



Northern Ireland
Assembly

Committee for Enterprise, Trade and
Investment

OFFICIAL REPORT (Hansard)

Mental Health Discrimination Bill

4 October 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Mr Paul Frew
Mr Alban Maginness
Ms Maeve McLaughlin
Mrs Sandra Overend

Witnesses:

Ms Elaine Cassidy	Department of Enterprise, Trade and Investment
Mr Richard Scott	Department of Enterprise, Trade and Investment

The Chairperson: From the Department of Enterprise, Trade and Investment (DETI), we have Richard Scott from the company law section and Elaine Cassidy, deputy principal in the company law section. You are both very welcome; it is good to see you. Can you take us briefly through where we are with this? If any member has any further question on interpretation or anything else, they can ask it then.

Ms Elaine Cassidy (Department of Enterprise, Trade and Investment): Thank you very much for inviting us to appear before you today to discuss the Northern Ireland aspects of the legislative consent motion in relation to the Mental Health (Discrimination) (No. 2) Bill, which is currently making its way through the House of Commons. We are grateful to the Committee for engaging with us at the outset of this process so that we can bring members along with us.

The Mental Health (Discrimination) (No. 2) Bill is a private Member's Bill introduced by Gavin Barwell MP. Its passage through Westminster is being supported by the Government. The main purpose of the Bill is to repeal various pieces of legislation that act as a discriminatory barrier against those with mental illness. This matter is being brought before the Committee and the Assembly because company law is a transferred matter under the terms of the Northern Ireland Act 1998, and it is legislated for on a UK-wide basis under the terms of the Companies Act 2006.

The UK Bill forms a part of the UK Government's commitment to improving life for people with mental health problems, and it is supported by the Royal College of Psychiatrists and various mental health charities, such as Mind and Rethink Mental Illness. The main aim of the UK Bill is threefold. First, it repeals section 141 of the Mental Health Act 1983, which states that a Member of Parliament, or of the devolved Administrations, automatically loses their seat if detained under the Act for six months or more. Secondly, it amends the Juries Act 1974 by redefining the category of those who are ineligible

for jury service. Thirdly, it amends the Companies (Model Articles) Regulations 2008 so that one no longer ceases to be a company director purely on grounds of mental health. It is the third objective of the Bill that we are dealing with, as it falls within the remit of DETI. The Office of the First Minister and deputy First Minister (OFMDFM) is dealing with the first two aspects.

The particular provision that we are dealing with is the provision that requires the removal of a company director automatically if they have been restricted by a court order on the grounds of mental health. There is no equivalent provision that deals with a director having to be disqualified if they have any type of physical illness, so there is, therefore, a double standard and disparity. The aim is to remove that potentially discriminatory barrier. As it stands, under the Companies Act 2006, each public and private company is obliged to have articles of association. If they do not have those articles of association themselves, by default, the Companies Act dictates that they must adopt the model articles of association contained in the 2008 regulations. It is only these 2008 regulations that are amended by this legislative consent motion.

We have been advised that the regulations, as they stand, have the potential to act as a discriminatory barrier against people with mental health issues, so the revocation of these measures will remove the potential for discrimination and ensure that regulatory balance exists between GB and NI company law. If the opportunity to avail ourselves of the provisions in the Mental Health (Discrimination)(No. 2) Bill is missed, the existing uniformity with UK company law could be affected, and company directors in Northern Ireland would be unable to benefit from the modernisation of the company law provisions in GB.

That is a brief summary of what the UK Bill intends to do and why there is a requirement for a legislative consent memorandum. We are happy to take any questions that the Committee may have on the issue.

The Chairperson: I do not think that anyone would disagree with the principles that you have just clarified for us.

Mr Flanagan: I think that it is useful legislation. Surely there is no reason why someone should be discriminated against for having some sort of mental illness when there is no comparable action for people with any other kind of illness. Of my two questions, the first is more procedural than anything else. Companies legislation was devolved in 1998, yet the Companies Act was made in 2006. Why was that? Was there a legislative consent motion in 2006?

Ms Cassidy: As far as I am aware, in 2006, there was a process of reform of company law in the UK. To date, Northern Ireland company law has always followed that of GB. The problem was that it followed at a later date, so there was a regulatory disparity between NI and GB company law. At the time, the decision was taken that company law should be legislated for under the terms of the Companies Act 2006 in Westminster but should include Northern Ireland.

Mr Flanagan: When was that decision taken?

Ms Cassidy: In 2005 or 2006. As far as I am aware, it was subject to a massive public consultation on the issue. As far as I am aware, back then, everyone was in agreement that it was a practical matter. The Companies Act 2006 is the largest on the statute book, so the practical implications of Northern Ireland following suit at a later stage was causing problems for companies that operate cross-jurisdictionally.

Mr Flanagan: So, are we obliged to follow what is done in Britain?

Ms Cassidy: No, and that is why the legislative consent motion has come into effect. The Northern Ireland Assembly can say that it does not want to enact this particular provision here, and the Assembly would not pass its legislative competence to Westminster in that instance. Essentially, we can pick and choose which elements we want to enact and which elements we do not want to enact.

Mr Flanagan: OK, that clarifies that. I suppose that there is some sort of a demand for companies to have similar laws here as in Britain, because there are an awful lot of companies based in Britain that have offices here or vice versa. With the growth of the all-island economy, it is also the case that there are businesses that are based here that also have outfits in the South. Have any discussions taken place with the Dublin Government to see whether there would be any implications if there were

a different policy in the South? Have efforts been made to make similar changes in the South if there is a difference?

Ms Cassidy: None that I am aware of to date. If the Committee wishes, we could look into that. I am not aware of how the legislation operates in the Republic compared with Northern Ireland, but we could certainly look at that in the long term to see whether there is any scope for that or whether any problems are created by the different legal codes cross-jurisdictionally.

Mr A Maginness: I think that this is very sensible legislation, and I am very supportive of it. However, what happens in an instance where somebody who is suffering from a chronic mental health condition is still a company director and is not removed from the board of the company? If something goes wrong in the company and the board is responsible for that, and that person, by reason of his or her mental illness, was not party to the decision-making of the company, does that person still carry the legal responsibility that any other director who is not suffering from a mental illness has?

Mr Richard Scott (Department of Enterprise, Trade and Investment): The provision removes the automatic disqualification for people who are affected by that court order, but remaining on the statute book are provisions for the removal of a director who is suffering from a mental health condition. If a registered medical practitioner treating that person gives written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months, the Act allows for the termination of that appointment.

Mr A Maginness: Do you see the point that I am making? It would be unfair to a person who is suffering from a chronic mental illness if they were regarded as being responsible for a decision made by the company when, in fact, they were not part of that decision-making process.

Ms Cassidy: In addition to what Richard said, there is still a facility to have somebody removed on the grounds of medical advice. In addition, we are looking at the equality issues under article 12 of the UN Convention on the Rights of Persons with Disabilities. We are looking at updating legislation and practices to ensure that those who are suffering from mental illness who still hold their position on a board of directors have all reasonable adjustments made to allow them to continue that role. What has been suggested is that we would have the likes of a nominated advocate who would work alongside that director to ensure that their mental health problems do not implicate them or, as you say, cause them any problems legally as regards making a decision that they are not wholly informed of. We are in the initial stages of this, as the Bill has only recently had its Second Reading at Westminster. So, along with the Cabinet Office and OFMDFM, we have had exploratory talks about what reasonable adjustments may need to be made and to see whether there is anything that we can do to help facilitate those with mental health problems to stay in their position as director but, as you say, also ensure that they do not unfairly suffer any elements of legal responsibility because the adequate provisions were not put in place.

Mr A Maginness: That is ongoing work.

Ms Cassidy: We are just at the initial stages.

Mr A Maginness: And that would not be addressed by this legislative consent motion.

Ms Cassidy: No. All that we are doing in this legislative consent motion is asking the Assembly to pass its legislative competence to Westminster to remove that potentially discriminatory barrier, and the outworkings of that are an ongoing process with ourselves, OFMDFM, the Cabinet Office, which is dealing with this across the water, and various equality units to see what further measures would need to be taken. All that the legislative consent motion is doing is removing that potentially discriminatory barrier, and the outworkings are still to be discussed and finalised.

The Chairperson: Are members content with the legislative consent motion and content to consider a short draft report on it at next week's meeting?

Members indicated assent.

The Chairperson: Thank you for your time.