



Northern Ireland
Assembly

Committee for Enterprise, Trade and
Investment

OFFICIAL REPORT (Hansard)

Consumer Rights Bill: Legislative Consent
Motion

20 February 2014

NORTHERN IRELAND ASSEMBLY

Committee for Enterprise, Trade and Investment

Consumer Rights Bill: Legislative Consent Motion

20 February 2014

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Sydney Anderson
Mr Sammy Douglas
Mr Gordon Dunne
Mr Paul Frew
Mrs Sandra Overend

Witnesses:

Mr Dennis Cunningham	Department of Enterprise, Trade and Investment
Mr Jimmy Hughes	Department of Enterprise, Trade and Investment

The Chairperson: With us here today are Dennis Cunningham, head of consumer affairs branch; and Jimmy Hughes, deputy chief trading standards officer. You are both very welcome.

Mr Dennis Cunningham (Department of Enterprise, Trade and Investment): Good morning, sir and Committee members.

The Chairperson: It is usually on a Saturday morning that we hear Jimmy waxing eloquently about consumer-related matters and dealing with them very well, too. I wanted to put that on the record for you, Jimmy.

Mr Jimmy Hughes (Department of Enterprise, Trade and Investment): Thank you.

The Chairperson: It is always refreshing to hear a public servant who is fully across the range of issues out there and able to communicate them to people in a language that they understand.

Mr Hughes: Thank you very much.

The Chairperson: So thank you for that.

Mr Flanagan: You were not expecting that.

Mr Hughes: I was not, but he has not finished yet.

Mr Flanagan: That is only the start of it.

The Chairperson: Praise where it is required and needed. You know the score and how we operate here. You have up to 10 minutes to present to us on the issue, as you see it, and then we will have a few questions from members.

Mr Cunningham: Chair, by way of introduction, the Committee will be aware that the Department for Business, Innovation and Skills (BIS) at Westminster has been working on plans to introduce consumer rights and some kind of consolidation of consumer rights for something like two years now. I think that this is a good news story for consumers and businesses. I am sure that members will have seen from the links that we provided that this is a comprehensive Bill, covering a lot of very detailed technical aspects of transactions and the supply of goods and services. It attempts to harmonise and clarify areas of consumer law on which — I think that this is fair to say — there has been not confusion but a need to provide legal interventions, and more than you would have wished, to resolve disputes. The Bill, which applies across the UK, attempts to clarify such uncertainties and introduce some new aspects that the existing legislation does not cover, such as digital content.

The legislation applies across the UK, but one could ask why Northern Ireland does not make its own legislation, given that it has devolved responsibility for consumer protection. That is a fair question, but I think that the answer is probably even more important than the question. From a business perspective and a consumer perspective, whether you are a consumer in Northern Ireland or in Scotland, England or Wales, you will inevitably carry out transactions and buy goods from many firms that operate across the UK. The one thing that we try to do — Jimmy, in his Trading Standards role, will liaise on this — is maintain consistency for businesses, whether they happen to have operations in Glasgow, Newcastle, Liverpool or here in Belfast. So there is a need to maintain parity and consistency to protect consumers and to be fair to traders and businesses. That is why there is a UK-wide approach instead of Northern Ireland doing its own thing.

Had there been a policy rationale or a need articulated by the trade bodies or organisations such as the Confederation of British Industry (CBI) for Northern Ireland to have something different, that would have come to the fore. That has not happened. There is a need to maintain parity for trading purposes and so that consumers anywhere in the UK have a consistent approach to resolving disputes. We often buy goods and services from companies based elsewhere in the United Kingdom, so it is important to have a redress that is consistent.

The Consumer Rights Bill has been an opportunity to consolidate and bring together areas in which there have been differences between the rules here and those in the rest of the UK. In the purchasing of cars, for example, different rules and regulations come into play. A reasonable consumer who bought a car two weeks ago and was unsatisfied would think that there was something wrong with it and want a refund. Even simple matters like that become complex because the volume of legislation on consumer protection that comes into play is not as clear as it should be. This Bill will make that kind of situation a lot clearer: there will be a 30-day option.

Mr Hughes: Yes, there will be that option for people simply to say that they want to reject goods because they are faulty. At that point, you have the right to give the goods back. At present, the question is whether it is reasonable. Answering the question of whether it is reasonable is virtually impossible: you are always looking at different circumstances. The new measures will make things hard and fast. If there is something wrong, the trader will get a shot at fixing it, and, if they are unable to do so, the consumer is entitled to reject the goods. That is very basic.

Mr Cunningham: The rationale for it being done on a UK-wide basis is as I explained: the problems facing consumers and businesses across the UK are consistently the same. There is nothing unique to Northern Ireland. In an ideal world, given that a lot of our consumers are buying stuff online from areas in Europe, European states would harmonise their laws. This Bill will enable, if that were to happen in any meaningful way, the UK, and Northern Ireland within that, to respond more easily, because we will have one Consumer Rights Bill.

The Chairperson: I was going to ask you about online purchases, but you got in ahead of me.

Mr Flanagan: I am still trying to come up with a lock of questions, but I will tear on anyway.

I do not think that anybody would reject the need for updated consumer legislation: the last comprehensive legislation was about 30 years ago, and there have been significant changes since. However, I do not accept the rationale that we have to do the same as England and Wales. I would be very reluctant to allow a Tory-led Government to bring in changes that would have an impact on

consumer rights, because I do not think that they would have consumer rights at the heart of what they were trying to do.

When a matter is devolved, we have an elected local Assembly and Executive in charge of bringing in legislation on a range of issues, and we should embrace that opportunity. We should not hand over the power to the British Government, not knowing how the Bill will be finalised. You are asking us to support a legislative consent motion (LCM) for a Bill, but we do know how it will look because it is still going through its early stages and has not gone through either of the Houses of Parliament. At this stage, I am reluctant to support it because I do not know what it will look like. There are questions being raised about how appropriate it is and how wide-ranging it is.

I do not accept that there is a need for a single system across Britain and the North. We have devolution here, so we can bring in whatever system we feel is best to protect the needs of consumers. You say that there is nothing unique about the North of Ireland, but we have a border. An awful lot of people who shop in the North come from the South, and an awful lot of consumers in the North go to the South to shop. We have a situation that needs to be addressed, and it will not be dealt with by a British Government. Moreover, the EU consumer rights directive needs to be implemented across all member states by 13 June. What is being done to make sure that we meet that deadline?

The Chairperson: On that, I am reading in your summary that the Minister agreed to Northern Ireland being included in the UK-wide consultation on the Bill's provisions. Some of the provisions of the Bill are reserved matters, so can you expand —

Mr Flanagan: Can they answer the question that I asked first and then come back to yours, which is on a different issue?

The Chairperson: It is. He will answer yours surely, Phil, but I want that question answered for my own mind.

Mr Cunningham: A lot of the companies that Northern Ireland's consumers are dealing with operate in England, Scotland and Wales. From that point of view —

Mr Flanagan: Which of them operate in England, Scotland, Wales and the North and do not operate in the South? They are all well used to having different systems.

Mr Cunningham: I am not able to go into the exact details. Even Tesco operates in foreign markets, but it primarily operates as a supermarket in the United Kingdom. Car manufacturers operate in other countries throughout Europe and the world. The rationale for including Northern Ireland in the Bill is that a body of legislation exists to help consumers get redress when purchasing goods or, indeed, services. At the moment, it is all over the place. The Bill will make it clear and clarified. I would love other areas to do exactly the same. I cannot give you specific examples, but it is true that other areas look at what the UK introduces and try to replicate that.

I mentioned digital content, and you are quite right to say that that is an area that is spread across Europe. There is a need to respond to that from a consumer perspective. Currently, there are weaknesses. There are weaknesses in the area of downloaded content. The Bill will put that right. If you are looking at the legislation from a consumer's perspective, you will see that it is very clear that there is big benefit in clarifying exactly what the rules are. The debate is about whether that should be done Northern Ireland legislation separate from the UK legislation. Yes, we could do our own, but one of the aspects that would have to be considered is the effort needed to do that. You would effectively be replicating or duplicating what is in the Bill anyway. The Bill was presented in the House of Commons on 23 January, so there is a detailed Bill there with the proposal, and we know exactly what it means.

Mr Flanagan: It is a proposal but not a finalised Bill, Dennis.

Mr Cunningham: That is true, but there has been large-scale consultation across the UK with businesses, trade associations and trading standards authorities on exactly what it will mean, and a serious effort has been made to evaluate its impact.

Mr Flanagan: With whom did they engage here?

Mr Cunningham: They came here and had presentations and public forums.

Mr Flanagan: With whom?

Mr Cunningham: They have also had input from the Consumer Council. The Consumer Council provided input to the Bill.

Mr Flanagan: Is the role and responsibility of the Department here not to introduce legislation to protect consumers? I do not understand why you are handing the responsibility over to another Government.

The Chairperson: I am trying to get to the bottom of that myself.

Mr Dunne: Another Government?

The Chairperson: Are you saying that, essentially, it would be a cut-and-paste exercise if the Department were to do it?

Mr Flanagan: No, the Department is handing over the whole power to set the legislation to the British Government.

The Chairperson: Sorry, I am talking about if you were to bring in specific legislation here.

Mr Cunningham: We would be duplicating or replicating what is being introduced in GB, because that is what consumers and businesses need here, too. The legislative consent motion guidance states that, where there is an existing body of legislation that is applicable to the UK, it is legitimate to use the LCM method to bring its relevance here. There are matters in the Bill to do with competition that are not devolved, and the Bill is addressing those. You would end up creating a confused environment for consumers and businesses, whereby some elements would be looking to the Northern Ireland duplication of the rest of the UK's Bill, and, for competition elements, you would still be depending on what happens across the water to give you guidance. From a business perspective and a consumer perspective, that is not a good place to go. Consolidation and harmonisation makes a lot more sense.

You are right to say that Northern Ireland could have its own legislation, but no one has provided any body of evidence to suggest that we should. We do have our own legislation. We produce our own legislation on weights and measures. In that area, there is sometimes a need for Northern Ireland to have specific and different legislation.

Mr Flanagan: Whom did you ask when determining whether we need our own specific legislation?

Mr Cunningham: BIS wrote to the Office of the First Minister and deputy First Minister seeking the permission of the First Minister and the deputy First Minister to progress on that basis. It then consulted widely and sought views in Scotland, England, Wales and here in Northern Ireland. Interestingly, Scottish colleagues would like to have been in the same position as us in having devolved responsibilities for consumer protection. They were refused that right.

Given our experience in Northern Ireland and what we know about the actual workings of consumer protection legislation — that is, the Sale of Goods Act 1979 and Provision of Services Regulations 2009 — I would argue that, although you have that law, it makes eminent sense to maintain parity with the rest of the UK. The Law Society of Scotland confirmed the same when the Bill was produced. It is delighted that the Bill is addressing many of the concerns that it has from a Scottish perspective.

The Chairperson: I want to ask two things. First, OFMDFM has agreed to going down this route; is that right? Secondly, Jimmy, I saw you indicating that you wanted to come in at one point during the discussion.

Mr Flanagan: Can I just get clarification on what OFMDFM agreed to?

Mr Cunningham: OFMDFM was written to the by the Minister in BIS, who asked for the agreement of the First Minister and the deputy First Minister to commence a consultation process with a view to bringing in such legislation.

Mr Flanagan: What was the response?

Mr Cunningham: It was agreed.

Mr Flanagan: Was it agreed that they would do a consultation —

Mr Cunningham: Yes.

Mr Flanagan: — or that they would bring in overarching legislation and that the Assembly and the Executive would endorse it?

The Chairperson: That has yet to happen, but we can proceed with the consultation.

Mr Hughes: It looks as though we are talking about a very radical reform. The short and long of this is that you could almost prosecute somebody under the Trade Descriptions Act for describing it as a radical reform. *[Laughter.]* It is like bringing out a new model of car towards the end of the car-trade season. The papers are full of it, but, when you flood down to see it, you find that it looks like the one that was sitting there last week. You are wondering what is different about it, and the response is, "Oh, yeah. There is a different button on the radio". Fantastic.

In going through the legislation, let us think of the things that we do. We buy and sell goods. There is virtually no change in the Bill. We buy and sell services. There is virtually no change. Rules on digital content had to be brought in. I am not of the age to do it, but my children and their children tell me that you do not buy an LP or CD any more. Instead, you press a button, and the music is downloaded. Legislation on that did not exist. We did not know whether that fell under goods or services. Even after the money had been paid, we were not quite sure who owned the product. Legislation on digital content has therefore been brought in as a sort of stopgap. If you look at the rules on digital content to see what your rights are, you will find that they look almost identical to what you will find in the Sale of Goods Act.

We are talking about this as an opportunity to build a new consumer empire or, at least, a new regime for consumerism. However, we are taking only a very small step and codifying that which is in place at present. At this time, it would be rash to say, "Let us go off on our own" or "Let us go down a different avenue altogether". If we were to do that, we would essentially be kicking the entire surface from underneath consumers and businesspeople. The Bill is not the radical change that everybody thinks that it is. It introduces one thing that will impact on consumers, which is the 30-day period in which to say, "Right, I have had it". That is it.

Mr Flanagan: Jimmy, that is not the only change that it makes. It hands over the Executive's responsibility to introduce consumer rights legislation.

Mr Hughes: To say that it takes that step is a rather strong way of putting it. The right is not handed away. We are allowing the other Parliament to codify and restructure the thing. If we were thinking of having a radical, root-and-branch reform, that would be the point at which to say, "Yes, we want to have a stronger and harder impact".

Mr Flanagan: Why are we not doing that?

Mr Hughes: We do not think that that is the way in which to go at the present time. We have a legislative system that greatly works. There are, I think, seven different contracts for how you buy something. Basically, somebody has got a bit fed up with that and put them all together. That is really what the Bill is. It may well have some extra bits and pieces, but the drift of the thing is like the new car that I mentioned, where everything is largely the same as it was before. To be quite honest, the owner of the Old Curiosity Shop, were he still in business, could quite comfortably operate within the new system. The system is not imposing anything on you.

If a businessman is operating a proper business today, nothing in here is going to change his proper business. A consumer going down the town to buy will get help from the day and hour that he goes down the town. He will know that he has 30 days to say, "Right, I have had enough. Let me get out of here". If you are asking whether I would like to see changes in consumer law, I am quite sure that there are very good ones to be made, but this is perhaps not the legislation that contains them. If we are handing away legislative authority, we are handing it away in the interests of expediency, and we

are not handing it particularly far, because, by the time that the legislation is finished with, it will be, to a greater or lesser extent, what it started off as.

Mr Flanagan: For there to be a radical reform of consumer rights, what changes are needed that are not included in this Bill that we could include if we were to draft our own Bill?

Mr Hughes: That is well beyond my pay grade, to be quite honest.

Mr Cunningham: I think that that goes back to the point made at the start, which is that nobody has provided any evidence or submitted any response to the consultation to suggest that there are any gaps in the Bill.

Mr Flanagan: But you have not done a consultation, Dennis.

Mr Cunningham: BIS has consulted here in Northern Ireland —

Mr Flanagan: But you have not. The Department here has not.

The Chairperson: Hold on a wee minute, Phil. Let him respond.

Mr Cunningham: There has been a public consultation carried out at the Trading Standards Service offices in Newtownbreda. The Consumer Council, which is well versed in portraying the needs and views of consumers, has welcomed that and has not identified anything different from or peculiar to the needs of businesses or consumers in Northern Ireland.

Mr Flanagan: If the Department were to bring in its own Bill, would it have the resources to deal with it?

Mr Cunningham: I am smiling, because it is true to say that there is an army of officials in the Department for Business, Innovation and Skills in London that looks at such things. The manpower and resources that would be needed to look at the Sale of Goods Act 1979 alone is significant. We have a lot of experience and expertise in Trading Standards in Northern Ireland — we are actually the envy of most — so we would be able to input, and we have been able to input. If we see gaps in legislation and changes that need to happen that would be of benefit to others, we can highlight them, but a significant resource element would be involved. However, to be honest, if that were necessary, we would have found a way to do it, but the reality is that the policy rationale behind the Bill is sound. There is no need to deviate, from a business or consumer perspective, from the current legislation that is out there. As Jimmy said, that is not fundamentally changing in any great way.

Reverse the argument and ask what the benefits are to Northern Ireland. If you are a business in Northern Ireland, over the long run, this will save you money. It must be a nightmare for businesses out there at the moment to train staff in all the different pieces of consumer law to ensure that they deal with consumers correctly at the point of sale, afterwards and in redress. They spend a lot of money training staff in the different legislation for the supply of goods and services, distance transactions, and so on. The Bill will enable their training to be a lot simpler and save them money in the long run, so it is good news for businesses. It is also good news for consumers, because, hopefully, the clarification of roles and the consistency of the 30-day rule, for example, will mean that disputes will not be as bad or as vigorous as they are under the current dispersed range of legislation. Hopefully, consumers will benefit from that.

The Chairperson: Thanks very much for that.

Mr Frew: I think that we are labouring a point here. We have tools and devices in democracy here, and an LCM is one such device that can help to bring in law in an efficient manner. I take Phil's point that he is quite entitled to scrutinise the Bill and scrutinise it to death, but I believe that his point is more to do with sovereignty. To be fair, if it is UK-wide legislation that needs to come in to protect and enhance the safeguards that consumers enjoy here already and to make the law simpler by putting it into one piece of legislation, the Committee should support it.

As far as I can see, it does not give up all right or any right that we have as an Assembly or an Executive to bring forward legislation in our own right if we feel that there are gaps. This is good legislation, and common-sense legislation more than anything. It is tying everything together in one

place to make it handier for consumers to buy and businesses to trade. The LCM is something the Committee should support.

The Chairperson: That is grand. I do not think that we require a response to that. There was no question in there. I was waiting for one, but it was a statement rather than anything else.

Mr Dunne: I support my colleague. Unfortunately, we have got into a bit of a political debate. It is not a political issue, because we are part of the United Kingdom. The intention of the majority of people is to remain in the UK, and I think that people across the table need to —

The Chairperson: I think that you have just made it a political issue.

Mr Flanagan: Nobody had mentioned it at all.

Mr Dunne: With all due respect, it was made political about half an hour ago, and the debate was allowed to ramble on. We are part of the UK, Philip.

Mr Flanagan: How did it become political?

The Chairperson: Hold on a wee minute, gentlemen. Can we stay focused on consumer issues, please?

Mr Dunne: We are part of the UK —

The Chairperson: Sorry, Gordon.

Mr Dunne: I think that it is important — *[Interruption.]*

The Chairperson: Can we stay focused on consumer issues, please?

Mr Dunne: It is important that the people here have the same consumer rights. We fully welcome the LCM. Regardless of people's background, they are totally entitled to have it. I welcome the fact that the Government response to the consultation states:

"Right that goods and digital content are fit for purpose and services are provided with reasonable care ... faults will be put right free of charge, or a refund or replacement provided."

That is very positive. You talked about purchasing a car. Will the Bill cover the second-hand market as well?

Mr Hughes: It will cover the second-hand and new markets, and anything that is sold by a businessman to a consumer.

Mr Dunne: They have 30 days.

Mr Hughes: If the thing has a fault to start with, the businessman has an opportunity to repair it if he can, and, if not, the consumer is within his rights to reject it at that point. There may be some deduction for usage and things like that, but, again, that comes down to the particular circumstances.

Mr Dunne: A lot of business is done with multinational companies such as supermarkets. Generally, they have a good policy. I think that the public are fairly satisfied with it. If a product is brought back, it will, in the main, be changed without dispute. Perhaps I am straying from the point —

Mr Hughes: No. I agree 100%. In many respects, the concept of getting your money back comes from people who were very effective in trading and made that quite a selling point years ago. If I recall rightly, you used to be able to bring pullovers back more or less for ever. My wife used to do it as part of her routine. *[Laughter.]*

Mr Dunne: Yes, but does the local supplier perhaps need to move on and be more flexible with consumer rights?

Mr Hughes: I am not sure that the local man is any different, in many respects. An awful lot of them have been brought on and come to recognise that. Perhaps the car trade will be slightly different, but that is for reasons that go back quite some time.

Mr Dunne: Do you think that the legislation will make a difference to the ordinary man in the street?

Mr Hughes: I think that it will help nobody else, to be quite honest with you.

The Chairperson: That is why we are here.

Mr Dunne: Correct. Remember that.

Mr Flanagan: Do no women do any shopping around here?

Mr Douglas: From your presentation, it was very clear that the Northern Ireland Consumer Council supports this. Dennis and Jimmy have totally convinced me, so I am happy to go with it.

The Chairperson: That is grand.

Thank you very much indeed, gentlemen. The Committee must now make the decision that it is content with the LCM process being followed. Members, there seems to be a general mass of opinion in favour of that.

Mr Dunne: Agreed.

Mr Flanagan: I would like to hear from the Consumer Council as to its view on it, in order to see what is missing from the Bill.

The Chairperson: I am sure that we can get the response sent over that it provided —

Mr Flanagan: I would like to hear from the Consumer Council and ask it directly. I asked Jimmy that question, and I think that he wanted to answer but could not.

The Chairperson: Hold on a wee minute, Phil. Let us be respectful to Jimmy. If we put a question to Jimmy, I know, from previous experience, that he will answer it. Do you want to put the question to him?

Mr Flanagan: I did. I am not going to force the issue, but I think that there are some people in our community who are very well versed and experienced in consumer affairs, and I would like to hear from them to see what is missing from this Consumer Rights Bill to see what can be added to it.

If we hear directly from experts that there is nothing missing from the Bill, that it is the perfect Bill and that, if we were to bring in a local Bill, it could not be any better than this one, I am happy to support it.

Mr Frew: Nobody is suggesting that everything and anything is perfect, or that everything and anything is in the Bill. We are using Westminster to tie up all the loose ends and converge all those issues into one Bill. If we feel, as an Assembly — a democratic institution — that we need to do more, we can do that. We are not losing the right to do that. Is that correct?

Mr Cunningham: That is correct. The Bill is a very technical piece of consumer legislation. The experts in consumer law are actually in the room. The Trading Standards Service in Northern Ireland are the experts in the Sale of Goods Act 1979. I am certainly not taking away from the fact that the Consumer Council has a view to represent consumers and should have input into the process. However, the expertise that exists on the technical aspects of the Sale of Goods Act 1979 and other law that is commensurate with it does not lie in the Consumer Council.

Mr Anderson: I am reading here that delay will disadvantage consumers instead of helping them. I think that we should not delay.

The Chairperson: I am happy enough to get written opinion from the Consumer Council on what it feels are the issues with the Bill. I am sure that four or five days of a delay, one way or another, will not impact on this in a major, meaningful way.

Mr Frew: Can we ask that specific question of what delay will mean?

Mr Cunningham: Any delay is unhelpful. However, if we are talking about a completely new debate to have Northern Ireland's own legislation, there would be considerable delay. The delay to seek a view from the Consumer Council —

The Chairperson: No, no. This is just to get clarity on what the Consumer Council's views are. That is the only delay. Personally — I am the Chair, but I am speaking as a member here — I do not have a problem with the legislative consent motion going ahead. I think that that is the general feeling of the Committee. This is just to get ourselves as informed as we possibly can.

Mr Douglas: What is the process, then? When the response comes back from the Northern Ireland Consumer Council, does it go to us all ?

The Chairperson: Yes.

Mr Douglas: We have a limited time after that.

The Chairperson: If it says that it is grand with that, that is OK.

Mr Frew: On my specific question, what will a delay, even of a week, mean to the legislation?

Mr Cunningham: We can handle a week or slightly longer if necessary. Basically, the Bill is in a process in Westminster at present. There will be critical deadlines in the coming months up until May or June. Obviously, we need to get our end sorted to feed into that.

Mr Anderson: Will the matter be back to the Committee next week?

The Chairperson: It will be back to us next week.

Mr Flanagan: Just for information, the Bill is going through the Committee in Westminster. It is expected to report by 13 March. There is no major urgency, so a week or a fortnight will not do any major damage.

The Chairperson: No. That is my point.

Mr Cunningham: The Committee has the right —

Mr Dunne: The Committee knows what is going on.

Mr Flanagan: It might know what is going on, but it is not —

The Chairperson: We are agreed on the course of action. I think that we have come to the conclusion. Jimmy and Dennis, thank you very much for your time and efforts both here and elsewhere.