government should be negotiating and engaging with another sovereign Government to implement them across the country's whole jurisdiction. A differential in this case will create two or even three tiers in the devolved regions. Are there any similar international laws that are enacted differently in Scotland and England?

Ms Wilson: In my field, it depends on each domestic legal system. The Scottish legal system's civil law model is slightly different, so they might have to do tiny supporting things differently. However, as a matter of international law, if the convention applies in the UK, we all have to comply with it.

Mr Frew: Yes, that is international law.

Ms Wilson: Yes. For the most part, any future agreements in this field will be subject to the Constitutional Reform Act 2005, and Parliament will have an opportunity to debate ratification of the treaty. There is scrutiny at that level.

Mr Frew: This might be well wide of the field, but I will ask it anyway. Is the Istanbul convention something similar? How would that be implemented?

Ms Wilson: I am sorry. I am not able to answer that.

Mr Frew: That is fine. I knew that it was out of left field before I asked it. Thank you.

Miss Woods: My questions have basically been answered. I was going to ask how we measure consent. It is the Department's consent, so it is the Minister. I just want to confirm that the Scottish Parliament has gone through exactly the same process.

Ms Wilson: In —?

Miss Woods: Has the Scottish Parliament already agreed to the Implementation of Agreements Bill? Has Scotland changed it in any way?

Ms Wilson: No, Scotland is still in the process of trying to obtain consent. They are at the same stage as us.

Miss Woods: OK, cool. Thank you.

The Deputy Chairperson (Ms Dillon): That was going to be my next proposal. I would like to see the views of other Assemblies' Committees before we take a definitive position on this. We do not have to take a definitive position on it today. Is the Committee happy that we request some information from the other Assemblies about their Committees' approach to it? I understand what Jo says about us being different or outside what other Assemblies are doing, but we do not know that yet; they might not be content. They may well be content. I would like the Committee to get an opportunity to find out the views of the other Assemblies' Committees.

Mr Beattie: How long do you reckon that would take?

Ms Wilson: I do not know, but we are up against it timewise.

The Deputy Chairperson (Ms Dillon): How tight up against it are we? If we were to come back to this, what is the latest date at which we could do that?

Ms Wilson: The very, very latest that we would need the legislative consent motion is early May.

The Deputy Chairperson (Ms Dillon): We could definitely come back much sooner than that. There does not need to be any big delay with it, because we can get that information, and then the Department can come back to us with confirmation of its view of it being changed and whether, rather than having Westminster included there, we would look to it being the Assembly, or it can give us a very strong rationale for why not to do it that way.

Ms Wilson: We just would not have the time to get an Assembly Bill in place for September.

The Deputy Chairperson (Ms Dillon): I am saying that we would certainly come back to you well in advance of May.

Ms Wilson: Yes, but, if we do not have a legislative consent motion, we simply would not be able to have a Bill in place for September.

The Deputy Chairperson (Ms Dillon): I understand that, but I still think that the Committee would like to have as much information as possible before we give that. We will not leave you tight to the wire.

Mr Sheehan: Can I ask a question, Chair?

The Deputy Chairperson (Ms Dillon): Paul Frew and Gordon will have to hold Paul Givan to account on leaving you tight to the wire.

Mr Frew: No, I am OK.

The Deputy Chairperson (Ms Dillon): I am only joking, but, obviously, Paul Givan is the Chair.

Mr Sheehan: I have a question on this issue, if it is OK with Gordon.

The Deputy Chairperson (Ms Dillon): Go ahead.

Mr Sheehan: What would be the repercussions of not being able to get the legislation through by September?

Ms Wilson: It would mean that Northern Ireland would be in breach of its obligations, because, where the UK has an international obligation and it is in the devolved field, the responsibility for complying with that lies with the Northern Ireland Administration.

The Deputy Chairperson (Ms Dillon): I suggest that the Clerk contact the Department about timescales to ensure that we do not put you under any pressure. That certainly is not our intention, but it is still important for the Committee to have as much information as possible to make the right decision in relation to this.

Mr Beattie: I am kind of with you on making sure that we have enough information; I am just concerned about what extra information we will get. We could very well sit here saying, "Let us see what Scotland does", but Scotland could be dithering, and then we would not get anything back from Scotland. There is nothing to say that Scotland is any further ahead than we are and that its decision will be any different from ours. If we are to delay it, we need to give a time frame for that delay; for example, we need to have decided by the end of March.

The Deputy Chairperson (Ms Dillon): That is the point of the correspondence between the Department and the Clerk. We will give a timescale. We do not need to give a timescale right here, right now, but we will give you a timescale, and there will not be any undue delay. You are right about the conversation with the other Assemblies. We will not be led by them, but we may be able to get some information, because they might highlight issues that we have not spotted, so it is important that we get that information.

Mr Beattie: Absolutely, Chair, and I am happy with that, but I just want to put on record that I will be happy to go ahead with this today, but, if we decide to wait and get more information, I have no problem, as long as that does not hurt the process.

Mr Frew: So that I am clear, this will not halt or stop the progress of forming a LCM in the coming weeks. You, Jo, can still go off today and carry on with your work, and it is really for the Committee to decide what we think of it. It is work for us and will not affect the Department. I am content to allow the Committee time to assess it.

The Committee Clerk: If the Committee is content, we will make contact, and we can update you next week on the information that we have on whether they have looked at it or are in process of doing so. We can keep moving on it.

Ms Wilson: And the 15 working days? That will not stop the clock ticking for scrutinising the memorandum.

The Committee Clerk: It starts ticking as soon as you lay your LCM.

Ms Wilson: If we lay it tomorrow?

The Committee Clerk: If you lay it tomorrow, the Committee has 15 working days to complete its report. Working days do not include Saturdays, Sundays, bank holidays or recess dates.

Mr Frew: When do you intend to lay it?

Ms Wilson: I will have to —.

Mr Frew: You are not going to lay it tomorrow.

Ms Wilson: We have approval to lay it.

Mr Frew: Yes, but surely the Minister can hold off and give the Committee time. If you are not under any time pressure from Westminster and a 15-day rule applies —?

The Committee Clerk: Easter and St Patrick's Day will kick in.

Mr Frew: Perhaps you could go back to see what your timeline looks like and see what wriggle room the Committee has to assess this. I am content with this and supportive of it, but, ultimately, if the Department lays the LCM when the Committee has shown any sign of shakiness, it may not work out well for the Department. The Committee must have its place here, so, if you could come back with a timescale and give us an indication of wriggle room, we will try our best to be as efficient as possible with time.

The Deputy Chairperson (Ms Dillon): That is what the Committee Clerk will do. She will make contact and ensure that there is no undue delay.

Thank you very much. We appreciate you coming to the Committee.