



Northern Ireland
Assembly

**COMMITTEE FOR
FINANCE AND PERSONNEL**

**OFFICIAL REPORT
(Hansard)**

**Legislative Consent Motion:
Finance (No. 3) Bill
(Mutual Assistance Recovery Directive)**

8 June 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Ms Caitríona Ruane

Witnesses:

Dr Veronica Holland) Department of Finance and Personnel
Mr Brian McClure)

The Chairperson:

The first part of the meeting will be recorded by Hansard. I remind members and those in the Public Gallery to switch off their mobile phones.

Mr Brian McClure (Department of Finance and Personnel):

Thank you, Chair. I look forward to working with the Committee. The previous Committee was instrumental in helping to bring forward a lot of improvements to the rating system that was introduced under direct rule, and we worked closely with the Committee. A lot of the ideas that

the Committee came up with found their way through to the reforms. We also found it a useful sounding board for what we had done. We look forward to a positive relationship with the Committee.

We believe that this first item is a relatively uncontroversial, fairly routine and unavoidable measure. I will give the Committee a bit of the background, before dealing with the legislative consent motion. Forgive me for reading; it is a little bit technical, and I do not want to miss anything.

The Finance (No. 3) Bill in the Commons will enable the UK to implement the mutual assistance recovery directive (MARD), which was agreed by the EU Finance Ministers during 2010. Under the directive, EU member states can provide each other with assistance in the recovery of tax debts and other duties, including the service of documents and the exchange of information in connection with the recovery of claims. It will replace existing legislation implementing the directive that was originally introduced in 1976 and consolidated in 2008. The new directive modernises and expands the scope of the existing directive. It affects individuals and businesses that owe taxes and duties in the EU. The provision to be taken forward in the Finance (No. 3) Bill would fulfil the UK's obligation in implementing the directive. It provides reciprocal arrangements for recovery and enforcing tax debts and for the exchange of information across the EU. That will improve tax compliance and tax collection and make the system fairer.

Under EU law, the directive must be implemented by 31 December 2011, so time is very tight. The current MARD legislation does not provide for the introduction of a new directive. The proposed legislation will permit the UK to assist other member states to ensure that all taxes due are properly collected and relevant information is exchanged. Among other things, the directive extends the scope of the existing directive, as I have mentioned; permits member states to provide for exchange of information; provides for tax officials from one member state to attend or participate in administrative inquiries in another member state; and permits a range of national bodies to engage in the mutual assistance process under the general oversight of the central liaison office in Her Majesty's Revenue and Customs (HMRC), which is the central office for the UK. It is very much a HMRC-focused policy.

Including Northern Ireland in the scope of the legislation is a fairly routine matter, and the changes are considered to be unavoidable and non-controversial. As you know, Westminster will

not normally legislate on devolved matters except with the agreement of the devolved legislature in the form of a legislative consent motion. The UK Government had previously advised that they would table an amendment at Report Stage, before 1 July. It is now intended to table the amendment during a Westminster Committee Stage this Thursday; that is, tomorrow. If the legislative consent motion is not agreed by the Assembly by the end of the month, the amendments would be removed. The specific amendments remove the provisions that currently exclude Northern Ireland transferred matters from the remit of the Bill, making changes to the relevant provisions in clause 87 of and schedule 25 to the Finance (No. 3) Bill. The provisions will also implement similar changes for Scotland.

What happens if the amendment is not agreed? Consideration has been given to the option of Northern Ireland self-legislating in order to implement the directive locally if the amendment is not agreed in time. Although that would provide greater control over the immediate timescales, it would still require implementation by 31 December this year. It is not a preferred option as any local regulations could not fully replicate the provisions that can be made in the Finance (No. 3) Bill and would not attract any later amendments.

Any legislation implemented by the devolved institutions in Northern Ireland would also lack the comprehensive coverage that the GB Bill would provide. In addition, HMRC, as a central liaison office under the directive, will have central responsibility in the practical operation of the directive. That suggests that Westminster legislation is, perhaps, the most appropriate in these circumstances. Failure to implement any change to provide for Northern Ireland could run the risk of infraction proceedings.

The measure is not expected by the Treasury to have any significant economic impacts. It does not impose any new burdens or costs on individuals, households or businesses. As regards equality impact, it does not increase the incidence of taxation or place any new burdens on any particular group of taxpayers. It is our assessment that it has no differential impact on any section 75 group.

As regards next steps, the views of other Departments have been sought on the matter. There have also been liaisons with officials in the Department of Agriculture and Rural Development (DARD) and the Department of the Environment. Responses have been received from all Departments with the exception of the Office of the First Minister and deputy First Minister

(OFMDFM). All the other Departments have indicated that they are either content with the proposals or have no comment.

As I said, Westminster is due to table a Government amendment to cover Northern Ireland tomorrow. That would be subject to Executive and Assembly agreement on a legislative consent motion by the end of this month. Executive agreement on the legislative consent motion is needed next Thursday and Assembly agreement is needed before recess to allow the amendments to stand. If that is not obtained, Northern Ireland will be excluded from the Bill's remit during the Westminster Report Stage at the start of July.

That is a very quick run-through.

The Chairperson:

As regards timescale, you suggest that an amendment is being tabled in Westminster tomorrow?

Mr McClure:

Yes.

The Chairperson:

Yet the Executive's consent to the process is only being sought next week and the Assembly's consent the week after. Is there not an element of putting the cart before the horse?

Dr Veronica Holland (Department of Finance and Personnel):

GB felt that it was easier to make the provision now rather than wait until the Report Stage to try to smooth the process. However, GB has indicated that, if the amendment is tabled and consent is not given, it will withdraw that as necessary, so it can be dealt with. That is the process that GB has decided to take forward.

Mr McClure:

It is a case of putting it in and taking it out later if consent is not received.

The Chairperson:

I realise that it fell on either side of different mandates, but there seems to be a bit of undue haste in trying to get it sorted in this way. This is a devolved matter, yet the Minister suggests that it is

better carried out by Westminster. At the same time, we are discussing taking on other fiscal measures from Westminster, such as setting the rate of corporation tax. It appears to be a little bit contradictory.

What is the rationale? Is it simply that the Department did not have its act together in time to get a proper Bill through here? I am trying to explore the rationale for feeling that Westminster would handle this better, when it is a devolved matter. It probably should have been handled by us if we had had time to sit back and devise the proper mechanism for it.

Dr Holland:

There has obviously been an issue with timing. HMRC advised us very late on that the change was needed. The information only came through to us just as the Assembly was breaking up. More generally, the view is that, because you can only have one member state, there has to be one central liaison office. HMRC takes that role for the UK as a whole.

We could legislate ourselves, but the advice that we have been given is that, if Northern Ireland were to take this forward and do it itself, the regulations would not be as comprehensive. My understanding is that the directive would be fine as it stands. However, should there be any further amendments, additions or alterations to that directive or any new directive brought forward, the Northern Ireland legislation would be limited in the scope of its provisions. It would also create operational difficulties given that HMRC is the central liaison office. That is the rationale behind GB taking forward the provisions on our behalf.

Mr McClure:

This did not come to our attention until March. It should have come to us a lot sooner. We, like you, feel on the back foot on this one, but we feel that it is unavoidable.

The Chairperson:

I have one final point. The central agency for dealing with all of this is HMRC. I presume, then, that the same approach will be taken in Scotland and Wales?

Dr Holland:

Yes. Provision will be made through the amendments being taken forward for Scotland to be included in the Bill. I assume that Wales is already covered. The amendments being tabled will

cover Scotland and Northern Ireland, and the Scottish Government are content with that approach.

Mr McLaughlin:

This is an issue that we must deal with, notwithstanding the topsy-turvy approach. I am interested in what the role of the revenue authorities will be, if, as expected, there is further devolution of, for example, tax-varying powers and corporation tax powers. Has that been taken into consideration should those developments emerge in the next year or 18 months?

Mr McClure:

No, it has not, but I think that it has to be. If changes to the delegated powers of the Northern Ireland Assembly are being considered, all of that work must be done early. However, no work has yet been carried out on that.

Dr Holland:

My understanding is that, because the Bill refers to devolved matters and transferred taxes, if the amendment is included in the Bill, it will automatically cover anything further that came to us, or any new taxes or levies that we introduce. That is my understanding of the way in which the provisions will work if we go with the GB amendment.

Mr McLaughlin:

I presume that one of the key discussions that we will have in approaching the issue of the corporation tax measure will be the possibility of tax avoidance, brass plating and all of that. In so far as there will be a direct hit on the block, we need to be certain that we can protect our economic interests. For that reason, I strongly support the measure. Does that need to be addressed specifically at this point before people sign off on this measure or, indeed, on any proposed reform?

Mr McClure:

I do not believe so. This is an EU-wide directive, so it is being applied across all member states. It is something that has to be done now. I do not think that it is going to inhibit or prejudice any change in the delegated powers that are available to Northern Ireland. All of the preparatory work certainly has been done.

Mr McLaughlin:

I am not speaking from any considered perspective; this is just something that occurred to me. HMRC is designated as the central liaison office for the purposes of all matters other than excluded ones. Would that change if corporation tax powers become a devolved matter, or would HMRC represent us nonetheless?

Dr Holland:

My understanding is that HMRC is the central liaison office for any local taxes, regardless of whether or not those are transferred. On the issue of corporation tax, previous advice from the Departmental Solicitor's Office was that we should not name in the legislation the taxes, duties and levies in Northern Ireland specifically because further ones might be brought forward in due course. It was felt that it is better to refer only to matters within the remit of the Northern Ireland Assembly.

Mr McClure:

It is our view that that does not inhibit or prejudice any change. We are getting into legal territory here, and we are not lawyers. However, if you wish, we can seek legal advice and come back to the Committee on that issue.

Mr McLaughlin:

I am anxious for detailed consideration to be given to the situation in which we as an Assembly may find ourselves in the relatively near future. I understand quite clearly why there is a central liaison function. Europe is not going to deal with us; it deals with sovereign Governments. The position of the European Commission is very clear. However, it might become involved in issues where the Assembly is concerned about the non-payment of taxes, because that could have a direct impact on our ability to deliver the Programme for Government and services. There are two issues to be considered, one of which, on relationships with Europe, is fairly straightforward. However, on policing or managing our responsibilities, including our increased responsibilities, we need to be clear about how the Executive can proceed, if necessary, to recover or defend our interests.

Mr McClure:

Your point is well made, and I will come back to the Committee in writing on that. I will need to

liaise with the Departmental Solicitor's Office, but I will come back to you in the next few days.

Mr McLaughlin:

I dare say that you will have to work that out with the Executive. I am not pressing the case that you come back to the Committee or hold up the process. I am just flagging up what I think is a strategic interest for the Assembly.

Mr D Bradley:

You said that the measure could be dealt with here through self-legislating, but your feeling is that it could be done more effectively through Westminster. Why is that the case?

Mr McClure:

The powers available there are more comprehensive.

Dr Holland:

As I said, although we may be OK as the directive stands at the moment, if there were any changes, additions or extensions to it or if it were replaced with a new one, current regulation-making powers would not be sufficient to allow the Treasury, on Northern Ireland's behalf, to legislate for those matters. In addition, any regulations brought forward by the Assembly would be limited to the scope of Northern Ireland. That, tied in with the fact that HMRC is the central liaison office for GB, would provide consistency across the system and ensure that things operate smoothly.

Ms Ruane:

Like Mitchel, I am not suggesting that things should be held up, but there are process issues. It is a bit worrying to hear that the British Government only notified you in March. Is that normal practice for them? If we keep jumping to their process and timescale, they will continue to do that. Have you or the Minister written to them concerning timescales and our processes, so that they give us enough time to fully consider this and other things that might come before us? We need to take a more rigorous approach on some of those matters.

Mr McClure:

It is the case that we were presented with this. We have written to them about finding a solution to the issue, but the Minister has not written to register that point, although it is something that we

might want to consider once we have gone through this process.

Ms Ruane:

It is something that we should consider, because, as the Chair said, the matter is only just coming before the Committee and has not gone to the Executive, yet it will go before Westminster tomorrow. That is very disrespectful to this institution.

Mr McClure:

However, in practical terms, they are putting in provisions that can be taken out later.

Ms Ruane:

I understand, but that nearly insults us all the more.

Mr McClure:

I do not disagree with anything that you are saying.

Mr Humphrey:

Think back to Mr Pidgeon's presentation last week. His clear advice was that there would be cost implications and that, if it was decided to devolve corporation tax, HMRC would have to be involved in carrying it out. In my view, HMRC would be the appropriate body to oversee things, but there would be cost implications. Nevertheless, given HMRC's ability, experience and resources, it would be the natural body to be involved in that, even though it would be a devolved matter. Having read your submission and having listened to what Brian said, it is clear that the Minister's advice — if it is the Minister's advice — is that we go ahead with it. There is provision to opt out and remove ourselves from the legislation. It is better to be involved and, at the same time, retain the option to remove ourselves. It is a matter of keeping the options open.

The timescale is difficult and not in any way appropriate for trying to work things through. However, this is a difficulty that happens when there is a national Government at Westminster and devolved Administrations.

I have just one question. At the end of your presentation you said that there were Departments that had not made comment. Is that right?

Mr McClure:

All Departments apart from OFMDFM have either indicated that they are content or made a nil return.

Mr Humphrey:

What is a nil return?

Mr McClure:

A nil return means that they have no comments. That is probably because those Departments have no direct interest in the provisions. Those with a direct interest, such as DARD, are content.

Mr Humphrey:

Are you content that those Departments have no direct interest, or are Departments not showing an interest because they do not have enough information or are being politically led not to comment?

Mr McClure:

I would not read into Departments indicating that they have no comment. It is the normal process that relevant Departments tend to give detailed comments and proposals and Departments that do not have a direct interest tend to say that they are content to make no comment.

The Chairperson:

That does not preclude those Departments from having a discussion at the Executive table and having whatever input they want there. It is just that the provisions have no direct effect on those Departments' workings.

Mr McClure:

Yes. DARD, for instance, is fully content and has made comment to that effect, but other Departments have not.

Mr Girvan:

Brian, thank you for your presentation. I appreciate that the provision is to bring about regularisation between member states within the EU. When did the EU directive come through to

Westminster? The issue is the timing of that. I appreciate that it came to us somewhat late in the day, but there might be a very valid reason why that was the case. At the end of the day, I appreciate that it is probably best that information on tax-gathering powers throughout the EU is shared directly through HMRC. I feel that that is the proper avenue to use. However, has there been any clear indication as to when the EU sent down that directive? The EU seems to deliver quite a bit of legislation that we end up having to take on board and deliver at either a local or Westminster level. Do you have any indication as to when that happened? I appreciate that it goes back to 1976 and takes in the provisions of the 2002 Order.

Dr Holland:

My understanding is that the provisions for the new directive were signed off by the EU at some stage in 2010. The GB Finance (No. 3) Bill was introduced in 2011. We have not been given an indication from Revenue and Customs as to why we and Scotland were brought into the process at such a late stage. We were not given an explanation for that.

Mr Girvan:

A number of amendments are included in the proposed legislation. There seems to be parity between that legislation and what has happened in Wales. Is that correct?

Dr Holland:

My understanding is that the provisions would cover England and Wales, with Scotland and Northern Ireland being covered through the amending provisions.

Mr Cree:

My point is on the same line as Paul's. When was the European directive agreed?

Mr McClure:

In 2010. I will come back to the Committee with a month, but we know that it was in 2010.

Mr Cree:

If it was at the end of 2010, obviously March is not so horrendous. If, in fact, it was January 2010, one would wonder what had been happening during that period.

Notwithstanding the point about the timing of the whole thing, there was a programme last

evening about a chap who lived in Estonia and had been chased across Europe for all sorts of scams and various other things that he had been up to. Against that background, one can clearly see how important it is to have flexibility across Europe to collect those sorts of debts and enforce overdue taxes. Therefore, I do not have any particular difficulty with the directive, but I am interested to know just how late in the year it was agreed. We are plagued with those things. Directives appear here like confetti, and unfortunately we seem to be stuck with them, but I am happy enough to go along with it. The Minister sets it out fairly well in his letter.

The Chairperson:

There is an option to take a decision on this today. Further information has been added. The suggestion from both Mitchel and Cairíona is that, although they would like the information, they do not want to hold up the process. The question is whether members are content to take a decision on it today or to wait. The cut-off point is in around two weeks' time, I think.

The Committee Clerk:

There is a protocol that the responsible Committee should issue a report to the wider Assembly in advance of the plenary debate, so the final date at which the Committee could make a decision would be Wednesday 22 June. It would need to agree its report that day and issue it to all members ahead of the debate on Monday 27 June. If members are content to, they can make the decision today and receive the follow-up information subsequently.

Mr McLaughlin:

Picking up on William's point, the options are that the Assembly does its own legislation or that we come in behind this provision. We have had an explanation that it would have a wider application and there would be more significant resource behind it if we consent to it. Unless any of the Committee members are arguing that we are better doing it as Assembly legislation, there is nothing really to hold us up.

The Chairperson:

Are members content to take the decision today? We will then await some outstanding information on the time frame and some of the implications that Mitchel asked about in relation to further matters that we anticipate dealing with over the next year or so.

The question is that the Committee for Finance and Personnel supports the Department of

Finance and Personnel in seeking the Assembly's endorsement of the extension to NI of the provisions of the Finance (No. 3) Bill as amended at Committee Stage in the House of Commons dealing with the mutual assistance for recovery of taxes, etc. Are members content?

Members indicated assent.

The Chairperson:

We will inform all MLAs of the issues in relation to the proposed legislative consent motion. The Committee will produce a short, informal report to be circulated to all Members in advance of the plenary debate on Monday 27 June. A draft informal report will be prepared for consideration by the Committee at next week's meeting.