



**Northern Ireland
Assembly**

Committee for Finance and Personnel

Room 435

Parliament Buildings

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From: Shane McAteer
Clerk to the Committee for Finance and Personnel

Date: 5 November 2015

**To: Claire McCanny, Senior Assistant Assembly Clerk, Assembly &
Executive Review Committee**


Assembly & Executive Reform (Assembly Opposition) Bill

At its meeting on 4 November 2015, the Committee for Finance and Personnel agreed that the enclosed response to the above Bill would be submitted to the Assembly & Executive Review Committee.

Members wish to highlight comments in relation to the proposed provision in the Bill to the establishment of a Budget Committee and previous work undertaken by this Committee in this regard.

Please give me a call if you wish to discuss any aspect of this return.

SHANE MCATEER

 21843

Enc.



Northern Ireland Assembly

Assembly and Executive Review Committee

Stakeholder Call for Evidence on Assembly and Executive Reform (Assembly Opposition) Bill

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Section 1

Stakeholder Details

Stakeholder Name	Telephone Number																
Committee for Finance & Personnel	02890521843																
Stakeholder Address	Stakeholder Type (Include one or more X)																
	<table border="1"><tr><td>Registered Political Party</td><td></td><td>Local Government</td><td></td></tr><tr><td>Academic</td><td></td><td>Government</td><td></td></tr><tr><td>Legislature</td><td>X</td><td>Non-Government</td><td></td></tr><tr><td colspan="4">Other (Please Specify)/ Member of the Public</td></tr></table>	Registered Political Party		Local Government		Academic		Government		Legislature	X	Non-Government		Other (Please Specify)/ Member of the Public			
	Registered Political Party		Local Government														
	Academic		Government														
	Legislature	X	Non-Government														
Other (Please Specify)/ Member of the Public																	

Please provide some background information on your role as a stakeholder

The Committee for Finance & Personnel was established to advise and assist the Minister of Finance and Personnel, Mrs Arlene Foster MLA, on matters within her responsibility as a Minister. The Committee undertakes a scrutiny, policy development and consultation role with respect to the Department of Finance and Personnel and plays a key role in the consideration and development of legislation. The Committee Chairperson is Mr Daithi McKay MLA.

Guidelines for Completion of Submissions

The Committee would ask that stakeholders submit electronic responses using this pro forma.

Stakeholders should be aware that their written evidence will be discussed by the Committee in public session and included in the Committee's published Report.

Stakeholders should also be aware that if they decide to publish their submissions, the publication would not be covered by Assembly privilege in relation to the law of defamation.

Closing date for submissions is: Tuesday 10 November 2015

Submissions should be submitted to:

committee.assembly&executivereview@niassembly.gov.uk

Section 2

Introduction

Powers

- 2.1.** The Assembly and Executive Review Committee is a Standing Committee established in accordance with Section 29A and 29B of the Northern Ireland Act 1998 (“the 1998 Act”) and Standing Order 59 which, amongst other powers, provide for the Committee to:
- I. make a report to the Secretary of State, the Assembly and the Executive Committee, by no later than 1 May 2015, on the operation of Parts III and IV of the Northern Ireland Act 1998; and
 - II. consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly.

Committee Stage of the Assembly and Executive Reform (Assembly Opposition) Bill

- 2.2.** Following approval at the Second Stage on Monday 12 October 2015, the Bill was referred to the Assembly and Executive Review Committee which has responsibility for Committee Stage of the Bill. To assist its scrutiny of the Bill, the Assembly and Executive Review Committee will consider and take evidence on the provisions of the Bill and report its opinion thereon to the Assembly.

Section 3

BACKGROUND

This section provides some background information on the Assembly and Executive Reform (Assembly Opposition) Bill

- 3.1. The Northern Ireland Assembly can bring about some changes to how the Assembly operates. For example, some changes might require amendments to the Standing Orders of the Assembly and it is for the Assembly to agree any such changes on a cross-community basis. However, it can only legislate on matters that have been transferred to the Assembly by the UK Parliament, or with the consent of the Secretary of State for Northern Ireland in relation to reserved matters or excepted matters that are ancillary to other provisions dealing with reserved or transferred matters. In other areas, the UK Parliament has the power to introduce legislative change — that is, excepted matters.

Consideration of Assembly and Executive Reform by UK Government

- 3.2. In August 2012, the then Secretary of State for Northern Ireland launched a consultation entitled, *‘Consultation on measures to improve the operation of the Northern Ireland Assembly’*, one of the key areas of which was “*Government and Opposition*”. The consultation highlighted that the Northern Ireland Executive currently operates as a five-party coalition, as this has been important in ensuring that all parts of the community are adequately represented in government. The Secretary of State pointed out that the present structure of government is derived from the 1998 Act, which recognised that inclusive power-sharing is essential in Northern Ireland.
- 3.3. The Secretary of State’s consultation paper went on to say that there are obvious flaws in a system where there is no effective alternative government and highlights that the UK Government has regularly expressed a wish at some stage to see a move to a more normal system that allows for inclusive government but also opposition in the Assembly. The consultation paper stressed that moves to a recognised opposition must be consistent with the principles of inclusivity and power-sharing that are central to the 1998 Act.
- 3.4. The consultation closed on 23 October 2012. On 11th February 2013, the Secretary of State published the consultation responses, along with draft legislation to make provision on the following issues: donations and loans for political purposes; dual mandates; electoral registration and administration; appointment and tenure of the NI Justice Minister. The ‘Publication of Draft Legislation Northern Ireland (Miscellaneous Provisions)’ (Cm 8563) is available online (<http://www.nio.gov.uk/getattachment/Publications/Publication-of-Draft-Legislation/27250-Cm-8563-v4.pdf.aspx>).
- 3.5. The introduction to the draft legislation refers to “Government and Opposition” and states:
“While the Government would welcome moves towards a system of government and opposition, we remain clear that such changes could only come about with the agreement of parties in the Assembly. In addition, such moves must be consistent

with the principles of inclusivity and of power-sharing that are central to the Belfast Agreement. We do not believe that there is sufficient consensus for statutory change at present which is why the draft Bill includes no provision on this issue.

However, the consultation document also drew attention to the possibility of procedural change within the Assembly aimed at providing for a more effective opposition. The Government notes that the Assembly and Executive Review Committee is examining these questions, amongst other institutional issues. The Assembly Research and Information Service produced a Briefing Paper entitled 'Opposition, Community Designation and d'Hondt' in November 2012. Procedural developments are of course matters for the Assembly itself and not for the Government to seek to impose."

- 3.6.** The Northern Ireland Affairs Committee were asked to scrutinise the draft legislation and on 20 March 2013 published a Report on the draft Northern Ireland (Miscellaneous Provisions) Bill. In relation to Government and Opposition, it states:

"We note that AERC is currently reviewing the issue of procedural changes in the Assembly, which touch on the question of opposition. We look forward to considering those findings in detail. We note that there appears to be some appetite for a shift towards an "official" opposition within the Assembly. Such an opposition would have to be fully funded and resourced, and we encourage the Government to assist the parties in devising a way forward. Any alternative arrangements should be guided by the fundamental principles in the Belfast (Good Friday) Agreement." (Para 158, Recommendation 24).

- 3.7.** The Northern Ireland (Miscellaneous Provisions) Bill had its First Reading in the House of Commons on 9th May 2013 and was published on 10 May 2013. The Bill does not include any provisions relating to opposition. The UK Government's response to the Northern Ireland Affairs Committee's pre-legislative scrutiny report on the draft NI Bill states in relation to recommendation 24 on Government and Opposition states:

"The Government notes the Committee's comments. We recognise that the system of Government and Opposition as traditionally understood may promote a more effective and innovative system at Stormont, and hope that the Northern Ireland parties will continue to consider potential methods which might further improve the operation of the institutions. It is clear that sufficient consensus does not exist amongst the parties at present for the Government to legislate on this matter. We will, of course, work with the parties should they agree any changes to the institutions along these lines which would require Westminster legislation in the future."

Consideration of Assembly and Executive Reform by NI Assembly

- 3.8.** In November 2012, the Committee agreed that its next priorities for Review were the issues of D'Hondt, Community Designation and Provisions for Opposition. At its meeting in February 2013, the Committee agreed the Terms of Reference for its Review of D'Hondt, Community Designation and Provisions for Opposition, a Stakeholder 'Call for Evidence' Paper and a stakeholder list that included all political parties registered in Northern Ireland. The Committee received and considered 22

stakeholder responses to the Review. It also held a number of evidence sessions with representatives from academia and non-governmental organisations.

3.9. The Committee Review took evidence on Provisions for Opposition in relation to:

Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity. In particular, the Committee took evidence on whether:

- Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties.
- Arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition; and
- Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

3.10 In respect of the provisions for opposition, the Committee concluded the following:

- i. There is no consensus at present to move to a formal Government and Opposition model, such as exists in Westminster. It also concluded that there is no consensus to move from the current opt-out model, whereby Parties can exercise their right to opt-out of taking up their Ministerial post or withdraw from the Executive, based on existing Assembly provisions.
- ii. That financial support for political parties should continue to be allocated on a broadly proportional basis and did not consider that additional resources should be allocated to non-Executive/opposition Parties.
- iii. Parties that exercise their right not to take their Executive entitlement would have “informal” recognition of non-Executive/opposition status on a proportional basis by:
 - Additional speaking rights;
 - recognition of status by order of speaking; and
 - allocation of time for additional non-Executive business – the use of the allocation to be determined by non-Executive Party/opposition.

The representatives of Sinn Féin stated that they were unable to support this conclusion.

- iv. Parties that have failed to meet the Executive threshold for d’Hondt but have reached a suitable threshold should attract appropriate recognition in terms of speaking rights, status by order of speaking and allocation of time for non-Executive business in proportion to their Party strength.
- v. The Committee recognised that there may be some value in Technical Groups and recommended that this facility for smaller Parties of the Assembly be reviewed.
- vi. The Committee concluded that the Parties of the incoming Executive should aim to agree a Heads of Agreement of a Programme for Government in advance of

the formation of the Executive, with a full draft Programme for Government published in accordance with current procedures.

Stormont House Agreement

- 3.11 The Stormont House Agreement, which was agreed by all five Executive parties in December 2014, contained a number of provisions relating to institutional reform and the formation of an official opposition. These are detailed below:
- 3.12 “Arrangements will be put in place by the Assembly by March 2015 to enable those parties which would be entitled to ministerial positions in the Executive, but choose not to take them up, to be recognised as an official opposition and to facilitate their work. These measures will include:
- Designated speaking rights including the opportunity to ask questions and table business sufficient to permit the parties to discharge their opposition duties
 - Provision for financial and research assistance (from within existing Assembly budgets keeping these changes cost neutral)
- 3.13 The threshold for Petitions of Concern should remain at 30 members. Changes will be made to the operation of the Petition of Concern mechanism through a protocol agreed between the parties.
- 3.14 After the Assembly meets following an election and before the FM/DFM are elected and the d’Hondt process runs, representatives of the parties who are entitled to take up places in the Executive and who confirm their intention to do so will meet to resolve the draft Programme for Government. Changes to Westminster legislation (as soon as time permits) could extend the time available from seven days to fourteen days. The draft Programme would, once the Executive was formed be passed to the Assembly for approval.”

4. Further Information

Stakeholders may wish to refer to the Committee’s previous reports on the Review of D’Hondt, Community Designation and Provisions for Opposition and Review of Petitions of Concern. These can be found on the Committee web page:

<http://www.niassembly.gov.uk/assembly-business/committees/assembly-and-executive-review/reports/>

Section 4

Stakeholder Response to the Bill – Clause-by-Clause

Purpose

Clause 1- Purpose

Response (This box will expand as you type):

Assembly Opposition

Clause 2: Formation of the Opposition

Response (This box will expand as you type):

Clause 3: Timing of formation of the Opposition

Response (This box will expand as you type):

Clause 4: Membership of the Opposition

Response (This box will expand as you type):

Clause 5: Dissolution of the Opposition

Response (This box will expand as you type):

Clause 6: Leader and Deputy Leader of the Opposition

Response (This box will expand as you type):

Clause 7: Topical questions from Leader and Deputy Leader of the Opposition

Response (This box will expand as you type):

Clause 8: Enhanced speaking rights for the Opposition

Response (This box will expand as you type):

Clause 9: Opposition rights to chair Public Accounts Committee

Response (This box will expand as you type):

Clause 10: Membership of Business Committee for the Opposition

Response (This box will expand as you type):

Clause 11: Financial assistance for Opposition parties

Response (This box will expand as you type):

Clause 12: Salary for office holders of the Opposition

Response (This box will expand as you type):

Assembly and Executive Reform Motion

Clause 13: Assembly and Executive Reform Motion

Response (This box will expand as you type):

Clause 14: Tabling of Assembly and Executive Reform Motion

Response (This box will expand as you type):

Clause 15: Reports by the AERC

Response (This box will expand as you type):

Technical groups within the Opposition

Clause 16: Formation of technical groups within the Opposition

Response (This box will expand as you type):

Clause 17: Membership of Business Committee for technical groups

Response (This box will expand as you type):

Topical Questions

Clause 18: First topical question to Minister from chairperson of statutory committee

Response (This box will expand as you type):

Budget Committee

Clause 19: Establishment of Budget Committee

The Assembly and Executive Reform (Assembly Opposition) Bill proposes the following clause:

“Budget Committee

Establishment of Budget Committee

19.—(1) Standing orders must make provision for the establishment of a committee to scrutinise the draft budget laid before the Assembly under section 64 of the Northern Ireland Act 1998, in accordance with this section.

(2) That committee is to have powers under section 44 of the Northern Ireland Act 1998 (power to call for witnesses and documents).”

The Committee for Finance and Personnel, including its predecessor committee in the last mandate, undertook work which is of relevance to the provision for the establishment of a Budget Committee in the Assembly. In that regard, you may wish to note the applicable research and conclusions contained in the reports on the Committee’s three-stage ‘Inquiry into the Role of the Northern Ireland Assembly in Scrutinising the Executive’s Budget and Expenditure’.

In the 2nd report on the Inquiry, published in 30 June 2010, the Committee noted the findings from comparative research by RaISe (available [here](#)) which found that budgets are dealt with by legislatures in the following three ways:

- (i) centralised, where a budget committee is assigned full responsibility for budget issues;
- (ii) dispersed, where responsibility is divided amongst sectoral committees; and
- (iii) a hybrid model, whereby portions of the budget are considered by sectoral committees and action is recommended within a framework set by a centralised budget committee.

The current system in NI is dispersed, with the Committee for Finance and Personnel performing a co-ordinating role.

The Committee also noted with interest recommendations from DFP that ‘in responding to the draft Budget, any proposal to increase spending on a particular service by a Committee should be accompanied by an equally detailed proposal as to how this could be funded’; and that ‘the Committee for Finance and Personnel, in responding on behalf of all the Committees, should identify whether it views the funding proposal to be realistic or not.’ The Committee, however, concluded that such an approach would be *‘more applicable in the context of a reformed system of Assembly financial scrutiny; whereby departmental committees would have access both to the necessary financial information held by departments and to additional specialist support and where a central budget committee existed with the requisite powers.’*

You may also wish to note the follow extract from the 3rd report on the Committee’s Inquiry, which was published on 21 March 2011:

“Central Budget Committee

In the Second Report relating to this Inquiry, the Committee briefly considered the merits of the establishment of a central budget committee within the Assembly, commissioning research in this regard. Members noted that the research paper cited a number of issues that would need to be more fully considered, including the need to:

- *explore whether a budget committee's remit could be expanded to include monitoring of cross-cutting issues, including the delivery of PfG and PSA targets;*
- *examine if existing legislative provision allows for a budget committee to be established, or whether an amendment to legislation is required; and*
- *consider the potential membership of a budget committee and if there would be the possibility for a conflict of interest where a Member might sit on both it and a statutory committee.*

The Committee therefore concluded that a scrutiny model which included a central budget committee warranted more consideration in the future, and stated "In the longer term, there is a case for the Assembly considering how its financial scrutiny system, including committee structures, could be reformed for enhanced effectiveness". The Committee believes that the idea of reforming the Assembly financial scrutiny system to establish a more powerful central budget committee should be reconsidered in the future, if the proposed reforms to processes and procedures that are set out in this Report fail to have the desired outcome."

In terms of the ‘proposed reforms to processes and procedures’, these included a proposed Memorandum of Understanding (MoU) between the Assembly and the Executive, aimed at addressing some of the difficulties encountered to date, including from the perspective of Assembly committees and of departments. A draft MoU was prepared jointly by Committee staff and DFP officials and considered by the Committee in January 2014. While the then Minister of Finance and Personnel, Simon Hamilton, gave his general support for the principles contained in the MoU, he pointed to the need for this work to incorporate the lessons learned from the 2015-16 Budget process. The Committee awaits a further response on the draft MoU from the Department.

Office of the First Ministers

Clause 20: Renaming of the Office of the First Minister and deputy First Minister

Response (This box will expand as you type):

Northern Ireland departments

Clause 21: Departments to be a single legal entity

Response (This box will expand as you type):

General

Clause 22: Interpretation

Response (This box will expand as you type):

Clause 23: Commencement

Response (This box will expand as you type):

Clause 24: Short Title

Response (This box will expand as you type):

Schedule: Content of Assembly and Executive Reform Motion

The Schedule sets out the kind of requests that could be included in an Assembly and Executive Reform Motion. These are matters which the Assembly could or might request the Westminster Parliament to legislate on in the event of Assembly agreement.

Scope of Assembly and Executive Reform Motion
Response (This box will expand as you type):
Replacement of cross community support with weighted majority voting
Response (This box will expand as you type):
Speaker
Response (This box will expand as you type):
First Minister and deputy First Ministers renamed as First Ministers
Response (This box will expand as you type):
Collective Ministerial responsibility
Response (This box will expand as you type):
Threshold for nomination of Minister
Response (This box will expand as you type):
Nomination of Ministers and Chairpersons of Statutory Committees
Response (This box will expand as you type):

Leaving the Opposition and re-joining the Executive
Response (This box will expand as you type):
Programme for government
Response (This box will expand as you type):
Function of statutory committees
Response (This box will expand as you type):
Simple majority for budget approval
Response (This box will expand as you type):

Section 6
<u>Contact Details</u>
All responses should be sent by email please to:
<p>Assembly and Executive Review Committee Room 276 Parliament Buildings Ballymiscaw Belfast BT4 3XX</p> <p>Tel: 02890521375</p>

To arrive no later than **Tuesday 10 November 2015**

Email: committee.assembly&executivereview@niassembly.gov.uk

Thank you for your submission