



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

---

Paper 99/11

24 May 2011

NIAR 272-11

# Parity and Social Security in Northern Ireland

## 1 Introduction

The Committee for Social Development is to receive briefings from both Law Centre (NI) and the Department for Social Development on the principle of parity as it relates to social security in Northern Ireland. To further aid the Committee's understanding and deliberations on the parity issue this Research and Information Service briefing paper provides background information on a number of areas:

- the parity principle within the context of the NI Act 1998;
- the history of parity exploring how and why it was established and why it is largely maintained;
- the potential budgetary implications of breaking parity;
- the scope for "stretching" parity; and
- the potential interaction between parity and European Law.

## 2 The Parity Principle and Section 87 of the NI Act 1998

The principle of parity with respect to social security benefits is reflected in [Section 87 of the Northern Ireland Act 1998](#)<sup>1</sup> which requires the Minister for Social Development and the Secretary of State for Work and Pensions to consult with one another in order to ensure that relevant legislation achieves as far as possible, a single system of social security, child support and pensions across the UK. The 1998 Act states that,

***“The Secretary of State and the Northern Ireland Minister having responsibility for social security (“the Northern Ireland Minister”) shall from time to time consult with one another with a view to securing that, to the extent agreed between them, the legislative to which this section applies provides single systems of social security, child support and pensions for the United Kingdom”***

The parity principle operates on the basis that Northern Ireland has the same range of social security benefits which are paid at the same rates and subject to the same conditions as in Great Britain. Underpinning the principle of parity is the argument that people in Northern Ireland pay the same rate of Income Tax and National Insurance contributions as those in Great Britain and therefore entitled to enjoy the same benefits and rights<sup>2</sup>.

Section 87 of the 1998 does not explicitly place a statutory requirement on the Minister for Social Development to keep parity with social security legislation and practice in Great Britain. Rather it places a requirement on the Minister to “consult” with the Secretary of State for Work and Pensions in order to seek to maintain single systems of social security, child maintenance and pensions. However, historically the long-standing policy of parity in social security between Great Britain and Northern Ireland has largely been maintained primarily because Northern Ireland receives significant subventions in the form of Annually Managed Expenditure from the UK Tax and National Insurance Funds.

## 3 A Brief History of Parity

Parity of course pre-dates the NI Act 1998 and to understand the evolution of the parity principle in relation to social security it is suggested that one must go much further back in time to the establishment of the Northern Ireland state in 1921.

Prior to the restoration of devolution, there was a surprising dearth of analysis and information on the principle of parity. However, one succinct account of the parity principle is provided by Professor Jonathan Bradshaw in a paper entitled “*Social Security Parity in Northern Ireland*” published in 1989. In this paper, Bradshaw highlights that, “*the parity principle has dominated the relationship between Northern*

---

<sup>1</sup> Northern Ireland Act 1998, [www.legislation.gov.uk/ukpga/1998/47/section/87](http://www.legislation.gov.uk/ukpga/1998/47/section/87)

<sup>2</sup> Information on parity extracted from Explanatory Memorandum to the Northern Ireland Act 1998 (Modification) Order 2009.

*Ireland and the rest of Great Britain (GB) since the founding of the state*<sup>3</sup>. The following extract from the paper provides an account of the origins of parity, however, it is advisable to note that this is just one view of how parity has evolved and there may be alternative views.

**Extract: Bradshaw, J. (1989)**

**“THE ORIGINS OF PARITY**

The financial arrangements between Britain and Northern Ireland derive from the Government of Ireland Act in 1920. Under the Act, NI was provided with powers to set its own priorities and fund from its own resources all transferred services. To finance these responsibilities it had two sources of revenue – transferred revenue from taxes controlled in NI, and the bulk of the revenue came from NI’s share of reserved taxes, mainly income tax and national insurance contributions. This reserved tax revenue was paid after the deduction of a contribution to the cost of reserved services and the “Imperial Contribution” toward defence and diplomacy.

Despite NI’s freedom to determine policy on transferred services, it was recognised from the start that there were economic and political advantages to be gained in providing a range and quality of services broadly comparable with those in Britain. As taxes and National Insurance contributions were determined on a UK basis and were part of citizenship, so should benefits. It was thought that not to maintain social provision at a level equivalent to that pertaining in Great Britain was have, as Ditch puts it, “affected loyalty and sentiment” (NI Assembly 1984).

However, the principle of parity was not established formally and the NI Government found that maintaining broad comparability within the financial arrangements was very difficult. NI had to be bailed out – first the Imperial Contribution was made residual rather than the first charge on NI revenues, and then eventually waived. Then the NI unemployment insurance fund was supplemented by a contribution from the British exchequer. Eventually with war approaching in 1948, Sir John Simon formally committed the British Government to funding any deficit in the NI budget. The principle that emerged was the beginning of the concept of parity. The British exchequer would make good a deficit in the NI budget if it was not “the result of a standard of social expenditure higher than, or of a standard of taxation lower than that of Great Britain” (NI Assembly 1986, para 10).....

**THE FUTURE OF PARITY IN SOCIAL SECURITY**

Given the continuance of direct rule, the intrinsic merits of the parity principle and the general level of satisfaction in Northern Ireland with its application, it is difficult to envisage any dramatic shift from parity in social security affairs. Indeed, if some form of devolved Government were reintroduced in the Province, given developments that have taken place in financial and administrative arrangements, social security might be a candidate to join law and order, defence and foreign policy as a (reserved) retained responsibility of central government....because the principle of parity is exercised most strictly in social security policy and there is least room for local autonomy, local variation in policy is virtually non-existent....

The only circumstances that could conceivably lead to a break with parity in the short to medium term is if the cost of living in NI has moved so far ahead of that in the rest of the United Kingdom that the national level of benefits was no longer sustainable. For parity to be varied in that context the differences would have to be very considerable and cost greater than those experienced in different regions of Britain – otherwise it would be difficult to justify giving special treatment in NI.....

<sup>3</sup> Bradshaw, J. (1989) *Social Security Parity in Northern Ireland*. Belfast: Policy Research Institute. (Copy available in the Assembly Library).

**In the longer term the future of parity depends on the future of NI – whether it becomes more closely integrated with Britain, whether it re-develops some form of devolved self government, or whether it moves to become part of a united Ireland.....”**

## 4 The Concept of Parity in Relation to Social Security

Although one must take cognisance of the fact that Bradshaw’s paper was written in 1989 and therefore in a different political climate, he does identify a number of reasons why interest in amending parity had been somewhat subdued pre-devolution:

**“1. There is a general agreement that the constitutional arguments for parity are very powerful. NI is part of the UK and as part of the UK its citizens should pay the same taxes and receive the same benefits as other citizens in the UK.**

**2. There is a general feeling in civil service and academic circles in NI that the province is not only benefiting from the application of the parity principle, but indeed doing rather well.**

**3. This reflects a commitment to the interests of the people of NI that is shared across the spectrum of political parties....all parties... are concerned to obtain the maximum possible benefits for the people of NI out of its relationship with Britain.”<sup>4</sup>**

Bradshaw further argues that there had previously been no substantive debate on parity pre-devolution because *“...there is no room for debate – virtually everyone with an interest in the subject shares the same objective. Those who might want to oppose parity in principle, but more likely in its application, soon get bogged down in technical detail, the absence of adequate evidence, and in a UK context, the marginal nature of the issue. Nevertheless, parity is important. It is of great significance to the living standards of the people of NI. It is an essential component of the relationship between Britain and NI and, if the constitutional position were to change, it is likely to be one of the first things to be affected.”<sup>5</sup>*

### Consideration of Parity by the Previous Northern Ireland Assembly

It is interesting to note that this is not the first time Members of the Northern Ireland Assembly have been interested in the principle of parity as it relates to social security benefits. In 1984, the Northern Ireland Assembly Health and Social Services Committee, who at that time had a remit for social security matters, published a detailed report on the issue. The remit of the Committee Inquiry was to explore *“whether the principle of maintaining parity between the social security system in Northern Ireland and Great Britain is working to the disadvantage of claimants here because of the higher cost of living”<sup>6</sup>.*

<sup>4</sup>Bradshaw, J. (1989) Social Security Parity in Northern Ireland, pp22-23.

<sup>5</sup> Bradshaw, J. (1989) Social Security Parity in Northern Ireland, p3.

<sup>6</sup> Northern Ireland Assembly Health and Social Services Committee (1984) Social Security Parity. (Copy available from the Assembly Library).

In terms of parity as a ‘concept’, an interesting written submission to the Committee from the Northern Ireland Consumer Council note that parity, is not always a black and white issue, and could be in a number of different ways including, e.g. “parity as input”, “parity as output” and “parity as outcome”.

**“The concept of parity may be said to have underpinned relations between Northern Ireland and Great Britain since the establishment of the state in 1921. From the outset it was argued that the existence of a devolved government and administration within the context of the United Kingdom should in no way disadvantage Northern Ireland’s citizens, and that in so far as was possible, standards (in terms of range of policies and levels of benefits) should be at standards comparable to those pertaining in Britain. There were numerous reasons why benefits and services should be maintained at comparable standards to those in Britain, not least being that Taxes and National Insurance contributions were determined on a United Kingdom basis, and therefore on the basis of common citizenship so should the benefits. There were also political advantages in maintaining social services at a level equivalent to those prevailing in Britain; not to have done so could have adversely affected political loyalty and sentiment.....**

There are various ways in which themes may be put into practice. Birrell and Murie have suggested three:

1. Parity as absolute uniformity.
2. Parity as similarity in most respects.
3. Parity as similarity in only the broadest sense.

Social security is usually regarded as falling within category one....it may be more appropriate to consider the notion of parity along three dimensions:

**Parity-as-input: the contributions made by Northern Ireland residents to the cost of maintaining the social security system (in its widest sense). Revenue is raised by means of both direct and indirect taxes...**

**Parity-as-output: this relates to the levels of benefits paid and the conditions of eligibility....**

**Parity-as-outcome: this relates to the overall impact social security...have for individuals, their families and the broader social and economic community – in terms of spending power; the interaction with wages; the contribution to the overall level of economic activity.....”<sup>7</sup>**

Also noteworthy is that in written evidence to the Northern Ireland Assembly Health and Social Services Committee Inquiry on Social Security Parity, the then Department for Health and Social Services outlined that there was a perceived constitutional, administrative, legislative and fiscal basis for parity in social security:

**“The main considerations on which parity, as it operates at present, are based are:**

**constitutional:**

**common citizenship of the United Kingdom with consequent common rights and obligations. The principle of parity in taxation and in national insurance contributions brings in its wake parity in benefits.**

<sup>7</sup> Extracts from written evidence on the Parity Principle from the Northern Ireland Consumer Council to the Northern Ireland Assembly Health and Social Services Committee, January 1984.

**administrative:**

the substantial convenience both for Government and employers, especially with employees in both Northern Ireland and Great Britain. Also, movement of workers and social security beneficiaries between Northern Ireland and Great Britain is by no means uncommon, and it is convenient that contribution liabilities and benefit payments are identical in both countries.

**legislative:**

when social security legislation for Northern Ireland corresponds to that for Great Britain it is possible to harmonize the legislative timetables in both parts of the United Kingdom and ensure that changes are introduced from the same dates.

**financial:**

the parity arrangements between the two National Insurance Funds have provided substantial financial transfer to Northern Ireland....viewed in purely financial terms, any increases above parity in the rates of contributory benefits would require to be financed out of the National Insurance Fund by an increase in the local rates of contributions.....”

## 5 The Potential Budgetary Implications of Breaking Parity

It appears that Departmental attitudes towards adherence to the parity principle, particularly in relation to retaining parity in benefit levels across the UK have remained largely unchanged since the publication of the Committee’s report in the 1980’s. In February 1985, the Secretary of State for Northern Ireland wrote to the then Speaker of the Northern Ireland Assembly stating that, *“the parity principle is central to policy on social security in the United Kingdom, and indeed, to the nation’s fiscal system as a whole. There are strong grounds for it remaining so, not least because of any significant departure from parity for a group of beneficiaries in one area of the United Kingdom would inevitably have implications for beneficiaries in similar circumstances elsewhere....”*<sup>8</sup>.

Similar sentiments with respect to the importance of maintaining parity in relation to social security benefit levels have been expressed in the recent DSD/DHSSPS [‘Review of the Support Provision for Carers’](#) report published in September 2009<sup>9</sup>. This review, amongst other issues, examined the social security benefits system for carers. In particular it explored the impact for parity that Mr McNarry’s Carer’s Allowance Bill posed in challenging the ‘overlapping benefits rule’.

The review ultimately recommended that the long-standing policy of parity between Great Britain and Northern Ireland in social security should be maintained. It suggests that one of the primary arguments for the maintenance of parity was the inextricable link between the social security system in Northern Ireland with the UK Tax and National Insurance systems. Closely related to this issue is that under parity, Northern Ireland receives a significant annual subvention from both the GB National Insurance

<sup>8</sup> Letter from the Secretary of State to J A Kilfedder MP, Speaker of the Northern Ireland Assembly in response to the NI Assembly Committee for Health and Social Services report on Social Security Parity. 25 February 1885.

<sup>9</sup> Department for Social Development/Department of Health, Social Services and Public Safety (2009) Review of the Support Provision for Carers. [www.dhsspsni.gov.uk/review-of-support.pdf](http://www.dhsspsni.gov.uk/review-of-support.pdf)

Fund and from general taxation to meet Northern Ireland's contributory and non-contributory benefit needs<sup>10</sup>.

Social security expenditure in Northern Ireland is part of Annually Managed Expenditure (AME). It is not subject to the Barnett Formula and is outside of the Departmental Expenditure Limit (DEL) that DSD have responsibility for managing over the budget period. DSD maintain that historically, the amount raised through National Insurance contributions in Northern Ireland is insufficient to meet the costs of contribution based benefits here (e.g. basic State Pension, contributory Employment and Support Allowance). Shortfalls in the Northern Ireland National Insurance Fund is made up by a transfer from the GB National Insurance Fund<sup>11</sup>. In 2008/09 Northern Ireland received £2.55bn to fund non-contributory benefits and a further £505m to fund contributory benefits<sup>12</sup>.

The HM Treasury '[Statement of Funding Policy](#)' for the devolved administrations clearly states that *"If, in the future, the Northern Ireland Executive change social security policy to differ from the rest of the United Kingdom, United Kingdom Ministers will need to take a view on whether and how to adjust this funding"*<sup>13</sup>. Although the Statement does not outline in explicit terms what course of action this might involve, one can only speculate that a number of scenarios could occur *depending on the nature of the break in parity*.

The UK Government could, for example, argue for the retention of parity in order to maintain similar eligibility criteria and benefit rates throughout the UK. It would be in a very strong position to argue for the retention of parity in this respect because of the significant subvention Northern Ireland receives from GB National Insurance and taxation. Alternatively, the UK Government could accept the break in parity but could insist that any additional costs associated with the breach (e.g. any additional payments on top of existing benefits) should be met from the Northern Ireland block grant and not from AME.

As the academics Birrell and Murie suggest parity can be viewed in three ways – parity as absolute uniformity; parity as similarity in most respects; and parity as similarity only in the broadest sense<sup>14</sup>. It is arguable that in terms of the eligibility criteria for benefits and the actual benefit rates which apply, parity is more closely aligned to "parity as absolutely uniformity" as there is broadly speaking little variation between GB and Northern Ireland. However, there are ways in which social security is administered in Northern Ireland which is through necessity different from its application in GB

---

<sup>10</sup> Ibid, p39.

<sup>11</sup> Ibid, p27.

<sup>12</sup> Northern Ireland Assembly Question for Oral Answer (AQO 712/11) Mr David McNarry, MLA. To ask the Minister for Social Development what the budgetary implications would be if he were to break parity with the rest of the United Kingdom in relation to welfare support.

<sup>13</sup> HM Treasury (2010) Funding the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly: Statement of Funding Policy. [www.hm-treasury.gov.uk/spend\\_sr2010\\_fundingpolicy.htm](http://www.hm-treasury.gov.uk/spend_sr2010_fundingpolicy.htm)

<sup>14</sup> As cited in Northern Ireland Assembly Health and Social Services Committee (1984) Social Security Parity. (Copy available from the Assembly Library).



(because of different administrative structures and IT systems between the NI and GB). Therefore, in many respects in terms of the day to day application of social security parity could be interpreted as being more closely aligned to “parity as similarity in most respects” and in some cases even “similarity only in the broadest sense”. As the next section briefly explores, it is important to consider that it is the nature of the proposed break in parity which is the crucial factor.

## The Scope for “Stretching” Parity?

In response to the Coalition Government’s programme of welfare reform, the former Minister for Social Development, Alex Attwood MLA, in a Statement to the Assembly in November 2010, indicated that he aimed to “*stretch the limits of parity in a way that does not prejudice the block grant or those who are on benefits*”<sup>15</sup>. On elaborating on his comments in reference to an Assembly Question, the Minister further stated<sup>16</sup>,

*“I have said repeatedly that it would be ‘thoughtless folly’ to rush headlong in and end parity. This would only create more need among those already in need. But I will stretch parity, to find ways in law and practice, to avoid, reduce, ease or lessen the impact of welfare cuts and welfare changes. I believe that the issue of parity should be discussed and addressed in the longer term and doing things different from parity considered. The issue is not just the politics of parity, it is much more the politics of poverty, which is at the heart of my discussions with DWP and my call to the Executive to provide new monies to protect those in need”.*

But is it possible to stretch parity without compromising the block grant? The Law Centre (NI) believes that in some instances it is possible to depart from parity without jeopardising social security entitlement. Law Centre (NI) suggest that there is scope in Northern Ireland for taking a more policy-led approach to implementing sanctions and conditionality measures and in contracting out welfare to work programmes<sup>17</sup>. Indeed, in a number of areas it will be difficult on a practical level for Northern Ireland to maintain absolute parity with GB. For example, the lack of a comprehensive childcare infrastructure in Northern Ireland relative to that in other regions, may mean that it will be significantly problematic for lone parents here to meet new lone parent obligations (i.e. to undertake certain work-related activities as part of their progression to work for lone parents with a youngest child age seven or over).

<sup>15</sup> Northern Ireland Assembly Official Report, 23 November 2010. Ministerial Statement on Welfare Reform. [www.niassembly.gov.uk/record/reports2010/101123.htm](http://www.niassembly.gov.uk/record/reports2010/101123.htm)

<sup>16</sup> Northern Ireland Assembly Question for Oral Answer (AQO 717/11) Ms Martina Anderson, MLA to ask the Minister for Social Development to outline what he means by ‘stretching parity to the maximum’ and what consideration he has given to ending the requirement for parity legislation.

<sup>17</sup> Law Centre (NI) Briefing on the Welfare Reform Bill. April 2010. <http://lawcentreni.org/policy/consultation-responses/686.htm>



*An Example of Parity Divergence: Local Housing Allowance and the Welfare Reform Act (Northern Ireland) 2007*

Birrell and Heenan (2010) in their paper “*Devolution and Social Security: the anomaly of Northern Ireland*” provide the following illustrative example of how there has at least been some recent policy divergence in relation to social security in NI and GB. The example relates to the payment of Local Housing Allowance and the Welfare Reform Act (NI) 2007<sup>18</sup>:

*“The introduction of the Northern Ireland Welfare Reform Bill in 2007, which proposed to put into law the same social security provisions as the UK 2007 Welfare Reform Act led to an item of policy divergence. There was much concern in the Northern Ireland Assembly that if this Act were simply mirrored in Northern Ireland, regulations would allow payment of the new Housing Allowance directly to tenants in the private rented sector rather than to landlords. The Assembly Committee suggested that this would cause additional difficulties for low-income tenants already struggling to prioritise their money, possibly leading to arrears and evictions and placing further burdens on the social housing sector. As a result of these concerns, the minister...decided she had enough leeway to retain the current system, whereby payments were made directly to landlords. The theory underpinning the Act in GB was that giving tenants additional responsibilities would promote and encourage financial self-management. The Assembly in Northern Ireland considered the additional responsibilities as burdens rather than freedoms. Consequently, an ideological viewpoint led to a breach in parity, which the UK government accepted on the basis of being a minor divergence.”*

Another example of an attempt at a divergence in the administration of social security was suggested by previous Social Development Committee in its [report on the Administration of Disability Living Allowance](#) (published in October 2008). The aim of the Committee’s report was to open up discussion on the administration of Disability Living Allowance in Northern Ireland and to make recommendations that the Committee believed would lead to its improvement. The Committee had expressed particular concern that the lengthy and repetitive DLA claim form took many hours to complete. The Committee recommended that the Department for Social Development consulted widely with stakeholders so that the form could be improved. The Department, however, felt that there were implications for parity associated with creating an NI-specific claim form stating that:

<sup>18</sup> Birrell, D. & Heenan, D. (2010) ‘Devolution and social security: the anomaly of Northern Ireland’. *Journal of Poverty and Social Justice*, vol 18, no. 3, 2010, 281-93.

*“Using the same claim form is a key contributor to ensuring Disability Living Allowance is administered consistently across the UK and meets the existing demand for parity between ourselves and DWP”.*<sup>19</sup>

## Challenging Parity – Negotiating with the UK Government

In general terms (particularly with regard to the level at which benefits are set across the UK and the eligibility criteria applied) parity has seldom been challenged by the various devolved administrations. It has been suggested by some academics that in general, *“there has been little political controversy about this through the devolution issue. Politically and administratively the system accepts that social security is set at the UK level and that devolved administrations have no rights to supplement the incomes of their citizens, excepted in limited fields related to devolved functions like free public transport for the elderly and wider rights to free drug prescriptions for out-patient health treatment”*<sup>20</sup>. However, that is not to say that parity has never been challenged by the devolved administrations as the following example illustrates.

There is an argument that the most effective course of action in seeking to challenge the most stringently adhered to aspects of parity is to enter into negotiations with the UK Government (which may involve sustained lobbying of the UK Government by the devolved administration with the assistance of interest groups). Parry (2007) provides an illustration of how parity was challenged by the actions of one devolved administration (i.e. the Scottish Executive) and how this issue was resolved at the UK level. This challenge to parity related to the decision by the then Scottish Executive to provide compensation payments for people who contracted hepatitis C from contaminated blood products<sup>21</sup>. The Scottish Executive’s decision to award compensation was made after the publication of a report by an independent expert group that concluded that Scotland had a duty to recompense those whose health had been affected as a result of contracting hepatitis C through NHS treatment.

However, although health policy was a devolved matter, aspects of the scheme required approval of the UK Government because the Scottish Executive sought a guarantee that the UK Government would not negate the compensation payments by clawing back compensation given to those infected by stopping their social security benefits (given that for some benefits there is a cap on the amount of savings a person can hold)<sup>22</sup>. This situation was said to have placed the UK Government in a very challenging position. Given that the parity principle promotes similar eligibility criteria and benefit levels across the UK, the Scottish compensation scheme and the requested protection of social security benefits would have placed similar ‘victims’ of

<sup>19</sup> Northern Ireland Assembly Committee for Social Development. Report on the Consideration of the Administration of Disability Living Allowance. 2 October 2008. [http://archive.niassembly.gov.uk/social/2007mandate/reports/report\\_110809R.htm#aim](http://archive.niassembly.gov.uk/social/2007mandate/reports/report_110809R.htm#aim)

<sup>20</sup> Parry, R. (2007) Social Security under devolution in the United Kingdom. Published in Jef van Langendonck ed, the Right to Social Security (Antwerp: Intersentia 2007), pp109-119.

<sup>21</sup> Example cited in Parry, R. (2007).

<sup>22</sup> British Medical Journal (2003) ‘Scotland breaks rank to offer compensation to hepatitis C victims’. BMJ 2003;326:303.

contaminated blood products who resided in England, Wales and Northern Ireland in a disadvantageous position in comparison to those in Scotland.

However, with heavy lobbying from the Scottish Executive, Scottish MSPs and other interested groups, the UK Government overcame this difficulty by implementing a UK-wide compensation scheme that included an announcement that the compensation would not result in the withdrawal of social security benefits for relevant claimants throughout the UK<sup>23</sup>. This example perhaps provides an illustration of how effective and sustained collective bargaining and negotiation is at times necessary to make substantial amendments to social security regulations.

## Interaction between Parity and European Law?

Could certain breaks in parity have far reaching implications in terms of European Law? In evidence to the Committee for Social Development (in its consideration of the Carers Allowance Bill) an official from the Department for Work and Pensions suggested that the Committee should also consider the interaction between European law and the parity principle<sup>24</sup>:

*“... The second thing that you might not have spotted, and there is no reason why you should, is that the interaction with European law could be quite tricky.*

*I had our lawyers try to think through what would happen if you pass this Bill. Essentially, one could use treaty rights to open up the GB and Northern Ireland systems to extra costs. If I were a carer of pensionable age and you passed this Bill, I would be incentivised to move to Northern Ireland and claim the carer's allowance. I could then move to the Republic and invoke my treaty rights and take that with me back to Great Britain.*

*That sounds a bit fantastical in one sense, but I bet that if the two systems moved apart, people would explore the possibility of doing that. The free movement rules would mean that I would be quite within my rights to claim in Northern Ireland, move to the Republic for a short while, invoke my treaty rights there and then move back to Great Britain. Great Britain might then respond to Northern Ireland not just by saying that you have got to fund your costs in Northern Ireland, but that you have opened our system up to costs that we have not budgeted for.....I think you should bear in mind the interaction with European law.*

*..... There are quite big risks involved in moving the two systems apart. As I said, Great Britain cannot mandate you to keep parity; you are sovereign*

<sup>23</sup> Scottish Executive (2004) Hep C ex-gratia payment scheme. 23 January 2004.

<sup>24</sup> Generally, those entitled to certain cash benefits in one European country can continue to receive those benefits if they live in a different country – this is known as the principle of exportability (there are certain exceptions to the rule, unemployment benefits for example, are generally not exportable).

*in that respect. However, the advantages of it, and the protection that we give to external challenge, are there and are not to be underestimated.*<sup>25</sup>

As there has yet to be a break in parity of this nature, it is difficult to assess the strength of this argument.

## 6 Conclusion

As local academics Birrell and Heenan highlight, the parity question has “*caused considerable confusion among commentators, academics and politicians*”<sup>26</sup>. With its quasi-legal context it can certainly at times be a very difficult concept to grasp. It interacts with, and has far reaching implications for areas that one wouldn’t initially think to associate with it. For example, one major issue which has only relatively recently been explored in any great detail is the relationship between parity and social security appeals tribunals in Northern Ireland<sup>27</sup>. As McKeever has emphasised, in terms of claimants appealing against departmental decisions case law in relation to social security appeals in GB are not legally binding within Northern Ireland but in practice they are regarded as persuasive authority in decision-making. The issue of parity and appeals is somewhat of an unchartered territory but it is certainly an issue worthy of consideration within the context of wider deliberations on parity<sup>28</sup>.

Undoubtedly the issue of parity will become a dominant theme as the Coalition Government’s welfare reform agenda progresses in Northern Ireland. Whether there is any operational flexibility to negotiate on aspects of the parity arrangements will need to be carefully considered by the Committee on a case by case basis and in the context of the potential impact on the social security budget and block grant for Northern Ireland.

---

<sup>25</sup> Northern Ireland Assembly Official Report, Minutes of Evidence. 10 March 2011. Committee for Social Development Report on the Carer’s Allowance Bill. [www.niassembly.gov.uk/social/2007mandate/reports/2010/report\\_47\\_10\\_11r.htm](http://www.niassembly.gov.uk/social/2007mandate/reports/2010/report_47_10_11r.htm)

<sup>26</sup> Birrell, D. & Heenan, D. (2010) ‘Devolution and social security: the anomaly of Northern Ireland’. *Journal of Poverty and Social Justice*, vol 18, no. 3, 2010, 281-93.

<sup>27</sup> See McKeever, G. (2010) *Reforming Social Security Appeals Tribunals in Northern Ireland: Parity whether to Leggatt or Not?* *Journal of Social Security Law*, Vol 17, 2010, Issue 2, pp71-100.

<sup>28</sup> See McKeever, G. (2010) *Reforming Social Security Appeals Tribunals in Northern Ireland: Parity whether to Leggatt or Not?* *Journal of Social Security Law*, Vol 17, 2010, Issue 2, pp71-100.