



Northern Ireland
Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Immigration and Social Security Co-
ordination (EU Withdrawal) Bill
Legislative Consent Motion:
Department for Communities

17 June 2020

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Members present for all or part of the proceedings:

Ms Paula Bradley (Chairperson)
Ms Kellie Armstrong (Deputy Chairperson)
Mr Andy Allen
Mr Mark Durkan
Ms Sinéad Ennis
Mr Fra McCann
Mr Robin Newton

Witnesses:

Mr Seamus Cassidy	Department for Communities
Ms Michelle Grills	Department for Communities
Mr Gerry McCann	Department for Communities
Ms Anne McCleary	Department for Communities

The Chairperson (Ms P Bradley): Members, you have been provided with papers on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill legislative consent motion (LCM). I welcome to the meeting Anne McCleary, Gerry McCann, Michelle Grills and Seamus Cassidy from the Department for Communities. Anne, we will put the spotlight on you and ask you to brief the Committee.

Ms Anne McCleary (Department for Communities): Hello, Committee. It feels a bit strange doing a meeting like this. This is my first time providing evidence remotely, so apologies. May I check that Gerry McCann is on the line? He was not 100% sure that he could be heard.

Mr Gerry McCann (Department for Communities): Hello. Can you hear me?

The Chairperson (Ms P Bradley): Yes. We can hear you clearly.

Ms McCleary: Yes. We can.

Mr G McCann: I am here, as is Seamus Cassidy. We are on the same number.

Ms McCleary: OK. That is fine. Thank you for the invitation to attend the Committee. We are very pleased to have the opportunity to speak to you today about the Immigration and Social Security Co-ordination (EU Withdrawal) Bill and, in particular, the proposed legislative consent motion. We have provided the Committee with a written briefing on the Bill, including a copy of the draft legislative consent motion.

The Bill was introduced at Westminster in the 2017-19 session, but Parliament was prorogued before the December 2019 general election. The Bill was reintroduced to Parliament on 5 March and is going through its Committee Stage in the House of Commons.

I will preface the briefing by emphasising that immigration and freedom of movement within the EEA are excepted matters under schedule 2 to the Northern Ireland Act 1998 and are the responsibility of the Home Office. It is worth highlighting that at the beginning.

If the Committee is content, I will run through the Bill's main provisions. In summary, first, the Bill repeals the main retained EU law relating to free movement and brings EEA nationals and their family members under UK immigration control. Secondly, it protects the status of Irish citizens in UK immigration law once their EU free movement rights end. Thirdly, it introduces powers to enable the Westminster Government and devolved authorities to amend retained EU law governing social security coordination, thereby enabling policy changes to be delivered post-EU exit.

The primary purpose of the Bill is to end for the UK the EU's rules on the free movement of people at the end of the transition period, which is 31 December 2020. Those rules are currently retained in UK law by the European Union (Withdrawal) Act 2018. The ending of the rules on free movement will mean that EEA nationals who are not resident in the UK at the end of the transition period, and their family members, will require permission to enter and remain in the UK under the Immigration Act 1971. As I said at the outset, immigration and freedom of movement within the EEA are excepted matters under schedule 2 to the Northern Ireland Act 1998 and are the responsibility of the Home Office.

In addition, the Bill makes provision for the Westminster Government or, where appropriate, a devolved authority to amend retained EU legislation relating to the social security coordination regime. That is where the LCM comes in. The legislation in question is, first, regulation (EC) No 883/2004, on the coordination of social security systems, and its associated implementing regulation, regulation (EC) No 987/2009; secondly, regulation (EEC) No 1408/71, on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the community, and its associated implementing regulation, regulation (EEC) No 574/72; and, thirdly, regulation (EC) No 859/2003, which extends the provisions of regulation (EEC) No 1408/71 and regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the grounds of their nationality. All that is a bit of a mouthful.

While immigration and freedom of movement are excepted matters, aspects of the EU social security coordination regulations touch on devolved issues, which is why the LCM process is now being followed. The regulations are a somewhat complex web of excepted matters — in other words, we cannot touch them — and devolved issues, including, first, the determination of the state to which contributions should be paid; secondly, competency for the award of benefits; thirdly, aggregation of contributions and periods of residence for benefit entitlement; and, finally, provision for some benefits, such as child benefit, that are the responsibility of HMRC.

The provisions that deal with transferred matters relate to social security coordination. The provisions allow the UK Government and/or, where appropriate, a devolved authority to make regulations to amend retained direct EU legislation that relates to the social security coordination regime, which is retained in UK law by the European Union (Withdrawal) Act 2018. I stress that that will enable policy changes to be delivered following the end of the transition period depending on the outcome of negotiations with the EU on the future relationship.

With regard to Ireland specifically, in February 2019, the UK signed an agreement with Ireland that protects the social security rights of all UK and Irish citizens who move within the common travel area. The Minister for Future Borders and Immigration and the Minister for Disabled People, Health and Work asked the then Minister for Communities, Deirdre Hargey, to agree that the Northern Ireland social security coordination provisions remain in the Bill and to agree to bring forward the necessary legislative consent motion. If the Northern Ireland provisions are omitted from the Westminster Bill, it would be necessary to bring forward a further Assembly Bill to ensure that the Department for Communities has the power necessary to amend retained EU law on social security. Our working assumption is that such a Bill would mirror the social security coordination provisions of the Westminster Bill in conferring powers on Northern Ireland Departments. However, clause 5 of the Westminster Bill also makes provisions for regulations to be made by a Minister of the Crown and the devolved authority acting jointly. Given that the retained regulations are, as I said, a somewhat complex web of excepted and devolved matters, the availability of the option of making regulations jointly may provide a useful way in which to amend the law in a coherent way. Devolved competence

would be respected in that such regulations would require the approval of the Assembly before being made.

Based on the anticipated progress of the Westminster Bill, it is likely that, if we had to go down that route and there was a Northern Ireland Bill, it could not be introduced to the Assembly before September at the very earliest. Such an Assembly Bill would be unlikely to complete its passage before spring 2021, assuming that a slot could be obtained in the legislative programme. That would leave Northern Ireland at a disadvantage as there would be no power for the Assembly to amend the EU social security coordination regulations until the Bill completed its passage. So, changes could be made to the EU social security coordination regulations in GB but the Northern Ireland Assembly may not be able to bring in those changes until a later date.

It is anticipated, as you will appreciate, that there will be significant demands across Departments for Bills to be progressed through the Assembly before the end of the current mandate. Retaining the Northern Ireland provisions in the Westminster Bill would help to relieve some of the expected pressure on the legislative programme but would also have the advantage of ensuring that those essential new provisions can be enacted as soon as possible. Discussions between the EU and the UK on social security coordination are ongoing. Retaining those provisions in the Bill will ensure that any necessary changes can be brought forward for Northern Ireland at the same time as changes are taken forward in GB.

As members are aware, the LCM process and the Committee's role in it are set out in Standing Orders. I can confirm that the Executive have agreed to proceed on the basis of a legislative consent motion. We are happy now to answer any questions or to clarify any issues that members may have.

The Chairperson (Ms P Bradley): Thank you for that, Anne. You answered everything that I had written down about how a Minister of the Crown and a devolved authority acting jointly would work. A follow-up was what the ramifications would be if the Assembly did not agree to this, but you answered that pretty well as well. I do not have anything further than that. Do members have anything that they want to ask Anne?

Ms Armstrong: I will follow on from the Chair's point about what the ramifications would be if the Assembly did this itself. I appreciate the pressure on the legislative programme that is coming forward, but if we did it ourselves and were not in sync with the rest of GB on it, what would the financial or other ramifications be for the Assembly?

Ms McCleary: Gerry will be able to give you some information on that.

Mr G McCann: Yes. I assume that we would be working on the basis that, if there were any extra costs for benefits here that would not be the case in England, Scotland and Wales, we would have to pick up those costs. However, again, until we know what the future shape looks like, it is very hard for us to try to guess what the costs might be.

Ms Armstrong: That is my concern: the fact that we do not know what the future will look like. There are no White Papers on this. There is no indication of what is potentially coming down the road.

You said that the Executive have agreed to the LCM as a proposal. Could you give clarification of the Minister's position on that LCM?

Ms McCleary: The Minister has approved it.

Ms Armstrong: OK. So, there are no issues with that. Is there no viability in the Assembly doing this itself?

Mr G McCann: I find it very hard to see any benefit to doing that. All that we are doing here is giving a power for us to make some future regulations. There is nothing in the Bill that, in its own right, makes any changes to overall social security policy. All that this is doing is giving a power. That power can be exercised only with the Assembly's control, so for future regulations that we want to make, we will come to the Committee as usual. The draft regulations would have to be laid before, voted on and passed by the Assembly. There is full control there.

Ms Armstrong: My concern is that in the paperwork that we received — it is page 21, schedule 2 — it talks about how, if we were taking anything forward, we would be required to consult the UK Government. If the UK Government were making any changes or additions, would they have to notify us in advance, or is it simply that, once we agree on this way forward, they can set whatever they like without having to consult the devolved nations?

Mr G McCann: We work very closely with GB on any set of regulations that we end up making. I am not sure how to put this, but there are things in those regulations that do not fall to the Assembly because they fall into schedule 2 to the Northern Ireland Act. Therefore, they would not have to consult us on those. However, they would consult us fully on anything that falls within the control of the Assembly. We, in turn, would then consult the Committee.

Ms Armstrong: OK. We have already seen that we, in Northern Ireland, have a different viewpoint to the rest of the UK on some social security measures. I am just concerned that things can be done to us and that, if we want to do anything different, it would be the same as the mitigation measures, where we had to go separately rather than have a whole-UK discussion. If we are entering into legislation where Westminster takes full control, it leaves us without the opportunity to introduce back into social security things like our mitigation measures.

Mr G McCann: Whether this is done under the power in this Bill or whether we have a further Bill to give us the power to make regulations, I am not sure that it would actually change that situation. It would just be giving us a power to make regulations. If, in the future, the NI Assembly wishes to take forward some law to enable it to do something very different, that is within the control of the Assembly.

Ms Armstrong: OK. Thank you.

Mr Durkan: Thanks to Anne, Gerry and Seamus for the presentation and to Kellie for asking a few of the questions about issues that I also have concerns about. Kellie floated the idea of us, in the Assembly, doing the bits that we can do. What would be the disadvantage to people here, and even people not here, of us going down that route? I know that there would be a delay, but what would be the impact of that delay on people? Would there be a detrimental impact?

Mr G McCann: Again, until we see the shape of any future deal, I cannot say. I do not know, and I do not have any way of guessing this, but there may be something in it that, in fact, works out better for people coming here and that they gain under. However, I stress that I do not have any way of knowing that. Say that we did go down the route of having our own separate Bill, we could find that the set of regulations in Northern Ireland do not actually work because of changes that may have been made to the regulations elsewhere by the Government over in England. We could have a situation where we are sitting with a set of regulations that cannot actually function. Again, until we see what the deal looks like, it is very hard for us to call.

I come back to point that all that we are doing here is giving us the power to make regulations. Those regulations fall fully within the control of the NI Assembly. I am not absolutely clear what difference it would make if it were done by a Bill of the Assembly as opposed to the route that we have before us, but that is entirely a matter for the Assembly.

Mr Durkan: You said that the Assembly would be consulted on potential future changes. Could you define "consulted"? Will we be told what is going to be done, or will we be asked what is going to be done?

Mr G McCann: We would come to the Committee with any proposed changes to the regulations. We are all aware that talks between the EU and the UK Government are going on at the moment. Social security will probably be part of the overall settlement. We are not involved in those talks per se.

Mr Durkan: There is a lot of "could" and "may". I do not want to shoot the messenger.

Ms McCleary: The important thing perhaps is to regard this as an enabling power. It enables us to have regulations, but those will follow the process that other regulations follow. The Assembly will have the normal scrutiny that it would have if this were done a totally different way. Whether the primary power to make the regulations comes from UK legislation or from ours, it is just about the power. How it is done on the ground is the area that you will be concerned about, and the Assembly will have scrutiny of that.

Mr Durkan: It is just that I am always a bit dubious about LCMs. As I said, I definitely do not want to shoot the messengers here. However, we have heard again and again, "This is not the way that we want to do business. We would rather not be doing that", whether it is in respect of accelerated passage or LCMs, but it seems that it is the only way that we are doing business. I know that we are in extraordinary times —

Ms McCleary: Exactly.

Mr Durkan: — but how long was this sitting on the previous Minister's desk before it came to us, when we are right on the cusp of the summer and the window for us to legislate on this ourselves is practically closed? It just does not sit comfortably with me. I am not overly enamoured with any LCM, but, when you are dealing with welfare, social security and EU issues, I am not very comfortable with us tying ourselves to Westminster even further on those.

Ms McCleary: As I said, there is a very limited scope of areas that we are looking at with this. I described what they are. It is not going into the detail of entitlement to the personal independent payment (PIP) or universal credit; it is looking only at coordination.

Mr Durkan: OK. Thank you, folks. I will have more of a look at it. I have to confess that I have not read through it all fully. There is a big agenda for today. I have looked at it, but maybe I will do so in more detail. Thank you.

Ms Ennis: I will follow in the vein of the last two members who spoke. It is an extremely difficult one to try to predict, because we do not know what will come down the track at us. Anne answered my question. I was going to ask what the potential negative impacts would be for anybody who is currently claiming social security here, regardless of whether it is the Assembly or Westminster that does this. However, Anne, you said that this is not really dealing with that and that it does not go into the nuts and bolts of PIP and other benefits, so that is perhaps a conversation for a later stage.

I concur with Mark. I need to get a better understanding of what this actually entails. We probably do not have time for that today, but I note the presentation and the information. We will take that away and try to digest it better.

Ms McCleary: OK.

The Chairperson (Ms P Bradley): Thanks, Sinéad. No other member wants to raise any concern or issue. Thank you, Anne and Gerry, who are staying with us for the next session, when we will also be joined by Doreen Roy, and to Michelle and Seamus, who are leaving us.