



Northern Ireland
Assembly

Committee for the Economy
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From: Peter Hall
Clerk to the Committee

Date: 31st March 2020

To: Nick Mitford
Clerk to the Committee on Procedures

Subject: Review of procedures for Legislative Consent Motions and
Standing Order 42A

Nick,

Your memo of 16th March 2020 regarding the Committee on Procedures' review of the current procedures for handling Legislative Consent Motions (LCMs) and the related Standing Order, 42A, refers.

The Committee for the Economy has agreed via correspondence that I respond on Members' behalf.

a) Review the circumstances in which the use of a Legislative Consent Motion is considered appropriate.

As Standing Order 42A paragraph (1) highlights, the LCM is designed to seek the Assembly's agreement for a piece of legislation to be undertaken by the UK Parliament in an area of devolved competence.

The Committee will always be vigilant when the competence of the Assembly and, by extension, committees, is overridden by legislation by the UK Parliament. Members are keen to have a clear understanding of why this is necessary and the impact that it has, including whether it curtails the Assembly competence, either temporarily, in the longer-term, or permanently. In the majority of cases there is a logical and appropriate reason for the LCM, and Members can approach it as a piece of legislation which is subject to the usual rigorous level of Committee scrutiny.

Standing Order 42A paragraph (3) sets down what is required to ensure that the Committee is given the proper opportunity to scrutinise based on clear information and a sound justification for the need for the LCM. It is vital that the LCM is accompanied by this information so that the Committee can properly scrutinise this and any other piece of legislation. It is likely that the Committee would be unable to support the LCM if this information was not

provided, or was not received by the Committee in a timely fashion to permit scrutiny.

The circumstances in which the LCM is used are clearly set down in the Standing Order and, therefore, the Committee would not seek to change that. However, the Committee on Procedures may wish to consider whether there should be a more transparent challenge function carried out by the relevant Executive minister. The LCM is a device that is not well-known or understood by the wider public and that lack of knowledge could create suspicion that the UK Parliament is not respecting the devolution settlement. Perhaps the Committee on Procedures may wish to consider a mechanism for such a challenge function with greater public clarification regarding the perceived need for the LCM.

b) Review the processes through which Legislative Consent Motions are introduced to the Assembly.

Paragraph (4) of the Standing Order indicates that the relevant Executive minister should lay a Legislative Consent Memorandum before the Assembly seeking consent, or a memorandum indicating why a Legislative Consent Motion is not being sought. This should be done within 10 working days of the introduction of the relevant parent legislation. This is relatively timely, however, it is not unusual for the time period to be cut short, creating further pressure on the relevant committee in respect of its scrutiny role.

Once the Legislative Consent Memorandum is laid before the Assembly paragraph (6) of the Standing Order indicates that at this point it stands referred to the relevant committee unless the Assembly decides otherwise. There is some concern as to why the Assembly would intervene to prevent the committee from carrying out its scrutiny function. The Committee on Procedures may wish to consider stipulating more clearly the basis on which the Assembly might intervene in this way.

c) Review the mechanisms by which the Assembly specifically gives, or does not give, its consent.

Paragraph (7) of the Standing Order indicates that the committee has 15 working days from referral to consider and report on the Bill which deals with the devolved matter. This is an extremely tight period and does not take account of the size or complexity of the Bill and its provisions. This time-period puts considerable pressure on Members and Secretariat to complete the scrutiny function. If there are issues raised by the Bill that are controversial, or divide the opinion of Members, it is likely that the committee report will not provide a decisive outcome, i.e. the committee will not be in a position to definitively support or reject the LCM.

Paragraph (8) of the Standing Order indicates that the LCM cannot be moved until at least 5 working days after the committee reports, or 20 working days until after the date of referral to the committee. This is designed to allow those

Members who do not sit on the committee to consider its report inform their view of the LCM.

Paragraphs (9), (10) and (11) of the Standing Order indicate how a subsequent LCM can be moved regarding further, relevant amendment to the Bill. This includes a number of highly controversial issues, including the legislative competence of the Assembly, or ministerial or departmental functions. Considering the timescale issues already highlighted above, it would be concerning to Members for such an LCM to proceed at the expected speed unless it deals with matters that have been thoroughly discussed and there is a very high degree of consensus. The Committee for Procedures may wish to consider whether it should seek to allow for a variation to the usual procedures for processing LCMs when these deal with the matters outlined in paragraphs (9), (10) and (11) where a high degree of consensus does not exist.

d) Review the arrangements for consultation with and consideration and reporting by committees of the proposed legislation and its outworkings.

As indicated above, Members have highlighted that one of the key issues in respect of LCMs is the short timescales and, on occasion, inadequate communication from the relevant minister. To properly scrutinise the Bill's relevant provisions and report, the committee will be under immense pressure. Therefore, it is imperative that the relevant UK department and Executive minister engage as early as possible so that a committee has a clear understanding of the issues that they will deal with and can undertake a level of scrutiny and consultation with stakeholders before the Bill is introduced.

It would be the case that committee scrutiny of legislation in these cases is less than Members would like to be able to apply. With regard to Bills introduced to the Assembly, it is usual for the committee applying scrutiny to bring a motion extending the committee stage of the Bill to allow appropriate scrutiny. This is not the case in relation to scrutiny undertaken in the context of legislative provisions under LCMs.

The Committee on Procedures may wish to consider stipulating a requirement for some level pre-legislative engagement by the relevant Executive minister with the relevant committee. The Committee may also wish to consider whether there is scope for further provisions in standing orders to offer committees more support with regard to this issue, perhaps around timescales.

e) To consider the need to introduce a Standing Order/amendments to Standing Orders to address the issues identified within the inquiry.

As indicated in the responses above, Members agree that there may well be scope for changes to be made to standing orders as part of this inquiry. As

the inquiry deals with issues most relevant to statutory committees, Members agree that these committees should be canvassed for their views on any proposed changes.

I hope this input is helpful and the Committee for the Economy is happy to engage further, should that be required.

Regards,

A handwritten signature in blue ink, appearing to read 'Peter Hall', written in a cursive style.

Peter Hall
Committee Clerk