

The Speaker



Northern Ireland
Assembly

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Mr Stephen Moutray MLA
Chair of the Assembly and Executive Review Committee
Room 276
Parliament Buildings

10 November 2015

Dear Stephen,

Assembly and Executive Reform (Assembly Opposition) Bill

Thank you for the invitation to respond to the Committee's consideration of the Bill.

While it is difficult for me as Speaker to take positions on issues which will come before the floor of the House, the attached submission attempts to raise a range of relevant issues the Committee may wish to take account of.

Given my responsibilities towards the whole Assembly and the fact that the Bill will come back to the Chamber for discussion in due course, I will be making this submission public by placing it in the Library so that all Members may access it.

I wish the Committee well with its deliberations.

Yours sincerely,



MITCHEL MCLAUGHLIN MLA

"Respect - A First Step"



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Assembly and Executive Reform (Assembly Opposition) Bill

Evidence from the Speaker – Mitchel McLaughlin MLA

Introduction

1. The introduction of an Opposition in the Assembly has been debated for many years but I welcome that the mechanics of how it might work is now being considered in more detail in the context of all-party talks and this Bill. Given my role in plenary and Chair of the Business Committee and the Assembly Commission, I will be a significant stakeholder in how arrangements for an Opposition will be introduced and implemented, whether through the provisions of the Bill or subsequent changes to Standing Orders. In scrutinising this Bill, I would stress that the Committee and the House need to bear in mind that it will be me, my successor and Assembly staff who have to interpret and implement it so its provisions and intentions should be clear and unambiguous. I therefore welcome the opportunity to contribute to the Committee's inquiry.
2. I have informed the Assembly that I will not be seeking re-election as a Member or as Speaker. Any comments made by me are therefore in the interests of the Assembly as a whole and the smooth operation of its procedures. I will not comment on areas which may be purely a matter for party political judgements and decision by the House but I think there are a range of points from my perspective which may help the Assembly's deliberations. As my predecessors did, I think it is important for me to be able to give evidence in a form which does not provide opportunities for others to draw the Speaker into party politics.
3. For ease of reference, I have divided my evidence into three sections:
 - A **General Principles** – some underlying principles which I think are relevant to the wider issues in the Bill.
 - B **Opposition and Assembly Business** – dealing with some of the specific provisions in the Bill.
 - C **The Position of Speaker** – focusing on the issues involved with the position of the Speaker as set out in the schedule of the Bill.

A General Principles

All Parliamentary Institutions Evolve

4. Frustrations around the operation of the Assembly are understandable but it is fair to say that the instances of political crises and delay in agreeing major political issues have inevitably limited the development of a parliamentary culture at the Assembly. Accordingly, there may have been lesser attention given to reviewing and improving our procedures compared to other legislatures elsewhere.

Managing Expectations

5. Managing expectations is important and we need to be conscious that government and legislating is not easy and certainly not as easy as the public debate would suggest, particularly in our local context. There are currently few parliamentary institutions in the world which are not experiencing a difficult relationship with the electorate. This is regardless of whether they have an Opposition or not. Therefore, we should not fall into the trap of viewing the introduction of an Opposition as a miracle cure for all the current ills facing the Assembly and the Executive. The overall performance of the Executive and the Assembly, the decisions taken, as well as party politics will all be as influential, if not more so, than issues of process in improving the Assembly's relationship with the public.

Our Unique Circumstances

6. We need to be more mindful of our history as a region emerging from conflict and the fact that our model and procedures were designed to take account of our past difficulties, widely divergent political views and relationships. That is reflected in the fact that our Standing Orders require cross community support to be changed or suspended. Reviewing and improving any system of government should be a continuing process but the debate should take account of both best parliamentary practice and our specific circumstances. Achieving our current arrangements has taken years of delicate handling between parties. Any new arrangements, whether arrived at through this Bill or otherwise, should equally demonstrate care to avoid creating different problems or frustrations.

Power And Opposition Is Shared

7. The fact that departments and Ministerial appointments are shared among the bigger parties via mandatory coalition in the current system is well known. However, a consequence is that Opposition as well as power has been shared. After Executive and Committee business and Private Members Bills, Assembly time has been divided among the parties proportionately. I appreciate that part of the intention behind the proposal to introduce an Opposition is to increase the challenge and scrutiny to the Executive. That would suggest that currently responding to a critical Private Member's motion from another party in the Executive is always an easy experience. From what I see from the Chair, I

doubt Ministers would agree. Similarly, while there has been no requirement to fund an official Opposition, the Financial Assistance to Political Parties scheme has provided funding to all parties in the Assembly to support their Assembly work including parliamentary scrutiny.

The Separation Of Powers Between The Executive And The Assembly

8. It is fair to say that this sharing of both Executive and Opposition functions between all the biggest parties in the Assembly has blurred the perceptions of the traditional divide between the role of the Executive as the government and the role of the Assembly amongst parties, the media and the public. Any measures which strengthen the role and perception of the Assembly as the legislature responsible for holding the Executive to account would be welcome.

The Electorate Decides The Composition Of The Assembly

9. As Speaker, I deal with the composition of the House as it is returned by the electorate and that is reflected by the allocation of speaking time etc being distributed proportionately based on party strength. The Bill focuses more on a balance between Government and Opposition. No matter whether changes are introduced in this Bill or in subsequent changes to Standing Orders, the occupant of the Chair will always have to take the position that no individual Member can be guaranteed to be called every time they want to speak. That message is often unpopular particularly with those who have less opportunities precisely because they have been returned in smaller numbers or as an individual. Even if this Bill is passed, Members have to understand that they cannot always automatically expect an opportunity to speak especially on highly subscribed motions.

Backbench Rights

10. While the Bill divides the Assembly purely into Executive and Opposition, it is important to note that the Speaker also needs to take account of the rights of backbenchers who have all been elected to represent their constituents regardless of whether their parties are in Government or Opposition. While acknowledging that party control over Members is strong in the Assembly, the Speaker cannot assume that backbenchers may not have something different to contribute from their parties, particularly based on their constituency experiences.

Re-examining Procedures

11. There are a number of areas where it is arguable that the Bill proposes change on the basis of introducing Opposition to the existing procedures and practises in the Assembly eg the scheduling of business. However, I would suggest that if an Opposition is introduced then it may be necessary and more prudent to revisit our procedures and consider the models which can best accommodate the introduction of an Opposition.

Considering Procedures In Letter And In Practice

12. In considering this Bill, the Assembly and the Committee is going to have make judgements between aiming for worthwhile ideals and accommodating political realities to produce workable and agreed procedures. As part of that, I would encourage the Committee to look at not only the letter of the existing and proposed procedures but also how they work or will work in practice.

Alternative Means Of Implementing Arrangements

13. Many of the provisions contained within the Bill could be introduced by the Assembly via means other than legislation. That is a decision for the House and any comments made here should not be construed as support from me for delivering them by legislative or other means. However, the Committee does need to consider the strengths and advantages of reflecting provisions either in legislation or by alternative means such as Standing Orders.

B Opposition and Assembly Business

Topical Questions

14. I note the intention to require the first question at Topical Questions to be allocated to either the Leader of the Opposition at OFMDFM Questions or, in the case of other Ministers, the relevant Committee Chair. While there is logic in this, obviously within the current system this would reduce the time available for backbenchers within the 15 minute slot. Therefore, I suggest this provision should also be examined in the context of the Committee on Procedures review of Topical Questions. My contribution to that review has been to encourage a move to allocate the majority of time to Topical Questions (rather than tabled questions as present) and that supplementaries should be allowed from the floor to Topical Questions. It would seem to me that this would better accommodate the changes proposed in the Bill.
15. Additionally, these proposals are based on the current arrangements for OFMDFM questions. Given the changes expected in that department, it is reasonable to expect that the current format will have to be reviewed in the next mandate. With the introduction of Topical Questions, there has been much more interest in questioning the First and deputy First Minister on their roles as leaders of the Executive rather than their narrow departmental responsibilities. I have therefore written to the First and deputy First Minister suggesting that this could be an opportunity to move to a format more like that in other legislatures with a weekly time slot. Therefore, it would be better that any provisions in the Bill retain flexibility to deal with any subsequent changes in the arrangements and procedures of the House.

“Enhanced Speaking” rights

16. I suggest some clarity is needed around the concept of “enhanced speaking rights” for the Opposition. I understand that the Bill seeks enhanced time for

the Opposition parties beyond their party strengths but is this just for their lead spokesmen during a debate (the Leader or Deputy Leader of the Opposition or another spokesman) to scrutinise the government or is this proportionately for all Members judged not to be in Government? The former may well be a helpful development but if it is the latter then care will be required to ensure that there is the right balance to offer protection for backbenchers of Government parties to be able to raise the issues of their constituents. We should not concede that these contributions will always be free of criticism of the Executive or do not add additional insight to discussions.

Days Set Aside for Opposition Business

17. I note the requirement in the Bill for a minimum of 15 days to be set aside for Opposition Business but there are a number of procedural issues which would have to be clarified. Currently, Private Members Motions (which I assume would be similar to the business to be taken on Opposition days) are scheduled by the Business Committee only when the absence of Executive business means there is time available. It is therefore a sensible measure to build in a safeguard to protect some entitlement to Opposition Business and not allow the Executive to crowd it out. However, identifying those minimum fifteen days will only be able to be done if either the Executive better organises its business further ahead of time or if the role and authority of the Business Committee is redefined in this context.
18. I have written to the First and deputy First Ministers previously with my concerns that there needs to be effective coordination between departments when scheduling Assembly business. I believe this to be a significant factor leading to peaks and troughs of late sittings dealing with multiple pieces of Executive business one week followed by Private Members Motions and an earlier finish the next week. The First and deputy First Minister have responded positively to these concerns particularly in the context of having to manage the legislative workload ahead of the end of this mandate but it may be no bad thing if the requirement to identify Opposition days encouraged better management of Executive business. In this context, the outline of an indicative legislative programme and estimated timeframe at the start of each session, would be helpful to the whole Assembly. This could be introduced in a number of ways, including through additions to Standing Orders, but the key issue is introducing what would be accepted as a key element of the parliamentary culture in institutions elsewhere.
19. There will also be a need to consider whether time will be protected for backbench business as having Executive, Opposition and Committee business protected risks squeezing out any opportunity for backbenchers to table issues of importance to their constituents.
20. Finally on this issue, I would stress the importance that the introduction of Opposition Days should not be done in a way which can only be managed through longer sittings. There is a need to better regulate our sitting times

throughout a session to avoid the peaks and troughs and particularly to make our hours more family friendly. I do not believe the intention of Opposition Days is to exacerbate a situation that I am already seeking to address with the Business Committee.

Committee Chairs

21. I note the provisions around the Chair of the Public Accounts Committee and allocating the first Topical Question to Committee Chairs. The only comment I would make is that the preferred situation is that any Chair of a Committee should be reflecting the position of the Committee and its findings during its work. Any arrangements should not undermine that by suggesting that the Committee Chair's party, whether part of government or Opposition, should be a relevant factor in that work.

Assembly Executive Reform Motion

22. I note that the Bill requires the Speaker to send any Assembly and Executive Reform Motion to the Secretary of State. Current convention by Speaker's ruling is that I will write on behalf of the Assembly to inform any individual of a motion passed by the Assembly if the motion "calls" on a specific individual. In keeping with that convention, I therefore suggest it would be helpful that an Assembly and Executive Reform Motion should include a specific "call" to the Secretary of State.

Resources

23. I note the provisions within the Bill to resource the Opposition from within the Financial Assistance for Political Parties Scheme and wider comments on the Bill that any financial support for an Opposition should be cost neutral and not increase the costs of the Assembly. There are two points I need to make. Firstly, it will be important to agree in principle what constitutes a reasonable cost for supporting an Opposition. If there is no agreement on that, or on FAPP allocations to parties in the Executive being adjusted to proportionately favour Opposition parties, then the cost of FAPP will increase. In the context of the costs of Opposition being neutral to the Assembly, and in a financial environment where the Assembly budget is going to have to reflect the broader financial climate in the public sector, this situation will force the Assembly Commission to make hard choices and to have to look at other areas for cuts including those areas which offer support to Members and their constituents and Committees. It seems to me that it would be counterproductive if funding for an Opposition forced the Commission to squeeze other services which support Members in their scrutiny functions.
24. On a wider point, there is also a need to consider the financing of an Opposition in the light of the current budget setting mechanism for the Assembly. Unlike other legislatures where the required independence of the legislature is recognised in the budget setting process, in the current process DFP and the Executive ultimately propose the budget allocation to the Assembly. I believe

that an independent budget setting process for the Assembly should be accompanied by the principle that the Assembly budget should reflect the position in the wider public sector and should not be immune from the wider financial climate. However, if we remain with the current budget setting process for the Assembly, there is at least the potential for it to be perceived that DFP and the Executive could reduce the Assembly's budget if the Assembly and its committees, or the Opposition had caused the Executive difficulties. Therefore, while the Executive will not directly decide the funding for the Opposition, it will have an influence indirectly through setting the Assembly's overall budget. Given that the Government parties may well have a majority on the Assembly Commission and in the Assembly as a whole, some consideration of safeguards would be required. Much good work has been done to create a Memorandum of Understanding to establish a more appropriate budget process but there is a need to avoid further delays and proceed with it urgently.

Ministerial Accountability

25. Part of the purpose of the Bill is to look at the effectiveness of the Assembly in holding the Executive to account. I welcome that in the context that there are limited mechanisms to hold Ministers to account. I would note that this is also a difficulty for the Chair. For instance, Standing Orders do not provide any provisions for sanctions against Ministers who do not answer written questions on time. Nor do they give the Speaker the power to require a Minister to attend the House, for example to answer an Urgent Question. It would not be logical for me to impose the same sanctions I impose on Ministers that I impose on Members eg asking a Minister to withdraw from the House or banning them for speaking would only deprive other Members of the opportunity to hold the Minister to account. I make these points only to manage expectations as to what might be expected from the Assembly or an Opposition within the totality of our current procedures.

Technical Groups

26. The House can decide whether it wants to introduce technical groups and/ or the detail of how they would work. I do think that smaller parties and individual representatives should be entitled like all backbenchers to table some business on the floor of the House on behalf of their constituents and the current procedures do not adequately facilitate that. In terms of speaking rights, the Deputy Speakers and I often do exercise our discretion to ensure that a voice is heard from the smaller parties and individual representatives even though our flexibility to do so in short debates is limited. However, while I think better measures could be introduced to hear their voice, possibly by technical groups there is also a need to manage expectations in the context of their strength in the House and the rights of all backbenchers. The Chair has often been criticised when it has called some Members from the smaller parties or individual Members during a debate but not all, or when it has not called one of

those Members during a specific debate despite having called them on other business that day or that week.

27. Except where there is no time limit on an item of business, such as a piece of legislation, I cannot envisage circumstances when the Chair will be able to guarantee that all Members can be called to speak every time they wish. If a Technical Group was to be formed out of a range of smaller party or individual representatives, the Chair would want to be assured that the group had mechanisms in place to decide and prioritise which Members of it were speaking on which issues. If a group is not to have a group position on an issue, there is danger of disputes on which Members of the Group may wish to speak on it. My point here is only to underline that the Chair should not be in the position of resolving such disagreements.

Petitions of Concern

28. I am not going to get involved in the debate of how Petitions of Concern could be reformed but I note that the proposal in this bill is based on a different way of assessing support for a cross community or weighted vote rather than by assessing the nature of the issue. The proposal has been made in the past that the Speaker should consider whether the subject matter of an item of business qualifies for the use of a Petition of Concern. While I do not doubt that any Speaker would consider the matter in depth before reaching a decision, it would undoubtedly lead to the Speaker having to make some difficult calls and strained relationships in the Assembly.

C The Position of Speaker

29. I welcome the debate this Bill introduces around the role of Speaker. As someone who has been in the Assembly since 1998 but has only seen things from the perspective of the Chair in the past few years, I can attest to the fact that most Members and others do not fully understand the issues, problems and constraints which face the holder of the office of Speaker. Therefore, I am not going to give definitive positions on every proposal but I hope I might be able to make some points from my experience of the post which Members might find helpful. It is important that I should make clear that I am approaching these issues without any self-interest. I will be retiring at the next election and will not be seeking re-election as a Member or as Speaker.

Independence and Impartiality

30. Independence and impartiality are the most important elements of the position of Speaker and no provisions should be considered which undermine that. While the rest of the House is viewing the outcomes they are seeking purely through the prism of their own party political perspectives, it is the duty of the Speaker to take a step back and base their decisions solely on the Assembly's conventions and procedures and the best interests of the Assembly as a whole.

I believe that my predecessors and I have attempted to embody that so I fully endorse the spirit of those aspects of the Bill. However, I think what Members will have to debate is whether and how much the core elements of independence and impartiality can be enforced in legislation.

Election of a Speaker

31. I completely understand the motives behind proposing the election of the Speaker by secret ballot and I fully support the notion that Members should be supporting the candidate they have confidence in to represent the best interests of the whole house rather than party political considerations. However, whether the person is elected by cross community support as now or by weighted majority, the political reality is that it will still likely require any candidate for the Office of Speaker to have majority support from the biggest unionist party and the biggest nationalist party, even if the candidate comes from another part of the House. Members will know that my approach has been that I am the Speaker for every MLA in the Chamber. It would be extremely difficult for any Speaker to do the job if they were not accepted or given cooperation by one of the biggest parties in the House. Therefore, there are a range of elements which the Committee needs to balance in its consideration.

Speaker's Relationship With Their Party

32. The conventions existing in the Assembly clearly underline the principle that the Speaker is not an active party representative and should undertake the role of Speaker independently and impartially. That is how both my predecessor(s) and I have conducted our business. For instance, when as Principal Deputy Speaker I was authorised to exercise some of the Speaker's functions during the then Speaker's illness, I instantly stepped aside from participation in Committees where I would have been perceived as representing a party line. Further, once elected Speaker I ceased to attend Assembly Group meetings of my party and have approached business in the Assembly purely as an element of my responsibilities as Speaker. One of the frustrations of being Speaker is that the easy response for any Member who does not get what they want is to claim there is a party political agenda behind the decision. That is also an easier thing to report rather than seeking to understand the procedural requirements, particularly when the parliamentary convention is that the Speaker does not have to explain their decisions as they are not open to challenge.
33. Of course, each Speaker will approach issues from the perspective of their personal background and every Speaker will always inevitably make decisions which are not to the liking of different parts of the House from time to time. However, the only way to bring the whole House with you is to be focused on making fair decisions for the right reasons based on procedures, conventions and the best interests of the House as a whole. If any Speaker was not doing that and was clearly following a party direction then it would be inconceivable that they could hold the confidence and cooperation of the majority of the

House and it would be impossible to carry out the role. In that context, the Committee and Members need to decide whether further provisions are necessary in legislation.

Speaker and the Constituency

34. While I have listened to a range of comment about how the Speaker should be elected in the future and that they should cease to represent a constituency, only those who have had the privilege of being Speaker have experience of how difficult it is to balance the role of Speaker with that of a constituency representative during an active Assembly. The responsibilities of Speaker often restrict your time and take you away from the constituency. While Ministers may always be inclined to respond to requests for meetings, you do not have the same tools that are available to other Members to pursue an issue such as speaking on the floor of the House or tabling motions or questions. Neither do you have the ability of a Minister to pursue issues through your influence within the Executive. Similarly, you have to be careful about becoming involved in issues which you may end up presiding over on the floor of the Assembly and the nature of any constituency meetings you attend. The amount of media activity you can take to highlight an issue is limited particularly if it is critical of existing provision by a department or agency.
35. It is not impossible to do constituency work as you can still pursue cases through correspondence etc in a low profile way but you have to be very much reliant on the support systems and staff you have developed as a party MLA. However, while it is difficult, a debate is required about whether there is value in the Speaker maintaining an understanding of the pressures that Members are facing in their constituencies. This is particularly relevant in relation to the Speaker's role as Chair of the Assembly Commission responsible for providing the necessary staff, services and functions for Members to perform all aspects out of their duties. There may be a danger of a Speaker being out of touch with the wider role of a Member if he/ she is in post over a number of mandates without having constituency responsibilities.

Re-election Of The Speaker

36. In different jurisdictions the issue of how the constituency and party pressures on a Speaker are managed are handled differently particularly in relation to their re-election as a Member. In the older institutions there is no set method with Westminster, for example, relying on a convention that the Speaker should not face party competition and in the Oireachtas the Ceann Comhairle is automatically returned similar to the proposals in the Bill. In the younger institutions of Scotland and Wales they have not put any measures in place to deal with this conundrum. In Scotland, no Presiding Officer has sought re-election to the Scottish Parliament on the basis that they would be seeking re-election as Presiding Officer and in Wales a previous Presiding Officer was re-elected to the Welsh Assembly as a Member of his party. Therefore, we are not the only region with an issue of how to deal with this in modern times.

37. Proposing that the Speaker no longer represents a constituency and can be replaced by another Member from that party does address some issues of democratic deficit to that constituency. Additionally, it does mean that any party is not disadvantaged from having a lesser voting strength than that which it was elected with and this might avoid situations arising when a party may want to oppose a very able candidate seeking the Speakership for that reason. Enforcing that a Speaker can no longer represent a constituency or seek re-election is an absolute way of reinforcing impartiality and independence but it does pose the dangers I raised above of a Speaker in post a long time becoming out of touch.
38. My predecessor did have to re-seek election as a party representative before seeking re-election as Speaker but he was conscious of the difficulties and I believe he handled it sensitively. He only campaigned locally in his constituency and did not get involved in the wider party campaign, although I accept that the electoral dynamics in his constituency may have uniquely facilitated that. I suspect there are no perfect arrangements for how a Speaker can be elected and re-elected so the Committee will have to assess the impetus for changing the current system and reach its view.

Deputy Speakers

39. The current provisions of the Bill do not deal with the Deputy Speakers but given the wider principles of the Bill, the Committee may want to include them in their discussion. The Deputy Speakers (including the Principal Deputy Speaker) can currently go from presiding over plenary in one debate to participating as a party spokesman in the next item of business. Clearly, the Speaker has to make a wider range of decisions which are reflected in a stricter approach to ensuring the impartiality of the Speaker. However, if the arrangement around Deputy Speakers are seen as acceptable and manageable, then the Committee will need to consider how much more extreme the constraints on the Speaker have to be than they already are. If the number of Members decreases in the future, then the number of Deputy Speakers may logically have to be reviewed. If the committee was to favour the election of the Speaker by secret ballot then the logic would be that the Deputy Speakers should equally be selected this way to elect the Members who most had the confidence of the House rather than those who were nominated by their party leaders.
40. I also recently requested that the Committee on Procedures should review whether measures could be put in place to ensure that at least one representative in the Speaker's team was female, similar to a requirement in Westminster. The Committee on Procedures believed this was something best left to the discretion of parties in deciding which Members to nominate as Deputy Speakers. However, this should be revisited if the introduction of a secret ballot was proposed. Members will know that ensuring the House better reflects the wider community is something I feel strongly about and the representation of women is the area where progress is most urgently needed.

The Assembly needs to be showing leadership on this and this may be an area where a strong signal could be sent out by a small measure.

D Conclusion

41. Throughout this evidence, I have attempted to highlight some issues that need to be considered and I look forward to seeing the outcome of the deliberations on the Committee and the floor of the House. I again stress the importance that anything agreed by the House needs to be clear and unambiguous for the benefit of the Speaker and staff who will have the responsibility to implement it.
42. I welcome the fact that this Bill is provoking a public debate about the effectiveness of the Assembly in the context of some of our procedures. However, I think there is merit in a wider debate about some of our other arrangements which could equally improve the effectiveness and efficiency of our work such as electronic voting and trying to better regulate our hours. These issues may not provoke much enthusiastic discussion by parties and commentators but they are linked to important issues about prioritising the best use of our time, making the Assembly a working environment which is more attractive for a wider group of people to seek election and having regard for the interests of our staff who are often neglected stakeholders who are directly affected by our decisions on how to do our business.
43. While sometimes unfairly judged, the Assembly has many areas in which it can improve its effectiveness and perceptions. Having said that, neither should we underestimate how much people are invested in wanting to see a strong local Assembly as is constantly emphasised to me by the number of people who stop me to say they had seen some item of business in the Chamber. Whatever the outcome of this Bill, there will still be much work to be done.