



Northern Ireland  
Assembly

Committee for Enterprise, Trade and  
Investment

# OFFICIAL REPORT (Hansard)

Small Business, Enterprise and Employment Bill  
— Legislative Consent Memorandum:  
Department of Enterprise, Trade and Investment

2 December 2014

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## Committee for Enterprise, Trade and Investment

Small Business, Enterprise and Employment Bill — Legislative Consent  
Memorandum: Department of Enterprise, Trade and Investment

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**Members present for all or part of the proceedings:**

Mr Patsy McGlone (Chairperson)  
Mr Gordon Dunne  
Mr Paul Frew  
Mr Paul Givan  
Mr William Humphrey  
Mr Danny Kinahan  
Mr Fearghal McKinney

**Witnesses:**

Mr Keith Brown	Department of Enterprise, Trade and Investment
Ms Fiona McCausland	Department of Enterprise, Trade and Investment
Mr Jack Reid	Department of Enterprise, Trade and Investment

**The Chairperson (Mr McGlone):** With us today from the Department of Enterprise, Trade and Investment we have Mr Keith Brown, head of the financial capability, mutuals and company law branch; Ms Fiona McCausland, principal in the business development unit; and Mr Jack Reid, deputy principal in the Insolvency Service. You are very welcome to the Committee. It is good to see you. Do you want to make an opening statement?

**Mr Jack Reid (Department of Enterprise, Trade and Investment):** We thank the Committee for the opportunity to meet. The issue that we are looking at is a proposal for a legislative consent motion to allow provisions dealing with devolved matters in DETI's area of responsibility to be included in the Small Business, Enterprise and Employment Bill being made at Westminster. The Northern Ireland Executive agreed to that when it met on 6 November.

I understand that the Committee members have already received a memorandum with detailed information about the provisions to be extended to Northern Ireland. If the Chairman is content, I am happy to limit myself to a short summary of the legislative areas affected and for us then to take questions from members.

The Bill makes amendments to companies legislation. The Assembly agreed that the Companies Act 2006 should apply in Northern Ireland, and, accordingly, amendments to the Act made by the Bill are intended to extend to Northern Ireland. The Bill amends Northern Ireland legislation dealing with director disqualification, which is a devolved matter. That will allow the public in Northern Ireland to benefit from enhanced protection from rogue and incompetent directors at the same time as the public in GB. It will also give creditors of Northern Ireland companies that have failed the same opportunity

that they would have in GB to benefit from compensation orders made against, or undertakings given by, the directors responsible.

Clause 1 of the Bill gives the Secretary of State for Business, Innovation and Skills the power to make regulations to render invalid contractual provisions prohibiting the assignment of receivables. The aim, in plain language, is to remove barriers to companies, especially smaller ones, raising finance by selling on or factoring in the right to collect money due to them for goods or services they have supplied. Extension of the provision to Northern Ireland will ensure consistency of approach across the UK.

Clause 3 gives the Secretary of State power to make regulations requiring large companies to publish details of their practices, pay and invoices. Extension of the provision to Northern Ireland will ensure that companies here have the same incentive to improve their payment practices as those in the rest of the UK.

Clause 37 is to extend to Northern Ireland and will give the Secretary of State the power to make an order or regulations granting exemption from liability to certain bodies carrying out public functions concerning accounting standards.

We are happy to take questions.

**The Chairperson (Mr McGlone):** Thank you very much. You touched on a number of processes going on at Westminster and processes going on here. Let me put this to you: the reason for utilising the Westminster Bill rather than an Act of the Assembly — I refer to paragraph 9 of the legislative consent memorandum — is that a Bill here would take longer to enact. However, on insolvency measures, a number of provisions outlined in the Department's briefing paper are to amend the Insolvency (NI) Order 1986.

The Insolvency (Amendment) Bill is currently going through the Assembly. Would it not therefore have been more appropriate to include the measures in the Northern Ireland Bill rather than to go with Westminster legislation? Is there any particular reason for that? It is just that it appears that you have two processes going on, with a bit here and a bit over there.

**Mr Reid:** Yes.

**The Chairperson (Mr McGlone):** This is also relevant. A big issue that has come up in the Insolvency (Amendment) Bill is the statutory regulation of insolvency practitioners. The Department has already confirmed to us that the Small Business, Enterprise and Employment Bill is to contain provisions for the regulation of insolvency practitioners. Those will not extend to Northern Ireland but are to be enshrined in a further insolvency Bill. The question that arises is why the legislative consent motion has not been extended to include provisions for Westminster to legislate on that matter rather than have us wait for another insolvency Bill. Your approach seems to be a bit here and a bit over there.

**Mr Reid:** Yes, I accept that.

**The Chairperson (Mr McGlone):** Can you clarify why that is the case, please? What is the rationale behind it?

**Mr Reid:** Yes, I will. Most of the amendments made to Northern Ireland law that relate to insolvency at all are, in fact, amendments to the Company Directors Disqualification (Northern Ireland) Order 2002, not the Insolvency (Northern Ireland) Order 1989.

**The Chairperson (Mr McGlone):** Right. Is it 1986?

**Mr Reid:** Let me see now. One of the schedules to the Small Business, Enterprise and Employment Bill replicates for Northern Ireland amendments to our Company Directors Disqualification Order that are similar or corresponding to those made to the Company Directors Disqualification Act 1986, which applies in GB.

**The Chairperson (Mr McGlone):** Right.

**Mr Reid:** We could not have used our Insolvency Bill to make those amendments, because the scope of that Bill is limited to amending the Insolvency (Northern Ireland) Order 1989. The right to amend the Company Directors Disqualification Order would not be conferred.

**The Chairperson (Mr McGlone):** OK.

**Mr Reid:** That is the reason for not including those amendments in the Insolvency Bill.

**The Chairperson (Mr McGlone):** OK. Right.

**Mr Reid:** There is an area in which amendments are being made to ensure that people who have been made bankrupt elsewhere in the United Kingdom are not allowed to act as company directors or insolvency practitioners in Northern Ireland. That single amendment is the only amendment that is being made to the Insolvency (Northern Ireland) Order 1989, and it is being made in the context that these are reciprocal arrangements. It is being made in the context of the UK as a whole. It is necessary to ensure that there are reciprocal arrangements in place so that people who are made bankrupt in Northern Ireland will not be allowed to act as directors in England and Wales either.

**The Chairperson (Mr McGlone):** OK.

**Mr Reid:** The matter of regulation or control of the recognised professional bodies that are responsible for authorising and regulating insolvency practitioners was raised, as you know, at Second Stage of our Insolvency (Amendment) Bill. Yes, had we known that the matter was going to be raised, we could have taken the option of including it in a legislative consent motion and had it dealt with in the Small Business, Enterprise and Employment Bill. However, we did not know that that was going to happen, and it is too late to do it now. It is too late to ask Westminster to start to amend the Small Business, Enterprise and Employment Bill to apply the provisions to Northern Ireland. We are actively looking at the possibility of including them in our current Bill in order to meet MLAs' concerns.

**The Chairperson (Mr McGlone):** Can you explain to me why it is too late for inclusion in the Westminster Bill?

**Mr Reid:** The Westminster Bill has entered the House of Lords, and we feel that it is too late to seek a major amendment to it at this stage. We feel that having the provisions included in our current Bill will ensure that they are still brought in in a timely manner for Northern Ireland.

**The Chairperson (Mr McGlone):** OK. Thank you. Can you clarify whether you are talking about the current Insolvency Bill?

**Mr Reid:** I am. We are actively looking at the possibility of including the provisions required in the current Insolvency Bill by way of an amendment to it at Consideration Stage.

**The Chairperson (Mr McGlone):** Grand. That is OK. It clarifies that point for us. No members have anything further to add. Those were the two main areas on which we sought clarification. Thank you very much for your time. It was very helpful.