Northern Ireland Assembly

Committee for Enterprise, Trade and Investment

OFFICIAL REPORT (Hansard)

Credit Unions and Industrial and Provident Societies Bill: DETI Briefing

13 December 2012

NORTHERN IRELAND ASSEMBLY

Committee for Enterprise, Trade and Investment

Credit Unions and Industrial and Provident Societies Bill: DETI Briefing

13 December 2012

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
Mr Stephen Moutray
Mr Robin Newton
Mrs Sandra Overend
Ms Sue Ramsey

Witnesses:

Ms Elaine Cassidy	Department of Enterprise, Trade and Investment
Mrs Jackie Kerr	Department of Enterprise, Trade and Investment

The Chairperson: With us today is Jackie Kerr, head of business regulation division, and Elaine Cassidy, deputy principal of company law branch. Good morning. You are very welcome. We will follow the usual format. You have been here previously, Elaine. The usual format is that we open the floor to you to make an opening statement. Then, we will have questions on clarification or on any other addenda that members wish to add afterwards. So, the floor is yours. Please continue.

Mrs Jackie Kerr (Department of Enterprise, Trade and Investment): Thank you, Mr Chairman. I will set the scene regarding the process that has been followed to date as part of the work on reform of the credit union sector in Northern Ireland since the Committee published its report in 2009.

The reform process has been taken forward in two stages. The first stage focused on establishing the regulatory framework and registration arrangements for the credit union sector to facilitate the reform process and the new legislation that has been taken forward. The first phase of that process of reforming the regulatory framework involved a consultation during 2010, which was taken forward by the Department of Enterprise, Trade and Investment (DETI) and the Treasury to look at the appropriate regulatory arrangements for the sector in Northern Ireland. The outcome of that process led to the decision that responsibility for the regulation of credit unions in Northern Ireland would transfer from DETI, which exercised it until 2012, to the Financial Services Authority (FSA) in GB.

Having taken that decision in 2011, the Treasury and the FSA undertook further consultation the following year. The Department worked very closely with the FSA and the Treasury in that process, and the Committee was also very involved in the process. The process focused on how the new regulatory framework would operate in practice. Around this time last year, in late 2011 and early 2012, a series of roadshows was organised with credit unions, bodies and relevant stakeholder groups across Northern Ireland to allow further discussion on what this would mean in practice and what the details of the new regulatory regime would be.

The outcome of that work was that, at the end of March 2012, responsibility for the regulation of credit unions transferred to the FSA. So, DETI no longer has the role of regulating the bodies. The Committee will be aware that in June 2012 a legislative consent motion was passed by the Assembly which facilitated the transfer of the registration function from DETI to the FSA as well, so that the entire regulatory framework, from registration to regulation, would be exercised by the successor bodies to the FSA. You will be aware that, at present, changes are being taken forward in GB that will create two new bodies in place of the current Financial Services Authority. The actual transfer registration will be effected when those new bodies are established. At present, DETI still exercises that role.

The outcome, or what has been achieved through the legislative changes that have gone through to facilitate the transfer of responsibilities to the FSA, is that credit unions and their members now enjoy the protections available under the FSA regime; much greater protections than they would have enjoyed under local regulatory arrangements. A consequence of this has also been to enable credit unions to expand the range of services they can offer. So, this has essentially established the regulatory framework to facilitate the wider legislative process of reform for Northern Ireland credit unions.

I will pass over to Elaine, who will take you through the detail of what has been happening as part of the pre-consultation processes leading up to the legislation itself.

Ms Elaine Cassidy (Department of Enterprise, Trade and Investment): As Jackie mentioned, the regulatory framework has set. That was the initial stage. We are now into stage 2, which is the development and process of the primary legislation Bill to update credit union, and industrial and provident society, legislation in Northern Ireland.

We have a slot in the legislative timetable for 2013-14. We have a bit of time now, so we have tried to use it to have extensive pre-consultation engagement with stakeholders. We have met numerous players in the credit union and industrial and provident sectors. To date, we have met the Irish League of Credit Unions, the Ulster Federation of Credit Unions, the Co-operative Forum, individual credit unions, the FSA and the Treasury. In January, we plan to meet the Department of Finance in the Republic; the Central Bank of Ireland, which regulates credit unions in the Republic; and the Tyrone Federation of Credit Unions. Come the end of January, we will have had extensive discussions with all of the key players in the sector. What that has enabled us to do is get a grip on the key policy areas that affect the sector. It has helped us to engage with stakeholders and has made the public much more aware of the Bill that is coming forward.

As the basis for our policy development, we have used the 2009 Committee for Enterprise, Trade and Investment report and the situation in GB since the implementation of the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 (LRO). We have also taken account of any other issues, concerns or requirements that the sector feels may be appropriate. We hope to end the pre-consultation stage early in the new year and be in a position to go out to full 12-week public consultation in the springtime. That will allow us to consult for a full 12 weeks and take us through the summer. It will allow us to have the legislation passed within the Assembly's current mandate.

In the written briefing that the Committee received last week there is a list of 23 policy proposals that we have scoped out and drafted. Rather than run through each one individually, because we could be here all day, I am very happy to take questions, concerns or views that the Committee may have on each aspect. Again, if there is anything that Committee members feel that we have, perhaps, missed or that would be particularly appropriate to consider, we would be grateful for your views on that.

The Chairperson: Just one thing; the time frame. When do you think the legislation will be in place? There seems to be an extensive consultation going on. I was not on the Committee when the process started, and I know that some aspects were contingent on other things happening at Westminster, but the Committee report was published in 2009. We are coming into 2013, and I heard 2014 creeping into the lexicon. People could be pensioners by the time this is sorted out.

Ms Cassidy: It is a two-stage process. The first stage involved putting the regulatory and registry function and the framework into place to allow us to put the policy proposals through by primary legislation. Aspects, such as developing the financial services that credit unions cannot offer, need the appropriate regulation to be in place first. I appreciate that the process has been longer than anticipated, but all those elements have had to fall into place to allow us to be able to make a piece of primary legislation that does what we want it to do. We were constrained without the appropriate regulation and registry function being in place.

Mrs Kerr: As Elaine said, we have a legislative slot, and this is the earliest slot that we can secure at this point in time. So, we are trying to make best use of the time available to us as part of this process to ensure that we are consulting as widely as possible and ensure that we get the legislation right.

The Chairperson: I appreciate that. From what I am hearing, it was anticipated that it would not be in place until 2013 anyway. Are you saying that this slot has become available now? In other words, was there not a slot made available for this in the first instance?

Mrs Kerr: This is a slot that was made available. Departments go through the process, and that is what we were allocated.

The Chairperson: OK. I thought when you said that a slot had become available you meant something else. So, this slot was for this piece of legislation.

Mrs Kerr: Yes.

Mr A Maginness: I welcome the legislation. It has been a long journey, but it has been worthwhile. We have the regulatory framework in place, and now we can put a bit flesh on the bones. I welcome the legislation: it is very important. You talk about other services and extending or expanding the range of services offered by credit unions. Will you give me a brief sketch of the additional services you imagine credit unions offering after the legislation has been passed?

Ms Cassidy: Once regulation is passed to the FSA, credit unions in Northern Ireland will be able to offer the full range of financial services that credit unions in GB can offer: mortgages, ISA accounts, debit and credit cards, and the payment of benefits could all be offered because of the additional FSA regulation. With things such as mortgages, credit unions have to get prior approval from the FSA. So, there is form-filling, and then the credit union gets approval to offer that service. There are certain credit unions in Northern Ireland that are doing that. Once the regulation function is passed, they will be able to offer all the additional services that they want to offer.

Mr A Maginness: So, credit unions can start to expand their services. Is that what you are saying to me?

Ms Cassidy: Yes.

Mr A Maginness: They do not have to wait for the legislation.

Ms Cassidy: No.

Mr A Maginness: So, in some ways, the legislation is just adjusting the functioning of credit unions in Northern Ireland. It is not that extensive, is it?

Ms Cassidy: It brings credit unions and industrial and provident societies in Northern Ireland into the 21st century. There are key elements, such as group membership, on which we plan to consult. That will be one of the bigger policy areas, but there are also things such as electronic communication and allowing credit unions to communicate with their members by e-mail. It is just bringing things up to date.

Mr A Maginness: It is really a modernisation of the credit unions.

Ms Cassidy: Exactly.

Mr A Maginness: You see group membership as being a crucial part of the legislation. Are there any restrictions on group membership that you can envisage?

Ms Cassidy: Currently, in GB, post-LRO, they offer group and corporate membership. We think that the idea of group membership sits clearly within the ethos of Northern Ireland credit unions. So, local community groups or football clubs can all borrow and avail themselves of the services of a credit union. Perhaps, we are not as sure on the corporate aspect because of the risk element. The primary objective of Northern Ireland credit unions is to protect their members. We plan to consult on introducing group and corporate membership and see what the response is. I have to say that, in our pre-consultation, we learned that all or most credit unions are very keen on the group aspect, but are, perhaps, not as convinced on the corporate membership aspect. So, our intention is to put it out for consultation and see what happens.

I had discussions with the Treasury and the FSA on how it is being operated in GB. To date, they have not had any problems with it. However, as the LRO came into effect only in March, they have not had a real chance to look at its operation so far.

Mr A Maginness: I certainly welcome group membership being extended to credit unions. Of course, there would need to be safeguards on that. I am sure that we will discuss it at a later point. Thank you very much indeed.

Mr Flanagan: Thank you, ladies. You are very welcome. Thanks for the update. It is very exciting for the credit union movement that it will get these changes. Having spoken to a number of credit unions, I know that they are very keen to see the changes implemented as soon as possible.

However, a number of concerns have been raised with me by directors of some local credit unions. I know that you have engaged extensively. What efforts have been made to engage with individual directors of credit unions on a one-to-one basis?

Ms Cassidy: We have offered the invitation to the director, manager or whoever we felt was appropriate, of each credit union that we have met. To date, we have not met individual directors. When we get into full consultation, we are more than happy to meet them all. We have invited the Northern Ireland board of the Irish League of Trade Unions to ask us to present to them, and it is the same with the Ulster Federation of Trade Unions. The invitations have been out there. I suppose that we are just at the initial stages. We have to get down to the detail and the working out of aspects.

Mr Flanagan: As regards how credit unions will be classified when this is finished, some have been able to avail of funding through the rural development programme because they are not classified as financial institutions currently. Will that change?

Ms Cassidy: They will still be classified as being a credit-union mutual, not as financial institutions.

Mr Flanagan: One thing that the Committee looked at recently was the cost of administering the growth loan fund that DETI rolled out for businesses. When that process is finished, will the credit union movement be in a place to tender for such Government work?

Ms Cassidy: To be honest, I am not sure at present. I will certainly look at the issue and come back to you with an answer.

Mr Newton: Thank you, Mrs Kerr and Ms Cassidy, for coming along. I think that Alban must have been reading my notes because his questions were in much the same vein as mine. You mentioned non-qualifying members. Perhaps, you could talk us through that. My other issue is whether individual branches of a credit union will be treated as autonomous bodies, with the usual risks for those who are post holders in them. How will the legislation address that issue?

Ms Cassidy: I will start with the issue of non-qualifying members. Currently, only 10% of a credit union's membership can be made up of non-qualifying members. The proposal in legislation is to remove that 10% and allow each credit union to determine for itself what percentage of non-qualifying members it can have. The theory is that just as times are changing and people are moving — kids are going off to university in a different country and people are moving away because of their jobs — they still want to be part of the local credit unions that they have grown up with. That 10% may act as a barrier in the future. It does not seem to be an issue now, but to future-proof the legislation, we are proposing to remove that barrier and let each credit union determine for itself what it feels is an appropriate figure in order to allow local credit unions to keep the members who want to stay with them.

Mr Newton: They will have to put a figure on non-qualifying members.

Ms Cassidy: If they want to. From talking to the credit unions, it seems that the maximum amount is about 8% at the minute. The 10% does not currently seem to be an issue, but we just do not know, and we do not know how long it might be before another piece of legislation would come in to amend it.

Mr Newton: With regard to the autonomous nature of an individual branch of the credit union and those who hold office in that branch, there are risks and responsibilities.

Ms Cassidy: An idea was flagged by the Irish League of Credit Unions about amalgamating credit unions into a Northern Ireland credit union movement. That would be more like a bank, so you could go into a branch in Lisburn or a branch in Newry. We looked at the details and the risk associated with that and the regulation and management of it, and it seemed to be a step too far. It was really going away from the ethos of the locality of the credit union and the common bond, so we have no proposals to extend that aspect of the credit union. That is not currently included in the policy proposals for the Bill.

Mrs Kerr: There are also no proposals for changes in liability of directors, if that is what you were alluding to.

Mr Newton: Sorry, I should have declared an interest as a member of a credit union. If I go into my local credit union and do something dodgy — not that I would — as regards the guy behind the counter who deals with me or the officers of that credit union, where does the responsibility lie with that branch? Are they covered by the organisation, or do they have risks and responsibilities?

Mrs Kerr: In respect of an individual member?

Mr Newton: Yes.

Mrs Kerr: There are protections for members generally through regulation by the Financial Services Authority. We need to go back and check, but I cannot imagine that there will be a liability for directors or the credit union as a result of fraud perpetrated by a member, because it is not the organisation that is liable. If it is OK, I will come back and give you a more fulsome answer on liabilities of members and any case history in respect of a situation such as you describe.

Mr Newton: That is fine.

The Chairperson: Mr Newton reminded me that it was remiss of me not to declare that I am a member of a credit union. I declare that interest too.

Ms S Ramsey: It might be easier to declare who is not a member. I am also a member. What are the rates for your loans? *[Laughter.]*

Mr Agnew: I declare my interest as a member of a credit union.

Mr Frew: Am I the only one who is not?

Ms S Ramsey: You have too much money.

Mr Agnew: I am heavily indebted to the credit union in every sense. Thank you for the presentation. You suggested the increase in services that credit unions can now provide, given that they have had FSA regulation, particularly with the consideration of the increase in the 1% a month interest rate cap. While I appreciate that the governance of credit unions is not going to change in the sense of it being a mutual society, I would be concerned that, if services are expanded so far, the credit union, to all intents and purposes, becomes a bank; albeit with a different governance model, but, to the end user, there would be no difference. Is that something that people are aware of? What is in place to keep the unique character of a credit union?

Ms Cassidy: When looking at the policy proposals, our starter was the 2009 report and the LRO, but when we started to look at the LRO in detail, we realised that it was not wholly appropriate to Northern Ireland because the situation was so different. The ethos of credit unions here is very true to what a credit union is about — the common bond, the locality and knowing people. That is how it works, and that is why credit unions here are so successful.

The Treasury is currently going out to consult on raising the 1% interest rate to 3%, and that consultation should be out this week. The 1% rate is a proposal, but the Department thinks that that is wholly adequate and should not be amended. We are going out to consult. However, from all of our pre-consultation with the credit unions, I have to say that no one wants that to be amended. We thought that, because it was in the LRO, we would consult on it. I imagine that there will be a wholehearted response to say that it should be kept as is. We are very aware that the status of credit unions here is very different from that of those in GB and that credit unions work so well here that we would not want to do anything to affect that.

Another provision in the LRO is the attachment-to-shares provision. When you join a credit union in GB, it determines there and then whether you are allowed to avail yourself of loans. In Northern Ireland, it is done on a case-by-case basis. The Department believes that that is a much more appropriate way of doing it, because you can look at the borrower's history and at their ability to repay. We intend to consult on that provision, but we think that, in Northern Ireland, it is not appropriate because it does not fit within our framework and our ethos.

Mr Agnew: That brings me to my second question. I was going to ask what the proposals are for amending provisions relating to attachment of shares, and you have largely covered that. Where are we on amending the rules on the common bond, and what could the amendments look like?

Ms Cassidy: Again, having looked at that LRO provision, we do not think that it is wholly appropriate here. In GB, the common bond provisions were amended to encourage more members to join because, in GB, membership is at 2% as opposed to our 50%. Also, credit unions in GB are heavily subsidised by local councils, so they wanted the common bond to be extended to include the whole council area. The Department thinks that the current bond as it operates here is perfectly adequate and helps to protect the interests of credit unions and their members. Again, we will consult on that provision, because some credit unions that we spoke to were maybe keen on looking at it, but it seems that there cannot be a direct lift of that provision from GB to NI because the circumstances are so different.

Mr Agnew: Thank you. I am somewhat reassured by those answers.

Mrs Overend: Thank you very much for coming today. It is very interesting. I have one minor question to add on to that. What are the regulations regarding people who work in credit unions in Northern Ireland and how is it planned that that will change? If those come in, do you plan that they will be retrospective or that they will start from a certain date?

Ms Cassidy: The only provision in the current policy proposals for the Bill to affect people who work in a credit union is in relation to the disqualification of directors. We intend to bring that in line with regular company law provisions. It is already in place for industrial and provident societies but not for credit unions. That is the only intended provision that will have an effect on anyone who works within or with a credit union.

Mr Dunne: In our previous discussions, there was talk about training for staff in credit unions on the changes. How is that rolling out, or are you aware of what is proposed on training?

Mrs Kerr: The Minister has made available a package of £20,000 in assistance for each of the two trade bodies to assist in this transitionary period from the transfer of regulation from DETI to the FSA. The bodies are thinking about and focused on training and support for staff to deal with the new procedures. We have received proposals from both trade bodies on how they would use that funding, and those are getting active consideration. We hope to make a decision within this financial year, but shortly. That is primarily focused on providing that kind of support to help them to cope with the changes.

The Chairperson: In your initial draft policy proposals that are being considered for consultation, you mention as an issue:

> *"Investment in community development - relax the rules on application by credit unions of surplus towards social, cultural or charitable purposes".*

Have you any fixed or broad thoughts about the applicability or otherwise of that yet?

Ms Cassidy: We have looked at that area in quite a lot of detail. I know that it was an element of the 2009 ETI Committee report. The prime objective of credit unions is to protect members' interests. So, what we do not want to do is introduce any provision that may add an element of risk to those members. We have talked extensively to the two trade bodies about the community reinvestment aspect. It has been quite difficult to pin down whether it would be a loan or an investment in order to obtain a return. The idea of introducing group membership is that local community groups will be able to borrow and avail themselves of the service of credit unions. The Northern Ireland situation is very different from the GB one. Once a credit union pays a 3% dividend to its members, it can allocate up to 10% of its surplus to social and charitable funds. Our current thinking is that that element, along with the introduction of group membership, would cover the community aspect without attaching an additional risk to credit union members.

The Chairperson: OK. Thanks very much for that. I do not think that members have anything further to add, so that is it. That is great. You will be back up again to discuss payday loans on 5 February. Is that right, Jim?

The Committee Clerk: An invitation to attend that event on the 5th was sent through Dennis Cunningham, head of consumer affairs.

The Chairperson: You have a wee while to prepare for that over Christmas.

Ms S Ramsey: Get a payday loan to see what it means.

The Chairperson: Thank you very much indeed for your time.