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The Speaker

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To: All Assembly Members

10 February 2023

Dear Member,

Since yesterday, a number of Members have been seeking procedural guidance on whether secondary legislation in relation to the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022 Act could be passed at a recalled sitting of the Assembly.

I am conscious that we are dealing with matters of not only public importance but of importance to individuals and families. It is therefore critical that these matters are properly informed from a procedural perspective and not dealt with in what might seem to be an unseemly manner. Therefore, I am writing to all Members in the interest of providing procedural clarity.

The issue here is one of timing and choreography. If the relevant secondary legislation was laid, it is theoretically possible for any recall notice to include firstly the election of a Speaker and Deputy Speakers, and then a motion citing the relevant regulations and seeking their approval.

At this stage, the regulations have not yet been laid and therefore do not formally exist for the Assembly to approve at a recalled sitting, whether or not a Speaker and Deputy Speakers were elected. I also understand that the order has not yet been laid to commence the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022 Act. The Act would have to be commenced before the regulations could be laid.

I can also confirm that no recall petition has yet been submitted.

I assume that the Secretary of State expects the regulations to be laid shortly. However, a recall notice can only deal with the business on the notice and cannot be changed or anticipate business that might be laid.

I should also make clear that if the Assembly were to elect a Speaker and Deputy Speakers and then appoint a Business Committee, the Assembly is then free to proceed to meet as it wishes to consider any business. Therefore, there is no requirement to deal with all of these matters in one sitting on one day.

Of course, there are also issues in relation to scrutiny if the Assembly was to proceed to consider legislation at a time when there are no Ministers or committees in place. The absence of committees in particular would require a suspension of the relevant SOs. However, that position obviously arises from the political circumstances we are in.

Assembly officials are always happy to assist Members and the Business Office can advise on the wording of a procedurally competent motion if and when the regulations are laid.

I hope this advice provides you with clarity.

Yours sincerely,

A handwritten signature in black ink that reads "Alex Maskey". The signature is written in a cursive style with a long horizontal flourish extending to the right.

ALEX MASKEY
SPEAKER