



Northern Ireland
Assembly

Committee on Procedures

Inquiry into Private Members' Bills

Together with Minutes of Proceedings, Minutes of Evidence and other evidence considered by the Committee

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Report: NIA 178/17-22 Committee on Procedures

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Powers and Membership

Powers

The Committee on Procedures is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order 54.

The Committee has power to:

- Consider and review, on an ongoing basis, the Standing Orders and procedures of the Assembly;
- Initiate inquiries and publish reports;
- Republish Standing Orders annually; and
- Call for persons and papers.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Ms Carál Ní Chuilín MLA (Chairperson)^{1 2 3}
- Mr Tom Buchanan MLA (Deputy Chairperson)
- Ms Rosemary Barton MLA
- Ms Sinéad Bradley MLA

¹ Mr John O'Dowd joined the Committee on Monday 21 September 2020

² Ms Carál Ní Chuilín replaced Mr John O'Dowd as a Member of the Committee on Monday 18 January 2021

³ From 20 January 2021 Ms Carál Ní Chuilín replaced Ms Linda Dillon as the Chairperson of the Committee

- Ms Nicola Brogan MLA⁴
- Ms Joanne Bunting MLA⁵
- Mr Gerry Carroll MLA
- Ms Ciara Ferguson MLA^{6 7 8}
- Mr William Humphrey MLA^{9 10 11 12}

⁴ Ms Catherine Kelly left the Committee on Tuesday 3 November 2020 and was replaced by Ms Nicola Brogan on Monday 30 November 2020

⁵ From 21 June 2021 Ms Joanne Bunting replaced Mr Maurice Bradley as a member of the Committee

⁶ Ms Linda Dillon resigned as Chairperson of the Committee on Procedures on 20 January 2021

⁷ Ms Linda Dillon re-joined the Committee on Monday 1 February 2021

⁸ From 27 September 2021, Ms Ciara Ferguson replaced Ms Linda Dillon as a member of the Committee

⁹ Mr Harry Harvey left the Committee on 17 February 2020 and was replaced by Mr Gary Middleton

¹⁰ From 22 February 2021, Ms Paula Bradley replaced Mr Gary Middleton as a member of the Committee

¹¹ From 22 March 2021, Mr Gary Middleton replaced Ms Paula Bradley as a member of the Committee

¹² From 21 June 2021, Mr William Humphrey replaced Mr Gary Middleton as a member of the Committee

List of Abbreviations and Acronyms used in this Report

The Assembly: Northern Ireland Assembly

The Committee: Committee on Procedures

The Unit: Private Members' Bills Unit

MLA: Member of the Legislative Assembly

PMB: Private Members' Bill

RaISe: Research and Information Services

ToR: Terms of Reference

SO: Standing Order

MoU: Memorandum of Understanding

EFM: Explanatory and Financial Memorandum

Executive Summary

1. In September 2016, the then Committee on Procedures agreed to carry out a review of the how the Assembly supports PMBs. The broad objective was to determine if the current approach was fit for purpose in light of the increasing demand. The collapse of the Assembly in 2017 meant that this review was not completed. In the interim, the Bill Office conducted a review of the operational requirements to support PMBs which lead to the recommendation of a PMB Unit.
2. When the Assembly resumed in 2020, the Speaker presided over the creation of a dedicated Private Members' Bills Unit (the Unit) to operate within the Bill Office. The Unit was provided with enhanced staffing resources for the remainder of the mandate and focused on increasing the support provided to Members and the number of PMBs which could be supported simultaneously.
3. The Speaker also wrote to the Committee on Procedures in 2020 advising that he had published updated guidance for Members on the support available for PMBs for 2020-22. In his letter, the Speaker asked the Committee to consider returning to the issue of a review the PMB system, so that any further improvements could be put in place after the 2022 Assembly election.
4. At its meeting on 21 April 2021, the Committee agreed the Terms of Reference for the Inquiry into Private Members Bills.
5. The Terms of Reference for the Committee's Inquiry into Private Members Bills are as follows:
 - a. Examine whether the system of support currently in place for PMBs is fair, appropriate and a good use of public resources.
 - b. To compare and contrast any variations and limitations of the right to table PMBs in other legislatures.
 - c. To review whether the current arrangements are equitable or whether they could be improved by requiring a consistent level of involvement of

the Bill Office as well as public consultation prior to the PMB being submitted.

- d. 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.
 - e. To outline whether there are any issues arising from the nature of the special circumstances of the Assembly which need to be taken into account, and, based on the above to consider whether provision should be made in Standing Orders to clarify:
 - i. Whether there should be scheduled / dedicated plenary days for PMB business;
 - ii. Whether there should be mechanisms by which a proposal must pass a simple majority or other measure of support before being provided with resources to be developed further;
 - iii. Whether there could be arrangements to allow Members to legislate as a group and for all their names to be attached to it.
 - iv. 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.
6. In addition to considering a research paper from the Assembly Research and Information Services (RaISe), the Committee considered written evidence from: Ministers from the NI Executive; a number of the political parties represented in the Assembly and independent members; the Chairperson's Liaison Group (CLG); and the Assembly Business Committee.
7. The Committee also received written and/or oral views evidence from a number of MLAs who had recently progressed a PMB through the Assembly. Finally,

the Committee received oral/written evidence from officials from the Unit and the Speaker of the Assembly, Mr Alex Maskey MLA.

8. The Committee was cognisant that in the current mandate (2017-2022), unforeseen circumstances have seriously impacted on the work/legislation schedule of the Northern Ireland Executive and Assembly. The two most significant factors are the collapse of the institutions between January 2017 and January 2020 and the pressures brought to bear over the last two years by the COVID-19 pandemic.
9. There are two methods open to a member wishing to introduce a PMB. The first method is that they may approach the Unit, which provides access to research, legal advice and specialist drafters for the development of their Bill. The Unit provides guidance and advice to Members and coordinates the delivery of the service. Procedures for a member wishing to bring forward a Unit-supported PMB are set out in Guidance to Members by the Private Members' Bill Unit ('the Unit') under the authority of the Speaker. The service is open and impartial in that any MLA is able to approach the Unit.
10. The alternative method by which members may bring forward a Bill is to present a privately drafted (or "pre-drafted") Bill to the Speaker. This will be assessed by Assembly Legal Services to ensure it is competent before the Member is authorised by the Speaker to introduce the Bill (these steps are required for all Bills). This option does not allow for access to the dedicated services of the Unit in the Bill development process.

Key Findings

11. It was universally acknowledged by consultees that this mandate is quite extraordinary in that there was a dissolution of the Assembly for three years followed by the Covid-19 pandemic shortly after restoration of the Assembly in early 2020. The compression of the current mandate into two years was accompanied by a further increased demand to develop PMBs. Based on the growing interest and evidence of demand from members across Assembly mandates, it is reasonable to conclude the demand on the Unit and its support services is likely to endure in future mandates.

12. The unique context of this mandate has created a scenario in which there is increased demand to initiate legislation, with a limited timeframe in which to introduce and progress it. In recognition of this, the Speaker has sought to take a flexible approach to PMBs, in particular extending the deadlines for reaching key milestones in the process. This has allowed Members maximum time to develop their proposals whilst recognising the limited time available to complete their passage. This has allowed for the drafting of a record number of PMBs, which could contribute to the work of the next Assembly mandate.
13. However, the unique context has also meant that there is a high volume of PMBs during the busy end-of-mandate period. The Committee noted that this was far from ideal and would not be desirable in the context of a full five-year mandate, when pressures on plenary time traditionally reach their height. It is important therefore to consider mechanisms to better encourage a flow of PMBs across a full mandate and to address how the Assembly's procedural rules would benefit from reform.
14. The Committee recognises that this inquiry must take account of the lessons learned from this mandate, but also distinguish it clearly from how things would work in a more "normal" five-year period. Current issues to weigh in the balance include: the need to resource and equip Members to develop legislation; the high volume of PMBs at the Assembly and measures to prevent this at the end of mandate period; the scope and scale of policy proposals for PMBs; the question of procedural requirements including communication and engagement between PMB sponsors and relevant Departments; ensuring value for money in the development of PMBs; and discussion around the benefits of the steps required in the pre-introduction stages.
15. The two methods via which a member may bring forward a Bill vastly differ, which raises issues around the equity of the current arrangements and whether a new balance is required. The Committee notes the benefits of the recommended steps in the Assembly PMB process to ensure the development of robust legislation, including public consultation, appropriate research and access to professional legislative drafters. The Unit has provided a high level of support to members and has proved to be a very positive step in the Assembly's evolution as a legislature. The Committee supports the retention of

the current PMB Unit to provide support to Members in developing legislation. Together with the proposed addition of a deadline in Standing Orders, it is important that PMB Unit resources remain agile and can be re-oriented to support the increased volume of legislative business at the end of the mandate.

16. A PMB sponsor should be mindful of the fundamental purpose of a PMB when bringing forward a proposal. The Committee supports the view that Members should ensure when crafting their PMBs they pursue a single, focused policy objective and avoid significantly complex and cross-cutting PMBs. The Committee supports the focus in existing (Speaker's) Guidance for early engagement with a relevant Department to ensure proposals actually require legislation and secondly that the Department is not developing its own legislation to achieve the policy objectives. This should identify if there is a need for a PMB and in turn avoid unnecessary duplication of resources.
17. The Committee noted that other legislatures have a range of procedural rules and controls around their own PMB processes. These vary and include ballot systems, mechanisms to require support at a pre-legislative stage on proposals for Bills. The Committee considered the appropriate balance, taking into account the particular circumstances of the Assembly.
18. The importance of encouraging the participation of Members in the legislative process across the range of parties is central to the ethos of inclusion at the Assembly. The Committee also considered the need to manage the PMB process in a structured manner that ensures value for money. Taking this balance into account, the Committee did not favour the introduction of pre-legislative tests of support, which would represent a significant departure from the current relatively open model in place.
19. The Committee supports the Bill Office providing updated Guidance to the Speaker for approval on the operation of timescales within the supported process and providing information on the reforms resulting from this Inquiry.
20. However, the Committee did reflect that it would be helpful to set a deadline in Standing Orders for the introduction in PMBs. This deadline should be by the end of June of the calendar year preceding the Assembly election, so as to reduce legislative pressures during the end of mandate period. This

recommendation recognises that it is important that all Bills introduced should stand a realistic chance of completing their passage. Similarly, Assembly resources are re-directed in that period to meet the legislative demands within the system.

21. The Committee observed that “privately-drafted” Bills are subject to significantly fewer procedural requirements as those Bills that have progressed through the Unit. There is a concern that this can create an inequality and/or under-developed legislation. There is evidence to suggest that tighter criteria for those “pre-drafted” Bills (such as consultation and communication with the relevant Department) may help to mitigate these risks.
22. The Committee did not support wholly closing the avenue of privately-drafted Bills, feeling this would be disproportionate. However, the Committee supports these Bills being subject to additional procedural requirements prior to introduction to the Assembly. Conducting a public consultation on proposals for a PMB is recognised as a crucial and necessary step in the development of a final Bill. Similarly, engagement and communication with the relevant Department regarding the proposals is important to determine their intentions and to avoid duplication. It is therefore recommended these steps are required as a minimum for pre-drafted Bills.
23. The Committee does not support the granting of ex-officio membership of the relevant scrutiny committee for PMB sponsors. Whilst some argued having a PMB sponsor as a member on the Committee responsible for scrutinising the Bill may be helpful (particularly for the sponsor in responding to the evidence of stakeholders), granting this status has the potential to upset the careful political balance on committees. In particular, the Committee noted a potential conflict with Standing Order 49(1) and 49(2).
24. Scheduling of business in Plenary is at the discretion of the Business Committee and it is aware of the competing pressures that arise throughout the mandate. It is understood that at the end of the mandate the Assembly deals with a high volume of legislative business. The current approach has sufficient flexibility to accommodate PMBs where possible without creating unintended consequences for committee business or an unnecessarily rigid approach.

Coupled with a more even flow of PMBs across the mandate the Committee supports the existing approach to scheduling.

25. The implementation of Section 15(3) of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 in the Assembly's Standing Orders, making provision for an annual debate on the Executive legislative timetable would be a helpful planning tool for the scheduling of Plenary business (as well as for the wider scheduling of support by the Bills team).

Summary of Recommendations

- **Recommendation 1:** In light of the evidence considered, the right of individual members to initiate legislation is a key feature of participation in law-making, and it is unlikely there will be a decline in demand for PMBs in future mandates, the Committee recommends that the PMB Unit is retained in the Assembly and that the Assembly Commission should allocate appropriate resources to sustain and develop the Unit.
- **Recommendation 2:** In accordance with existing guidance and to ensure an effective use of public resources, the Committee recommends that members should ensure that, when bringing forward a PMB, the policy proposals contained therein are sufficiently narrow and specific in focus to effect the change which the PMB sponsor is seeking to achieve.
- **Recommendation 3:** To address the issue of the high demand for PMBs and to manage expectations, the Committee recommends that the Bill Office should develop revised guidance for the incoming Speaker to approve for Members early in the new mandate. This will refresh members on the rules and procedures relating to PMBs, including any changes to Standing Orders and guidance arising from this inquiry.
- This should continue to include guidance on factors relevant to timescales and achieving key milestones in the development process. It will be important to distinguish this mandate and address the approach for the full five-year term. The Committee notes the Speaker will review progress and determine how best to manage levels of demand in line with available resources. This will include the opening and closing of the PMB submission window and management of deadlines in the PMB process.
- **Recommendation 4:** Furthermore, to prevent congestion in the later sessions of a mandate meaning that PMBs are stalled in order for Executive legislation to be prioritised, the Committee recommends that a final deadline for a PMB to be introduced to the Assembly be set in Standing Orders, for the end of June of the penultimate session of the mandate.

- **Recommendation 5:** The Committee recommends that there are minimum procedural requirements for introduction of all PMBs. A Member wishing to introduce a PMB which has been “privately-drafted” should be required to:
 - a) undertake mandatory public consultation (parameters in similar terms as Bill supported by the Unit); and
 - b) have communicated the policy objectives and scope of the proposal to the relevant Department before they are submitted to the Speaker for consideration.

- **Recommendation 6:** The Committee recommends that the option to invite the sponsor of a Bill remains at the discretion of the respective Committee. There should be no procedural changes to grant a sponsor of a PMB ex-officio membership of the relevant scrutiny committee. Committees will continue to manage the handling of evidence in relation to a PMB and weighing up the most appropriate level of involvement by the sponsor as well as the range of stakeholders for a Bill.

- **Recommendation 7:** The Committee recommends that provision should be made in Standing Orders to implement section 15(3) of The Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 and that this Standing Order be brought to the Assembly as soon as practicable.

Introduction

26. The Northern Ireland Assembly (the Assembly) is the devolved legislature for Northern Ireland and is responsible for making legislation on transferred matters in Northern Ireland.
27. The right to initiate legislation has its foundation in The Belfast Agreement (also known as the Good Friday Agreement). Strand 1, Paragraph 29, of the Agreement provides that: *Legislation may be initiated by an individual, a Committee or a Minister.*¹³ Scope for individual Members to initiate legislation is a central and evolving feature of advanced democracies and provides an opportunity for Members to engage with the democratic process and their role as legislators.
28. The legislative programme for the Assembly is largely driven by the Northern Ireland Executive. Executive departments will have their own individual priorities for legislation, with the Programme for Government designed to knit together the work of departments into a central strategy. The structure of government, democratic mandate and resourcing of departments provides the Executive with the primary role in initiating legislation across the range of matters within the Assembly's remit. However, Bills brought to the Assembly by individual members have an important role to play in shaping the public debate, influencing policy and making law.

The Private Members Bill (PMB) Process at the Assembly

29. Standing Orders (SOs), the working rules and procedures which regulate the way the Assembly carries out its business, set out the procedures for "Public Legislation" in SOs 30-43. It should be noted that there is no differentiation in SOs in relation to Bills brought forward by Ministers and by members. That is, all public legislation must follow the same procedural requirements, once it has reached the Introduction Stage.
30. The procedures for a member wishing to bring forward a PMB are set out in Guidance to members by the Private Members Bills Unit ('the Unit') under the

¹³ [Belfast Agreement 1998](#)

authority of the Speaker. As the presiding officer of the Assembly, the Speaker will review and refresh this guidance for issue at the beginning of each mandate. Historically in the Assembly, PMB processes were supported by a small team of Bill clerks handling both Executive and Non-Executive legislation. These Bill clerks carried PMBs through their policy development phase as well as the different stages of passage which follow in the Assembly. The processes have developed incrementally over time, in line with increasing demand for PMBs and the success of a number of high profile Bills.

31. The development of the Unit required additional resources in this mandate to enhance the support for Members wishing to develop PMBs. This comprised additional staff, a focused remit on Bill development and increased resource for parliamentary drafters. The 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 means key stages must be completed in order to access financial resources for Bill drafting.
32. To introduce a “supported” PMB, members approach the Unit, which provides access to research, legal advice and specialist drafters, for the development of their Bill. The Unit provides guidance and advice to Members and coordinates the delivery of the service. This service is open and impartial in that any member is able to approach the Unit. A number of steps are built into the process in the interests of developing robust, well-researched legislation. Requirements for those Bill proposals that proceed through the Unit include:
 - i. Confirmation of the legislative competence of the proposed Bill;
 - ii. RaISe input on Bill subject matter, most importantly the current legislative position in Northern Ireland, the position in other UK legislatures and in Ireland and analysis of policy issues;
 - iii. Consultation for a minimum period of eight weeks or, alternatively, the PMB sponsor must provide a letter to the Speaker (for determination) as to why a consultation is not necessary (a Statement of Reasons). For example, this may be because there has been a recent consultation on the same proposal;

- iv. Communication to the relevant Department of the intention to legislate and to ascertain whether they have any plans to do so- if so this would avoid duplication of effort and wasting public resources;
 - v. Communication to the Equality Commission of the intention to legislate and seek views;
 - vi. Communication to the Human Rights Commission of the intention to legislate and seek views.
 - vii. Submission of a Final Proposal (FP) to the Speaker by the deadline. The FP should detail the evolution of the PMB, including the consultation process and any adjustments made to proposals and the impact of research etc. The Speaker then decides whether or not to grant funding for drafting the Bill - in doing so he assesses compliance with the procedural requirements of the Unit and does not take a view on the policy merits or otherwise of the proposal.
 - viii. The member works with the Unit (and sometimes the drafter via the PMB Unit) on drafting iterations of the Bill. This is an intensive process and often involves dealing with complex issues which arise when translating policy intent into effective legislation.
 - ix. Work with the Unit to draft an Explanatory Financial Memorandum (EFM) with initial research on costings provided by RaISe. This phase is an opportunity for the Member to think further about the practical implications of the Bill as they near the process of scrutiny at the Assembly;
 - x. Submission of Bill to Speaker for competence checks and authority to Introduce.
33. The alternative method by which members may bring forward a Bill is to present a “privately-drafted” Bill to the Speaker, 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 currently require any additional procedural steps to be undertaken other than the submission of a

compliant EFM. The existing PMB guidance does not allow access to the services of the Unit in the Bill development process for privately-drafted Bills in order to preserve fairness between members. This has been the consistent practice in The Assembly.

34. It should be noted that whether a Member chooses to use the Assembly Bill Office to bring forward a Bill or chooses to bring their own “privately-drafted” one, in both instances, approval must be received from the Speaker to move to the Introduction stage. The Speaker will determine whether the objective of the Bill is within the legislative competence of the Assembly and will also forward a copy of the Bill to the Northern Ireland Human Rights Commission.

Background

35. Challenges posed by the increasing demand by members to bring forward PMBs through the Assembly emerged at the beginning of the 2016 mandate, when the capacity of the Unit to support a number of PMBs simultaneously was reached at a very early stage. Table 1 shows the number of initial proposals received across Assembly mandates, along with the proposals drafted, introduced to the Assembly and eventually received Royal Assent.

Table 1

Mandate	Initial Proposals	Drafted	Introduced	Royal Assent
2017-current	33	11*	11	TBC
2016-2017	27	0	0	0
2011-2016	25	11	11	5
2007-2011	21	11	11	3
1999-2003	7	3	2	1

*The drafting process is continuing for further Bills where sponsors met the deadline for Final Proposals. These Bills will then be at an advanced stage for the next mandate.

36. In September 2016, the Committee on Procedures agreed to carry out a review of how the Assembly supports PMBs. The broad objective was to determine if the current approach was fit for purpose in light of the increasing demand. The collapse of the Assembly in 2017 meant that this review was not completed. However, the Bill Office conducted an internal review of the existing system and recommended the establishment of a dedicated PMB Unit for the development process.

37. When the Assembly resumed in 2020, the Speaker authorised the creation of a dedicated Private Members' Bills Unit to operate within the Bill Office. The Unit was provided with enhanced staffing resources for the remainder of the mandate and focused on increasing the support provided to Members and the

number of PMBs which can be supported simultaneously. In 2020, the Speaker also wrote to the current Committee on Procedures advising that he had published updated guidance for Members on the support available for PMBs for 2020-22. In his letter, the Speaker asked the Committee to consider returning to the issue of a review the PMB system so that any further improvements could be in place after the 2022 election.

38. The Speaker is the Chairperson of the Assembly Commission; the Assembly Commission has ultimate responsibility for allocating sufficient resources to supporting the development of PMBs.

Committee Approach

39. At its meeting on 21 April 2021, the Committee agreed the Terms of Reference for the Inquiry into Private Members Bills. The Committee subsequently wrote to the following stakeholders seeking written views on the ToR for the Inquiry:
 - a. the NI Executive;
 - b. the political parties represented in the Assembly and independent members;
 - c. the Chairperson's Liaison Group (CLG); and
 - d. the Assembly Business Committee.

40. The Committee further wrote to the following MLAs who had recently progressed a PMB through the Assembly to invite their written and/or oral views on the Inquiry's Terms of Reference: Áine Murphy MLA; Aisling Reilly MLA; Caoimhe Archibald MLA; Chris Lyttle MLA; Clare Bailey MLA; Colin McGrath MLA; Declan McAleer MLA; Gerry Carroll MLA; Jemma Dolan MLA; Jim Allister MLA; John Blair MLA; John O'Dowd MLA; Kellie Armstrong MLA; Mark Durkan MLA; Mervyn Storey MLA; Orlaithi Flynn MLA; Pádraig Delargy MLA; Pam Cameron MLA; Pat Catney MLA; Pat Sheehan MLA; Paul Givan MLA; Philip McGuigan MLA; Rachel Woods MLA and Robin Newton MLA.

41. The Committee received oral evidence from the following MLAs in relation to their views on the ToR for the Inquiry:
 - a. At the meeting of 3 November 2021: Clare Bailey MLA;
 - b. At the meeting of 17 November 2021: Caoimhe Archibald MLA and Jim Allister MLA;
 - c. At the meeting of 1 December 2021: Kellie Armstrong MLA and Chris Lyttle MLA; and
 - d. At the meeting of 15 December 2021: Colin McGrath MLA and John O'Dowd MLA.

42. At the meeting of 15 December 2021, the Committee received oral evidence from the Private Members' Bills Unit and from the Speaker of the Assembly, Mr Alex Maskey MLA.
43. In addition to receiving evidence from the aforementioned parties and individuals, the Committee commissioned research papers and received briefing from the Assembly Research and Information Services (RaISe).
44. Given the significance of the Inquiry and the potential impact that the outcomes of the Inquiry may have for Assembly business, it should be noted that the Committee sought views from the Executive on the Inquiry's ToRs in July 2021. When no response had been received after the deadline for written responses had passed, at the meeting of 15 December 2021, the Committee agreed to write to each individual Minister in the Executive, seeking either their individual and / or departmental perspectives.
45. At its meetings on 19 January 2022 and 9 February 2022, the Committee considered the evidence gathered and discussed its views on the key issues arising. At the meeting of 23 February 2022, the Committee agreed its views and agreed the final report by way of correspondence via the Temporary Provisions in Standing Orders 115(8).

Committee Considerations

46. The Terms of Reference for the Committee's Inquiry into Private Members Bills are as previously set out in paragraph 5. The Committee's considerations in relation to each are detailed in the paragraphs which follow.
47. In relation to the first ToR, that is to: **Examine whether the system of support currently in place for PMBs is fair, appropriate and a good use of public resources.** The Committee received a range of views from consultees in relation to the overall approach of the current system. There is general agreement that the right to legislate is inherent in the role of an MLA and this is supported by Members. The Alliance Party stated in its written submission that it: *believes passionately in the ability of members being able to introduce legislation and the importance of ensuring 'good law'.*
48. Furthermore, evidence from individual members supported this view. For example, in his oral evidence, Chris Lyttle MLA stated that: *...I really do support private members being able to progress legislation. I think that it is an important counterbalance to relying on an Executive to produce legislation, which has had varying levels of effectiveness over the years, to be diplomatic. Clare Bailey MLA also emphasised in her oral evidence, that: ...we are elected as members of the legislative Assembly, and that should be our primary function. That is how I feel about that. I think that we should all be skilled up on legislation, what it looks like, how to do it and what to scrutinise.¹⁴*
49. The Committee noted the different perspectives on the system of support currently in place for PMBs at the Assembly and the need to strike the right balance between the level of resources provided, the depth of support provided and the procedural requirements for producing a PMB.
50. The Speaker, as the ultimate authority in authorising drafting support for those PMBs that proceed through the Unit's system, acknowledged in his written response that the demand from Members for PMBs has been increasing and welcomed a culture where PMBs are brought to the Assembly. However, he

¹⁴ Official Report (Hansard), Review of Private Members' Bills: Mr Chris Lyttle MLA, 1 December 2021.

further highlighted that: *the resource required to meet high demand from Members may not be the same as the resource required for the number of PMBs that can realistically make their passage through the Assembly...but there remains a need to ensure that the public money invested in PMBs is being used wisely.*¹⁵ This was a fundamental issue that the Committee sought to understand further.

51. The DUP's written response expressed concern about the level of public money expended in the PMB system in this mandate and cautioned that the current high level of PMBs introduced in this term may: *have an impact on value for money when the total resources expended is considered alongside the number of Bills that are ultimately successful.*¹⁶
52. In the absence of an Executive response to the Committee's inquiry, the Committee wrote to individual Ministers, seeking their perspectives on the current PMB system. As the Executive is the lead body that produces legislation for consideration by the Assembly, it was essential that Committee receive views from Ministers as part of the inquiry. The Economy Minister, Gordon Lyons MLA wrote that: *The sheer volume of PMBs working their way through the system means that it becomes incredibly difficult for Members to fully consider the need and impact of same, and they can also undermine and circumvent the normal policy development role for Departments. Unfortunately, this can lead to bad law. In any normal mandate there is always a rush in the final few months to get Executive legislation through the Assembly, even more so when we lost so much time at the beginning of this mandate. Add to this the number of PMBs taking up Assembly time and Departmental time and it is not hard to conclude that reform of the system is long overdue.*¹⁷
53. The Minister for Infrastructure encouraged the Committee to note that proposals for PMBs: *are not always subject to the same rigorous policy development and public consultation that an Executive Bill will have. Therefore, proposals may*

¹⁵ Speaker's written submission.

¹⁶ DUP's written submission.

¹⁷ Economy Minister's correspondence, 7 January 2022.

*not always be as well informed or tested before Introduction Stage. Further consultation and engagement should be encouraged and an appropriate evidence base developed for all PMBs.*¹⁸

54. The Minister for Health, Robin Swann MLA, identified a number of issues in the current system that he urged the Committee to evaluate such as: the scheduling pressures that PMBs put on the Assembly and the associated risks; the importance of a PMB sponsor engaging early with a Department(s); and the importance of a PMB sponsor providing clarification in any accompanying Explanatory and Financial Memorandum (EFM) of why and how a proposal should be implemented, as well as detailing how economically viable a Bill will be to implement.
55. The Justice Minister, Naomi Long MLA, also highlighted in her response the need for PMB sponsors to communicate and collaborate with relevant Departments. Furthermore, Ms Long suggested training be given to MLAs at the start of each mandate on the key differences between primary and secondary legislation. She argues that this would be of benefit to members by helping them: *understand the appropriate level at which the changes they are seeking should be achieved and would facilitate consistency of approach across Executive and Assembly business.*¹⁹
56. The Chairpersons Liaison Group's (CLG), a body made up of the chairpersons of all statutory and standing committees (with the exception of the Business Committee) addresses issues that arose during the current mandate from the perspective of Assembly Committees. It stated 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*

¹⁸ Correspondence from the Minister for Infrastructure, Nichola Mallon MLA, 10 January 2022.

¹⁹ Justice Minister written submission.

*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.*²⁰

57. As the Committee responsible for scheduling business at the Assembly, the Business Committee focused its response on this area of its remit. It should be noted that although the Business Committee did not offer its view on the current system in place for PMBs more generally, it did suggest that the Committee's Inquiry consider: *whether, rather than to allow an unlimited number of PMBs to be introduced throughout the mandate, it may be more efficient to introduce measures that would provide a reasonable expectation of a PMB having sufficient time to complete its passage through the Assembly.*²¹ The Business Committee went on further to suggest that introducing a final date by which Members may submit a PMB to the Speaker that is based on a time that would provide a realistic expectation of the Bill completing its Assembly passage may be helpful.
58. The Speaker's written submission also supported this view when he made the following suggestion for the Assembly: *As a maximum, it might be wise to have PMBs introduced no later than June at the end of the penultimate session of each mandate. If such a deadline was to be set out in Standing Orders, any milestones set out in the PMB guidance would have more force.*²²
59. The Unit's written evidence outlined the processes that are in place to assist members with developing a PMB and the benefits of them, which included ensuring that the proposal is well researched, consulted on and is within legislative competence. Additionally: *it requires engagement with the relevant department to avoid duplication and ensures professional drafting services are applied to the Bill. Members are supported to begin to engage with any financial implications resulting from their Bill and have an opportunity to promote*

²⁰ Response from the Chairpersons' Liaison Group to the Committee on Procedures – Inquiry into Private Members' Bills, 16 November 2021, paragraph 4.

²¹ Response from the Business Committee, "Committee on Procedures Inquiry into Private Members' Bill", 16 November 2021, paragraph 10.

²² Speaker's written submission, paragraph 18.

*their proposals as well-researched when recommending their Bill to the Assembly. The full range of steps in the PMB development process therefore have a view to equipping the Member for the challenges of the scrutiny process.*²³

60. The Unit's written evidence also detailed the return on the investment of resources in this mandate: *...we are in a unique mandate. We have a two-year compressed time frame. With the resource that the Commission had invested in private Members' Bills at the beginning of this shortened mandate, we have been able to draft and introduce 11 supported private Members' Bills. That is equal to the number drafted and introduced in the full five-year mandate of 2011-16.*²⁴ The Committee noted that the investment of resource in Bills drafted that did not have time to complete their passage could carry forward into the next mandate. This meant the investment of resource was not lost due to the Bills failure to progress.
61. The Committee also considered evidence in relation to the two methods through which an MLA may bring forward a PMB; that is either by using the services of the Unit at the Assembly or by bringing a privately-drafted Bill directly to the Speaker. Members were able to hear experiences from MLAs that had used one or both of these methods, and the detailed considerations are outlined under the third TOR for this Inquiry. It was very well established that the two methods differed greatly in relation to the measures and milestones required under each and this in turn had an influence over the entire PMB process.
62. Whether there was a need for additional criteria and controls around the current PMB process was considered by the Committee, principally in relation to the potential for duplication in legislative proposals brought before the Assembly. This was of particular concern to the Committee; it was very clear in its view that there should be no duplication in the Bills being considered in the Assembly – considering any overlap in work to be wasteful, nugatory and not an efficient use of Assembly time.

²³ Review of PMBs – Update briefing to Committee on Procedures, paragraphs 12 & 14.

²⁴ Official Report (Hansard), Review of Private Members' Bills: Northern Ireland Assembly Bill Office, 15 December 2021.

- 63. There are currently procedural safeguards in place at the Assembly to avoid this potential duplication which the Non-Executive Bills Unit outlined. Firstly, in relation to PMBs supported by the Unit, the existing guidance in place addresses where there are 2 similar PMB proposals from 2 or more different members. In this instance, those members must work together (a collaboration) to develop a single PMB or enter a ballot, after which only one PMB proposal will be taken forward. Secondly, where the Unit is supporting a Bill and discovers that a relevant Department is preparing or planning to prepare legislation on an issue, the Unit will cease to provide support to that PMB. These measures will prevent any potential duplication in 2 PMBs being progressed through the Unit or for the potential for a PMB to duplicate aspects of Executive legislation.

- 64. It is important to recognise there is also a political safeguard in place, which is the Assembly’s power to vote against a PMB at Second Stage of its passage. That is, if the majority of the Assembly is opposed to a PMB, it can vote against that PMB. Ministers have the opportunity to make their case against a particular Bill and if the House is persuaded, this will mean no further Assembly time will be spent on it.

- 65. When considering existing protections in place to prevent duplication of Bills, the Committee was content that they remained both relevant and effective, recognising that the recent examples of Bills in passage on the same subject as both exceptional and unprecedented.

Key Findings:

- **The key issues identified in the current arrangements are: the high volume of PMBs at the Assembly; the importance of standards of policy development of PMBs; communication/engagement between PMB sponsors and a relevant Department; ensuring value for money in development of PMBs; the equity of the current balance between methods in which an MLA may bring forward a Bill and deadlines for introduction.**

- **The Committee considers the investment in the Unit to be a good use of resources in supporting Members to develop legislation and supports its permanent retention.**
- **The Committee notes there is a need to identify the best means of managing the flow of PMBs in an Assembly mandate and avoid resources attaching to Bills with little hope of completing their passage. The Committee supports existing safeguards against duplication of effort and avoiding nugatory work on PMBs. Current PMBs unable to complete passage in this mandate can be re-introduced in the next.**
- **A priority for PMBs would be to avoid the significant pressures on plenary time at the end of the mandate to stand a greater chance of completing their passage. A deadline in Standing Orders for introduction of PMBs would support this objective.**
- **The Bill Office should prepare updated guidance for Speaker on the deadlines within the supported PMB process and to update Members on changes in the procedural rules resulting from this Inquiry.**

66. In relation to the second ToR, that is: **To compare and contrast any variations and limitations of the right to table PMBs in other legislatures.** The RaISe paper *“Private Members’ Bills – Bills that have become law in other legislatures and procedures in other legislatures”* was considered at the Committee meeting of 16 June 2021. The paper substantially addressed this issue, along with the evidence received from Bill Office officials and the Speaker.
67. The RaISe paper that the Committee considered in June 2021 focused on the legislatures of Scotland, Wales, England and the Republic of Ireland, in which a PMB (or equivalent) exists. It was apparent other legislatures also have a range of procedural rules in relation to what Bills may be submitted and/or how they may proceed to become law. For instance, in Scotland, the Parliament allows all MSPs (other than Ministers) to lodge proposals and (if successful)

introduce Members' Bills, subject to a maximum of two per MSP in each 5-year session, and a maximum of two proposals in progress at any one time. In Wales, there is a ballot process in which any member can enter the ballot (not Government Ministers or members who have previously been successful in the ballot). Members can pursue almost any topic unless it is outside Parliament's competence, including but not limited to introducing a tax or payment.

68. In Westminster, there are three ways in which a PMB may become law: Ballot Bills; Ten Minute Rule Bills and Presentation Bills – rules for which are detailed in the RalSe paper.²⁵ The Oireachtas supports all Members right to propose a PMB. However, a Member must have the permission of the House (via a vote proposal that “leave to introduce” be given) to have the Bill printed and placed on the Order Paper.
69. It should be noted that in 2016, the sub-Committee on Dáil Reform initiated a review of the PMB process after which several changes were made including the creation of a Memorandum of Understanding (MoU) on PMBs. This MoU put in place a process which supports a Members right to propose legislation, parliament's duty to scrutinise legislation, and Government's duty to ensure fiscal responsibility. The MoU amended Standing Orders and created a new “detailed scrutiny” stage for PMBs with a view to ensuring that PMBs are subjected to a similar level of scrutiny as Government Bills. Taking place after Second Stage, and prior to formal Committee Stage, “detailed scrutiny” is undertaken even where a Financial Resolution, Money Message or opinion from the European Central Bank (ECB) is required to proceed to formal Committee Stage.²⁶
70. Only one response from political parties addressed arrangements for PMBs in neighbouring legislatures, the Alliance Party, in its written submission, stated that: *We would propose that a ballot system, such as in the Welsh Parliament is introduced but with a more generous allocation beyond that of the Welsh*

²⁵ RalSe Paper, NIAR 132-2021, *Private Members' bills – bills that have become law in other legislatures and procedures in other legislatures.*

²⁶ RalSe Paper, NIAR 132-2021, *Private Members' bills – bills that have become law in other legislatures and procedures in other legislatures.*

Senedd where the Bills ballot only permits 20 members to bring forward a Bill within the Mandate. Checks and balances should also be introduced to ensure that smaller parties and single members are not discriminated against such as, for example, allowing a member to introduce at least one Private Members Bill per mandate.²⁷

71. Reflecting on the procedures in place for PMBs in other legislatures, the Committee noted the importance of a system which reflects the particular circumstances of the Assembly and its parliamentary culture. The participation of smaller parties and an ethos of inclusion of individual members is a powerful consideration in the Assembly's approach to PMBs. The Committee considered the ways in which the Assembly might revise its own procedures for PMBs. It was important, for the Committee, however, to preserve as much of the right of members to bring forward PMBs in a way that was not overly burdensome, whilst ensuring value for money invested in the process.

Key Findings:

- **Legislatures elsewhere have a range of specific rules and controls around their own PMB processes. These vary and include a ballot system, a cap on numbers allowed in the system at the same time, votes on proposals for Bills and timeframes for various stages.**
- **The Committee considered that the particular circumstances of the Assembly must be borne in mind. The emphasis on participation of individual members in developing law and ensuring access of smaller parties to resources was a key factor.**

72. In relation to the third ToR, that is: **To review whether the current arrangements are equitable or whether they could be improved by requiring a consistent level of involvement of the Bill Office as well as public consultation prior to the PMB being submitted.** As stated previously, the two methods in which an MLA may bring forward a PMB is by using the

²⁷ Alliance Party written submission.

services of the Private Members' Bills Unit at the Assembly or by bringing a "pre-drafted" Bill directly to the Speaker.

73. The DUP, in its written response stated that it was their view that:
...development of a Private Members Bill is the ultimate responsibility of the member sponsoring the proposal. The practical involvement of the Bill Office should be commensurate to the effort and progress made in each case if it is to represent good use of public resources.
74. The system currently in place received significant positive feedback in terms of the level of support provided- John O'Dowd MLA noted *...The support and engagement with the Bill Office and other Assembly staff has been excellent. They have helped walk me through the legislative process every step of the way....when you sit down to draft your own legislation, it is a formidable task...*²⁸
75. Other Members, whilst recognising and valuing the level of support and advice provided by the Unit, raised the issue of whether the process of supported PMBs could be made quicker. Chris Lyttle MLA (who used the Unit to propose his Bill) during his oral evidence stated: *..I am not sure how long it takes once those drafting instructions are outsourced to the drafters, but there are a couple of stages there that can take quite some time. In my experience, it would have been helpful if the Assembly drafting instruction stage had been quicker. However, that is just an observation; it is not a criticism.*²⁹
76. Kellie Armstrong MLA also provided evidence on her experience of bringing a PMB entirely through the Non-Executive Bills Unit and spoke positively about her experience stating that: *Until the point at which the drafting was finished, I found the system extremely helpful. I have to say that our Bill Office was fantastic. I went through the whole Assembly system; I did not go outside it. Nobody else wrote the Bill for me. We did the consultation with a lot of support from our Bill Clerk. We did all the work and ticked all the boxes concerning what we had to do for the Speaker. Then we got to the drafting stage; one of the*

²⁸ Official Report (Hansard), Review of Private Members' Bills: Mr John O'Dowd MLA, 15 December 2021.

²⁹ Official Report (Hansard), Review of Private Members' Bills: Mr Chris Lyttle MLA, 1 December 2021.

*expert panel of drafters did the drafting of the Bill and was fantastic. Then we came to the First Stage in the Assembly, and you know where we are with it now.*³⁰

77. It was clear to the Committee that the help and support provided by the Unit has been significant to the members that have used it to get their Bills ready for the Introduction Stage in the Assembly. In evidence to the Committee, the Speaker referenced the importance of the Assembly having in place robust processes of support to develop legislation: *...you need to have well-developed legislation, which means that it needs proper consideration and scrutiny.....when you do the work through the support of the Bill Office, the quality is there from day one.*³¹
78. In its written statement, the Unit asserted that, when using their services: *It can be argued the system is fair as it affords all Members the opportunity to meet deadlines and rewards those making the earliest progress by providing support in intensive drafting and pre-introductory stages. The commitment of public resources to provide Members with the opportunity to develop legislation at the Assembly is not insignificant, both in staffing terms and providing expert drafting.*³²
79. The Committee notes that the management of resources is in line with the progress made by Bills through the developmental process. This takes a fair, objective approach with all members. The Committee recognised that in the constraints of time during the latter part of the current mandate a balance had to be struck between advancing PMBs as far as possible whilst resourcing a high volume of existing legislative business.
80. It was clear to the Committee that a number of Members who had submitted privately-drafted Bills noted they could move ahead with speed. During its

³⁰ Official Report (Hansard), Review of Private Members' Bills: Ms Kellie Armstrong MLA, 1 December 2021.

³¹ Official Report (Hansard), Review of Private Members' Bills: Office of the Speaker, Northern Ireland Assembly, 15 December 2021.

³² Review of PMBs – Update briefing to Committee on Procedures, paragraph 27.

considerations, the Committee gave particular thought to the Speaker's clear views in relation to these privately-drafted Bills.

81. The Speaker mentioned his concern in relation to "pre-drafted" Bills in his written submission. He explained that the reasons for his reticence in relation to such Bills are threefold: 1. They do not go through the same rigorous development process undertaken by Executive Bills or Assembly supported PMBs including key steps such as a consultation; 2. It does not seem fair or equitable to Members who go through the rigours of the Bill Office support that others can submit their own draft and 'jump the queue' in terms of the allocation of Assembly time. 3. The potential for abuse in relation to enabling Bills to be submitted through external support or funding.³³
82. Along similar lines, the Alliance Party's written submission indicated that it would support a requirement for all PMBs to go through the Supported Private Members' Bill Service (the Unit), including privately drafted Bills, as it would ensure drafting of robust legislation with mandatory consultation.³⁴
83. Colin McGrath MLA, who brought a "privately-drafted" Bill to the Assembly provided his insight on the process during his oral evidence and advised that his experience was positive. However, he did acknowledge that: *if you leave too much to the outside, there is always the potential for a blurring of the lines between a vested interest and an outcome that is wanted from legislation. If it is kept in-house and only your consultation goes out, the voice of those vested interests becomes equal with that of everybody else. To reiterate, I have no experience of that happening, but I can see how, if left to your own devices, you could wander down a road that could take you there. Using the in-house scheme as much as possible would definitely be preferable if it prevented that. I do not know whether there needs to be a rule that, if you get help from a sponsored organisation, you must make sure that it is charitable or that its aims*

³³ Speaker's written submission, paragraphs 23-28.

³⁴ Alliance Party written submission.

*and objectives are for the greater good. There is definitely a conversation in there somewhere to make sure that there are safeguards.*³⁵

84. In relation to the issue of sponsors of PMBs undertaking public consultation on their Bill proposals, the Committee recognised that rules on consultation are different depending on the route taken when bringing forward a PMB. Those PMBs that progressed through the Unit were required to publicly consult on proposals for at least 8 weeks. However, those PMBs that were submitted to the Speaker had no such requirement for consultation.
85. The importance of public consultation prior to a PMB being submitted was highlighted by many MLAs in their written and oral evidence. Colin McGrath MLA highlighted the importance of consulting on the proposals of a PMB, believing that: *I am a firm believer that you can never consult enough and that you should consult at every opportunity that you get. Should it be mandatory? I think so, because, at a bare minimum, you will get out and hear people's thoughts.*³⁶
86. Dr Caoimhe Archibald MLA, during her oral evidence, mentioned that engagement with the public is equally important as well as having a written consultation. She stated that: *I certainly see the physical consultation document as one part of it, but talking to people about the Bill, what you want it to do and what you think that it will do and hearing their views was every bit as important, if not more so, in developing the Bill and in understanding how people saw how what you were doing fits into their work.*³⁷
87. The DUP specified in its written response that: *...it is important that universal guidance is made available to all members and we agree that there may be*

³⁵ Official Report (Hansard), Review of Private Members' Bills: Mr Colin McGrath MLA, 15 December 2021.

³⁶ Official Report (Hansard), Review of Private Members' Bills: Mr Colin McGrath MLA, 15 December 2021.

³⁷ Official Report (Hansard), Review of Private Members' Bills: Dr Caoimhe Archibald MLA, 17 November 2021

*merit in producing revised advice and resources in respect of completing and analysing the public consultation element of the initial proposal.*³⁸

88. The Justice Minister, Naomi Long MLA stressed the importance of PMB sponsors engaging with relevant Departments and wrote in her correspondence to the Committee: *Thought should be given as to how Departments and individual MLAs might be able to work together on PMBs where a Minister is in favour of the intent of a proposed Bill, but does not have a legislative vehicle or adequate time to draft provisions themselves.*³⁹
89. The Speaker also indicated his support for public consultation on PMBs when he stated in his written submission that: *While under the 1998 Act, the Speaker can consider whether a Bill can be introduced based on whether it is within the legislative competence of the Assembly, I believe the Assembly could pass Standing Orders to put other requirements upon PMBs before they could be scheduled and processed further. At the very least, I think we should expect that every Bill being presented to the Assembly, whether supported through the Bill Office PMB process or independently drafted, should have to meet some requirements such as a consultation.*⁴⁰
90. Although the importance of public consultation was acknowledged by most MLAs, many suggested that more support could be provided during the consultation process. Clare Bailey MLA, during her oral evidence stated: *I found going to public consultation a big learning curve, discovering that there are no financial resources for private Members who are working on Bills. I had to cover that cost out of my own pocket. I think that that is still the case.*⁴¹
91. Rachel Woods MLA, also expressed her concern in relation to the lack of funding support for public consultation in her written response to the Committee: *In my view, the Committee should explore options for the Assembly to bring online surveys connected to PMB public consultations ‘in-house’... The*

³⁸ DUP's written submission

³⁹ Correspondence from the Minister for Justice, Naomi Long MLA, 7 January 2022.

⁴⁰ Speaker's written submission, paragraph 28.

⁴¹ Official Report (Hansard), Review of Private Members' Bills: Clare Bailey MLA, 17 November 2021.

Committee may also wish to consider the possibility of additional support or assistance with this aspect of the PMB process.”

92. The Committee carefully weighed up the benefits of the supported PMB process and the privately-drafted route. On balance, the Committee considers that although the pre-drafted route should not be closed, certain minimum procedural requirements should be set. In particular, mandatory public consultation and engagement with the relevant department are key steps. In order to preserve fairness, those taking this route will not benefit from the range of Assembly services applied to supported PMBs.

Key Findings:

- **The Committee notes the improved support from the Unit for members to develop strong and focussed PMB proposals. The development of robust legislation must be the central objective and the Committee supports this being a rigorous process.**
- **Privately-drafted Bills are not subject to the same criteria for submission to the Speaker compared to those Bills that have progressed through the PMB Unit. There is a concern that this can create inequality and less well-developed legislation. There is evidence to suggest that tighter criteria for those privately-drafted Bills (such as consultation and communication with the relevant Department) may help to mitigate these risks.**
- **A public consultation on proposals for a PMB is recognised as a crucial and necessary step in the development of a final Bill. The Committee also notes the importance of engagement and communication with the relevant Department regarding the proposals.**
- **The Committee considers that in the context of the wider review of guidance and the service, some thought should be given to how best to support sponsors of PMBs in relation to the public consultation aspect of the development process. This should recognise a sponsor of a PMB is ultimately responsible for leading**

his or her own Bill and consider the best approach to public consultation.

93. In relation to the fourth ToR, that is: **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.** It should be noted that the genesis of this ToR was via correspondence from the Committee for Finance in January 2021. The Chairperson of that Committee, Dr Steve Aiken MLA, wrote to the Committee on Procedures to consider setting out clear procedures (and amending Standing Orders as appropriate) in order to allow committees, if they so choose, 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. It was after consideration of this correspondence that the Committee on Procedures agreed to include it in the ToR for the Inquiry.
94. A mixture of views were forthcoming on this aspect of the inquiry. The Committee was able to gather written/oral evidence from MLAs who had the experience of being on the Committee that had been charged with the scrutiny of their Bill during Committee Stage. For instance, Jim Allister MLA, who was a strong proponent of including the Bill's sponsor on the corresponding Committee, stated: *My first Bill passed through a committee of which I was not a member. In the case of my second, I was already a member of the scrutinising committee. The experience for me as sponsor was immeasurably different. It is this experience which causes me to strongly support speaking rights for the Bill sponsor during committee evidence gathering and deliberations on the Bill. No one knows the Bill and its intentions better than the sponsor. Thus, being able to pose questions to witnesses and contribute can crystallise the issues for the committee and retain focus. For the sponsor too it is an invaluable experience, as confronting first hand problems identified allows the Bill to be shaped and amended for the better.*⁴²

⁴² Official Report (Hansard), Review of Private Members' Bills: Mr Jim Allister MLA, 15 December 2021.

95. Another proponent, Clare Bailey MLA, stated during her oral evidence session that: *I am on the Committee that is scrutinising the Bill, and that has been a game changer, to be honest, especially in comparison with the other Bill. I am able to give feedback to Committee members and listen to stakeholder engagement. I can work on the amending, streamlining and reorganising of the Bill more effectively, because I am getting such detailed feedback.*⁴³
96. However, concerns were raised by other stakeholders that the inclusion of the sponsor of a Bill on a Committee may hinder robust scrutiny of the Bill. The DUP, for instance, stated: *While we endorse the need to promote effective and regular exchange of views between a Bill sponsor and members of the relevant Committee in the course of their deliberations, we hold some concern that affording a sponsor the distinct opportunity to ask questions of witnesses may lead to a level of confrontation and potentially stymie constructive dialogue...should any privileges be extended to ex-officio members, those powers should be limited and well-defined.*⁴⁴
97. John O'Dowd MLA, during his oral briefing acknowledged the potential conflicts by stating: *There is a balance to be struck. The fact that I sit on the Committee is useful, because I am involved with all the Committee discussions, I hear the witness statements at first hand and I have the ability to ask questions and engage with my fellow Committee members on the legislation...Does that also work against scrutiny of the Bill? Do witnesses feel that they are inhibited from making comments because the Bill sponsor is sitting there looking at them? That is worth further consideration, but there are certainly benefits to being on a Committee as your Bill goes through that Committee.*⁴⁵
98. Chris Lyttle MLA implied there may be alternatives to a sponsor being an outright ex-officio member by stating: *It is prudent for a Committee to engage as regularly as it can with sponsors of Private Members Bills. Committee Stage is*

⁴³ Official Report (Hansard), Review of Private Members' Bills: Ms Clare Bailey MLA, 17 November 2021.

⁴⁴ DUP's written submission.

⁴⁵ Official Report (Hansard), Review of Private Members' Bills: Mr John O'Dowd MLA, 15 December 2021.

*obviously a formal stage of the Bill, but it can be a fairly informal process at times in trying to exchange possible amendments with each other. In my experience, Committees are keen to perform that impartial role most of the time, and they generally have a consensus of trying to improve and enhance Bills. Informal and regular engagement with Bill sponsors can be adequate.*⁴⁶

99. The CLG, in its written response drew attention to the fact that: *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). The CLG went on further to give its view 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.*⁴⁷
100. The CLG also pointed out that: *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:*
- a. *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".*
 - b. *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*

⁴⁶ Official Report (Hansard), Review of Private Members' Bills: Mr Chris Lyttle MLA, 1 December 2021.

⁴⁷ Response from the Chairpersons' Liaison Group to the Committee on Procedures – Inquiry into Private Members' Bills, 16 November 2021, paragraph 4.

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”.⁴⁸

Key Findings:

- **Evidence indicates that having a PMB sponsor as a member of the Committee responsible for scrutinising the Bill may be beneficial (particularly for the sponsor in responding to issues). The sponsor knows the Bill and may be able to clarify to the committee what the intentions and implications are when the committee is unsure.**
- **However, this should be balanced against the potential for a sponsor to unduly influence the Committee’s consideration of a Bill. This could create difficult management issues for the Committee Chairperson. Currently, it is open to Committees to invite the sponsor to give evidence on as many occasions as they feel is appropriate.**
- **Including a sponsor of a PMB as an additional ex-officio member would upset the balance of parties at Committee, therefore raising a potential conflict with Standing Order 49(1) and 49(2).**

101. In relation to the fifth ToR, that is: **Whether provision should be made in Standing Orders to clarify whether there should be scheduled or dedicated plenary days for PMB business.** It is noteworthy that the most substantial response on this ToR was from the Business Committee, as the Committee responsible for the scheduling of Assembly business. That response stated that: *The (Business) Committee will schedule additional time*

⁴⁸ CLG written submission, paragraph 8.

and or sitting days to ensure there is sufficient plenary time for the passage of Executive Bills but this is not extended to PMBs. The introduction of scheduled/dedicated plenary days for PMBs would therefore undoubtedly provide a greater opportunity for more PMBs to complete their passage through the Assembly. However, if allocating dedicated days resulted in a reduction in the amount of plenary time available for Executive Bills, the number of late and additional sittings would inevitably increase if the Committee adhered to its commitment to make sure there is sufficient time for all Executive business to be concluded. Selecting non-sitting days for dedicated PMB days would be likely to have implications for other areas of Assembly business, in particular committee business.⁴⁹

102. The DUP's written submission also resonates with this perspective outlining: *...discretion regarding the scheduling of Private Members' Business should remain with the Business Committee. Whilst appropriate time should be provided for the tabling and debate of non-Executive Bills, these demands will likely vary between Assembly terms and thus a prescriptive approach to assigning dedicated days could in theory provide an impediment to tabling business in a flexible and responsive way.⁵⁰*

103. The Speaker was very clear in his views in relation to the scheduling of Plenary time and stated that: *Executive business and the legislative programme to deliver any Programme for Government has priority. While PMBs are an important opportunity for Members, they only have the Assembly time which is available after Executive business.⁵¹* Furthermore, he addressed this issue by stating that: *I would be inclined to think that it may be preferable for the Business Committee to continue to schedule PMBs in the context of the other business each week. That allows the Business Committee the flexibility to make the maximum use of time, including scheduling an additional sitting on a Wednesday or other day as necessary.⁵²*

⁴⁹ Response from the Business Committee, "Committee on Procedures Inquiry into Private Members' Bill", 16 November 2021, paragraph 10.

⁵⁰ DUP's written submission.

⁵¹ Speaker's written submission, paragraph 9h.

⁵² Speaker's written submission, paragraph 19.

104. There was considerable evidence to suggest that the existence of a firm deadline for introduction of PMBs may help the scheduling process and reduce any need to consider dedicated plenary days. MLAs would have more certainty and confidence in relation to the timelines for their PMBs if they could strive to avoid the busy end of mandate period. CLG stated: *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.*⁵³ As mentioned previously, the Speaker also indicated that the introduction of deadlines for PMBs may be useful, perhaps no later than June at the end of the penultimate session of each mandate.

Key Findings:

- **Scheduling of business in Plenary is at the discretion of the Business Committee and it is aware of the competing pressures that arise throughout the mandate. This approach has significant flexibility to accommodate business as available plenary time opens up.**
- **It is commonly known that Executive and Committee business takes priority over PMBs in relation to scheduling in Plenary. Scheduling additional sitting days for the purposes of PMBs may have other undesired outcomes such as pressure on Committee business.**
- **The proposed deadline of June in the penultimate session of a mandate, introduced via Standing Orders was proposed by the Speaker (and “a deadline” supported by Business Committee and CLG evidence). It is hoped that this firm June deadline will provide a mechanism to reduce PMBs added to the end of mandate pressures. This should help ameliorate the pressures which have been a feature of the end of the current mandate. The Committee**

⁵³ Response from the Chairpersons' Liaison Group to the Committee on Procedures – Inquiry into Private Members' Bills, 16 November 2021, paragraph 4.

acknowledges that this may merit further review following its implementation over a future 1-2 future, more “normal” mandates.

105. In relation to the sixth ToR, that is: **Whether there should be mechanisms by which a proposal must pass a simple majority or other measure of support before being provided with resources to be developed further.**
106. This ToR was addressed directly by Jim Allister MLA in both his written and oral evidence when he stated: *There is the suggestion that there should be some sort of filter or sift before a Bill could be allowed to be drafted. That would be a retrograde step. A Bill can be properly evaluated only when you see it in its actual form. There would be a danger of a knee-jerk or ill-considered rejection of an idea if there were a sift at an earlier stage and the idea did not get all the consideration that it deserved, in part because what it actually meant had not been fully articulated in legislative terms. That would be a retrograde step. Furthermore, in a House where Back-Benchers are the users of private members' facilities for bringing forward Bills and where there are a couple of very large, dominant parties, you would not want really to create a situation where the big brigade could simply suppress issues at the earliest stage possible.*⁵⁴
107. The DUP's written submission also echoed similar concerns, stating: *We acknowledge that in principle there may be merit in a mechanism that filters the number of Private Members Bills receiving the full support of the Bill Office and ultimately lessens the burden on Assembly business. That said we feel the operation of a simple majority threshold may not be in keeping with the ethos of private business. This could pre-empt the outcome of the legislative process and prevent barriers to support for a particular proposal being resolved during the relevant stages of scrutiny. Moreover, it is unlikely that an approach which effectively allows a group of parties or MLAs to kill Private Members' Bills before their introduction would reflect the spirit of the commitment included in New Decade New Approach that a Petition of Concern will only apply after Second*

⁵⁴ Official Report (Hansard), Review of Private Members' Bills: Mr Jim Allister MLA, 17 November 2021.

Stage in respect of both Executive and Private business. This needs careful consideration.

108. During their considerations, members contemplated the fundamental purpose of a PMB. Members were of the view that an MLAs' right to legislate and bring forward a PMB should not be heavily reduced or made overly burdensome and introducing an additional barrier to obtain support before drafting could be seen as a backwards step. PMBs are an important part of the democratic process in the Assembly and can be of great benefit to the elected representative seeking to develop legislation that is not necessarily a priority for an Executive Department. This is especially the case for those "back-benchers" who may not have the support of bigger organisations behind them. PMBs can also be used to highlight important issues to the relevant Departments and encourage them to look more deeply at legislative objectives and to address gaps in policies.
109. However, it was clear to the Committee that there were some PMBs being brought to the Assembly that were both broad in policy reach and significantly complex. It can be reasonably deduced that broad and complex Bills will require a greater level of resource to support and develop than smaller, more focused Bills. Therefore, situations where large, complex PMBs are being introduced at the Assembly are of concern to the Committee as the Assembly does not have an equivalent level of resources available to dedicate to a Bill as a Government Department would have. This tension between a members' right to legislate versus the demands of ambitious and complex PMBs was one that the Committee reflected on.
110. In support of this concern, the Speaker, in his written submission stated: *I would argue that a PMB is more suited to niche and narrow policy issues. There may be issues that are important to parts of the community but may not get to the top of a department's legislative programme because of other priorities. A Member may more manageably take such proposals through the Assembly with the support provided. This is also important because particularly complex PMBs will take much more staff time, may cost more to draft and place greater*

*demands on Members in the process of scrutiny. Supporting complex proposals could have an impact on the resources available to other Members.*⁵⁵

111. It should be noted that in other legislatures, namely the Scottish Parliament and the Oireachtas, a system in which support for proposals is “tested” is included in the PMB process. In the Scottish Parliament, a members final proposal is published in the Business Bulletin for a month. If, by the end of that period, it has been supported by at least 18 other MSPs from at least half of the parties or groups represented in the Parliamentary Bureau and the Scottish Government has not exercised its right to block the proposal (on the grounds that either it or the UK Government will legislate in similar terms), the MSP secures a right to introduce a Bill to give effect to the proposal.⁵⁶ In the Oireachtas, a member must have the permission of the House (via a vote proposal that leave to introduce be given) to have the Bill printed and placed on the Order Paper.
112. The Committee gave this careful consideration. Striking a balance between encouraging and supporting all members to develop legislation was seen as a crucial element of the Assembly’s ethos. This has to be weighed against the need to effectively manage the high levels of demand for PMBs. Taken in the round, the Committee considered that introducing pre-legislative tests of support would be a disproportionate response. The system in this mandate should be operated across a full mandate before any further reforms should be considered. The Committee noted the package of measures being recommended would achieve this balance. Securing the additional resourcing for PMBs for the future will embed a high level of support for PMB development; increasing minimum procedural requirements emphasises the importance of developing good legislation e.g. through public consultation, whilst setting deadlines for introduction will help to reduce end of mandate congestion.

⁵⁵ Speaker’s written submission, paragraph 12.

⁵⁶ RaISe Paper, NIAR 132-2021, *Private Members’ bills – bills that have become law in other legislatures and procedures in other legislatures.*

Key Findings:

- **Introducing additional pre-legislative mechanisms for support before drafting a PMB, such as a requirement for political support, as is the case in other legislatures, would not be appropriate for the Assembly. This reflects a PMB is primarily designed to support “back-benchers” in their right to legislate and the Assembly has an ethos of ensuring maximum participation.**
- **Time should be taken to reflect on whether the package of measures being proposed strikes the balance between managing demand and supporting the development of PMBs before any further review of procedural rules in this area.**
- **However, the scope of PMBs should be carefully considered when initiating proposals and legislation. It is important that a PMB is not significantly complex or extensive in terms of its objectives to ensure that the requirements to support and develop it can be met.**

113. In relation to the seventh ToR, that is: **To consider whether there could be arrangements to allow Members to legislate as a group and for all their names to be attached to it.** The DUP’s written submission stated that: *We would be broadly supportive of this proposal. The model adopted in the House of Commons whereby up to 11 members can attach their names to the Bill as ‘supporters’ is a reasonable example; affording the opportunity for grouped support while retaining the essence of Private Members business in that one Member still has overall charge.*

114. The Committee considered this proposal. The Committee has no issue with groups of Members having a mechanism to designate as supporters of a PMB. However, it is important the Bill has a single sponsor with responsibility for its development and passage. The importance of one Member having ownership and becoming conversant with the policy and development of the Bill is paramount.

Key Findings:

- **Committee is content for the names of a number of members to be attached to a PMB proposal**
- **It remains important that a single member is the point of contact (as sponsor) for the Unit in terms of ownership and becoming conversant with the policy and development of the Bill is paramount**

115. In relation to the eighth ToR, that is: **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.** Both the Business Committee and CLG mentioned the requirement of section 15(3) of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016. This requires Standing Orders to make provision for an annual debate to the Executive legislative timetable and that this has not yet been delivered. Both responses also suggested that the implementation of this SO would be helpful to the scheduling of plenary time. Furthermore, the CLG states that: *...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.*
116. The Alliance Party expressed their views on this aspect of the ToRs, stating that: *The capacity and ability for members to bring forward legislation must be balanced against the need to allocate time for Executive Legislation, the lack of such from certain Ministers has been notable in current and previous Mandates, hence, perhaps, the focus on Private Members Bills.*
117. The Speaker set out his views in relation to this issue: *The biggest resource issue in relation to PMBs is time, both Assembly time and the time of Members. Once Executive business is taken into account, there is not unlimited Assembly plenary and committee time for PMBs to be considered. Additionally, Members have a range of responsibilities in the Assembly, on multiple committees and in their constituencies. If the number of PMBs in the system exceeds the time available to the Assembly and Members, and that is not managed, it is the*

quality of scrutiny that suffers. Therefore, while not easy to do, it would be more helpful to make a judgement on the level of PMBs it is reasonable to accommodate within a mandate and then determine the staffing and financial resources required to support it.

118. The Committee reflected on the evidence on this ToR and noted in particular the uniqueness of the current mandate. In normal circumstances, the Speaker retains considerable discretion to set deadlines for completion of key stages of PMBs. This includes the opening and closing of the submission window to gain access to PMB support and firm deadlines for completion of key stages e.g. Final Proposal. In the current mandate, the Speaker has taken a flexible approach to aim to support as many PMBs as possible under straitened circumstances. Coupled with the introduction of a deadline for introduction in Standing Orders, the Assembly will have therefore have greater ability to encourage PMBs to be spread more evenly than is currently the case.

N.B: On the afternoon that the Committee met to agree its final inquiry report a written response was received from the Minister for Education. Whilst that evidence did not inform the Committee’s considerations, in order for the Minister’s points to be put on the record, the correspondence is included in Appendix 2.

Key Findings:

- **In relation to the efficient scheduling of Plenary time, it would be extremely useful to know both the intended volume of PMBs at the earliest possible stage (considering reforms arising from this inquiry) and also to know the Executive’s intentions for bringing forward legislation.**
- **The implementation of Section 15(3) of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 in the Assembly’s Standing Orders is key. This will make provision for an annual debate on the Executive legislative timetable, which would be a helpful planning tool for the scheduling of Plenary business (as well as for the wider scheduling of support by the Bills team).**

Conclusions and Recommendations

The Current PMB Process

119. It is clear from the evidence that the right of individual members to legislate is valued by MLAs and they want the exercise of that right to continue to be adequately supported. It was universally acknowledged by consultees that this mandate is unique, in that there was a dissolution of the Assembly for three years followed by the Covid-19 pandemic shortly after restoration. Despite these extraordinary circumstances, consultees and stakeholders agreed that the demand for a Private Members' Bill facility is likely to endure in future mandates.
120. When the Assembly resumed in 2020, the Speaker presided over a dedicated Private Members' Bills Unit (the Unit) to operate within the Bill Office. The Unit has been provided with enhanced staffing resources for this mandate and has focused on developing the level of support provided to Members and the number of Bills which can be supported simultaneously. A matter of critical interest to the Committee for the purposes of this Inquiry is: **Whether there is a continued need for a dedicated Unit within the Bill Office to support PMB development and introduction?**
121. As of January 2022, there were 22 PMBs at various stages of progress through the support of the Unit. At the close of the Speaker's (extended) deadline of 18 September 2020 for receipt of initial proposals, 33 had been received. This was the highest number in any mandate since 1998, with the trend in numbers steadily increasing. A significant spike was registered in this mandate, as awareness of the increased capacity to support the development of PMBs has grown. It is reasonable to conclude that, based on a rise in MLAs seeking to introduce legislation and the continued increase in the numbers of proposals being received, that a dedicated unit is needed to adequately support MLAs to exercise their right to bring forward PMBs.
122. Therefore, the Committee considered how this demand might continue to be supported and whether the current arrangements and system in place represent an effective service to MLAs and an effective use of public resources. This

consideration included balancing the importance of every members' right to initiate legislation and the effective use of public funds to support them in this process. At present the support of the Unit is dedicated to those members who work through its supported development stages, then to drafting and introduction. Members who bring forward privately-drafted legislation currently do not get any support from the Unit. As privately-drafted Bills arrive with the Speaker (already drafted) in a Bill format, the only support provided by the Assembly for these is a legal check to confirm competency, prior to the introduction stage. Committee is agreed that the end product for any PMB should be competent, well researched and robust legislation and that supporting the development of such is an effective use of public resources. The Committee agreed by consensus that the Assembly should continue to make provision to support members in their right to legislate and endorsed the model of support and requirements in place.

123. Another issue which emerged in relation to the current PMB process is the balance between the requirements of the supported process and the length of time it takes for a PMB to progress through the various stages required. Overall, the Committee acknowledged that a range of factors determined this, including the overall demand and pressures on resources in the system, the complexity of the particular Bill and the level of progress made at early stages ahead of the intensive drafting process.
124. The Committee welcomed the positive feedback from Members on the quality of support provided through the Unit. Ultimately, the Committee considered the development of legislation should not be seen as a short and speedy process; that good, well considered legislation takes time and must go through a high level of rigour to be able to deliver competent and well-crafted legislation.
125. **Recommendation 1: In light of the evidence considered, the right of individual members to initiate legislation is a key feature of participation in law-making, and it is unlikely there will be a decline in demand for PMBs in future mandates, the Committee recommends that the PMB Unit is retained in the Assembly and that the Assembly Commission should allocate appropriate resources to sustain and develop the Unit.**

126. A critically important issue emerging during the Committee considerations was whether or not PMBs are in fact an appropriate mechanism to achieve the change which the MLA wishes to achieve – i.e. are PMBs always a suitable vehicle for the extent or scope of the Bill being proposed? Executive Departments have the lead role in developing and bringing forward public legislation and setting out a Programme for Government. They have both the financial resources and professional (subject-matter) expertise to develop and consider large and complex Bills. It is clear that the Assembly and the Unit does not have and would never have an equivalent level of resource to dedicate to a single Bill.
127. Whilst reviewing the evidence in relation to the current PMB process in the Assembly, the Committee noticed that there were variations in the types and the scope of Bills being brought to the House via the PMB route(s). It was the Committee's view that PMB proposals should be specific and tailored in terms of their objectives in order to have an increased chance of advancing through the process and ultimately achieving their purpose. Although the Committee does not wish to place any restrictions on the ability of an MLA to access the support of the Unit, it is clear that a PMB is not the most appropriate vehicle to progress significantly complex and cross-cutting legislative change. Supporting complex PMBs requires more staff time, may cost more in terms of legal drafting and place greater demands on members in the process of scrutiny, meaning that in the end they may be less likely to succeed in achieving objectives which were too ambitious or broadly-scoped.
128. The Committee notes that the existing guidance from the Speaker to members states that those members that wish to use the PMB service in the Assembly must have legislative proposals that address a single, focused, policy objective and that they must not utilise an unreasonable proportion of the drafting budget. The Committee is supportive of this guidance.
129. **Recommendation 2: In accordance with existing guidance and to ensure an effective use of public resources, the Committee recommends that members should ensure that, when bringing forward a PMB, the policy proposals contained therein are sufficiently narrow and specific in focus to effect the change which the PMB sponsor is seeking to achieve.**

130. The high volume of PMBs in progress in the Assembly was also a key issue that emerged. That volume can partly be explained by increasing demand, the challenges of a compressed mandate and the shortage of Executive legislation in the early stages of the current mandate. A number of MLAs have, instead felt strong incentives to introduce legislation of their own to progress certain policy objectives. The fact that three years were lost in this mandate is most certainly a factor in the high volume and time pressures currently attached to PMBs. Irrespective of this, it seems that the general trend is that the number of PMBs is rising every mandate.
131. The Committee considered the evidence of a steady rise in interest of Members developing legislation as a very positive sign of their engagement and evidence of a maturing legislature. The Committee recognised the current authority of the Speaker may be able to be used to partly mitigate the issue of high volumes at late stages in the context of his guidance to Members. The PMB process is not defined in Standing Orders; the dates and stages for completing milestones in PMBs are determined by the Speaker, who retains ultimate authority in authorising drafting support for Bills.
132. In light of these roles and functions of the Speaker that relate to the PMB process, it is useful for the Speaker to continue to communicate guidance and/or deadlines for the introduction of PMBs to the Assembly regularly throughout the mandate. This has been a feature of the Speaker's approach and will continue to be relevant, not least in the context of changes to the procedural rules and guidance arising from this Inquiry. Given the flexibility offered within the Assembly system for PMBs and a full five-year mandate to work with, this may encourage a steadier flow of PMBs.
133. In addition to the policing of deadlines within the supported PMB process, a firm deadline in Standing Orders for introduction of PMBs will help to ensure additional legislation is not injected into the notably busy end of mandate period. This will aid planning and ensure that PMBs introduced stand a realistic prospect of completing their passage.
134. **Recommendation 3: To address the issue of the high demand for PMBs and to manage expectations, the Committee recommends that the Bill**

Office should develop revised guidance for the incoming Speaker to approve for Members early in the new mandate. This will refresh members on the rules and procedures relating to PMBs, including any changes to Standing Orders and guidance arising from this inquiry.

135. **This should continue to include guidance on factors relevant to timescales and achieving key milestones in the development process. It will be important to distinguish this mandate and address the approach for the full five-year term. The Committee notes the Speaker will review progress and determine how best to manage levels of demand in line with available resources. This will include the opening and closing of the PMB submission window and management of deadlines in the PMB process.**
136. **Recommendation 4: Furthermore, to prevent congestion in the later sessions of a mandate meaning that PMBs are stalled in order for Executive legislation to be prioritised, the Committee recommends that a final deadline for a PMB to be introduced to the Assembly be set in Standing Orders, for the end of June of the penultimate session of the mandate.**

“Privately-drafted” Bills

137. There are 2 routes via which a PMB may progress to the Introduction Stage – using the PMB Unit within the Assembly or by bringing a “privately-drafted” Bill to the Speaker for consideration, thereby essentially bypassing the Unit. Evidence was forthcoming from MLAs providing their perspectives that bringing a “privately-drafted” Bill to the Speaker may be a speedier process. However, evidence from the Bill Office and the Speaker noted that cannot be the only consideration. This evidence emphasised that the development of well-crafted legislation involves a number of stages, supported by the Unit, which are in place in order to both support the Member and enhance the legislative process.
138. Privately-drafted Bills are not subject to the same criteria or stages of development before submission to the Speaker, only that they are within the legislative competence of the Assembly and come with an accompanying Explanatory and Financial Memorandum (EFM). As set out in paragraph 122, these Bills arrive with the Speaker in a (ready-drafted) Bill format and therefore

require none of the pre-introduction development support provided by the Unit. Whilst Committee did not wish to prohibit PMBs being introduced via the privately-drafted route, it agreed that Bills introduced in this way would not be supported by the Unit.

139. Bills that proceed through the Unit to be developed are subject to a series of stages including research, consultation, communication with the relevant Department(s), etc. Although proceeding through the Unit and undertaking the necessary steps may be seen as a more lengthy and rigorous process, the Committee acknowledged that the ultimate result, that is, well-conceived legislation, proves that it is worthwhile.
140. It was apparent to the Committee that the inconsistencies in these two methods were resulting in inequalities. Inequalities in relation to the access that some members may have to legislative drafting services (versus those that don't have access to those services) and potential disparity in relation to the quality of the final Bill. Members were concerned that privately-drafted Bills did not have the same requirements to meet, especially those related to consultation. The Committee therefore considered a number of options to address these inequalities, including:
 - a. To prohibit "privately-drafted" Bills altogether, requiring all PMBs to go through the PMB Unit;
 - b. Require "privately-drafted" legislation to undergo at least a mandatory public consultation, and communicate the policy intentions to the relevant Department; and
 - c. Require all PMB proposals to go through the Assembly and/or Business Committee for a vote and/or views on the proposals prior to submission to the Speaker.
141. Members considered that prohibiting privately-drafted Bills altogether would be a disproportionate approach. Given that historically, a member has had the right, as a legislator of submitting a privately-drafted Bill, the Committee felt it would be too punitive to remove that right completely.
142. Members also considered taking steps to require all PMBs proposals (both those that proceed through the Unit and those that are privately-drafted) to be

submitted to the Assembly and/or Business Committee for a vote and/or views on the proposals prior to submission to the Speaker. This could be akin for example to what currently occurs in the Oireachtas (with a “leave to introduce” vote) or the Scottish Parliament (with a proposal requiring support by at least 18 other MSPs). However, the Committee felt that this was also too restrictive when compared with the current system. Members were also cognisant of the fact that this is an exceptional mandate and that it would perhaps be acting in haste to make wholesale changes without observing what the demand for a PMB would be in several “normal” mandates.

143. When considering the third option, members balanced what currently occurs in relation to privately-drafted PMBs and the steps that a PMB which is progressed through the Unit must take. It was important to the Committee that the right to submit a privately-drafted PMB be retained, but it was apparent that at least some minimal procedural steps should be required in the interests of developing legislation and preserving fairness overall. These additional screening measures, in the Committee’s view, would not be overly burdensome or unreasonable, but in line with expectations required of most policy or legislative proposals.
144. The Committee agreed that minimum procedural requirements should be introduced and that the privately-drafted PMBs should remain unable to access the Assembly support services provided to supported Bills. This strikes a balance between not closing off an option to progress legislation whilst promoting fairness and good practice principles of consultation and engagement.
145. **Recommendation 5: The Committee recommends that there are minimum procedural requirements for introduction of all PMBs. A Member wishing to introduce a PMB which has been privately-drafted should be required to:**
 - a. **undertake mandatory public consultation (parameters in similar terms as Bill supported by the Unit); and**

- b. have communicated the policy objectives and scope of the proposal to the relevant Department before they are submitted to the Speaker for consideration.**

Sponsor of a PMB as an ex-officio member of Committee

146. Contrasting views were forthcoming in relation to this aspect of the Inquiry. The Committee considered written/oral evidence from MLAs who had the experience of being on the Committee that had been tasked with the scrutiny of their Bill during Committee Stage. There were proponents of this experience and those MLAs spoke of the advantages, such as a sponsor having the opportunity to hear and see all of the evidence provided in respect of the Bill in person. This meant the sponsor could respond to and clarify issues as they arise, and to reflect on objections or alternative viewpoints. The proponents felt that this potentially makes committee scrutiny more efficient as well as better informing the Bill sponsor.
147. However, concerns were raised by other stakeholders that the inclusion of the sponsor of a Bill on a Committee may hinder robust scrutiny of the Bill and stifle open and frank discussion. The Committee was of the view that these contrasting views had to be carefully balanced.
148. Other factors that the Committee considered on this issue related to the composition of committees under the D'Hondt method and the need to preserve the balance of party representation in committees. The risk that was identified was that including a sponsor of a PMB as an additional member of a committee may mean that the membership of that committee would not reflect the balance of parties at the Assembly. This issue does not arise where a sponsor is a committee member as of right.
149. This could be significant in circumstances where a committee needed to take decisions in relation to a Bill. Even through granting ex-officio membership without voting rights, the presence of a sponsor may be enough to influence proceedings disproportionately and create difficult management issues for the Chairperson.

150. A key factor that emerged during the Committee's deliberations on this issue was 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).
151. It was the Committee's view that, as the option of inviting the sponsor of a Bill to meet with the Committee as frequently as required through the scrutiny process already rests with Committee, this granted sufficient flexibility without creating unintended consequences. Committees are autonomous entities and should be treated as such, especially in respect of their roles in the scrutiny of legislation. The Committee considered this to be the most flexible and carefully balanced approach and did not support establishing procedural rules or guidance granting ex-officio membership to PMB sponsors.
152. **Recommendation 6: The Committee recommends that the option to invite the sponsor of a Bill remains at the discretion of the respective Committee. There should be no procedural changes to grant a sponsor of a PMB ex-officio membership of the relevant scrutiny committee. Committees will continue to manage the handling of evidence in relation to a PMB and weighing up the most appropriate level of involvement by the sponsor as well as the range of stakeholders for a Bill.**

The Scheduling of PMBs in Plenary

153. The Committee recognises that, even in an ordinary mandate, the scheduling of business is pressurised due to competing demands toward the end of the mandate. This issue has been exacerbated in this mandate by the absence of an Executive for three years and the ongoing COVID-19 pandemic. Nevertheless, the Committee is aware that this is a likely trend for future mandates.
154. The Committee knows that the main priority for the Assembly as a whole is to scrutinise, debate and pass legislation. As the Committee responsible for the scheduling of Assembly business, the Business Committee retains considerable flexibility to schedule additional time and / or sitting days to accommodate business. Although Executive and Committee business takes priority, the

Business Committee will consider appropriate opportunities in the time remaining to consider scheduling PMBs.

155. Additionally, the Committee did not hear any evidence to suggest there is a need or desire to schedule extra Plenary sittings or to designate specific days or times for the consideration of PMBs. The Committee considered that a move in this direction may be premature given the unique circumstances of this mandate, with a high volume of PMBs at a late stage. In its considerations, the Committee considered the need to balance the right of members to bring forward legislation alongside the need to allocate adequate time for Executive legislation. The Committee considered the current system (should the other recommended measures be introduced as a result of this inquiry) should provide appropriate flexibility and opportunity to seek to accommodate PMBs, particularly in a normal five-year mandate. As stated in the key findings box which follows paragraph 104, Committee concedes that any changes implemented as a consequence of this inquiry may merit further review in a further 1-2 more “normal” mandates.
156. Members noted that the requirement of section 15(3) of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 for Standing Orders to make provision for an annual debate on the Executive legislative timetable has not yet been implemented. Committee noted that the absence of the annual debate on the Executive legislative timetable was highlighted in a number of the consultation responses received. Committee agreed that implementation of this arrangement would be helpful to the scheduling of plenary time and the Committee agreed to consider bringing forward a Standing Order making provision for an Annual Debate on the Executive’s Legislative Timetable as part of this inquiry.
157. As the inquiry progressed, on 9th November 2021, by coincidence of timing, the Assembly also agreed to implement the recommendations from the AERC’s report on the Independent Review of the adequacy and effectiveness of the Statement of Entitlements for an Official Opposition. One of those recommendations was that all of the revisions to Standing Orders cited in the 2016 Act be implemented. As such, the Assembly has already agreed in

principle that the changes to Standing Orders from the 2016 Act should be made.

158. **Recommendation 7: The Committee recommends that provision should be made in Standing Orders to implement section 15(3) of The Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 and that this Standing Order be brought to the Assembly as soon as practicable.**

Links to Appendices

Appendix 1: Committee Correspondence

[View the Committee's correspondence.](#)

Appendix 2: Written Submissions

[View Written Submissions received in relation to the report.](#)

Appendix 3: Minutes of Proceedings

[View Minutes of Proceedings of Committee meetings related to the report.](#)

Appendix 4: Minutes of Evidence

[View Minutes of Evidence from evidence sessions related to the report.](#)

Appendix 5: Research Papers

[View Research Papers produced by the Assembly's Research and Information Service \(RaISe\) in relation to the report.](#)

Appendix 6: List of Witnesses who gave evidence to the Committee

[View the list of witnesses who gave evidence to the Committee.](#)

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