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To: Emer Boyle, Clerk to Committee on Procedures

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Subject: Review of PMBs – Preliminary Briefing to Committee on Procedures

Introduction

1. The purpose of this paper is to set out some initial thoughts to assist the Committee on Procedures (the Committee) in the early stages of its review of the systems and processes in place for Private Member's Bills ('PMBs') in the Northern Ireland Assembly. The paper will provide context on how the service has evolved, describe the current operation of the PMB system and suggest some key principles the Committee may wish to bear in mind during its review.
2. This paper is not intended to be exhaustive, but will act as an introduction to some of the issues under consideration. The Non-Executive Bills Unit ('the Unit') will be happy to return to the Committee at a later stage of its review to help inform its consideration of options for the PMB service in the next mandate. This could include appropriate comparison with other models and how aspects of these may or may not work in the context of the Assembly.

Context for Private Members' Bills at the Northern Ireland Assembly

3. The right to for individual Members to bring forward legislation, is a typical feature of modern democracies and is often used to generate debate on novel, specific or potentially controversial policy issues. Strand 1, Paragraph 29, of the Belfast (Good Friday) Agreement 1998 provides that: "Legislation may be

initiated by an individual, a Committee or a Minister.”¹ The Assembly Commission may also introduce Bills and Standing Order 30 refers to the introduction of PMBs by Members.²

4. Neighbouring jurisdictions employ a range of parliamentary processes to facilitate the Introduction of Bills by individual Members. These processes vary considerably in their approach, reflecting differing parliamentary models. For the Assembly, the consociational model places a premium on an inclusive approach, which is reflected in a structured yet relatively open process for PMBs. The focus is on providing high quality support to Members in developing their role as legislators.
5. Standing Orders contain no explicit provision for the procedures around PMBs, which is set out in guidance to Members by the Bill Office under the authority of the Speaker. This was first developed in 2010 following a comparative review of PMB support between the Northern Ireland Assembly, the UK Parliament, the Scottish Parliament, the National Assembly for Wales and the Houses of the Oireachtas. Each incoming Speaker will review and refresh this guidance for issue at the beginning of the mandate. The present time is an opportune moment for the Committee to have a stocktake, as there has been an interim model of enhanced support operating since the resumption of the Assembly in 2020.
6. Broadly, the system is managed by prioritisation of available resources rather than putting in place formal limits on the numbers of bills which can be supported. This system is flexible, with the Speaker setting timetables for completion of key stages (including a point at which no further proposals are accepted) and requiring members to demonstrate compliance with guidance. This involves officials working closely with Members to provide guidance and manage expectations of the process as each milestone is reached. The present mandate has been unusual in attempting to enhance support for PMBs within a time-compressed period.

The PMB Service at the Assembly- Background

7. It is useful to set out some background to the developing picture of support for PMBs within the Assembly. There is a growing appetite to produce legislation amongst Members and the service has evolved to meet this need as much as possible within the resources available.
8. Prior to the resumption of the Assembly in 2020, PMB processes were supported by a small team of bill clerks handling both Executive and Non-

¹ [Belfast Agreement 1998](#)

² [Standing Orders of the Northern Ireland Assembly](#)

Executive legislation. This team carried PMBs through their policy development phase as well as their passage through the Assembly. The processes developed incrementally over time, in line with increasing demand for PMBs and the success of a number of high profile bills.

Transition to the Current Model

9. Some key challenges of this growing interest emerged at the beginning of the 2016 mandate, in which the capacity of the Bill Office to support a number of PMBs simultaneously was reached on day one. This was due to a flurry of interest from Members eager to register bills in their subject area. The Speaker placed a temporary cap on the number of PMB proposals which could be supported and asked the Committee on Procedures to examine how the Assembly could develop the capacity to support a higher number of PMBs. This cap attracted significant criticism from Members at the time, who expressed concern on constraints being placed on their right to introduce legislation.
10. This example illustrates the importance of ensuring the level of resource required is consistent with the ambition of the service to Members. It also reflects the importance of planning the delivery of support for PMBs across an entire mandate and ensuring fair access for all Members. The Committee will no doubt wish to consider a range of options to strike the right balance for the Assembly in this regard. The opportunity to communicate expectations to Members at the beginning of the next mandate will be important.
11. Another issue which arose was the need for a mechanism to resolve the conflict where more than one Member wishes to author a bill on the same subject. The guidance was re-drafted to ensure that more than one Member cannot develop the same or a substantially similar bill using Bill Office resources. The current PMB guidance allows for collaboration and agreement to resolve this between Members. Failing a resolution, a ballot is held to determine which Member will sponsor the bill. This approach prevents a race to register proposals and promotes value for money in the use of resources.
12. At its meeting on 27 September 2016, the Committee on Procedures agreed to carry out a review of the Assembly's procedures to support PMBs. The broad objective was to determine if the current approach was fit for purpose in light of increasing demand. The collapse of the Assembly in 2017 meant that this review was not completed. In the interim, officials recognised it would be important for the incoming Speaker to have options for an enhanced model of support for PMBs for the remainder of the mandate.
13. The Bill Office review of the PMB service conducted an internal review to recommend reforms which did not require any change in Standing Orders to deliver. These addressed the following issues:

- *Taking steps to manage a rapidly increasing demand for support;*
- *Considering the challenges in programming support across the Assembly mandate;*
- *the level, quality and scope of the support service available to Members;*
- *handling duplicate PMB proposals.*

14. On the resumption of the Assembly in 2020, the Speaker authorised the creation of a dedicated PMB Unit to operate within the Bill Office. The Non-Executive Bills Unit ('the Unit') has been provided with enhanced staffing resource for the remainder of the mandate and has focused on increasing the support provided to Members and shortening the lead time for producing PMBs.

15. As of 29 April 2021, there remain 24 proposals at various stages of progress within the Unit. Ten Initial Proposals of the 33 received were sent to the Bill Office between in the days leading up to the deadline of 18 September 2020. This number of submissions received is the highest of any mandate since 1998, with numbers steadily increasing with each mandate (Table 1).

Table 1

Mandate	Initial Proposal
2017 (2020)-2022	33
2016-2017	27
2011-2016	25
2007-2011	21
1999-2003	7

The Supported PMB Service

16. Broadly, there are two paths open to a Member wishing to introduce a PMB. Firstly, they can avail of the supported PMB service, which provides access to research, legal advice and specialist drafters for the development of their Bill. The Non-Executive team provide guidance and advice to Members and coordinate the delivery of the service. The Unit services as many PMBs as possible without a formal cap on numbers, however the Speaker sets timetables for the completion of key milestones.

17. As the process is not defined in Standing Orders, the dates and processes for PMBs in an Assembly mandate are communicated to Members by the Speaker, who retains ultimate authority in authorising drafting support for Bills. The Speaker will, from time to time, issue guidance to Members on the PMB process

following advice from officials, who plan the level of support provided to members in line with available resources. For example, there was a deadline for Initial Proposals of 18 September 2020 to allow for certainty of the number of PMBs in the system. A separate deadline for Final Proposals was set for 11 June 2021, which aims to focus support on those PMBs with a more credible opportunity of being introduced in the time available.

18. The Unit is there to provide the Member with support in terms of focusing on their key policy objectives, making decisions between options to achieve these objectives and providing advice on refining the draft legislation. They work in confidence with the Member up until the point of consultation. This is important, as it gives the Member confidence they can explore options before publicly committing to a particular course of action. In summary, there three broad stages within the supported PMB process:

- **Initial Proposal and Development:** This is where the Member liaises with the Unit about an idea for a PMB and begins the process of discussion, engagement and refinement. This involves taking early advice from RAISE and ALS on the policy context in which the bill would operate and the ensuring a bill can be drafted within the legislative competence of the Assembly.

It also involves engagement with the Minister of the relevant department with responsibility to ensure there is no duplication of efforts. Engagement with the Human Rights Commission and Equality Commission is built in. This step is to ensure value for money in avoiding unnecessary duplication of work; to design bills which are within the remit of the Assembly and to ensure that proposals reflect best practice and are informed by the wider policy context.

- **Consultation and Final Proposal:** The Unit will assist the Member in the preparation of an eight-week consultation to test opinion and establish public support for the policy proposals. This step informs the policy development process by creating scope for the Member to become aware of any alternative approaches which might be considered.

This informs subsequent debate within the Assembly and is a key milestone as the Member prepares their Final Proposal for the Speaker. The Final Proposal document is where the Member reflects on the policy development process and demonstrates their compliance with the guidance on developing a PMB. The submission goes to Speaker to authorise access to the panel of drafters.

- **Drafting and Introduction:** This is where the Unit instructs specialist drafters and works with the Member to craft a piece of legislation to give

effect to their policy objectives. This expertise adds value by drawing the Member's attention to different means of achieving their objectives.

It is at this stage where the legislative mechanisms to promote the policy goals becomes clear and potential unintended consequences can be resolved. This builds the knowledge of the Member around the practicalities of their proposal as they aim to persuade the Assembly of its merits.

19. Broadly, the key advantages of using the PMB service include providing the Member with access to a strong knowledge base and anticipating and addressing any issues with legal competence or the practicalities of achieving their objectives at an early stage. The use of specialist parliamentary drafters not only serves to sift out technical issues; the drafting process is another opportunity to stress test how a proposal would work before introduction.
20. There is an important job in promoting this service to Members as a high quality vehicle for producing legislation. This underscores the importance of the injection of additional resources in enhancing support and achieving efficiencies of time for Members in the process. This has been a key focus of the Unit during its short time in operation.

Privately Drafted PMBs

21. Secondly, Members can present a Bill to the Speaker that is privately drafted (perhaps by a lobby group or other person), which will be assessed by Assembly Legal Services to ensure it is competent before the Member is authorised by the Speaker to introduce the Bill. This option does not allow for access to the dedicated services in the bill development process. Although limited guidance is offered on issues such as the requirements for introduction, there is no funding or Bill Office resource made available to the Member at the pre-introductory stage.

Key Principles for Further Discussion

22. The Committee will be considering approaches taken in other jurisdictions and understanding their similarities and differences. It is useful to stress-test ideas from other jurisdictions against the particular circumstances of the Assembly. We welcome further discussion with the Committee on the range of options available as the Committee conducts its review.

23. Overall, the Assembly's processes and procedures for PMBs combine a relatively high level of support with a relatively low threshold of access. This reflects the historical commitment to PMBs as a central pillar of the legislative process. The consociational model and the principle of inclusion has informed the desire to maintain equity of access for members to high quality support.
24. Whatever configuration of procedures is ultimately adopted, certain high-level principles which the Committee might give consideration to include:
- a. **Level of Service:** Determining the level of service that is considered desirable for Members and the necessary resource implications for the Assembly;
 - b. **Scope of Access:** In considering this, assessing how any proposed model balances the breadth and depth of support to be delivered within available resources;
 - c. **Fairness:** Determining the deployment of resources in a fair manner and managing Members' expectations of the service they can expect and what is expected of them;
 - d. **Planning:** Considering the issue of how to programme support across the mandate and how this is reflected in procedures, not least given end of mandate pressures with Executive bills.
25. Private Member's Bills play a crucial role in the legislature and enhance the breadth of debate. It is clear from the Committee's terms of reference that they are undertaking a holistic review of how the service will operate in the future. This is to be welcomed and the Bill Office looks forward to further engagement with the Committee throughout the review as it proceeds.