



**Northern Ireland
Assembly**

Chairpersons' Liaison Group

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From: Stella McArdle, Clerk, Chairpersons' Liaison Group (CLG)
To: Emer Boyle, Clerk, Committee on Procedures
Date: 16th November 2021
**Subject: Response from the Chairpersons' Liaison Group to the
Committee on Procedures – Inquiry into Private Members' Bills**

1. The Chairpersons' Liaison Group ('CLG') would like to thank the Committee on Procedures for the invitation to provide views on the Committee's inquiry into Private Members' Bills. The Committee Stage of a Bill is a key pillar of conducting effective scrutiny of legislation, as it allows for a deeper investigation of the Bill's provisions. The Committee notes the recent correspondence from the Speaker to Members emphasising the importance of robust scrutiny to the Assembly as the number one priority.
2. Having considered this matter, CLG agreed that it would focus its response specifically on the areas within the terms of reference most directly engaging the work of Committees. Broadly, this relates to the management of PMBs across the mandate and ensuring that optimal conditions are in place for scrutiny. Of course, Committee Chairs and indeed Members generally may express views more broadly to the Committee individually or through their party.

CLG would ask the Committee on Procedures to note that this memo reflects its views and opinions rather than recommendations for changes from CLG.

The System of Support for PMBs and Use of Resources

- (i) **Relevant TOR:** *To examine whether the system of support currently in place for PMBs is fair, appropriate and a good use of public resources.*

3. CLG notes that sufficient time should be available within the schedule for the effective scrutiny of PMBs. Under Standing Order 33, statutory committees may consider, take evidence and report its opinion on a piece of legislation within a period of 30 days. This period is routinely extended under SO 33 (4) to allow Committees additional time to scrutinise the provisions of a Bill in detail in a process which involves the taking of evidence and advice from officials on crafting amendments to legislation. This is complex and intensive work and requires sufficient time to be set aside to thoroughly examine and test Bills with stakeholder groups, departments and Bill sponsors.
4. In the current mandate, CLG notes that a large number of Bills have been disproportionately spread across a relatively small number of Committees when relatively little time remains in the mandate. This poses significant challenges for Committees who need to take decisions about the prioritisation of work in the knowledge that not all Bills may be in a position to complete their passage. This reflects the limitations on the capacity of committees to meet to scrutinise a high volume of legislation. This increases the risk, at the conclusion of the committee stage, that there is not enough time available to schedule the remaining stages in compliance with Standing Orders. Taking that into account, it is the view of CLG that consideration should be given to putting in provisions which would provide confidence to the sponsors and the scrutinising committees that any PMBs that are introduced stand a reasonable chance of completing their passage through the Assembly.
5. The well-known trend of Executive business increasing significantly in the final months of a mandate has a significant impact on available time for scrutiny. All Executive business, oral statements by Ministers, LCMs and motions to approve subordinate legislation, will take precedence over PMBs. In the absence of a realistic prospect for a PMB to complete all of its stages, there is a real risk that the intensive work of scrutiny will prove to be nugatory. Although there are a range of factors which can impact the passage of a Bill, the risk of a Bill timing out increases in the final session of a mandate. Therefore, CLG would be supportive of a final deadline for submission of PMBs to the Speaker. This would reflect that PMBs submitted in the session before an election may

face significant impediments to completing their passage. This deadline would have the added benefit of allowing committees to structure their forward work programme with greater certainty.

PMB Sponsors and Committee Membership

- **Relevant ToR:** *To consider whether committees, if they so choose, should be able to include the sponsor of a PMB as an ex-officio member of that committee during the appropriate stages of the passage of the PMB in order to allow the sponsor to ask questions of witnesses and thus provide necessary clarity to the committee.*
6. There are occasionally circumstances in which the sponsor of a Bill will also be a member of the Committee to which it stands referred for scrutiny. When this occurs, it provides the sponsor with the opportunity to hear and see all of the evidence provided in respect of the Bill, to respond to and clarify issues as they arise in real time, and to reflect on objections or alternative viewpoints. This potentially makes committee scrutiny more efficient as well as better informing the Bill sponsor. A sponsor who is not a member of the committee which is scrutinising the bill does not necessarily have the same opportunity to do this. However, it is not necessary to include the sponsor of a PMB as an ex-officio member of a committee in order to address this potential issue.
 7. In fact, it is already the case that Ministers and Members who are not members of a committee may, at the invitation of the committee, take part in its deliberations. An invited Minister or Member may not vote, make any motion, move any amendment or be counted in the quorum. While they may not ask questions of a witness, as witnesses are called at the request of the committee, they may raise issues which may then be pursued with witnesses by members of the committee. However, an invited Minister or Member can hear and see all of the evidence provided in respect of the Bill, can respond to and clarify issues as they arise in real time, and can reflect on objections or alternative viewpoints in exactly the same way as a member of the committee who is also the sponsor of a Bill.

8. There would be risks associated with making the PMB sponsor an ex-officio (and therefore additional) member of the committee. The Assembly's Standing Orders provide, pursuant to subparagraph 4(1) of schedule 6 of the Northern Ireland Act 1998, that in appointing members to committees, regard is had to the balance of parties in the Assembly. Specifically:
 - Standing Order 49(1) says that "*Statutory committees shall be constituted to reflect as far as possible the party composition of the Assembly except in so far as individual parties or individual members may waive their rights*".
 - Standing Order 49(2) says that seats on statutory committees will be allocated on a proportional basis in accordance with a number of principles including that "*...the number of seats on the statutory committees of the Assembly which is allocated to each political party as far as possible bears the same proportion to the total of all the seats on the committees as is borne by the number of members of that party to the membership of the Assembly*"; and that "*...the number of seats on each statutory committee which is allocated to each political party as far as possible bears the same proportion to the number of seats on that committee as is borne by the number of members of that party to the membership of the Assembly*".
9. Including a sponsor of a PMB as an additional, *ex-officio* Member of the committee would, in all likelihood, mean that the membership of that committee would then not reflect the balance of parties at the Assembly. This would be particularly significant in circumstances where such a Committee, with an unbalanced membership, took decisions in relation to the Bill (for example, deciding whether to support particular clauses or whether to table amendments). In these circumstances, the vote of the sponsor of the Bill could prove decisive. This would give the sponsor a disproportionate ability to influence the outcome of the committee's consideration of the sponsor's own Bill.
10. It has not been previously been considered that a conflict of interest arises when a sponsor of a Bill sits on the committee to which the Bill is referred. This has been a balanced judgement which recognises the broad principle that

Members cannot readily be disenfranchised (albeit that they continue to be subject to the rules on advocacy). The sponsor of a Bill is, of course, also obliged to declare relevant interests and act in accordance with the Rules of Conduct (as set out in the Assembly's Code of Conduct).

11. However, the position is different when the sponsor of the Bill is the Chairperson of that committee. In these rare cases, advice has been provided that the sponsor should not chair those proceedings of the committee that relate to the scrutiny of his or her Bill (or draft or proposed Bill). This recognises that Chairperson has a significant role in guiding a committee in carrying out its functions and that the potential for a conflict (perceived or otherwise) would therefore arise if the Chairperson was guiding a committee in respect of how it should scrutinise his or her Bill. It is therefore already recognised that caution needs to be applied to ensure that the sponsor of a Bill does not have the opportunity to exercise disproportionate influence on how a committee carries out its scrutiny of a Bill.
12. Given that it is already the case that a sponsor of a Bill may, at the invitation of the committee, take part in some or all of the deliberations in relation to a Bill (without having the privileges of a member of the committee such as asking questions, counting towards quorum or being able to vote), it is the view of CLG that it is unnecessary to make provision for a Bill sponsor to be an ex-officio member of a committee. This approach also avoids the real risk of upsetting the delicate balance of parties which is reflected in the existing membership of any committee and calling into question the legitimacy of any decision taken by a committee in relation to a Bill.

Scheduling PMBs Across the Mandate

- *Relevant ToR: How Assembly plenary time might be maximised and prioritised towards the end of the mandate, when the level of PMBs and Executive legislation are likely to create significant pressures on Assembly business.*

13. CLG notes the unique circumstances within the current mandate with business being under a compressed two-year timeframe. Despite these challenges, the

Assembly Commission has sought to provide additional resources for Members to develop PMBs. With the benefit of a full five-year mandate, CLG believes the volume of business could be more evenly distributed across the available time. This would help minimise legislative congestion in the final months and could be kept under review in keeping with the setting of deadlines for completion of key stages. This will support the work of Committees in a range of ways, including by reducing pressure for additional plenary sittings on non-sitting days towards the end of a mandate when committees are meeting. Therefore, where possible, early engagement in a mandate between Assembly and Executive officials should take place to ensure comprehensive planning in respect of Executive business in order to minimise pressures towards the end of the mandate. This should be regularly reviewed and updates provided by the Executive Office to the Assembly.

14. CLG notes that sub-section 15(3) of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 requires Standing Orders to make provision for an annual debate on the Executive legislative timetable.
15. If this Standing Order was in place then the Assembly and its committees would be able to plan on the basis of knowing with certainty what Executive legislation was planned for the year ahead. This would assist considerably in enabling committees to plan their scrutiny accordingly. It is the view of CLG that consideration be given by the Committee on Procedures to whether this Standing Order should be implemented.
16. Taking a holistic approach to the management of the legislative timetable (including by encouraging more PMBs to be developed in the earlier years of a mandate) will promote the Assembly's scrutiny role. Ultimately, any changes made to procedures should be done with a view to helping the Assembly to scrutinise legislation more effectively and to provide Members with a better opportunity to see their Bills complete their passage.