

From: The Minister

**Level 9
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG**
e-mail: private.office@communities-ni.gov.uk
Tel: (028) 9082 3476

FROM: MINISTER FOR COMMUNITIES

Date: 11 NOVEMBER 2020

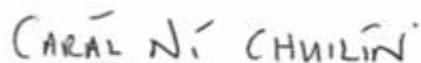
Immigration and Social Security Co-ordination (EU Withdrawal) Bill Debate 28 September 2020

Letters to Mark Durkan MLA and Matthew O'Toole MLA

Please see copy letters in response to questions raised by Mr O'Toole and Mr Durkan during a Legislative Consent Motion debate on the above matter on 28 September.

I would be grateful if you would arrange for these letters to be deposited in the library for the benefit of all Members.

Is mise le meas



**Carál Ní Chuilín MLA
Minister for Communities**

Encs: Letters to Matthew O'Toole and Mark Durkan dated 15 October 2020.



From: The Minister

**Level 9
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG**

Telephone: (028) 9082 3320
e-mail: private.office@communities-ni.gov.uk
Our ref: SUB 2009 2020
Date: 15 October 2020

Matthew O'Toole MLA
Room 276
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Via e-mail matthew.otoole@mla.niassembly.gov.uk

Matthew, a chara,

THE IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL – QUERIES RAISED DURING THE LEGISLATIVE CONSENT MOTION DEBATE

Thank you for your contribution to the debate on the Legislative Consent Motion in relation to the social security co-ordination provisions contained in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. I promised to write in relation to the queries you raised.

If the provisions for here had been omitted from the Westminster Bill, the Department for Communities would have had no power to modify the retained social security co-ordination regulations in the event of no agreement on social security co-ordination being reached between Britain and the EU or to make consequential amendments to social security law here. The only option to obtain such a power would have been to bring forward a separate Assembly Bill.

At best, such an Assembly Bill would have been unlikely to complete its passage before Spring 2021, assuming a slot could have been obtained in the legislative programme. There would have been no power for the Assembly to amend the EU Social Security Co-ordination Regulations until the Bill completed its passage. It is also anticipated that there will be very significant demands across Departments for Bills to be progressed through the Assembly before the end of the current mandate.

I fully concur that the competence of the Assembly in respect of social security matters must be respected. Clause 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill does not introduce any new policies; it merely confers regulation-making powers. Retaining the power in clause 5 for a Department here to

amend the co-ordination regulations may give us some flexibility over the limited devolved issues within the co-ordination regulations. Furthermore, clause 5 provides a power to make consequential amendments, for example, to address inoperabilities or inconsistencies which may arise from the modification of the retained social security co-ordination regulations. This provides a power to ensure the continued operation of domestic social security legislation that refers to, or is related to, the social security co-ordination regulations.

You had asked for more detail on how the Bill interacts with the Common Travel Area (CTA). It allows Irish and British citizens to travel freely and reside in either jurisdiction. It also facilitates the enjoyment of a number of associated rights and privileges. Both the Irish Government and the Westminster Government have indicated their commitment to maintaining the CTA. The CTA is underpinned by deep-rooted, historical ties, and maintaining it has been, and continues to be, a shared objective. Irish citizens and British citizens will continue to have access to their CTA associated rights. Both Governments confirmed that position on 8 May last year, when a Common Travel Area Memorandum of Understanding was signed, setting out a commitment to ensuring Irish and British citizens will continue to be able to reside, work, study, and access healthcare, social security and public services in each jurisdiction.

The Irish and British Governments signed a reciprocal agreement on social security in February 2019 which ensures that the social security rights of Irish and British citizens moving between the jurisdictions continue to be protected. The agreement guarantees reciprocal treatment and continued access to social security provisions for Irish and British citizens and their qualifying family members when in the other's state. It also provides for the export of certain benefits and ensures that social security contributions can be used to meet entitlement criteria for accessing benefits in each other's state.

You also referred to the issue raised by the Human Rights Commission about gaps in cross-border childcare provision in relation to universal credit. The Universal Credit Regulations (Northern Ireland) 2016 have been amended from 13 July 2020. Prior to this amendment, "relevant childcare" included care provided outside the north, but only where it was provided by an organisation which had been accredited by the Secretary of State. The amendment to regulation 37(3) of these Regulations has the effect of expanding this definition to include care provided outside the north by a provider approved or accredited under the legislation of the relevant state, and where evidence of such is provided to the Department by the claimant.

Consequently, cross-border workers may benefit from domestic legislation for entitlement to the childcare costs element of Universal Credit where the childcare is provided in the south as above. It is not necessary to rely on EU law.

I trust that this response helps to answer the points you raised.

Is mise le meas,



Carál Ní Chuilín MLA
Minister for Communities



From: The Minister

**Level 9
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG**

Telephone: (028) 9082 3320
e-mail: private.office@communities-ni.gov.uk
Our ref: SUB 2009 2020
Date: 15 October 2020

Mark Durkan MLA
Room 383
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Via e-mail markh.durkan@mla.niassembly.gov.uk

Mark, a chara,

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At best, such an Assembly Bill would have been unlikely to complete its passage before Spring 2021, assuming a slot could have been obtained in the legislative programme. There would have been no power for the Assembly to amend the EU Social Security Co-ordination Regulations until the Bill completed its passage. It is also anticipated that there will be very significant demands across Departments for Bills to be progressed through the Assembly before the end of the current mandate.

I fully concur that the competence of the Assembly in respect of social security matters must be respected. Clause 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill does not introduce any new policies; it merely confers regulation-making powers. Retaining the power in clause 5 for a Department here to

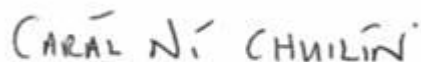
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In relation to your point about childcare options for cross-border workers, the Universal Credit Regulations (Northern Ireland) 2016 have been amended from 13 July 2020. Prior to this amendment, "relevant childcare" included care provided outside the north, but only where it was provided by an organisation which had been accredited by the Secretary of State. The amendment to regulation 37(3) of these Regulations has the effect of expanding this definition to include care provided outside the north by a provider approved or accredited under the legislation of the relevant state, and where evidence of such is provided to the Department by the claimant.

Consequently, cross-border workers may benefit from domestic legislation for entitlement to the childcare costs element of universal credit where the childcare is provided in the South of Ireland as above. It is not necessary to rely on EU law.

I trust that this response helps to answer the points you raised.

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Carál Ní Chuilín MLA
Minister for Communities