



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Local Government (Disqualification)
(Amendment) Bill**

10 June 2010

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

Local Government (Disqualification) (Amendment) Bill

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Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr Danny Kinahan
Mr Ian McCrea
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

The Chairperson (Mr Boylan):

The Committee will now go through the clause-by-clause scrutiny of the Local Government (Disqualification) (Amendment) Bill. Members have been provided with a reply to Committee queries, as well as the draft amendment from Dawn Purvis. Members have also been provided with a draft Committee amendment, an updated clause-by-clause scrutiny table with comments from the meeting on 20 May 2010, and a copy of the Bill.

We will now go through clauses 1, 2 and 3 and the long title, one by one, in order to seek the Committee's position on each. Once a clause has been agreed, members will no longer be able to discuss it.

Clause 1 (Disqualification)

The Chairperson:

Two amendments have been tabled to clause 1, one by Dawn Purvis and the other by Mr Weir. Do Committee members wish to make any comment before I put the Question on those two amendments? The tabled Committee amendment has been amended.

The Committee Clerk:

The original proposed Committee amendment has been amended.

The Chairperson:

The original Committee amendment is in members' packs, as is the amended form of that amendment, which reads:

In page 1, line 5, at end of clause 1 insert —

“(2) The disqualification in subsection (1) shall take effect at the end of 60 days after a person takes his seat as a member of the Assembly”.

I am going to put the Question. Do any members have questions at this point?

Mr Weir:

I am not sure why the original draft Committee amendment was changed. Sorry; just give me a few seconds to read the two against each other.

The Chairperson:

No problem.

Mr Weir:

I do not have any particular problem with the Committee amendment. However, will the reference to someone taking an Assembly seat kick in the moment he or she signs in as a Member

with the Speaker? Having dealt recently with the first of the changes to the dual mandate, I know that there is a gap between a member resigning from the Assembly and a replacement coming in. Can we get clarification on that?

The Clerk of Bills:

That form of words is chosen specifically because it is pinpointed in time by the reference in the Northern Ireland Act 1998 to taking one's seat, which is reflected in Standing Orders. The Northern Ireland Act is reflected in Standing Order 3(3), which states that the Member takes his or her seat when once they have signed the Assembly's Roll of Membership.

Mr Weir:

OK. I understand.

Mr Beggs:

If that provision were adopted, someone who achieves a dual mandate in council and the Assembly could go much sooner voluntarily. The only area on which I have concerns is the issue that significant, well known Assembly Members could run cynically to gather votes, knowing that they would stand down within two months and hand the seat on to someone else. That is a more difficult situation to address.

Mr Weir:

There is a flip side to that, however. Someone could cynically do the opposite. Let me give an example. Let us say, for the sake of argument, that Joe Bloggs, who is a sitting Member of the Assembly, comes into a very marginal seat. The party wants to keep its options open. There is the option that someone might run and then vacate his seat, in that cynical way. The other possibility is that it gets an arrangement with an association on the basis that someone effectively replaces him on the ticket for the council, on the understanding that there is an agreement that, if the party wins the Assembly seat, then that person retains the council seat, but on the basis that that person runs as a proxy. Consequently, upon election to the council, if they failed to get into the Assembly, that person would then immediately resign from the council and vacate that seat.

Unfortunately, if people want to take a purely cynical view, there is a route either side of it, because a party can put forward for election someone who then resigns the seat and effectively defeat an Assembly candidate immediately after the election on that basis. The system could be manipulated, although I think that that would prompt a public backlash. It could be manipulated either way.

Mr Beggs:

I see that this draft amendment will deal with the situation, particularly as Assembly and council elections are scheduled for next year to be held on the same day. At nomination, you are neither a councillor nor a Member of the Assembly, as I understand it. It is very difficult to legislate for such a situation, but it appears to be a reasonable method of doing it.

The Chairperson:

There are two amendments, and I want to refer members to Dawn Purvis's amendment. It reads:

Leave out clause 1 and insert —

“1. (1) A person shall be disqualified from being a councillor if that person is a member of the Northern Ireland Assembly.”

We have no issues with that; is everyone content with it? Please have a quick read before I put the Question.

Mr Weir:

I have no problem with either amendment. However, the DUP has some concerns with the overall legislation. We want to give it further consideration. When it comes to the main clauses, we will abstain, but we will support the amendments. The two amendments make the Bill more competent and, on that basis, we are happy to support them.

Mr Kinahan:

I might be being thick, but, in respect of the word “being”, does that mean that a person has gone into council and accepted the role? At what point does one become a councillor?

The Clerk of Bills:

A person is a councillor from the moment that he or she comes into office. Under the Electoral Law Act (Northern Ireland) 1962, that is four days after the election. Under the sponsor's amendment, the disqualification takes effect once one becomes a councillor. It will take effect on the fourth day after the election. Under the original drafting, it was possible for candidates to be disqualified prior to their being declared elected.

Mr Weir:

I will explain it to Mr Kinahan, because the issue arose last week. The time frame may be slightly artificial, particularly if, as is likely to happen next year, there are two elections on one day. It may be the fourth, or possibly even the fifth day, before some people are elected. So, if we have a double election, both acts of being elected will happen at exactly the same time. It would be slightly different if it is purely a council election. In that case, I think that candidates are elected before they become councillors. The other is simultaneous.

The Chairperson:

Thank you very much, Mr Weir. Is that understood, Mr Kinahan?

Mr Kinahan:

Yes.

Question proposed:

That the Committee is content with clause 1 subject to the amendment proposed by the sponsor and the amendment proposed by the Committee.

Mr Beggs:

It is complicated. I am trying to understand whether we are amending an amendment.

The Chairperson:

No.

The Clerk of Bills:

There are two amendments to clause 1. The sponsor is proposing to leave out the definition of the disqualification. The Committee's proposed amendment is to add a new subsection to the clause to delay the impact of that disqualification. The amendments are compatible. The Committee is being asked to agree the two amendments to clause 1 and to agree clause 1 subject to the amendment proposed by the sponsor and the amendment tabled by the Committee.

Mr Weir:

Procedurally, should the Question on the amendments not be put before the Question on the clause as amended?

The Clerk of Bills:

The Chairperson has already asked for members' approval for the two amendments, and he will now ask for approval for the clause as amended.

The Chairperson:

We will take the vote. All those in favour of the amendments —

Mr Weir:

We are voting on the clause as amended.

The Chairperson:

Sorry; who is in favour of the clause as amended?

Mr Beggs:

There are two amendments.

Mr Weir:

Apparently they have already been taken.

The Chairperson:

Both amendments have been accepted.

Mr Beggs:

Are we not meant to take each amendment separately?

The Clerk of Bills:

We did.

Mr Beggs:

I missed that.

Mr Weir:

Apparently we have already agreed both amendments.

Mr Beggs:

I did not realise.

Question, That the Committee is content with the amendment proposed by the sponsor, put and agreed to.

Question, That the Committee is content with the amendment proposed by the Committee, put and agreed to.

Mr Beggs:

I reserve my position on that. I will not express a view at this stage.

The Chairperson:

OK, gentlemen, we will move on.

Mr Weir:

Can I clarify the result of that vote?

The Committee Clerk:

We have not come to a conclusion; that will go into the report.

Mr Weir:

OK, has everyone abstained?

The Committee Clerk:

The Committee has agreed the sponsor's amendment. There is a majority agreement on the Committee's amendment and no agreement on the clause as amended.

Clause 2 (Commencement)

The Chairperson:

This is the clause of the Bill that dictates when the Act will commence, which, as drafted, is the day of the first district council general elections to take place after Royal Assent of the Bill. It is not about the timing of the disqualification process.

Clause 2 agreed to.

Mr Weir:

The DUP will abstain.

Mr Dallat:

I abstain. It is the fashionable thing to do.

Clause 3 (Short Title)

The Chairperson:

Clause 3 refers to the short title of the Bill, which is the Local Government (Disqualification) (Amendment) Bill. I advise members that Ms Purvis has indicated that, if her proposed amendment to clause 1 is accepted, she will table a consequential amendment to the short title, to ensure that it is consistent with the purpose of the Bill.

Clause 3 agreed to.

Mr Weir:

We will abstain for consistency.

Long Title

The Chairperson:

This refers to the long title of the Bill, which will describe in more detail exactly what the Bill will do, which is to amend the Local Government Act (NI) 1972 to disqualify members of the NI Assembly from being elected, or being a councillor. I also advise members that Ms Purvis has indicated to the Committee that if her amendment to clause 1 to stop the Bill impacting on those who wish to stand for election goes ahead, she will be required to amend the long title to reflect that change. Is the Committee content with the Long Title, subject to the amendment proposed by the sponsor?

Long title agreed to.

The Chairperson:

All agreed, with one abstention.

I remind members that a late amendment was submitted from DemocraShe. The Clerk of Bills will discuss the problems with the amendment, which has been tabled to members.

The Clerk of Bills:

The paper was tabled very late, so I would have to take it away should the Committee decide to propose the amendment. At first glance, I am not clear that it has any legal effect whatsoever. It seems to refer to another piece of legislation that is already in force. There could be questions over its admissibility. Its intent is to promote gender balance in the representation in public life.

Mr Beggs:

Can you confirm that one would not normally need to add references to other legislation that is in effect? That is an unnecessary amendment.

The Clerk of Bills:

That is my first impression.

Mr Weir:

There is a small, separate issue with the reference to:

“if selected by a registered political party”.

In theory, one could construe that to exclude all independent Members. I can see some merit in that; however, I take the point. As I said, when I read this, I was a little confused because, in the 2002 legislation, it is permissible to say that something “shall be used”, which sends a mixed message. One might take the interpretation that it flags up that particular piece of legislation; however, normally, that is not how legislation works. Consequently, it does not achieve anything.

The Clerk of Bills:

From that point of view, there would be questions about its admissibility. However, at this point, I would not give a formal view beyond that.

The Chairperson:

I suggest that we write to DemocraShe to indicate our support for encouraging more women into political life. Nevertheless, do members agree that the amendment is not appropriate to the Bill?

Members indicated assent.

Mr Weir:

Furthermore, according to our legal advice, it may not be admissible.

The Clerk of Bills:

Procedural advice.

Mr Weir:

Sorry, yes; procedural advice.

The Chairperson:

That concludes the formal clause-by-clause analysis. A draft report of the Committee's deliberations on the Bill will be available to members at the Committee meeting on 17 June, with a view to the final version being approved on 24 June 2010.