



Northern Ireland  
Assembly

Chairpersons' Liaison Group

# Report on Strengthening Committee Scrutiny

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## Purpose and Membership

### Purpose

The Chairpersons' Liaison Group (CLG) is made up of the Chairperson of all committees of the Assembly, including Statutory, Standing and Ad Hoc committees (with the exception of the Business Committee). The CLG fulfils a strategic and practical liaison role in relation to the work of Assembly Committees, helping to develop common approaches to common problems and promoting good practice. In particular, the CLG seeks to:

- define a set of core tasks for statutory committees;
- identify, evaluate and assess options for improving the collective effectiveness of Assembly Committees;
- represent the common interest of committees;
- facilitate liaison between committees and the Executive;
- facilitate liaison between committees and the Assembly Commission;
- guide the clerk assistants in making decisions about financial and other resource allocations;
- identify, on behalf of committee members, common areas for development and training.

The CLG ordinarily has 14 members, comprising the chairpersons of each of the 9 statutory committees and 5 of the Standing Committees (excluding the Business Committee). Since its establishment in September 2020, CLG has also included the Chairperson of the Ad Hoc Committee on a Bill of Rights. The CLG includes a Chairperson and Deputy Chairperson, and has a quorum of 5 members.

## Membership

The CLG has 15 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the CLG is as follows:

- Ms Carál Ní Chuilín MLA (Chairperson) <sup>1 2</sup>
- Ms Sinead McLaughlin MLA (Deputy Chairperson) <sup>3 4</sup>
- Dr Steve Aiken OBE MLA
- Dr Caoimhe Archibald MLA
- Ms Paula Bradley MLA
- Mr Jonathan Buckley MLA <sup>5</sup>
- Ms Linda Dillon MLA <sup>6</sup>
- Mr Colm Gildernew MLA
- Mr William Humphrey MLA
- Mr Chris Lyttle MLA
- Mr Declan McAleer MLA
- Mr Daniel McCrossan MLA
- Ms Emma Sheerin MLA
- Mr Mervyn Storey MLA <sup>7</sup>
- Mr Peter Weir MLA <sup>8 9</sup>

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<sup>1</sup> With effect from 1 April 2021 Sinéad Ennis replaced William Humphrey as Chairperson

<sup>2</sup> With effect from 20 September 2021 Carál Ní Chuilín replaced Sinéad Ennis as Chairperson

<sup>3</sup> With effect from 1 April 2021 Colin McGrath replaced Sinéad Ennis as Deputy Chairperson

<sup>4</sup> With effect from 22 October 2021 Sinead McLaughlin replace Colin McGrath as a Member and Deputy Chairperson of the Chairpersons' Liaison Group

<sup>5</sup> With effect from 21 June 2021 Jonathan Buckley replaced Michelle McIlveen as a Member of the Chairpersons' Liaison Group

<sup>6</sup> With effect from 20 September 2021 Linda Dillon replaced Sinéad Ennis as a Member of the Chairpersons' Liaison Group

<sup>7</sup> With effect from 21 June 2021 Mervyn Storey replaced Paul Givan as a Member of the Chairpersons' Liaison Group

<sup>8</sup> With effect from 21 June 2021 Pam Cameron replaced Mervyn Storey as a Member of the Chairpersons' Liaison Group

<sup>9</sup> With effect from 6 July 2021 Peter Weir replaced Pam Cameron as a Member of the Chairpersons' Liaison Group

## Abbreviations and Acronyms used in this Report

<b>Abbreviation / Acronym</b>	<b>Full meaning</b>
CAMS Office	Clerking and Member Support Office
CIPFA	The Chartered Institute of Public Finance and Accountancy
CLAC	Constitutional and Legislative Affairs Committee
CLG	Chairpersons' Liaison Group
DPLRC	Delegated Powers and Law Reform Committee
ESR	Examiner of Statutory Rules
ETI	Enterprise, Trade and Investment
MLAs	Members of the Legislative Assembly
PAC	Public Accounts Committee
PAPON	Parliamentary and Assembly Procedural Officials Network
RaISe	Research and Information Service
RHI	Renewable Heat Incentive
SL1	A policy memorandum in relation to a proposed Statutory Rule
SR	Statutory Rule
TOR	Terms of Reference

## Executive Summary

1. The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive (RHI) Scheme identified “limitations inherent in *[the Enterprise, Trade and Investment (ETI) Committee’s]* role” and found that “reasons for this included its own limited resources and its dependence on the Department for information and analysis to allow it to perform its challenge function robustly”.
2. As a result, the Inquiry’s report made recommendations around strengthened Assembly Committees to increase scrutiny and help ensure that systematic changes are made and sustained; and that the Assembly considers what steps are needed to strengthen its scrutiny role, particularly as conducted by Assembly Committees, in the light of lessons from the RHI. The Inquiry recommended that such a consideration might include “*significantly increasing the resources available to statutory committees and, generally, identifying what steps are needed to improve the effective scrutiny of Departments and their initiatives, whether in Assembly Committees or in the Assembly Chamber itself*”.
3. The Chairpersons’ Liaison Group (CLG) agreed to review committee scrutiny with a view to identifying how the recommendations of the RHI report could be implemented to strengthen the scrutiny role carried out by committees, particularly in relation to the scrutiny of primary and subordinate legislation by statutory committees.
4. The review has identified a number of areas and made a number of corresponding recommendations which it believes will enhance the scrutiny process and help to ensure high quality robust legislation is produced.
5. The limitations of the existing staffing resource available to support the work of Assembly committees is evident. Committee remits continue to widen (for example, the need to consider issues relating to the UK’s exit from the European Union). Resource limitations are a significant concern, particularly when recognising that insufficient resourcing was seen as a contributor to the events that led to the RHI Inquiry. The CLG therefore strongly recommends increasing the staffing complement for statutory committees, subject to appropriate review, as soon as possible in the 2022-27 mandate.

6. The limited subject expertise available to committees is something that needs to also be addressed. There is a professional and well-resourced Research and Information Service (RaISe) in the Assembly but committees should also be encouraged, where possible and appropriate, to avail of external expertise to assist in improving the scrutiny process. This is also an issue for the Examiner of Statutory Rules (ESR) in relation to the scrutiny of delegated powers in bills, and a recommendation is made in respect of this issue.
7. The CLG makes two recommendations in relation to the ESR, in relation to the need for a review to determine if the current model is still fit for purpose and if an alternative approach to the consideration of delegated legislation is required.
8. Insufficient time to scrutinise subordinate legislation to the necessary level of detail was iterated by a number of those who provided input to this review. CLG is therefore of the view that the current arrangements are in need of review, particularly as this lack of time could be contributing to deficient legislation being passed. Leading on from this, the CLG is also of the view that improved timetabling of legislation would assist in managing committee work programmes and the management of resources.
9. CLG also makes recommendations in relation to the openness and transparency of the legislative process, greater engagement with a wider range of stakeholders and the provision of training and development for members.
10. As a result of this review, the CLG has made a total of 33 [recommendations](#) aimed at strengthening the scrutiny of primary and subordinate legislation as well as the need for pre- and post-legislative scrutiny. CLG believes it is essential its recommendations are acted upon to ensure that the Assembly delivers on its obligations as detailed in the RHI Inquiry Report.

## Introduction

1. Statutory committees of the Northern Ireland Assembly are established in accordance with paragraphs 8 and 9 of the Belfast/Good Friday Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48.
2. Statutory committees have a scrutiny, policy development and consultation role with respect to their respective department and Assembly Standing Orders also make provision for the scrutiny of primary and subordinate legislation.
3. As per Standing Order 56, the Public Accounts Committee (PAC) also has a significant scrutiny role in relation to the departments that are the subject of the Northern Ireland Audit Office's reports into which the Committee opts to carry out its inquiries. CLG agreed, at its meeting on 2 June 2020, to include both the PAC and the Audit Committee in the scope of this review.
4. [\*The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive \(RHI\) Scheme\*](#) identified "limitations inherent in *[the Enterprise, Trade and Investment (ETI) Committee's]* role" and found that "reasons for this included its own limited resources and its dependence on the Department for information and analysis to allow it to perform its challenge function robustly".
5. As a result, the Inquiry's report made recommendations around strengthened Assembly Committees to increase scrutiny and help ensure that systematic changes are made and sustained; and that the Assembly considers what steps are needed to strengthen its scrutiny role, particularly as conducted by Assembly Committees, in the light of lessons from the RHI.
6. The Inquiry recommended that such a consideration might include "*significantly increasing the resources available to statutory committees and, generally, identifying what steps are needed to improve the effective scrutiny of Departments and their initiatives, whether in Assembly Committees or in the Assembly Chamber itself*". Relevant extracts from the RHI report are included at [Appendix A](#) to this report.
7. As a result of the above, the CLG agreed to review committee scrutiny with a view to identifying how the recommendations of the RHI report might be implemented



to strengthen the scrutiny role carried out by committees, particularly in relation to the scrutiny of legislation by statutory committees.

8. At its meeting in May 2020, the CLG agreed the [terms of reference](#), [methodology](#) [and scope](#) of the review.
9. Whilst the CLG is not established in Standing Orders, and does not therefore have the same powers as committees of the Assembly, its purpose includes a strategic and practical liaison role in relation to the work of Assembly Committees, helping to develop common approaches to common problems and promoting good practice. In doing so, it aims to identify, evaluate and assess options for improving the collective effectiveness of Assembly Committees.

## Terms of Reference

In order to assess and implement the recommendations of the RHI report, as detailed in this report's [Introduction](#), the following terms of reference were agreed by the CLG at its meeting in May 2020:

- To examine how committee scrutiny is currently carried out at the Assembly;
- To consider the approach to scrutiny carried out by committees in other legislatures including, but not limited to, Westminster, the Oireachtas, the Scottish Parliament and the National Assembly for Wales;
- To consider the staffing and other resources these legislatures have in place to support the scrutiny function of their committees;
- To identify, review and update previously conducted research in the area of committee effectiveness, particularly as it pertains to scrutiny, carried out by the Assembly's Research and Information Service (RaISe);
- To identify innovative approaches that would improve scrutiny by committees;
- To work with Assembly officials and identify how pre-legislative and post-legislative scrutiny could be developed;
- To work with departmental officials to determine how best to identify and provide the information required by committees in order to strengthen their scrutiny role;
- To identify training and development needs for Assembly staff, MLAs and research support within parties to enable those involved in the scrutiny process to be better equipped to carry out that function;
- To consider the resources currently available to statutory committees and whether these should be strengthened or enhanced to better deliver effective scrutiny; and
- To make recommendations on whether and how to strengthen the resources available to statutory committees and any other steps needed to improve the effective scrutiny of departments.

## Methodology and Scope of Review

To deliver on the terms of reference, the CLG adopted the following methodology:

- The Clerking and Member Support (CAMS) Office should take forward this work on behalf of CLG and provided briefing and updates as appropriate;
- Benchmarking against other legislatures to consider how they carry out committee scrutiny, what their staffing structures are and drawing conclusions as to how the Assembly might improve its scrutiny function;
- Reviewing previous work of RaISe on committee effectiveness, updating that work with a focus on committee scrutiny and conduct further research that may be identified as necessary;
- Taking the views of Assembly staff, MLAs, party support staff and others as appropriate on how they feel scrutiny could be improved; and
- Producing a draft report for CLG's consideration and agreement making recommendations to the Assembly Commission, and others as appropriate, that deliver on the recommendations of the RHI report.

The CLG also agreed the scope of the review to include that:

- This work will remain within the terms of reference, as agreed by CLG. It will result in a report by CLG that will make recommendations to the Assembly Commission, and others as appropriate, for consideration, approval and implementation; and
- It cannot be guaranteed that all of the findings and resultant recommendations would be accepted by the Assembly Commission and what can be delivered will need to be prioritised and affordable in both the short term and the long term; and a mechanism will need to be put in place for review to ensure it delivers as required.

## Consideration of Issues

1. Having agreed the terms of reference, methodology and scope of the review, CLG received a number of briefings on how committee scrutiny might be improved. The briefings included:
  - The Assembly’s Examiner of Statutory Rules (ESR), on 15 September 2020, on the work of the Office of the ESR; how subordinate legislation is currently scrutinised and areas where it might be improved; and on areas of best practice in other jurisdictions;
  - RaISe, on 2 February 2021, on Committee scrutiny and engagement: areas of good practice and innovation in other legislatures;
  - RaISe, on 28 September 2021, on pre- and post-legislative scrutiny, specifically the consideration of approaches in other legislatures; and
  - The ESR, on 28 September 2021, on the role and remit of the ESR.
2. Further to the briefings, the CAMS Office hosted a workshop on 26 February 2021, attended by committee clerks, to take their views on how scrutiny might be strengthened.
3. The CAMS Office also sought the views of MLAs and their Assembly support staff via a questionnaire issued on 1 June 2021.
4. Finally, the views of officials in other jurisdictions were sought during a conference on 26 March 2021 of the Parliamentary and Assembly Procedural Officials Network (PAPON).
5. The information received and views provided concentrated on 4 areas: scrutiny of subordinate legislation; pre-legislative scrutiny of primary legislation; scrutiny during the passage of primary legislation; and post-legislative scrutiny of primary legislation.
6. What the information received emphasised was the fact that there is no definitive solution and it may be that best practice is context-based. It was acknowledged agreed that that striving to continually improve the scrutiny function was an ongoing process across all jurisdictions. With this in mind, the information received centred around seven key areas:

- Scrutiny of subordinate legislation;
  - Pre-legislative scrutiny of primary legislation;
  - Scrutiny during the passage of primary legislation;
  - Post-legislative scrutiny;
  - Availability of member resources;
  - Engagement and Innovation; and
  - The role and powers of the ESR.
7. The following sections address the issues raised as they pertain to the different scrutiny roles and then addresses each of the above areas in turn and makes recommendations for change.

## Scrutiny of subordinate legislation

1. This section considers the role of statutory committees in the scrutiny of subordinate legislation. The role of the ESR in this process is detailed in the section on [the role and powers of the ESR](#).
2. As a result of the growing reliance on the use of delegated powers and 'skeleton' bills<sup>10</sup> it is imperative that the subordinate legislation receives sufficient scrutiny, particularly given the recommendations of the RHI Inquiry Report. This approach of producing 'skeleton' bills has been criticised by the Chairperson of the House of Lords' Secondary Legislation Scrutiny Committee<sup>11</sup> as detrimental to the scrutiny of legislation and the creating of high quality legislation, and has led to two reports from House of Lords committees on this matter<sup>12</sup>.

### ***Views expressed by Members and their support staff***

3. Five responses were received to the questionnaire to members and their Assembly support staff. The need for departmental officials to make themselves available to brief committees on the intent of subordinate legislation was emphasised as a means to delve into the detail of proposals through appropriate questions put to officials. So too was the need for concise briefing papers and the opportunity to receive one to one briefings from departmental officials and RaISe as appropriate.
4. The short timeframe in advance of motions being debated was also considered an issue.
5. One response highlighted the need for training to be provided to members on the legislative process as well as a longer period of time to be built into the process. This would afford committee members the required skills and the necessary time to appropriately scrutinise the subordinate legislation.
6. Another respondee emphasised the perception that subordinate legislation is less important than other committee business on account of the extremely short

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<sup>10</sup> 'Skeleton bills' are where broad delegated powers are sought to fill in policy details at a later date.

<sup>11</sup> <https://twitter.com/UKHouseofLords/status/1463451645463965698>

<sup>12</sup> <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/159146/two-lords-reports-published-on-the-balance-of-power-between-parliament-and-the-executive/>

time allocated on the indicative timings for committee meetings to consider the memorandum detailing the policy objectives of proposed subordinate legislation (known as an SL1s) and the associated Statutory Rules (SRs). They expressed the need for these to be given greater priority and to require more detailed briefings from departmental officials on the intent of the subordinate legislation.

7. One response to the questionnaire indicated that the current approach to scrutiny is efficient on account of the clarity of the process but not as effective as it could be.
8. The need for improved transparency and accessibility was raised as a quick win that ensures members and the public are aware of legislation being laid and are provided with a clear concise explanation of its policy intent. It was further suggested that the SL1 and SR should be made more widely available and not retained in committee. Proposals to improve transparency and accessibility are included later in this section.
9. The same respondent also expressed a need for a consistent approach across committees to the handling of subordinate legislation and potential for committees to be given the power to amend subordinate legislation.

***Views expressed by committee clerks and the Examiner of Statutory Rules (ESR)***

10. In response to the CAMS Office engagement with committee clerks, some clerks reiterated the need for subordinate legislation to be given more time and greater priority in committee meetings and also suggested that the reference to it as 'secondary' legislation might diminish its importance.
11. Clerks felt that the current process works well in terms of the SL1 being provided to the committee in advance of the SR being laid and it was suggested that a similar approach might be worth exploring in relation to primary legislation.
12. However, the SL1 itself was criticised in terms of it potentially being outdated and may need revised to ensure that it meets the needs of committees. There were no suggestions put forward as to how it might be improved. This is perhaps something that requires a detailed analysis.

13. In terms of delivering better scrutiny, it was felt that the time permitted to scrutinise statutory rules is insufficient and should be longer so as to permit meaningful engagement and scrutiny. This discussion prompted a concern in relation to the timeliness of the ESR reporting so as to allow committees to properly scrutinise subordinate legislation and to take action, e.g. prayer of annulment. It was felt that the time period was reduced as a result of the committee waiting to receive the report on the rule. This is an issue that can be resolved between Assembly Officials.
14. Committees often find themselves under pressure from departments to quickly agree SL1s and SRs on the basis there will be a detrimental impact on those to whom the SR relates. CLG is clear that committees should have sufficient time to consider subordinate legislation and it is not acceptable for departments to bring forward such legislation at a late stage and expect committees to respond to a deadline of the department's making.
15. The view was expressed that the timetable should not be driven by the department but should be determined by the nature and complexity of the policy area and the appropriate level of engagement needed with stakeholders. It was considered that a less prescriptive approach to the passage of subordinate legislation, where committees were given more control over the process, may contribute to the avoidance of an RHI-type recurrence.
16. CLG notes that there is a range of subordinate legislation received by committees that may entail different levels of scrutiny. Many of these will be SRs relating to routine requirements, for example the uprating of various payments. Others will require more detailed consideration of policy implications and others, though more rarely, as in the case of RHI initiative may be a new and innovative initiative requiring both engagement with stakeholders and availing of external expertise.
17. It was felt that a traffic-light type system should be put in place to help determine which pieces of subordinate legislations could be considered quickly without excessive need for deliberation; which subordinate legislation would require further information and greater clarity before a committee makes its decisions; and which would require much more detailed analysis before the committee comes to its decision. For example:



- Green – routine subordinate legislation e.g. uprating of payments.
  - Amber – SL1s indicating a new policy or changes to policy that require engagement with stakeholders.
  - Red – SL1 indicating new policy initiatives that may also require significant spend. This requires engagement with stakeholders and availing of external expertise.
18. Resourcing requirements was expressed as an issue of concern. This is rehearsed on a number of occasions throughout this report but it is evident, given the increasing volume of subordinate legislation and the need for more robust scrutiny, that there is a need to review the staffing support provided to committees. This is detailed further in the [availability of member resources](#) section.
  19. The increase in the volume of subordinate legislation across legislatures due to the increasing inclusion within primary legislation of delegated law-making powers is discussed in the annexed RaiSe paper “Parliamentary Scrutiny of Delegated Legislation – A Comparative Review”.
  20. In evidence provided to the CLG, the ESR discussed the need for greater outward engagement than is currently the case particularly in respect of the information that is made public. Other legislatures appear to be more proactive in making information on the passage of subordinate legislation more transparent and accessible through the use of trackers and links to motions in plenary and other appropriate information relating to the legislation. The ESR does engage where possible with members and staff, and also with external stakeholders such as departmental officials to raise awareness and understanding of scrutiny objectives, good legislative practice, and to build relationships which serve good scrutiny.
  21. Some work by the Business Office has also been taken forward in relation to tracking COVID-19 related subordinate legislation and consideration should be given to expanding this to include all statutory rules as it provides a high level of transparency.
  22. To put in place and to manage such a system may be resource-intensive and would involve considerable work between the ESR and business areas within the Clerking business unit.

### ***Views expressed by colleagues from other jurisdictions***

23. As agreed in the terms of reference for this review, the CAMS Office sought the views of colleagues in other legislatures during the PAPON 2021 Spring Conference on what they considered to be good practice in the scrutiny of subordinate legislation. There was however, a lack of consensus as to what constitutes effective scrutiny. It was agreed that committees do not engage widely enough with stakeholders and significant reliance is placed on the information provided to the committee by departmental officials.
24. Feedback also referenced the time implications on members and committees that may result in subordinate legislation becoming deprioritised and therefore preclude detailed scrutiny.
25. The conference did not extend to consideration of the scrutiny of primary legislation.

### **Recommendation 1**

To enhance transparency, SL1s and SRs should be published on the committee website upon receipt. In addition, social media platforms should be used to advise the general public and stakeholders of key subordinate legislation being considered by the committee.

### **Recommendation 2**

CLG recommends and expects that departments will adhere to an agreed timeframe for scrutiny of subordinate legislation in accordance with recommendation 5. Where this is not possible the Minister should write to the chair explaining why the scrutiny of an SL1/SR must be expedited.

### **Recommendation 3**

It is important that the time taken from receipt of the SR by committee to the committee receiving the ESR's report is strictly adhered to. Unless otherwise advised by the ESR in writing, CLG expects the ESR to report within two weeks of the ESR's office receiving an SR.

### **Recommendation 4**

In order to clarify the level of scrutiny required by a committee, CLG recommends that Assembly officials and Executive officials undertake a review of the existing arrangements for scrutiny of subordinate legislation with a view to enabling

committees having, where appropriate, greater time and opportunity to carry out more effective scrutiny of both SL1s and statutory rules. CLG recommends the basis for this approach should be a 'traffic light' system to categorise the level of scrutiny required for a particular SL1/SR, as discussed in paragraph 17.

#### **Recommendation 5**

CLG recognises that the timelines for scrutiny of subordinate legislation is a potential barrier to detailed scrutiny where engagement with stakeholders and/or external expertise is required. CLG therefore recommends that where a committee identifies the requirement to engage with stakeholders or avail of external expertise (e.g. following consideration of the SL1) it will advise the department following the committee meeting at which this is decided and agree a timeframe for consideration of the SL1 and subsequent SR.

#### **Recommendation 6**

Consideration should be given to the development of a 'legislation tracker'. This would enhance transparency and provision of information on the passage of legislation. Such increased outward engagement would assist in delivering the CLG's objective to "identify, evaluate and assess options for improving the collective effectiveness of Assembly Committees".

#### **Recommendations 7**

CLG considers there to be potential in the proposal for committees to be given amending powers in relation to subordinate legislation and recommends that the Assembly and Executive Review Committee considers how this could be facilitated.

#### **Recommendation 8**

CLG recommends that subordinate legislation should be given more time and higher priority during committee meetings and that references to it as secondary legislation should be avoided to not diminish from its importance.

#### **Recommendation 9**

CLG considers that the current SL1 is potentially outdated and should be reviewed to ensure that it fully meets the needs of committees. CLG recommends that Assembly Officials review the SL1, in conjunction with departmental officials, for consideration and approval of CLG early in the 2022-2027 mandate.

## Pre-legislative scrutiny

26. Pre-legislative scrutiny can be considered to be “the detailed examination of an early draft of a Bill that is done by a parliamentary select committee before the final version is drawn up by the Government”<sup>13</sup> and it plays an important role in enhancing the quality of legislation.
27. A problem pertaining to pre-legislative scrutiny is the willingness of departments to publish a draft bill but, where this is possible, it should indicate legislative intent; allow earlier engagement in the legislative process; highlight important or contentious issues early; and therefore provide more opportunity to committees to influence the content of a bill<sup>14</sup>. It would allow the Assembly to satisfy itself that the interests and concerns of stakeholders have been identified and reflected in the policy development. It can also be argued that it would lead to better legislation and therefore reduce the need for subsequent amending legislation.
28. The Scottish Parliament’s committee involvement in the passage of primary legislation begins at stage 1 when the bill is referred to the lead committee. In Wales, the first stage involves consideration of the general principles of the bill by a committee (or committees). This early involvement by committees in Scotland and Wales does not necessarily mean quality scrutiny but is a marked difference in approach to the Assembly’s procedure.
29. The Commission on Parliamentary Reform in Scotland made recommendations for the inclusion of two additional stages in the committee scrutiny process to facilitate pre- and post-legislative scrutiny but this was rejected by the Presiding Officer’s Advisory Group which noted that the Programme for Government provides an opportunity for committees to identify areas for pre-legislative scrutiny. Likewise, in Wales, the benefits of pre-legislative scrutiny were highlighted but no recommendations were adopted.

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<sup>13</sup> *Pre-legislative scrutiny - UK Parliament*

<sup>14</sup> National Assembly for Wales Constitutional and Legislative Affairs, *Committee Making Laws in Wales*, October 2015: <https://senedd.wales/laid%20documents/cr-ld10379/cr-ld10379-e.pdf>

30. In the Assembly, committees do not have a formal involvement in the passage of legislation until such time as it is referred to the committee following Second Stage.
31. In 2013, Dáil Eireann established pre-legislative scrutiny in Standing Orders and this is something that might merit consideration by the Committee on Procedures.
32. Dáil Eireann evaluated its pre-legislative scrutiny process in 2020 and reported that just over 40% of recommendations (146 of 350 recommendations) in relation to draft bills were accepted by Ministers thereby clearly demonstrating that pre-legislative scrutiny can have a significant direct impact on government legislation and can also help to frame subsequent debate on the bills.
33. A major impediment to effective pre-legislative scrutiny is time. The Cabinet Office's 'Guide to Making Legislation'<sup>15</sup> advises three to four months for pre-legislative scrutiny; several parliamentary committees have argued that 12 weeks should be the usual, or even the minimum, timeframe.

#### ***Views expressed by Members and their support staff***

34. In a response to the questionnaire to members and their staff, one member expressed the view that involvement at committee stage was sufficient and that progress of the bill could be monitored until it is referred to the committee. During this time the committee should be able to call the appropriate Minister to discuss issues of concern if they arise.
35. In responses received, the usefulness of pre-legislative scrutiny was broadly accepted and the need for both formal and informal engagement was identified as a means to engage with relevant stakeholders.
36. Another respondent expressed the desire to see more in-depth briefings on the need for proposed bills, lessons learned from other jurisdictions or past interventions, and the perceived benefits/costs associated with the legislation. The same respondent also expressed the need to impress upon committees the importance of their scrutiny role on the development of legislation.

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<sup>15</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645652/Guide\\_to\\_Making\\_Legislation\\_Jul\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf)

37. A respondent to the questionnaire recognised the benefits to be gained from pre-legislative scrutiny and emphasised the importance on having an impact at the early stages, both by committees and by those affected by the proposals. Early intervention, it was felt, might ease the passage of the bill through the Assembly if issues were identified before the legislation is introduced.

***Views expressed by committee clerks***

38. Included in the review’s terms of reference was the objective of working with Assembly officials to identify how pre-legislative scrutiny could be developed. The following paragraphs outline the views expressed.
39. In discussions with committee clerks, they felt that the role of statutory committees in assisting the Minister in the development of policy is not as it should be and is something that needs to be raised as a concern.
40. They discussed how Private Members’ Bills present difficulties in terms of a lack of pre-legislative scrutiny as they tend to be introduced without prior liaison with the relevant committee and this, it is argued, potentially diminishes the quality of the legislation produced and can lead to the need for significant changes at amending stages.
41. Committee clerks also felt that there should be a Standing Order setting out how the Executive should present its programme for legislation.
42. Effective planning by committees is essential if their scrutiny role is to be effective. Production of an Executive legislative timetable would help facilitate this planning which would incorporate the potential for pre-legislative scrutiny. CLG therefore encourage the Committee for Procedures to bring forward a Standing Order requiring an annual debate on the Executive legislative timetable.
43. CLG noted that sub-section 15(3) of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 requires Standing Orders to make provision for an annual debate on the Executive legislative timetable. If this Standing Order was in place, then the Assembly and its committees would be able to plan on the basis of knowing with certainty what Executive legislation was planned for the year ahead. This would assist considerably in enabling committees to plan their scrutiny accordingly. Advice from the Clerk to the

Committee on Procedures is that implementation of this is being taken forward by the Committee on Procedures.

44. Furthermore, 'New Decade, New Approach' stated that the First Minister and deputy First Minister should bring forward a programme of legislation and this was identified as important if committees are going to engage in pre-legislative scrutiny.

### ***Views expressed by CLG***

45. The CLG recognises the potential merits of pre-legislative scrutiny. While departments hold public consultations on legislative proposals there is no consultation on the subsequent bill introduced to the House.
46. The CLG believes that departments, following the initial consultation, should produce a draft bill for further public consultation. The draft bill should then be presented to the relevant committee for consideration before Introduction. The CLG recognises that this is a significant deviation from current practice but believes that this approach will allow for early engagement with the public and stakeholder groups in order to produce and facilitate public consideration of a draft bill; potentially reduce the time committees subsequently spend on the scrutiny of a bill; facilitate early changes to bills to produce better legislation; and produce fewer amendments at later stages based on early consensus-building.
47. Preparations to implement this approach should be taken forward within the Assembly and in discussions with departmental officials.

### **Recommendation 10**

CLG recommends that departments, following the initial consultation on proposed primary legislation, should produce a draft bill for further public consultation that it presents to the relevant committee for consideration before Introduction and that preparations to implement this approach should be taken forward within the Assembly and in discussions with departmental officials.

### **Recommendation 11**

CLG recommends that the Committee on Procedures considers bringing forward a Standing Order requiring an annual debate on the Executive legislative timetable.

### **Recommendation 12**

CLG recommends that each department provide the relevant statutory committee with a legislative work programme for the year ahead at the beginning of each Assembly year.



### **Recommendation 13**

CLG recognises that departmental plans in respect of the development of legislation may be delayed. Therefore, each department should provide in-year updates as to the progress of the development of bills to facilitate ongoing prioritisation of the committee work programme.

## Scrutiny during the passage of primary legislation

### ***Views expressed by Members and their support staff***

48. In response to the questionnaire by members and their Assembly support staff, a suggestion was made that informal workshops with officials (with researchers in attendance if appropriate) might provide a more efficient means to gather evidence but that the formal evidence gathering element of committee scrutiny is also necessary. Focus needs to be retained on the overall objectives of the legislation. In terms of strengthening the process it was suggested that greater detail, in addition to the formal legal wording of amendments, should be provided that explains the reason for proposed amendments and their impact.
49. In response to the questionnaire, a view expressed was that the Assembly Legal Service and RaISe should be available much earlier in the process, and before a bill reaches committee, for the benefit of individual members as well as to the committee. It should be noted however that these options *are* available as and when required, at the request of the committee and members.
50. Another respondent emphasised the need for early intervention by committees to make the process more effective from the outset.

### ***Views expressed by committee clerks***

51. Committee clerks expressed the views, as has been expressed in research provided to the CLG, that extensive engagement and higher quality debate at committee stage results in higher quality legislation. However, there is a reliance on departments providing information at early stages and this is not always forthcoming or it can arrive at a stage when it is too late to be useful to the committee. As with scrutiny of subordinate legislation, it was felt by clerks that the committee stage is too short and almost always results in an extension being sought.
52. It was felt that there is a need for improved communications with departmental officials to smooth the process through the stages of the bill.
53. The increased reliance on the accelerated passage procedure is also impacting the work of committees and removes their potential to add significant value to those bills.

**Recommendation 14**

CLG notes that the committee stages of a number of bills have not progressed as quickly as planned due to delays in information being provided by departments. CLG recommends that Ministers ensure that such requests are given priority in order to expedite them through internal departmental processes. Where delays occur the Minister should write to the committee providing an explanation as to the cause of the delay and a date by which the information will be provided.

**Recommendation 15**

CLG notes that a number of committees in this mandate have had to consider multiple bills concurrently. This is simply not good practice and increases the risk of committee scrutiny being impacted. CLG recommends that, in the development of the legislative timetable, Ministers ensure that this is not repeated in future mandates.

**Recommendation 16**

Under SO 33(2) the committee stage is defined as 30 working days from the date of referral to the committee. It is possible to extend this period under SO33(4) until a date specified in the motion to extend.

Of the 19 Executive bills introduced since January 2020 which have not been subject to the accelerated passage procedure, there have been motions to extend the committee stage of 17.

CLG recommends that the Committee on Procedures considers whether SO33(2) and SO33(4) are still appropriate.

**Recommendation 17**

CLG is aware that some committees produce an 'Issues log' during consideration of a bill. This allows a contemporary record of issues raised, clarification sought, amendments received etc., and is often based on a traffic light system. CLG recommends that this is adopted by all committees as a means of tracking issues raised in written and oral submissions and during committee stage by members. This will help monitor the department's actions in respect of recommendation 14.

**Recommendation 18**

While stakeholders and the wider public assist committees in their scrutiny of legislation committees do not provide direct feedback as to how their input has helped the committee. In the interests of transparency CLG therefore recommends that the issues log is used to help committees provide feedback to stakeholders on how their input assisted the committee.

**Recommendation 19**

While committees seek the views of stakeholders who provide a certain level of expertise to inform the committee stage CLG recommends, as with subordinate legislation, that where necessary committees consider availing of independent external expertise. CLG also recommends that Assembly officials consider how the identification and appointment of an external expert can be done in an expeditious way conducive to the timeframe of the committee stage.

**Recommendation 20**

There have been 18 Private Members' Bills (PMB) introduced in this mandate since January 2020. While this has been a positive development it has contributed to huge pressure on committees and their support teams, already considering Executive legislation. CLG understand that the Committee on Procedures has agreed a number of proposals to help streamline the PMB process and provide clarity to members on their role and responsibility as well as the support provided by Assembly officials. CLG recommends that the Committee on Procedures brings forward these proposals as soon as possible to ensure they are in place for the beginning of the new mandate.

## Post-legislative scrutiny of primary legislation

54. Post-legislative scrutiny can be considered to be “an inquiry by a [...] committee into how a new law has worked in practice since it came into force”<sup>16</sup>. It is important as it addresses the effects of the legislation in terms of whether its intended policy objectives have been met and, if so, how effectively.
55. Post-legislative scrutiny is more developed in European parliaments than pre-legislative scrutiny and a 2014 report of the House of Lords Constitution Committee<sup>17</sup> included evidence from the Chair of the Joint Committee on Human Rights which stated that as much attention should be paid to what happens after legislation becomes law as is paid to achieving the law. The report concluded that legislative scrutiny frequently ended at Royal Assent with little or no evaluation of whether the legislation actually achieved its aims. The issue of post-legislative scrutiny was subsequently examined by the Law Commission.
56. In its report<sup>18</sup>, the Law Commission identified a number of reasons why post-legislative scrutiny is desirable, including: examining whether the legislation works in practice; contributing to better regulation; concentrating minds and sharpening the focus on implementation and whether policy aims have been met; identifying and disseminating good practice; and improving the quality of legislation.
57. A 2013 report of the Scottish Parliament’s Standards, Procedures and Public Appointments Committee<sup>19</sup> identified post-legislative scrutiny as a wide-ranging concept that can mean different things to different people, ranging from a technical analysis of legal drafting to a wider policy review. It identified a number of good practices by committees and referenced the potential for committees to embed mechanisms for post-legislative scrutiny into legislation during the passage of bills (e.g. provision for a review of the operation of the legislation within a specific time period). The report concluded that it was

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<sup>16</sup> *Post-legislative scrutiny - UK Parliament*

<sup>17</sup> <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/17302.htm>

<sup>18</sup> [http://lawcommission.justice.gov.uk/docs/lc302\\_Post-legislative\\_Scrutiny.pdf](http://lawcommission.justice.gov.uk/docs/lc302_Post-legislative_Scrutiny.pdf)

<sup>19</sup> *8th Report, 2013 (Session 4): Post-Legislative Scrutiny : Scottish Parliament*

ultimately a matter for committees to decide whether or not to carry out post-legislative scrutiny.

58. A 2016 report agreed that the Scottish Parliament's Public Audit Committee<sup>20</sup> should include post-legislative scrutiny within its remit that would allow it to consider previous acts of the Scottish Parliament to determine whether they have achieved their intended purpose. The report went on to include a checklist to be followed when considering whether or not to conduct post-legislative scrutiny. That said, the Session 5 Legacy Report<sup>21</sup> of the Public Audit Committee recommended that post-legislative scrutiny be removed from its remit on account of the relevant subject committee having the subject knowledge and expertise.
59. The Welsh Parliament in 2015 reported on the recognised benefit of post-legislative scrutiny<sup>22</sup> but noted that it had not been routinely carried out by committees, perhaps because of capacity issues. Whilst not dictating the need for committees to carry out this scrutiny it recommended that it be incorporated into their work.
60. Dáil Eireann's Standing Orders, as with pre-legislative scrutiny, provide for post-legislative (or post enactment) scrutiny 12 months following the enactment of a bill, with the exception of the Budget Bill and the Appropriation Bill. It requires the member of the Government or Minister of State to lay a report in the Parliamentary Library, thus placing the onus on government to report, as opposed to the committees. Committees do, however, have the power to require a Minister or Minister of State to appear before them to discuss post-enactment reviews.
61. The Chartered Institute of Public Finance and Accountancy (CIPFA) recommended that post-legislative scrutiny should be part of a holistic approach to assessing the merits or otherwise of legislation and they have developed a number of useful principles for the design of a framework to undertake this scrutiny.

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<sup>20</sup> The Scottish Parliament, Post-legislative scrutiny: <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/105094.aspx>

<sup>21</sup> *Session 5 Legacy paper | Scottish Parliament*

<sup>22</sup> *cr-ld10379-e.pdf (senedd.wales)*

62. The additional staffing resource implications, and the implications on those called to give evidence and departmental officials must be taken into account when deciding how best to staff a committee team and whether a committee will conduct post-legislative scrutiny.

***Views expressed by Members and their support staff***

63. In response to the questionnaire to members and their Assembly support staff, it was suggested that a high-level strategic review should be carried out one-year after a bill becomes an act. This view was expressed by others who responded to the questionnaire and went on to include the need for briefings from a wider range of sources than just the relevant Minister and departmental officials and to include the costs associated with implementation of the legislation in the review.
64. Another response expressed the view that post-legislative scrutiny is as important as pre-legislative scrutiny and that it should be included in the work programme of committees. This view has also been expressed in the research papers provided to the CLG that considered practice in other parliaments.
65. A respondent emphasised the dearth in post-legislative scrutiny, something that is widely acknowledged as a key factor in the law-making process. They also recognised the significant resourcing implications, as did another respondent, but feels that the outcomes would justify the investment.

***Views expressed by committee clerks***

66. Included in the review's terms of reference was the objective of working with Assembly officials to identify how post-legislative scrutiny could be developed. Committee clerks identified the lack of post-legislative scrutiny as detrimental and expressed the need to improve in this area. They felt that it should be factored into committees' forward work programmes. It was suggested that the model applied in the Public Accounts Committee might be worth considering whereby departments would be asked to report to the committee on progress towards delivering on legislative objectives. Post-legislative scrutiny could also

be factored into End-of-Mandate (Legacy) Reports thereby increasing the likelihood that it was followed up on by the subsequent committee.

### **Views expressed by CLG**

67. CLG acknowledges the potential benefits of post-legislative scrutiny and that this can be done in a number of different ways to various levels of detail. For example, this could entail:

- (i) the formal assessment of the implementation of legislative proposals; or
- (ii) the formal assessment of the implementation of legislative proposals and the impact of the legislation; or
- (iii) (ii) plus additional scrutiny by the relevant Assembly committee to which the original legislation was referred.

68. However, CLG recommends that *at a minimum* post-legislative scrutiny should include a report by the relevant department on the implementation of the legislative proposals and this should take place 18 months after the commencement date of the legislation.

### **Recommendation 21**

CLG recommends that consideration be given to possible approaches to post-legislative scrutiny, as detailed on paragraphs 67 and 68 but, *at a minimum*, post-legislative scrutiny should include a report by the relevant department on the implementation of the legislative proposals 18 months after the commencement date of the legislation.

### **Recommendation 22**

CLG notes that the level of scrutiny decided upon should be determined by an objective process. CLG recommends officials develop a system to select legislation for different levels of post-legislative scrutiny based on criteria agreed by committee. In each case this should be presented to the committee for agreement.

### **Recommendation 23**

As part of its committee stage considerations a committee will decide on the level of post-legislative scrutiny required by the department and determine an appropriate means to ensure this is carried out i.e. amendment to bill, assurance by the Minister.



The committee's decision may include seeking the views of stakeholders and others impacted by the legislation.

## Availability of Member resources

69. In considering this review, the CLG sought comparisons with other legislatures. The Scottish and Welsh Parliaments are obvious comparators, given that they also are unicameral legislatures and their committees are also dual purpose committees that scrutinise both policy and legislation.
70. A review in 2017 of the Scottish Parliament<sup>23</sup> identified a number of factors that inhibited effectiveness in the scrutiny of government. These included party discipline; excessive amounts of legislation in some committees reducing the ability to develop their own agenda; too little pre- and post-legislative scrutiny; and high turnover of committee membership resulting in a lack of institutional memory. The review made recommendations that included, strengthening the depth, expertise and capabilities of those available to support parliamentarians. The review identified the need for greater resources to support members' scrutiny options; increasing ability to interrogate evidence; enabling committees to undertake their own research; and greater legal advice to guide committees on primary and subordinate legislation.
71. A review by the Welsh Parliament in 2017<sup>24</sup> also identified similar issues to the Scottish review and emphasised the fact that politicians sit on multiple committees which could hamper their ability to gain in-depth subject expertise that would facilitate better scrutiny.
72. Membership of committees is, however, a party decision so a view in this regard is not expressed in this report. That said, a stronger support team for each committee, equipped with the necessary in-depth subject knowledge, would assist members in the passage of legislation and would see the committee team providing a greater role in informing members on the details of the policy area.

### ***Committee staff support***

73. The staffing complement providing support to statutory committees of the Assembly has remained broadly unchanged. Staff support is an area that

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<sup>23</sup> <https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>

<sup>24</sup> *A Parliament that works for Wales - The report of the Expert Panel on Assembly Electoral Reform*

received criticism in the RHI report (see relevant RHI recommendations at [Appendix A](#)).

74. Committees of the Welsh Parliament are supported by a clerking team of four staff, as well as support from additional staff providing legal, research, translation and communications services. In Scotland, committees are supported by a team of 4 staff with support from research and others as necessary. Statutory committees in the Assembly are also supported by a team of four staff but Scotland and Wales have the equivalent of a Clerk, a Senior Assistant Clerk, an Assistant Clerk and one administrative support person, whereas in the Assembly our committees have additional administrative support but, with the exception of the Justice Committee, do not have a Senior Assistant Clerk.
75. The value of pre- and post-legislative scrutiny has gained prominence in recent years as methods to enhance and assess the quality of legislation. However, both are resource intensive and if effective scrutiny is to be conducted, resources need to be provided and this is an issue expressed throughout this review.
76. As previously mentioned, CIPFA has recommended that post-legislative scrutiny should be part of a holistic approach to assessing the merits or otherwise of legislation. Any additional staffing resource implications must be taken into account when deciding how best to staff a committee team to appropriately provide an enhanced legislative scrutiny function.

***Views expressed by Members and their support staff***

77. In response to the aforementioned questionnaire, it was proposed that additional resources should be put in place if there is to be real interaction with members and their support staff and if tangible outputs are to be achieved.
78. Another response expressed the opinion that the additional resources required would match the value added to the pre- and post-legislative scrutiny process. This would make staff and members think differently about legislation thereby potentially delivering more robust legislation.
79. Responses also centred on how expediting legislation has a significant impact on the workload of members and staff and is likely to result in errors.

80. A respondent emphasised the fact that staffing levels are insufficient and there is a need to strengthen the current committee support, particularly with regard to the legislative process and departmental policy proposals.

***Views expressed by staff from other jurisdictions***

81. In discussion with staff from other legislatures, the need to prioritise the workload of committees to give greater attention to scrutiny of subordinate legislation was discussed but the impact of members sitting on a number of committees, coupled with the small teams to support committees, often results in this not being possible.

***Views expressed by committee clerks***

82. Committee clerks expressed the views that increased scrutiny, both in relation to subordinate and primary legislation would have a significant impact on already stretched resources and to increase further the roles and responsibilities of committee teams would not be sustainable within current staffing allocations.
83. It is also recognised that not every statutory committee may require a dedicated additional staff member but there may be times that temporary additional staffing is required. Flexible working arrangements should also be considered where staff are not assigned to a particular committee but are able to move between committees on the basis of workload.
84. In addition, supplemental staffing resources would provide committees opportunity to implement the objective of the Northern Ireland Assembly Commission’s (the Assembly Commission’s) Annual Plan for 2022-23 in relation to “Designing Assembly specific models of legislative scrutiny and support based on relevant international best practice”.

***Wider scrutiny work of committees***

85. Whilst this review has considered strengthening committee scrutiny in terms of primary and subordinate legislation, committees engage in the scrutiny of policies and strategies and also conduct inquiries. Therefore, in taking a holistic approach in relation to the overall scrutiny role of committees any additional resources provided would allow committees to more effectively progress these

other aspects of committee work programmes and, potentially, give scope to committees introducing their own legislation.

86. Furthermore, the objective of the Assembly Commission's Annual Plan mentioned previously includes an outcome to "*enhance support for members in their policy and budget scrutiny, legislative scrutiny and post-legislative scrutiny by increasing capacity, capability, opportunity and independent input*". This objective's key milestone for delivery in 2022-23 is to "Implement agreed proposals to enhance policy and budget scrutiny, legislative scrutiny and post-legislative scrutiny."
87. Given the ongoing demands on staff there is a concern that budget scrutiny does not receive the attention it requires. As work continues to improve how committees scrutinise the budget process, and in order to deliver the Assembly Commission's milestone in relation to budget scrutiny, the recommendation of providing additional staffing support would assist in this regard.
88. European issues will likely also continue to impact the work of committees. CLG received briefing in November 2021 on the Inter-Parliamentary Forum that will give consideration to international treaties including trade deals and the work of the forum may have an impact on the work of statutory committees.
89. In September 2021, CLG received briefing on proposals for new or amended EU law that will require consideration by departments and committees of explanatory memoranda associated with the EU law. At that meeting CLG agreed to write to the First Minister and deputy First Minister on this issue emphasising the need for departments to engage with committees prior to finalising its input to the Government Explanatory Memorandum and that committees be provided with a final copy of the Explanatory Memorandum. This will add to committees' work programmes.
90. Also related to UK Withdrawal from the European Union and committee scrutiny is the issue of common frameworks. A number of committees have already considered issues relating to common frameworks resulting from the UK Withdrawal from the European Union. However, the majority of these have yet to be presented to committees and whilst the common frameworks deadline is February 2022, there may potentially be legislative out workings in the future that will impact the work of committees.

91. Whilst most primary legislation resulting from the UK Withdrawal from the European Union has concluded, democratic consent mechanisms will likely have an impact on committees in the future and this work will be in addition to normal requirements.
92. The additional staff resources would have an important role in providing the additional support that will likely be required in relation to EU issues going forward.

### ***Views of the CLG***

93. CLG has considered the resources currently available to statutory committees and whether these should be strengthened or enhanced to better deliver effective scrutiny. In doing so, CLG has heard evidence from a range of sources who have expressed the view that the resources currently available to statutory committees limits the extent to which committees scrutinise departments. CLG is satisfied that, with appropriate resources in place, the scrutiny which committees carry out could be more effective. Resources include the permanent staffing resource available to committees as well as that provided by RaISe, Legal Services and other business areas across the Assembly secretariat and, where appropriate, external expertise.
94. CLG has noted the additional senior support that committees at the Scottish Parliament and the Senedd/Welsh Parliament benefit from (e.g. through the provision of a Senior Assistant Clerk) and acknowledge how such support could benefit committees of the Assembly. Given the range of recommendations made by CLG in this report and the additional duties placed on staff, CLG recommends that the staffing complement of statutory committees should be enhanced to include an additional senior member of staff with specific responsibility for supporting committees in carrying out their scrutiny functions. This would include committee scrutiny in relation to all aspects of a department's work including scrutiny of primary and secondary legislation, budget scrutiny and scrutiny in relation to new work streams arising from EU exit.

95. CLG notes that it is the role of the Assembly Commission to provide the Assembly with the staff and services required for its purposes, and that the implementation of this recommendation falls to the Commission.
96. The staffing and other resources required by Assembly committees vary considerably during the course of a mandate, however committee resourcing has historically been relatively inflexible. In adding additional staffing capacity to statutory committees, CLG recommends introducing greater flexibility and team working across the range of services provided to committees by the Assembly Commission, together with administrative improvements and efficiencies in order to strengthen committee scrutiny whilst being mindful of ensuring value for money.
97. This recommendation will assist in delivering recommendations 1, 36 and 38 of the RHI Inquiry Report.
98. CLG acknowledges any proposals for increasing staff numbers will require consideration by the Assembly Commission.
99. The purpose of the CLG includes a role that seeks to “identify, on behalf of committee members and the staff in the Committee Office, common areas for development and training”. CLG notes that a Member Induction and Development Plan has been developed for delivery at the beginning of the 2022/27 mandate and is of the view that appropriate training in all areas of legislative scrutiny should be provided to members as a priority in the Members’ Induction and Development Plan for the 2022-27 mandate. This would assist in delivering Recommendation 38 of the RHI Inquiry Report in relation to steps needed to improve effective scrutiny.

#### **Recommendation 24**

CLG recommends that the staffing complement of statutory committees should be enhanced to include an additional senior member of staff with specific responsibility for supporting committees in carrying out their scrutiny functions. This would include committee scrutiny in relation to all aspects of a department’s work including scrutiny of primary and secondary legislation, budget scrutiny and scrutiny in relation to new work streams arising from EU exit.

### **Recommendation 25**

The staffing and other resources required by Assembly committees vary considerably during the course of a mandate depending on workload, however committee resourcing has historically been relatively inflexible. In adding additional staffing capacity to statutory committees, CLG recommends that the Assembly Commission introduces greater flexibility and team working across the range of services provided to committees, together with administrative improvements and efficiencies in order to strengthen committee scrutiny whilst being mindful of ensuring value for money.

### **Recommendation 26**

CLG recommends that appropriate training in all areas of legislative scrutiny is provided to members as a priority in the Members' Induction and Development Plan for the 2022-27 mandate. This would assist in delivering Recommendation 38 of the RHI Inquiry Report in relation to steps needed to improve effective scrutiny.



## Engagement and Innovation

100. Central to the scrutiny role of committees is the gathering, collation, and analysis of evidence as well as the practical application of this evidence to the scrutiny of the issue at hand e.g. legislation, policy, strategy or to assist with committee inquiries.
101. Committees of the Assembly have increasingly made use of the Assembly Commission's Public Engagement business unit to try to involve target audiences or hard to reach groups and this has resulted in significant increases in engagement activity with committees. The use of Citizen Space, a digital platform used for engagement activities, is a relatively recent development in committee engagement. CLG is supportive of committee staff developing their skills in the use of Citizen Space to ensure it is fully utilised in engagement by committees with the aim of enhancing the evidence-base.
102. Collaboration with other business areas, with the expertise needed to broaden the scope of committee engagement is welcomed and committees are encouraged to continue to do so. The CLG has previously considered and agreed a proposed framework for committee engagement that includes the use of Citizen Space as well as greater collaborative working and innovative engagement. At its meeting on 16 November 2021 CLG agreed that the CAMS Office should develop detailed proposals to deliver the aims and objective of the engagement framework.
103. However, CLG believe it is primarily through the work of committees that stakeholders engage in Assembly proceedings. It is therefore of the opinion that a key task for the Public Engagement Unit should be committee engagement with stakeholders.
104. Currently, committees of the Assembly gather evidence in written and oral form, whereas the Welsh Parliament permits evidence to be provided electronically in the form of audio and video clips and images. It is felt that this helps to reach people with lower levels of literacy. A reliance on written submissions and oral evidence in committees will exclude those for whom written and oral submissions are not best suited.

105. The information provided on the Welsh Parliament and the Assembly's websites place an onus on the respondent to contact the committee clerk if they wish to submit evidence in an alternative format. However, CLG believes it would be appropriate for the Assembly to be more proactive, e.g. offer alternative formats as an option for all during the call-for-evidence.
106. Committee clerks identified the benefits to be gained from video conferencing in terms of permitting engagement with a much more diverse range of stakeholders that would not necessarily have been possible in the traditional face-to-face setting and are supportive of continuing the use of video conferencing. This is particularly the case where individuals may have to travel a long distance either nationally or, potentially, internationally.
107. CLG also notes that other parliaments/assemblies have considered a range of innovative approaches to engagement, often based on deliberative engagement principles. Initiatives in the Scottish Parliament have included a range of digital tools; mini-publics; pop-ups in public spaces; attempts to make calls for evidence more engaging; and co-design with the Youth Parliament, the Children's Commissioner and others. The CLG acknowledged that benefits are to be gained from such innovative approaches and would encourage the exploration of better, more engaging, ways to connect to target audiences which should result in better and more effective committee scrutiny.

***Use of external experts to assist the scrutiny process***

108. Very rarely, there has been a need to procure external expertise to assist committees with legislative scrutiny. This has occurred when specialised legal knowledge has been required to help clarify issues for the committee during its deliberations. Such expertise may exist in the private sector, academia, or indeed elsewhere in the public sector and other parliaments / assemblies. The use of external subject experts by committees has been discussed a number of times in this report and the CLG is of the view that such experts should be used as and when required to enhance the scrutiny process.

**Recommendation 27**

CLG recommends that committee staff are offered training in the use of Citizen Space to enhance their digital skills, to ensure there is expertise across the committee team and to maximise use of the facility offered by this platform.

**Recommendation 28**

CLG recommends that a key task for the Engagement Unit should be to support committees in engagement activities with stakeholders. CLG recommends that committees should be assured of the appropriate support needed from the Engagement Unit when undertaking engagement activities with stakeholders. CLG also recommends that committees, working with the Engagement Unit, continue to trial, review and implement innovative approaches to engagement to underpin the scrutiny role of committees.

**Recommendation 29**

The CLG recommends that a review is carried out by Clerk Assistants early in the new mandate to how best facilitate the provision of evidence in alternative formats such as braille, audio/video clips, sign language etc. This will increase accessibility to committee proceedings, provide greater opportunities for potentially 'hard to reach' groups to engage with committees and therefore help contribute to more effective committee scrutiny.

**Recommendation 30**

CLG recognises the innovation in video-conferencing brought about by the Covid-19 pandemic which allowed committee meetings to continue in either a hybrid or fully virtual format. It also acknowledges this approach obviates the need for witnesses to travel to Parliament Buildings to give evidence. This potentially increases the range of witnesses available to committees, increases accessibility to stakeholders and cuts down on CO2 emissions as a result of travelling to Parliament Buildings. CLG therefore recommends that appropriate video-conferencing facilities are maintained for committee proceedings to be used by committees as required.

**Recommendation 31**

CLG recommends that that resources are made available to committees to avail of external expertise and that clerk assistants and committee clerks routinely advise

committees of the opportunity to avail of such expertise to further strengthen the scrutiny process. This recommendation will assist in delivering recommendation 1 of the RHI Inquiry report.

## The role and powers of the ESR

109. The Assembly appears to be unique from other parliaments as its committees delegate technical scrutiny to the ESR rather than carry out this function themselves; furthermore, it is unique in delegating such scrutiny to an individual rather than a committee. In 2002, the Committee on Procedures carried out a review of the ESR/Committee arrangements and concluded that the arrangement in place facilitated the efficient passage of legislation. It is now almost 20 years since the review and there may be merit in reconsidering the appropriateness of the current arrangement.
110. This proposal would, as with others in this report, assist in delivering the CLG's objective to "identify, evaluate and assess options for improving the collective effectiveness of Assembly Committees" and also recommendations 36 and 38 of the RHI Inquiry report.
111. The position and remit of the ESR are provided for under Standing Order 43 and the role, broadly speaking, is to assist committees in undertaking *technical* scrutiny of certain statutory rules. This is distinct from the committee's consideration of the merits of the policy as detailed in SL1s. At this stage scrutiny should provide the committee with clarity on the policy objectives of the legislation. Committees largely focus on this aspect of subordinate legislation scrutiny since, as noted above, the technical scrutiny is delegated to the ESR.
112. The Scottish and Welsh Parliaments specify ten grounds under which attention of the Parliament should be drawn to delegated legislation and these are listed in Standing Orders. The appropriate extract from the Standing Orders of the Scottish Parliament is included at [Annex F](#), for information.
113. Effective scrutiny of delegated legislation is underpinned by effective delegated powers contained within the primary legislation. The Scottish and Welsh Parliaments have a mechanism in place whereby their respective Delegated Powers and Law Reform Committee (DPLRC) and Constitutional and Legislative Affairs Committee (CLAC) have a role to play in the scrutiny of the delegation of powers but there is no such mechanism in place in the Assembly. It has, however, been stated by the House of Commons Political and Constitutional Reform Committee that:

...the Assembly began to consider delegated powers in legislation (against criteria similar to those used by the [House of Lords] Delegated Powers and Regulatory Reform Committee) in 2007. This function is also generally delegated to the ESR, who reports to the appropriate committee.

114. As the ESR's role in relation to the scrutiny of delegated powers within a bill during its legislative process is not specified in Standing Orders, there may be merit in providing for this scrutiny more formally.
115. The current position is that committees can request legal advice from the ESR on the delegated powers in a bill, and on any delegated powers contained within made amendments to a bill but it is not automatically provided. If this arrangement was to change and the scrutiny of delegated powers was to be provided for in Standing Orders, it may have resource implications.
116. It is also worth observing that, whilst the Delegated Powers Memorandum accompanying a bill is published, the relevant report from the ESR is not. A member of the public trying to follow the consideration by a committee of delegating provisions will, therefore, find it difficult to do so.

### **Recommendation 32**

CLG recommends that the Committee on Procedures gives consideration to conducting a review of the current ESR/Committee arrangements with the overall aim of determining if they still facilitate the effective passage of legislation, or if an alternative model for consideration of delegated legislation should be adopted.

### **Recommendation 33**

CLG recommends that the Committee on Procedures considers the appropriateness of including, in Standing Orders, the role of the ESR in relation to the scrutiny of delegated powers in bills, including those subject to accelerated passage procedure, and that advice provided to committees by the ESR in this regard is published. Any such proposals would require thorough investigation and, if deemed appropriate in terms of improved effectiveness and transparency, would also need to be fully investigated in terms of the resource implications for the Office of the ESR. Such resources may include access to subject area experts, both internal and external to the Assembly.

## CLG Recommendations

In reaching its recommendations and considering how they might be implemented the CLG would emphasise that its recommendations are not only in keeping with the purpose of the CLG, but they also aim to deliver on both the implementation of the recommendations relevant to committees contained in the RHI Inquiry Report as well as the Northern Ireland Assembly Commission's Annual Plan for 2022-23 in relation to "Designing Assembly specific models of legislative scrutiny and support based on relevant international best practice".

The CLG is of the opinion that the following recommendations will go some way to achieving these objectives.

### Scrutiny of subordinate legislation

#### Recommendation 1

To enhance transparency, SL1s and SRs should be published on the committee website upon receipt. In addition, social media platforms should be used to advise the general public and stakeholders of key subordinate legislation being considered by the committee.

#### Recommendation 2

CLG recommends and expects that departments will adhere to an agreed timeframe for scrutiny of subordinate legislation in accordance with recommendation 5. Where this is not possible the Minister should write to the chair explaining why the scrutiny of an SL1/SR must be expedited.

#### Recommendation 3

It is important that the time taken from receipt of the SR by committee to the committee receiving the ESR's report is strictly adhered to. Unless otherwise advised by the ESR in writing, CLG expects the ESR to report within two weeks of the ESR's office receiving an SR.

#### Recommendation 4

In order to clarify the level of scrutiny required by a committee, CLG recommends that Assembly officials and Executive officials undertake a review of the existing arrangements for scrutiny of subordinate legislation with a view to enabling

committees having, where appropriate, greater time and opportunity to carry out more effective scrutiny of both SL1s and statutory rules. CLG recommends the basis for this approach should be a 'traffic light' system to categorise the level of scrutiny required for a particular SL1/SR, as discussed in paragraph 17.

#### **Recommendation 5**

CLG recognises that the timelines for scrutiny of subordinate legislation is a potential barrier to detailed scrutiny where engagement with stakeholders and/or external expertise is required. CLG therefore recommends that where a committee identifies the requirement to engage with stakeholders or avail of external expertise (e.g. following consideration of the SL1) it will advise the department following the committee meeting at which this is decided and agree a timeframe for consideration of the SL1 and subsequent SR.

#### **Recommendation 6**

Consideration should be given to the development of a 'legislation tracker'. This would enhance transparency and provision of information on the passage of legislation. Such increased outward engagement would assist in delivering the CLG's objective to "identify, evaluate and assess options for improving the collective effectiveness of Assembly Committees".

#### **Recommendations 7**

CLG considers there to be potential in the proposal for committees to be given amending powers in relation to subordinate legislation and recommends that the Assembly and Executive Review Committee considers how this could be facilitated.

#### **Recommendation 8**

CLG recommends that subordinate legislation should be given more time and higher priority during committee meetings and that references to it as secondary legislation should be avoided to not diminish from its importance.

#### **Recommendation 9**

CLG agrees that the current SL1 is potentially outdated and should be reviewed to ensure that it fully meets the needs of committees. CLG recommends that Assembly Officials review the SL1, in conjunction with departmental officials, for consideration and approval of CLG early in the 2022-2027 mandate.



## **Pre-legislative scrutiny of primary legislation**

### **Recommendation 10**

CLG recommends that departments, following the initial consultation on proposed primary legislation, should produce a draft bill for further public consultation that it presents to the relevant committee for consideration before Introduction and that preparations to implement this approach should be taken forward within the Assembly and in discussions with departmental officials.

### **Recommendation 11**

CLG recommends that the Committee on Procedures considers bringing forward a standing order requiring an annual debate on the Executive legislative timetable.

### **Recommendation 12**

CLG also recommends that each department provide the relevant statutory committee with a legislative work programme for the year ahead at the beginning of each Assembly year.

### **Recommendation 13**

CLG recognises that departmental plans in respect of the development of legislation may be delayed. Therefore, each department should provide in-year updates as to the progress of the development of bills to facilitate ongoing prioritisation of the committee work programme.

## **Scrutiny of the passage of primary legislation**

### **Recommendation 14**

CLG notes that the committee stages of a number of bills have not progressed as quickly as planned due to delays in information being provided by departments. CLG recommends that Ministers ensure that such requests are given priority in order to expedite them through internal departmental processes. Where delays occur the Minister should write to the committee providing an explanation as to the cause of the delay and a date by which the information will be provided.

**Recommendation 15**

CLG notes that a number of committees in this mandate have had to consider multiple bills concurrently. This is simply not good practice and increases the risk of committee scrutiny being impacted. CLG recommends that, in the development of the legislative timetable, Ministers ensure that this is not repeated in future mandates.

**Recommendation 16**

Under SO 33(2) the committee stage is defined as 30 working days from the date of referral to the committee. It is possible to extend this period under SO33(4) until a date specified in the motion to extend.

Of the 19 Executive bills introduced since January 2020 which have not been subject to the accelerated passage procedure, there have been motions to extend the committee stage of 17.

CLG recommends that the Committee on Procedures considers whether SO33(2) and SO33(4) are still appropriate.

**Recommendation 17**

CLG is aware that some committees produce an 'Issues log' during consideration of a bill. This allows a contemporary record of issues raised, clarification sought, amendments received etc., and is often based on a traffic light system. CLG recommends that this is adopted by all committees as a means of tracking issues raised in written and oral submissions and during committee stage by members. This will help monitor the department's actions in respect of recommendation 14.

**Recommendation 18**

While stakeholders and the wider public assist committees in their scrutiny of legislation committees do not provide direct feedback as to how their input has helped the committee. In the interests of transparency CLG therefore recommends that the issues log is used to help committees provide feedback to stakeholders on how their input assisted the committee.

**Recommendation 19**

While committees seek the views of stakeholders who provide a certain level of expertise to inform the committee stage CLG recommends, as with subordinate

legislation, that where necessary committees consider availing of independent external expertise. CLG also recommends that Assembly officials consider how the identification and appointment of an external expert can be done in an expeditious way conducive to the timeframe of the committee stage.

### **Recommendation 20**

There have been 18 Private Members' Bills (PMB) introduced in this mandate since January 2020. While this has been a positive development it has contributed to huge pressure on committees and their support teams, already considering Executive legislation. CLG understand that the Committee on Procedures has agreed a number of proposals to help streamline the PMB process and provide clarity to members on their role and responsibility as well as the support provided by Assembly officials. CLG recommends that the Committee on Procedures brings forward these proposals as soon as possible to ensure they are in place for the beginning of the new mandate.

## **Post-legislative scrutiny of primary legislation**

### **Recommendation 21**

CLG recommends that consideration be given to possible approaches to post-legislative scrutiny, as detailed on paragraphs 67 and 68 but, *at a minimum*, post-legislative scrutiny should include a report by the relevant department on the implementation of the legislative proposals 18 months after the commencement date of the legislation.

### **Recommendation 22**

CLG notes that the level of scrutiny decided upon should be determined by an objective process. CLG recommends officials develop a system to select legislation for different levels of post-legislative scrutiny based on criteria agreed by committee. In each case this should be presented to the committee for agreement.

### **Recommendation 23**

As part of its committee stage considerations a committee will decide on the level of post-legislative scrutiny required by the department and determine an appropriate means to ensure this is carried out i.e. amendment to bill, assurance by the Minister.

CLG is of the view that post-legislative scrutiny should not be used as an attempt to reopen arguments made at previous stages of the legislative process but rather, in general, focus on the implementation and impact of the legislation.

## **Availability of staff and member resources**

### **Recommendation 24**

CLG recommends that the staffing complement of statutory committees should be enhanced to include an additional senior member of staff with specific responsibility for supporting committees in carrying out their scrutiny functions. This would include committee scrutiny in relation to all aspects of a department's work including scrutiny of primary and secondary legislation, budget scrutiny and scrutiny in relation to new work streams arising from EU exit.

### **Recommendation 25**

CLG notes that Assembly committee staff, when available, have been willing to help colleagues in other committees which are under greater pressure. However, it can also be the case that, on occasion, additional staff are simply not available to help. CLG recommends that senior officials consider the potential for flexible working arrangements where staff are not assigned to a particular committee but are able to move between committees on the basis of workload.

### **Recommendation 26**

CLG recommends that appropriate training in all areas of legislative scrutiny is provided to members as a priority in the Members' Induction and Development Plan for the 2022-27 mandate. This would assist in delivering Recommendation 38 of the RHI Inquiry Report in relation to steps needed to improve effective scrutiny.

## **Engagement and Innovation**

### **Recommendation 27**

CLG recommends that committee staff are offered training in the use of Citizen Space to enhance their digital skills, to ensure there is expertise across the committee team and to maximise use of the facility offered by this platform.

**Recommendation 28**

CLG recommends that a key task for the Engagement Unit should be to support committees in engagement activities with stakeholders. CLG recommends that committees should be assured of the appropriate support needed from the Engagement Unit when undertaking engagement activities with stakeholders. CLG also recommends that committees, working with the Engagement Unit, continue to trial, review and implement innovative approaches to engagement to underpin the scrutiny role of committees.

**Recommendation 29**

The CLG recommends that a review is carried out by Clerk Assistants early in the new mandate to how best facilitate the provision of evidence in alternative formats such as braille, audio/video clips, sign language etc. This will increase accessibility to committee proceedings, provide greater opportunities for potentially 'hard to reach' groups to engage with committees and therefore help contribute to more effective committee scrutiny.

**Recommendation 30**

CLG recognises the innovation in video-conferencing brought about by the Covid-19 pandemic which allowed committee meetings to continue in either a hybrid or fully virtual format. It also acknowledges this approach obviates the need for witnesses to travel to Parliament Buildings to give evidence. This potentially increases the range of witnesses available to committees, increases accessibility to stakeholders and cuts down on CO2 emissions as a result of travelling to Parliament Buildings. CLG therefore recommends that appropriate video-conferencing facilities are maintained for committee proceedings to be used by committees as required.

**Recommendation 31**

CLG recommends that resources are made available to committees to avail of external expertise and that clerk assistants and committee clerks routinely advise committees of the opportunity to avail of such expertise to further strengthen the scrutiny process. This recommendation will assist in delivering recommendation 1 of the RHI Inquiry report.

## **The role and powers of the ESR**

### **Recommendation 32**

CLG recommends that the Committee on Procedures gives consideration to conducting a review of the current ESR/Committee arrangements with the overall aim of determining if they still facilitate the effective passage of legislation, or if an alternative model for consideration of delegated legislation should be adopted.

### **Recommendation 33**

CLG recommends that the Committee on Procedures considers the appropriateness of including, in Standing Orders, the role of the ESR in relation to the scrutiny of delegated powers in bills, including those subject to accelerated passage procedure, and that advice provided to committees by the ESR in this regard is published. Any such proposals would require thorough investigation and, if deemed appropriate in terms of improved effectiveness and transparency, would also need to be fully investigated in terms of the resource implications for the Office of the ESR. Such resources may include access to subject area experts, both internal and external to the Assembly.

## Appendices

### **Appendix A – Relevant Extracts from the RHI Report**

[Read the relevant extracts from the RHI report.](#)

### **Appendix B – Minutes of Proceedings**

[Read extracts of minutes of proceedings related to the report.](#)

### **Appendix C – Correspondence**

[Read correspondence received in relation to the report.](#)

### **Appendix D – Responses to Questionnaire**

[Read responses to the questionnaire.](#)

### **Appendix E – Research Papers**

[Read research papers related to the report.](#)

### **Appendix F – Extract from Standing Orders of the Scottish Parliament**

[Read the extract from Standing Orders of the Scottish Parliament.](#)

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