



Northern Ireland
Assembly

**COMMITTEE
FOR THE OFFICE OF THE
FIRST MINISTER AND DEPUTY
FIRST MINISTER**

**OFFICIAL REPORT
(Hansard)**

Armed Forces and Veterans Bill

12 January 2011

NORTHERN IRELAND ASSEMBLY

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DEPUTY FIRST MINISTER**

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Members present for all or part of the proceedings:

Mr Tom Elliott (Chairperson)
Dr Stephen Farry (Deputy Chairperson)
Ms Martina Anderson
Mr Allan Bresland
Mr William Humphrey
Mrs Dolores Kelly
Mr Danny Kinahan
Mr Francie Molloy
Mr George Robinson
Mr Jimmy Spratt

Witnesses:

Mr Michael Potter)	NIA Research and Library Services
Mr Bob Collins)	
Ms Evelyn Collins)	Equality Commission for Northern Ireland
Ms Lisa King)	

The Chairperson (Mr Elliott):

On 15 December 2010, at our last meeting, the Committee agreed to ask the researcher to provide a briefing on the updated research paper. Michael is present. I will ask him to deliver that briefing. I hope that members have their folders on the Armed Forces and Veterans Bill with them. We have folders in all sorts of colours. That one is red.

Mr Michael Potter (Research and Library Services):

The presentation will look at the initial Bill paper of 8 December 2010 and will integrate the updated information. At the time, the original paper was circulated to Committee members, two significant events occurred that changed some of that information.

On 28 June 2010, the Armed Forces and Veterans Bill was introduced as a private Member's Bill by Mr David McNarry. In July 2008, the command paper entitled 'The Nation's Commitment' was presented to the Westminster Parliament following an inquiry into the national recognition of the UK armed forces. The rationale for the command paper was as follows: professions in the armed services are just as much a lifestyle choice as any other and employment, as such, should not be a barrier to routine life events that others take for granted. Service personnel and their families have to move location frequently, often to places where they have not chosen to live. There should be continuity of services: in health, education or special needs, for example. Limitations to service life and the threat of or incidence of physical or mental injury represent a sacrifice for which service personnel and their families should not be put at a disadvantage. The armed forces, associated personnel and extended families comprise around 10 million people. Therefore, they comprise a significant constituency whose needs should be taken into account when developing policy.

In February 2010, responses to a public consultation on the paper were published. An external reference group had been set up in 2008 to oversee the implementation of the strategy. It published its second annual report in November 2010. A progress chart from that publication is attached to the original Bill paper. It shows advances that have been made in each of the devolved areas — or have not been made, as the case may be. In many of the areas for action, 'The Nation's Commitment' referred to devolved matters. The Bill provides a legislative basis for the implementation of 'The Nation's Commitment' in Northern Ireland.

Clause 1 places a general duty to have due regard to the impact of the exercise of functions on the services community on Northern Ireland Departments; district councils; education and library boards; health and social care trusts; and the Housing Executive. There is no equivalent duty on public bodies in other parts of the UK. Such a duty was suggested in the consultation. However, it was generally unpopular. The Ministry of Defence response stated that:

“the main reason for perceived discrimination against the Armed Forces community is lack of awareness of their

particular circumstances and needs. Legislation would be heavy-handed and probably unnecessary, risking setting them apart from the communities into which they seek to integrate.”

Clause 2 requires Northern Ireland Departments to appoint co-ordinators to identify matters that affect the services community. Champions have been introduced elsewhere. For example, in Wales and Scotland, there are champions in health boards and NHS trusts. Many Scottish councils have appointed champions to look after the interests of the armed forces community. At present, 22 councils in Scotland have champions for the armed forces.

Clause 3 requires Northern Ireland Departments to consult with the UK and devolved authorities before exercising a function. At present, the external reference group consults across the UK with the participation of the Welsh and Scottish devolved institutions.

Clause 4 requires the Department of Finance and Personnel to publish and maintain a service personnel and veterans’ charter for Northern Ireland. On 8 December 2010, an Armed Forces Bill was introduced in the Westminster Parliament. It includes a provision for a requirement on the Secretary of State to prepare and publish an update report on the armed forces covenant. That Bill had its Second Reading on Monday 10 January 2011. In Scotland, Jeremy Purvis MSP has proposed a veterans’ charter, which was debated in the Scottish Parliament on 24 November 2010.

Across the UK, the implementation of ‘The Nation’s Commitment’ paper requires certain legislative adjustments to provide for the needs of the armed forces community, but also policy and strategy initiatives. Some local councils in England have piloted the armed forces welfare pathway, which seeks to assist members of the armed forces community where there is a significant local presence.

The devolved institutions have approached the issue differently. Wales has formed an expert group at Executive level to implement the devolved matters relating to the paper. Scotland does not have an Executive level group, but a cross-party group in the Parliament that proposes legislative change and invites initiatives such as the appointment of champions. To date, Northern Ireland does not appear to have formally engaged with ‘The Nation’s Commitment’ paper. However, in August 2009, the Department of Health, Social Services and Public Safety published a strategy, ‘Delivering Healthcare to the Armed Forces’.

The legislative approach represented by the Bill differs from the other devolved institutions. However, there are particularly sensitivities with regard to the armed forces in this context that do not exist elsewhere. Also, the constitutional arrangements differ in Northern Ireland, and Ministers in Northern Ireland have greater relative autonomy regarding implementation.

Committee members indicated interest in other contexts and countries, so I will touch on that very briefly. Across the world, armed forces personnel and their families are supported, to varying degrees and in different ways, by their respective Governments and communities. That is done mostly through provision within military systems, ministries of defence or departments of veterans' affairs. Much of that provision is set out in legislation, either through a succession of acts, as in the UK, or in one document, as is the case with the Code de la Défense in France.

In the USA, there is extensive legislative provision across every aspect of support to the military. That stems from the Servicemen's Readjustment Act of 1944, which became known as the "GI Bill of Rights". Some of that legislation bestows certain privileges on veterans and places a duty of care on bodies outside the military system, the Department of Defense and the Department of Veterans Affairs. Local communities, businesses and institutions can adopt a military unit as a measure of support. In Canada, organisations can likewise sponsor a unit. As in the USA, departments of veterans' affairs in Canada and Australia have statutory remits for looking after the needs of former service personnel. Canada also has a Veterans Ombudsman and a Veterans Bill of Rights.

I will give an update on the armed forces covenant. On 8 December 2010, a task force on the armed forces covenant published a report that recommended a number of ways in which the armed forces community could be supported. Those included a community covenant for local communities to support military units, as in the USA; a form of recognition for serving and former armed forces personnel and families such as an ID card to enable them to avail themselves of certain benefits or discounts; home ownership and education and initiatives; and support for veterans and greater engagement with the community. However, it did not include any new recommendations for legislation.

In summary, the Bill provides for the implementation in Northern Ireland of 'The Nation's Commitment' command paper, which seeks to address certain disadvantages experienced by

service personnel and their families by virtue of their employment that were identified in the inquiry. It will do that by introducing a statutory duty on certain public bodies to have due regard for their needs; by having appointed individuals and Departments to look out for their specific needs; through consultation with other UK and devolved authorities to harmonise policy and provision concerning service personnel and their families; and through a veterans' charter for Northern Ireland. As yet, Northern Ireland has not engaged significantly with 'The Nation's Commitment' strategy. The Bill seeks a statutory route to do so.

The Chairperson:

Thank you very much. Members do not have any questions, Michael, so you are getting away very lightly. I should have declared an interest as a member of the Royal British Legion and a former member of the forces.

Mr Bresland:

I declare an interest as well.

Mr Kinahan:

And myself.

The Chairperson:

We will now hear from representatives of the Equality Commission: Bob Collins, Evelyn Collins and Lisa King.

Evelyn, Bob and Lisa, you are very welcome. Thank you for attending. We wrote to you asking for comments on the Armed Forces and Veterans Bill. We ask you now to give a short presentation of no more than 10 minutes, and to then make yourselves available for questions. The session will be reported by Hansard for our records.

Mr Bob Collins (Equality Commission for Northern Ireland):

Thank you, Chairperson. We can certainly satisfy on the brevity element.

To begin, I say that we are sorry that, for whatever reason, the original letter to the commission appears not to have been received by us. That is the reason that there was no response. Had we received that letter, there would, of course, have been a response.

The second thing to say by way of introduction is that not every private Member's Bill, no more than every consultation by a public authority, will necessarily require a response by the Equality Commission.

Finally, as you know, the commission has no role in either giving or withholding approval for any Bill. That is the spirit in which we are here. Ours is not a legal interpretation of the Bill.

As far as the remit and interest of the Equality Commission is concerned, it appeared initially as though what was represented as the intention of the draft Bill may have been in some conflict with equality legislation. However, on the face of it, after careful reading, the Bill seems not to conflict with any equality or anti-discrimination legislation.

The Bill creates a duty for a range of specified authorities to give due regard to the impact that the exercise of their functions may have on an identified category of people, service personnel and their families. However, on the face of it, the Bill confers no preference and makes no requirement of any public authority around any action required to be taken following the giving of due regard to that impact. It seems to us that that followed from the White Paper's essential starting point:

“that those who serve must not be disadvantaged by virtue of what they do”.

In clause 2, the Bill creates the role of a co-ordinator in Government Departments. Of itself, that seems not to be a problem for any existing equality or anti-discrimination legislation. However, if the Bill is enacted, an important element will be the meaning that is given to the word “addressing” in clause 2. That will be a crucial consideration.

Crucial also will be the guidance from DFP, which will have a significant impact on the role and function of the aforementioned co-ordinators. The commission will, of course, be happy to respond to any consultation that DFP may have on any such guidance. If it came to that, the commission would want to consider whether there was any formal advice that it should give to DFP under schedule 9 to the Northern Ireland Act 1998.

The Bill proposes to create a regime in Northern Ireland that is quite different from that which pertains in other parts of the UK. That is not a problem for any current equality or anti-

discrimination legislation in Northern Ireland.

Were the Bill to create a requirement for preferential treatment, or were the interpretation in the execution of the Bill to suggest that such treatment was required or to be encouraged, there could be a collision with equality and anti-discrimination law. However, that is not on the face of the Bill, so there is an important distinction to be made between what the Bill says and how, if it were enacted, it were put into effect or how, as I say, its interpretation in execution were realised.

Clause 3 does not establish equivalence of treatment between Northern Ireland and Great Britain. It simply requires a consultation arrangement but it does not bind Departments to follow practice in Great Britain, be bound in any way, or change their intentions in any way by virtue of the consultation.

If the Bill were to require an equivalence of treatment, or if that process of consultation were to give rise to an expectation that equivalence of treatment were necessary, that too could give rise to a collision between the terms of the Bill and the existing quality of anti-discrimination legislation, whether in fair employment, the Race Relations (Northern Ireland) Order 1997 or disability discrimination legislation.

There are two other things I want to say. Service personnel in Northern Ireland enjoy the protection of all the anti-discrimination legislation in the same way that everyone else does. They have access to whatever recourse is available to everyone else. They also have the same entitlement as everyone else to make a complaint if they believe that a public authority is failing to discharge the requirements of its equality schemes and if, as a consequence, they are directly affected by that, service personnel are not outside the protection of the legislation as it exists.

An important point to note, which applies to everyone in Northern Ireland but clearly and specifically to service personnel no less than everyone else, is that, especially with the enactment of the Equality Act 2010, which applies only in Great Britain, there is a growing difference between the level of protection available to people in Northern Ireland and that to people in other parts of the United Kingdom, on grounds of age, disability, and in other respects. As some of you will know, because we have previously made this point to the Committee, we have urged and made formal proposals to Ministers, including the First Minister and deputy First Minister, for significant change in discrimination legislation, both in its own right, so that the legislation that

obtains in Northern Ireland is as good as it can be, and particularly because of the gap that has opened and will widen as, in sequence, elements of the 2010 legislation are given effect in Great Britain. Clearly, issues that arise when service personnel move from one jurisdiction to another in the United Kingdom also obtain in relation to everyone else who moves, whether employers, employees or others. That especially raises issues for employers who have staff in a number of jurisdictions in the United Kingdom, in Northern Ireland and say, England, Wales or Scotland. Certainly, the position of service personnel and everyone else would be substantially improved were that gap to be narrowed, or preferably closed, and were the kinds of proposals that had been made by the commission given effect through the necessary legislative change. That is entirely a matter for the Executive and the Assembly, because it is within the Assembly's competence.

I will reiterate the point that I made earlier. On the face of it, there is nothing in the Bill that conflicts with current equality or anti-discrimination legislation. However, there is a need for particular care to ensure that the Bill and its outworkings are enacted and that the interpretations that are brought to bear in its execution do not wittingly or unwittingly fall into the trap of colliding with existing legislation. In that context, the guidance that is identified in clause 2(3) of the Bill will, perhaps, assume greater importance than may have been attached to it when the Bill was drafted.

The Chairperson:

Thank you very much for that. I think that what you are telling us, in short, is that there are no issues with the Bill, but that it needs a watching brief.

Dr Farry:

I welcome our guests from the Equality Commission. I take the point that you made about the Equality Act 2010 in GB. Although the current situation in Northern Ireland is outwith our considerations today, the Committee needs to look at that in the near future.

I regard your evidence on the Bill as the critical evidence session for the Committee. Although I appreciate that you will inevitably have to be selective about where you engage or do not engage, I hope that you appreciate why the Committee was particularly keen to hear from you about the Bill. Like the Chairperson, I clearly understand the advice that you are giving us and that, consequently, we need to focus our attention on clause 2.

I want to tease the matter out more clearly. In a sense, I am putting words in your mouth, but equality, in itself, is not something that is divisible. To ask public bodies to have particular due regard to the situation being faced by current and former service personnel and their families need not be to the detriment to the rights, and right to equality, of any other individual in society. I am conscious of examples of that in my constituency. I am a governor of a school in which there are a large number of children of service personnel. If that school, or an equivalent body, were to particularly bear in mind the profile of its users, it would not be acting adversely against the interests of other children in the school. I assume that is the type of situation that you would be fairly comfortable with.

Mr B Collins:

I will address your first point first. We would, in any event, have responded to the Bill, because we recognise the closeness of the relationship and the way in which the due regard principle might be perceived as being in conflict with the section 75 due regard duty. We would undoubtedly have responded and we understand why the Committee has asked us to be here.

It could be argued that the very fact of requiring a Department or a public authority to have due regard to the impact that the exercise of a function may have on a particular group of people ipso facto confers an advantage on that group of people and a detriment on others. We do not think that that is necessarily the case. There are certain circumstances in which one would want particular attention to be paid, for example, to the children in the example that you cited. Of course, it is not exclusively about the children of service personnel, but, perhaps, about children of people who came from another part of the UK or have been posted to another place. I am certain that, when those children arrive at school, the schools concerned would take account of that fact and would have access to information, and would not simply ignore the context in which the child arrives in the schoolroom.

That pertains to people who move to Northern Ireland from other parts of the UK anyway. Since the duty is simply to “have due regard to the impact”, with no stated purpose and no stated consequence, the public authority is, therefore, not bound to do anything. That is why the use of the word “addressing” in clause 2 is important. What does “addressing” mean? How will it be interpreted? What will the guidance say about it? Because, if the interpretation of “addressing” were to give rise to particular or special attention or to preferential treatment, there would be a clear and evident difficulty.

The Chairperson:

I am reading “addressing matters”, which, I assume, is a fairly loose issue. However, in broad circumstances, would that give rise to concerns?

Mr B Collins:

It depends on the interpretation that either the guidance or the Department in question gives. To identify is one thing, but does “addressing” mean to remedy, resolve, deal with, overcome or provide for, and would that mean to provide for in a particular or preferential way as a priority? I am not putting in words; that is what appears in the Bill. I think that the word “addressing” and the guidance from the Department of Finance and Personnel will become key issues in determining how the Bill and, subsequently, the Act will be interpreted and executed.

Ms M Anderson:

I want to pick up on the two points that have been raised again to see if we can tease them out a bit. I listened to what you said about that fact that, on the face of it, you do not think that the Bill is in any way at variance with other legislation. However, the explanatory and financial memorandum requires authorities:

“to have due regard to the impact that the exercise of their functions has on members of the armed forces and their families and veterans and their families.”

When I read that sentence, I realised that we are not talking about the same situation — or are we? — that is described in the British Government’s White Paper that dealt with the armed forces and their families, because this Bill also deals with veterans. I say that particularly in the context that anti-discrimination legislation applies to everyone here, and we all have the same entitlement to the challenge function if a public body is not exercising its duties accordingly. Given the name of the Bill, there are implications not just for the armed forces and their families, but for veterans. Clause 2 states that a co-ordinator will take responsibility for “identifying and addressing matters”, which challenges what you said about it not colliding with other legislation, because that is quite specific on what it confers a public body to do.

Mr B Collins:

One of the key issues will be what “addressing” means and how it is interpreted. If the Bill is enacted as it stands, ultimately, of course, it will be a matter for the courts to identify what “addressing” means. However, in the meantime, it will be a matter for the guidance issued by the

Department of Finance and Personnel to identify what it believes it to mean. If the guidance from DFP were to convey that “addressing” means to give preferential treatment or priority, there is potential for real difficulty.

We do not come here as lawyers giving formal legal interpretation of the Bill, we are simply giving our best judgement on how the Bill relates to the other equality or anti-discrimination legislation.

If “addressing” is taken to mean following through on the provisions in the document entitled ‘The Nation’s Commitment’, a number of those — specifically those that are identified in points 37 and 38 of Michael Potter’s papers, which identify priority of access for employment for spouses or for people leaving the armed services — will give rise to a real issue in relation to the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) and the Race Relations (Northern Ireland) Order 1997. It is not clear whether there would be issues in relation to other legislation, but issues could arise in relation to those two, specifically in Northern Ireland, where it is not possible to give preference or withhold preference in any account in relation to either of those issues.

At the risk of repeating myself, our sense is that it is identifying a duty to have due regard without indicating the object of the due regard or attaching any action requirement to it — unlike section 75, which mentions:

“due regard to the need to promote equality of opportunity”

and

“regard for the desirability of promoting good relations”.

Nothing is attached to due regard here, other than due regard to how the exercise of function in that respect will affect that group of people. Having had due regard, you are not obliged to take any particular action in respect of that group of people, neither are you in relation to addressing it. It is not part of the Equality Commission’s function to say whether the legislation should be introduced or enacted; that is entirely a matter for the Assembly as the parliamentary authority in Northern Ireland.

Mr Humphrey:

Thank you very much for your presentation. Given the legislation and the circumstances that

currently prevail in Great Britain, if the Bill before us — in whatever shape it eventually comes before the House — is not enacted, will veterans and ex-service personnel from Northern Ireland be treated differently from their colleagues on the mainland? If they are not treated equally, will they not, effectively, be discriminated against?

Mr B Collins:

Obviously, a key subclause of that question was:

“in whatever shape it eventually comes before the House”.

If the Bill is amended, there will be an entirely different context for the discussion, because we do not know what change will have been made. Whatever way the cat jumps, there is going to be a difference of arrangement anyway, because what is proposed in ‘The Nation’s Commitment’ in respect of England, Wales and Scotland about priority access to employment appears not to be possible in Northern Ireland because of the existence of FETO and the Race Relations Order. There is, at least, a serious risk of collision between the two.

Ms Evelyn Collins (Equality Commission for Northern Ireland):

In addition, our understanding is that there is no equivalent legislation being put through in Great Britain now that would be relevant to this legislation. Following the 2008 White Paper there was an amendment to the Armed Forces Bill by the current Government in December, and I am taking this from the Michael Potter paper that you all have access to, which seeks to fulfil the commitments made in the White Paper. If the Bill goes ahead, the situation here would be different. However, given that there are no related legislative provisions in the rest of GB, our reading is that the position here would be no different if it does not go ahead.

Mr Humphrey:

Yes, but given the information, the Bill and the papers that you have mentioned, will ex-service personnel and veterans in Northern Ireland not be disadvantaged, if not discriminated against, if there is no Bill?

Mr B Collins:

At the moment, everyone in Northern Ireland is disadvantaged relative to everyone in Great Britain, because the Equality Act 2010 has received Royal Assent and is being progressively brought into effect.

Mr Humphrey:

We are speaking specifically about the armed forces.

Mr B Collins:

I know. If there is no Bill, there are areas in which service personnel or ex-service personnel will suffer the same inhibitions as everyone else. However, whether or not there is a Bill, it seems, on the face of it, that some things may be possible in Great Britain that are not possible in Northern Ireland. Great Britain does not have an equivalent of the Fair Employment and Treatment (Northern Ireland) Order and elements of the Race Relations Order may not apply there, simply because it is people in Britain, from Great Britain, being dealt with in Great Britain. The Committee may want to obtain its own legal advice; I am not offering legal advice. However, measures proposed in 'The Nation's Commitment' document may not be possible in Northern Ireland, whether or not there is a Bill, because of the risk of collision with Northern Ireland's pre-existing equality or anti-discrimination legislation.

Apart from that, it is difficult to identify a way in which you could say that people in Northern Ireland will be discriminated against compared to people in Great Britain but for the enactment of the Bill. That is beyond the Equality Commission's remit, because we are confined to Northern Ireland. Secondly, the existence of separate jurisdictions within the United Kingdom means that there is every likelihood, and the reality, of people being treated differently in the three main jurisdictions of England, Wales, Scotland and Northern Ireland in respect of devolved matters.

Mr Humphrey:

That is pretty clear. Thank you.

Mr G Robinson:

Surely equality is the whole thrust of the Bill. The way in which I have interpreted the Bill is that service personnel, families and veterans are not looking for anything more or less than other people in Northern Ireland or anywhere else. Surely the argument should be judged in the context that it does not matter who, or what, someone is.

Mr B Collins:

It would be entirely wrong for me, or anyone from the Equality Commission, to comment on the Bill as a Bill, or its intentions. It is much better that we confine ourselves to observations on the

extent to which we believe that there is any risk of the Bill being in conflict with Northern Ireland's existing legislation. I have tried to do that as clearly as I can. It is better not to express a view. The Equality Commission does not have a view, per se.

The Chairperson:

Thanks very much for that explanation and detail.

There is a response from the Ulster Defence Regiment and the Royal Irish Regiment's aftercare service in members' information packs. I suggest that we undertake clause-by-clause scrutiny of the Bill at next week's meeting, when we will ask Mr McNarry, the proposer of the Bill, to be present. At this stage, do any members have any proposals or amendments?

Ms M Anderson:

Do we not need to hear from OFMDFM about the proposed changes to the anti-discrimination legislation that the Equality Commission is talking about? If that will confer a protection on all, as opposed to a Bill that may give preferential treated to the armed forces and veterans, you will then have a collision with a veto and —

The Chairperson:

We wrote to OFMDFM twice for a response —

Ms M Anderson:

Based on the evidence that we heard today —

The Chairperson:

And we still have not had a response from them.

Ms M Anderson:

Based on the evidence —

The Chairperson:

It is not in our interest to hold this matter up any longer waiting on their response. We should just move on, whatever happens.

Dr Farry:

What we heard today was useful, and it has given me a lot more confidence in taking the matter forward. In some respects, I am not sure how much added value the Bill provides to the status quo, but it certainly will be an improvement.

In advance of next week, it may be useful if we were to highlight to Mr McNarry the importance of clause 2, just to give him a heads up that that is an area in which we probably have to explore things with him in a little bit more detail, and to encourage him to think through how he would take that forward, particularly in light of the evidence we heard from the Equality Commission today. Even at a basic level, the Bill states that it is the co-ordinator's duty to address matters, when surely it should be the Department's duty to address matters, rather than the individual co-ordinator.

There may be a few drafting issues with clause 2, but in the first instance that may be for Mr McNarry to address rather than the Committee to seek to amend, although of course we reserve the right to propose our own amendments if appropriate. However, it may be useful and productive if we were to steer him towards that clause as one on which particular attention needs to fall next week.

Mrs D Kelly:

Picking up on Stephen's point, it is the normal practice of scrutiny for the proposer to have an opportunity to hear where amendments may be required, and it is up to them whether they choose to bring forward the amendment based on the evidence, or whether the Committee should bring forward an amendment based on evidence. That may be part of what Stephen is driving at.

Secondly, Martina's point about additional powers is a separate issue over and above the Armed Forces and Veterans Bill in writing to OFMDFM to ask them precisely when, indeed if, they have any intention to strengthen the anti-discrimination powers as requested by the Equality Commission. I do not see that as repeating the —

The Chairperson:

Yes, but that is a separate issue. We should take that under any other business, and I am happy to do that in respect of Martina and Dolores's points.

Mrs D Kelly:

We would be happy if you would do that, rather than it was ignored, as long as it is taken under any other business, Chairperson.

The Chairperson:

That is fine. I am quite happy to do that. Have any members any amendments or proposals for amendments at this specific stage? You do not have to; you can make them at some other stage.

Dr Farry:

We should hear what happens next week, although I would certainly consider amendments based on the clause 2 issue, because it is critical. We should defer to Mr McNarry in the first instance, to see how he wants to take the matter forward.

Ms M Anderson:

Chairperson, no harm to you, I put a request to you and you just dismissed it out of hand and moved on. If you are going to try to chair this meeting, at least we should try to communicate and respect each other, to try to understand, despite what I said, what you are now proposing to do. First, you said we will move on to clause-by-clause. Is that what we are doing?

The Chairperson:

I actually suggested that we do a clause-by-clause next week; not today. I suggested that we would do a clause-by-clause next week, and if there were any amendments today, I was quite happy to take them as proposals, and let the Committee vote on them. Indeed, they can come forward next week or at any other stage. When we are doing clause-by-clause next week, it is up to Mr McNarry to decide whether he wants to take those as amendments, or whether we put them forward, if we agree them, as Committee amendments. That is the way in which I was proposing to move forward.

Ms M Anderson:

So are we going to try to carry out a couple of processes at one meeting? If we approve the clauses, do those not go to Mr McNarry to consider any proposals?

The Chairperson:

My intention was that if any amendments were proposed today, we could put those to Mr

McNarry so that he has them for next week. If we do not have them this week, we can still bring them forward next week. We will have the clause-by-clause scrutiny next week. This is the regular process for any Bill. We can debate those proposals next week. Some amendments, if there are any, may be accepted by Mr McNarry, and others may not. Some amendments may be proposed here but may not be accepted by the Committee. It is up to individual Members to put such amendments to the Assembly. It is the same as for any other Bill. I am trying to outline the process that I plan to follow.

Ms M Anderson:

If we are working on the Bill as we would on any other Bill, do we not have a response from a Minister?

The Chairperson:

No. It is a private Member's Bill.

Ms M Anderson:

So it is not necessary for us to get a response from OFMDFM?

The Chairperson:

No. In fact, it was explained to us from the start that, because Mr McNarry is the Bill's sponsor, although he is not representing a Department, he acts almost as though he was a departmental official who comes here to give us the details. That is how it was explained to us from the start.

Mrs D Kelly:

I want to pick up on the issue of proposed amendments. It is also normal practice that the Committee staff may bring forward suggested amendments that are based on some of the evidence that is presented.

The Chairperson:

The Committee staff normally bring forward amendments at the Committee's recommendation. It would be unfair to ask the Committee staff to draft amendments.

Mr Spratt:

You have outlined how, as I understand it, any private Member's Bill is supposed to be dealt

with. I guess that what is happening is that Sinn Féin and the SDLP have not got the response that they normally get from their friends in the Equality Commission. Quite simply, they are clutching at straws now.

Mrs D Kelly:

That is —

Mr Molloy:

That is a stupid remark. *[Interruption.]*

The Chairperson:

Hold on, members. We will have one person speaking at a time.

Ms M Anderson:

Well, Jimmy, you may not like the Equality Commission, but they are here to represent all the people of the North equally. They are everybody's friends. You may not embrace that hand of friendship, but they are here for everybody.

Mr Spratt:

Perhaps you did not listen to what I was saying —

Ms M Anderson:

That was a very cheap remark. The response that I received —

The Chairperson:

OK, folks. I am going to stop it there. We have had our say about that particular issue. I am concerned about whether the Committee will decide to progress the Bill or not. I am open to suggestions or proposals from members about other ways to move forward. I have outlined how I believe we should move forward, having taken advice from the Committee Clerk and others.

Mr Spratt:

I propose that you move forward in the way that you have outlined. It is my understanding that that is the way in which any Private Members' Bill is dealt with, no matter what it is about.

Question put.

The Committee divided: Ayes 7; Noes 3

AYES

The Chairperson (Mr Elliott), Mr Bresland, Dr Farry, Mr Humphrey, Mr Kinahan, Mr G Robinson, Mr Spratt.

NOES

Ms M Anderson, Mrs D Kelly, Mr Molloy.

Question accordingly agreed to.

Dr Farry:

On the back of that, may I propose that we draw to Mr McNarry's attention that clause 2 may be a source of concern to the Committee and encourage him to consider how that may be best addressed at next week's meeting?

The Chairperson:

Are members content with that approach?

Members indicated assent.

The Chairperson:

There are no proposals for amendments at this stage. The Committee for Finance and Personnel and the Department of Finance and Personnel have suggested that the Bill be amended to remove the references to "the Department of Finance and Personnel" and replace them with "the Office of the First Minister and deputy First Minister".

That would be done at clauses 1(3), 2(3), 4(1), (2) and (3) and 5(1) and (2).

Dr Farry:

May I be flippant and ask whether OFMDFM has a view on that?

The Chairperson:

They have not given us their view on it. I am sorry.

Ms M Anderson:

Are you making this proposal?

The Chairperson:

No. The Department of Finance and Personnel made the proposal to us.

Ms M Anderson:

Does the Department of Finance and Personnel —

The Chairperson:

Sorry, through the Committee for Finance and Personnel.

Ms M Anderson:

Right, so the Committee for Finance and Personnel is asking that reference to DFP is removed and replaced with OFMDFM?

The Chairperson:

That is right. I have no view on this. I only tell you it as something that is given us.

Dr Farry:

Just to muddy the waters further, this falls under the definition of a cross-cutting matter, in the sense that one Department proposes that another should assume responsibility. I feel that that is the appropriate way to go. However, I imagine that, under the ministerial code, the matter will have to be determined at the Executive, given that it involves two Departments. That may be a way of burrowing in, getting a view from OFMDFM and clarifying whether that has been the case. On face of it, we have one Department saying it should be OFMDFM, but we have nothing from OFMDFM that says that that is its desired way forward. We should clarify that point and also the point regarding the Executive.

The Chairperson:

I do not think that the Executive agreed on any decision to allocate the matter. However, on that particular point, if the Committee for Finance and Personnel wishes the Bill to refer to OFMDFM as opposed to Finance and Personnel, it should bring forward that amendment to the Floor of the House. That would be better than us doing it.

Ms M Anderson:

Has this gone through the Minister of Finance and Personnel, or is it something that the Committee has recommended with the support of the —

The Chairperson:

It came from the Department to the Committee.

Dr Farry:

If you are looking for the Finance Committee to table an amendment, it is probably not on its agenda any longer. It has passed it on to this Committee. We are working to a deadline and we have to report. If it is the view of this Committee, we should write to the Committee for Finance and Personnel and request that it make that amendment.

Mr Molloy:

Surely we should leave it to the DUP to sort out which of their Ministers will reject this Bill, instead of putting into our hands. It is not our job.

The Chairperson:

It was agreed some time ago that this Committee — [*Interruption.*]

Members, there is no point in getting into this. All that you are doing is creating more difficulty for yourselves and wasting more time.

We can ignore the suggestion or we can write back to the Committee for Finance and Personnel and say that we do not want to bring that amendment forward, but if they wish to do it, that is up to them. Is that reasonable?

Dr Farry:

Why does Mr McNarry not do it? That would be the cleanest way of doing it.

Mrs D Kelly:

That is the problem of going through the clause-by-clause scrutiny next week. If there were amendments based on some of the evidence that has been taken this afternoon, it would give Mr

McNarry an opportunity to reflect on what amendments he might wish to table to the Bill. We could hear that next week and then pick up on the clause-by-clause scrutiny. That would give members an opportunity to consider whether they want to bring forward amendments.

The Chairperson:

When is the deadline?

The Committee Clerk:

It is 28 January.

The Chairperson

We have only two meetings to decide, and have the report drawn up.

Ms M Anderson:

We could do it in two meetings. We could do your first meeting as Dolores suggests and the second —

The Committee Clerk:

We have to get the report written and agreed as well. We cannot do that unless we have done the clause-by-clause scrutiny, because we do not know what is going to happen at the next meeting.

The Chairperson:

Surely the suggested amendments are coming from the Committee for Finance and Personnel. We could simply write back to say that if someone on that Committee or in that Department wants to bring forward that proposal, then so be it. It is not up to us to do that.

Mr Humphrey:

Are we not taking a vote on how to proceed?

The Chairperson:

We did. However, this is not an amendment, this is a separate issue.

Mr Humphrey:

If there is no consensus, we should perhaps have a second vote.

The Chairperson:

I am open to proposals.

Ms M Anderson:

What are you proposing? To go back to the Committee for Finance and Personnel and ask it to

—

The Chairperson:

I am not proposing anything; I am making a suggestion. The Department of Finance and Personnel has requested that all references in the Bill to the Department of Finance and Personnel be changed to the Office of the First Minister and deputy First Minister. The Department wanted to know whether we would agree to that amendment.

Mr Molloy:

It is a private Member's Bill. Surely we should be putting it to Mr McNarry to see whether he wants the change.

Mr Spratt:

Stephen Farry has made that suggestion. I think that that it is the most sensible thing to do.

The Chairperson:

If we check the Hansard report of the meeting at which Mr McNarry gave evidence, we will see that he said that he was happy that it be OFMDFM rather than the Department of Finance and Personnel, if it were the will of everyone else.

Dr Farry:

I propose that we write to Mr McNarry and enclose correspondence from the Finance Minister, and request that he considers an amendment in light of that correspondence.

The Chairperson:

Are members content with that proposal?

Members indicated assent.

The Chairperson:

The Examiner of Statutory Rules has suggested amendments to clauses 1, 3 and 4 in relation to subordinate legislation. Mr McNarry has indicated that he is content with the amendments. That relates to making any subordinate legislation subject to affirmative procedure. Everyone seems content with that.

The Examiner has also suggested amendments to the clauses so as not to specify the Department and to define the Department in clause 6. That is fairly simple. As it stands, each time the Department is mentioned in the Bill, it states Department of Finance and Personnel. The amendments would mean the Bill would make reference to “the Department”, and there will be an explanation at clause 6.

Mr Molloy:

Surely if we had got that information earlier, it would have saved the debacle.

The Chairperson:

It would not, because we will have to refer to one particular Department in clause 6. Perhaps we should send that to Mr McNarry as well.