



Committee for Communities

OFFICIAL REPORT (Hansard)

Pensions (Special Rules for End of Life) Bill
— Legislative Consent Memorandum:
Department for Communities

14 March 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colm Gildernew (Chairperson)
Mrs Ciara Ferguson (Deputy Chairperson)
Mr Andy Allen
Ms Kellie Armstrong
Mr Maurice Bradley
Mr Brian Kingston
Mr Daniel McCrossan
Mr Maolíosa McHugh
Ms Sian Mulholland

Witnesses:

Mr David Tarr	Department for Communities
Ms Hayley Ward	Department for Communities

The Chairperson (Mr Gildernew): I welcome from the Department David Tarr, who is director of social security policy, legislation and decision-making, and Hayley Ward, who is policy lead. David or Hayley, please go ahead and brief the Committee.

Mr David Tarr (Department for Communities): Thank you, Chair and Committee, for the opportunity to brief you today. First, I offer my apologies for the short timescales that have been presented to the Committee in regard to the Pensions (Special Rules for End of Life) Bill and the associated legislative consent motion. The Department values the Committee's contribution and scrutiny, and, hopefully, my submission will clarify for the Committee why the time constraints are necessary.

The Bill was presented as a private Member's Bill to Westminster on 6 December 2023. On 21 December, Peter Schofield, permanent secretary of the Department for Work and Pensions, wrote to the DFC permanent secretary, seeking his agreement to include Northern Ireland provisions in the Bill. That agreement was given on 22 December 2023 on the basis that it was desirable to have those important protections extended to Northern Ireland. The Bill had its Second Reading in Parliament on 2 February 2024, and it is awaiting scheduling for Committee Stage. I wish to highlight that private Member's Bills generally pass through Westminster at an expedited pace in comparison with Government Bills.

It was not anticipated that a legislative consent motion would be required because the Bill was introduced during a period of interregnum. However, following the restoration of the Assembly, Minister Lyons subsequently received a letter from Mel Stride, the Secretary of State for Work and Pensions, advising that it was the UK Government's view that the clauses engage the legislative

consent process and seeking confirmation that the Minister agreed and, if so, that he would be content to begin the legislative consent process and support a legislative consent motion in the Northern Ireland Assembly. That was received by the Department on 22 February 2024.

It was not possible to inform the Committee of the request for a legislative consent motion until the Minister had been briefed by officials and provided his direction on how to proceed. I can advise that the ministerial decision and Committee notification were completed simultaneously, with a reply to the Secretary of State for Work and Pensions issued by the Minister's private office on 5 March 2024, which is the same date that the departmental Assembly liaison officer issued an initial briefing to the Committee.

The Department has since provided the Committee with a comprehensive written briefing on the Bill, which includes a draft legislative consent memorandum. The Department has been working at pace to implement the legislative consent process, with the aim of achieving all actions required by Standing Order 42A before the Bill reaches Committee Stage in the House of Commons.

I will pass across to Hayley to take you through some of the Bill.

Ms Hayley Ward (Department for Communities): I will give some background on the Bill. The Pensions (Special Rules for End of Life) Bill aims to extend the eligibility for receiving terminal illness payments from the pension protection fund and the financial assistance scheme.

The pension protection fund was established by the Pensions Act 2004 to pay compensation to members of eligible defined benefit schemes where the sponsoring employer became insolvent on or after 6 April 2005 and has insufficient assets to pay pension liabilities to at least the level that would be payable by the pension protection fund. The financial assistance scheme applies to schemes that started to wind up between 1 January 1997 and 5 April 2005. The financial assistance scheme makes payments to members of qualifying schemes that are unable to secure the pension liabilities in full.

Both the pension protection fund and the financial assistance scheme currently have provision to make payments to someone with a terminal illness. For the purposes of both schemes, terminal illness is defined as where:

"the person's death in consequence of that disease can reasonably be expected within 6 months."

The eligibility criteria were set in line with the social security special rules for end of life provisions originally introduced in 1990. The relevant definition of terminal illness for Northern Ireland is in the Pensions (Northern Ireland) Order 2005 and the Pensions (No. 2) Act (Northern Ireland) 2008. If the Committee is content, I will briefly run through the main provisions of the Bill.

The Chairperson (Mr Gildernew): Yes.

Ms Ward: The provisions that deal with transferred matters relate to the provisions in the Pensions (Northern Ireland) Order 2005 and the Pensions (No. 2) Act (Northern Ireland) 2008 that allow for the definition of "terminally ill" as being 12 months instead of six. Clause 1(3) and clause 1(4) make amendments to the Pensions (Northern Ireland) Order 2005 and the Pensions (No. 2) Act (Northern Ireland) 2008 to amend the definition of "terminally ill" from six months to 12 months. Clause 2(2) extends the relevant parts of clause 1 to Northern Ireland. Clause 2(3) extends clause 3, the short title of the Bill, to Northern Ireland, and clauses 2(5), 2(8) and 2(10) allow for an appointed day order and transitional saving provisions.

In summary, the legislative consent motion is requesting the agreement of the Assembly to the provisions in clause 2 of the Bill extending to Northern Ireland. That is to ensure that provisions are brought into effect at the same time as those in Great Britain. Although pensions policy is a devolved matter, in general, pensions policy and legislation operate in line with the corresponding provisions in England, Scotland and Wales, in line with section 87 of the Northern Ireland Act 1998.

If it is not agreed that provisions in the Bill be extended to here, it will be necessary to bring forward a separate Assembly Bill to ensure that parity is maintained. However, that would mean that people in Northern Ireland would not benefit from the extension of the terminal illness definition at the same time as those in Great Britain. If it is agreed that provisions in the Bill be extended to Northern Ireland, that will allow the provisions to be enacted across the jurisdictions at the same time. The intention is that

the Bill will be enacted as soon as possible. Therefore, it would be beneficial for it to be agreed that the provisions in the Bill be extended to here.

We are happy to take any questions or clarify any issues.

The Chairperson (Mr Gildernew): OK. Thank you very much for that. I am delighted to see that we have been joined by some of our younger citizens, who are, I believe, A-level students from All Saints College. It is good to see you engaging with the Assembly processes.

In relation to the legislative consent motion, I note that Marie Curie has indicated that we could go even further. I know that a lot of us have done a lot of work around end of life generally, and, in that sense, it is welcome, and there is certainly scope to do better as we go forward. Again, the fact that it is a legislative consent motion raises some challenges around devolution and all of that, but I understand the rationale. It is important to say that we would always prefer that there was a more robust process, but I know that a rationale has been provided.

Members, the draft report on that will come back to us next week. We will consider the implications. I thank the witnesses for their time today.

Sorry, Daniel wanted to come in with a question. Sorry, Daniel.

Ms Ward: We nearly got away.

Mr McCrossan: You have actually answered my question. It was about the robustness of the change. This is a move in the right direction, but it could be better.

I also have a question about the pension protection fund. It says in a paper here that the pension protection fund cannot compensate:

"someone who has received a lump sum for terminal illness."

Does that mean that anyone who has paid into a critical illness insurance scheme will be ineligible to make a claim?

The Chairperson (Mr Gildernew): That may be more relevant to a later agenda item, Daniel.

Ms Ferguson: On occupational pension.

Mr McCrossan: Yes.

The Chairperson (Mr Gildernew): Thank you for that, David and Hayley.