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Dear Peter

FINANCIAL REPORTING (DEPARTMENTS AND PUBLIC BODIES) BILL

Thank you for your letter of 01 October 2021 regarding the Financial Reporting (Departments and Public Bodies) Bill.

I have read your letter which requested responses to the following concerns raised by a number of organisations following the Committee's call for evidence.

1. **The Office of the Attorney General for NI (AGNI) is described in the Department's Bill information as being a public body which will be identified in the designation order which will be issued under the provisions of the Bill. The Office of the AGNI indicates that it is not an NDPB but operates within the boundary of TEO under the principle of an arm's length body so as to protect the independence of the AGNI. The Office of the AGNI contends that the Department's Bill information is incorrect but makes no further suggestion in respect of the Bill.**

In the response which issued to the Finance Committee on 10 June 2021 (GM-0451-2021), the Attorney General for Northern Ireland (AGNI) was listed in the table attached at Annex A as an 'Independent Office supported by TEO', and not as a NDPB. It was reflected on the table that AGNI is currently within the boundary of TEO. Individual bodies will not be named within the Bill itself. However, as for other bodies within the boundary, it would be the intention to include them on the annual Designation of Bodies Order, to ensure that the Order provides a full list of all bodies included within the Budgets, Estimates and Accounts.

2. **NI Water indicates in its response that it should not be included within a future designation order. This appears to be in line with the Department's intentions.**

As indicated, it would not be the department's intention to designate NI Water at this time. A solution to achieve alignment between Budgets, Estimates and Accounts for NI Water will take further work and engagement, and it is intended that this would be carried out as part of Phase II of the project.

3. **NILGOSC contends that it should not be within the scope of the Bill as it does not receive direct funding from Executive departments and that it is only designated as an NDPB owing to the use of the public appointments process for its board. It is therefore requested that the Department provides clarity in respect of whether NILGOSC should be included in a future designation order.**

The Department considered the position of the Northern Ireland Local Government Officers' Superannuation Committee (NILGOS Committee, or NILGOSC) as part of our overall consideration of pension schemes, and how they are administered. The NILGOS Committee administers the Local Government Pension Scheme, and the Committee itself is classified as a NDPB of DfC (appointments to the Committee are approved at Ministerial level, which represents one of the primary indicators of control). As such, it is felt they should be included in the Designation of Bodies Order because of this classification. Admin costs are offset by income for the NILGOS Committee in DfC's Budget but, as there is no grant-in-aid paid by the department, nothing is currently reflected in Estimates or Accounts. Therefore, under RoFP, as an NDPB, the element of admin costs and income relating to the NILGOS Committee itself which is currently within DfC's Budget should also be included in the consolidated Estimate and accounts of DfC. This will achieve consistency in what is reflected in Budgets, Estimates and Accounts.

There will be no impact on the treatment of the Local Government Pension Scheme which will remain outside the departmental boundary.

4. **SEUPB, SafeFood and Foras na Gaelige (FnaG) have asked for clarification in respect of the treatment of North South Bodies. FnaG has asked if the Department has consulted with those bodies and the NSMC and if the Department of Finance in RoI has agreed the relevant provisions. It is suggested that the RoI equivalent of the Department of Finance will be required to sign-off on any directions provided under the Bill. It is therefore requested that the Department provides, in respect of the Bill, the anticipated impact on governance arrangements for North South Bodies.**

The Bill will have no impact whatsoever on governance arrangements for North South Bodies. They will continue to be treated as analogous to NDPBs in the north and to Semi-State Bodies in the south, and there will be no impact on their governance or control structures whatsoever. Other than providing some fairly routine information to their sponsor department it shouldn't create any additional work for the North South Bodies themselves.

The core aim of the Bill is to allow for changes in Estimates and Accounts, to bring these publications into alignment with the Budget presentation. Under the current structure, the Budget shows the Northern proportion of the spend of North South Bodies, whilst the Estimates and Accounts show the cash grant paid to the body by the Northern department. Following the changes introduced by the Bill, the spend will be allocated proportionally and Estimates and Accounts will show the Northern share of the spend of the bodies rather than the cash grant. This will have no impact on the operation of the body or how they are currently jointly funded and the associated approval process. The change will be within the sponsor department and how they present the spend of the Body.

The Department of Public Expenditure and Reform (DPER) were consulted during the early stages of the project, to advise them of the forthcoming changes to the presentation within the NI publications. DPER did not raise any concerns or queries.

The NSMC have also been updated on the project, and the impact on North South Bodies.

Directions issued by the Department will be issued to the sponsor departments in Northern Ireland, and will only pertain to the Estimates and Accounts of those sponsor departments. There will be no impact on the Estimates or Accounts of the southern sponsor departments or the individual North South Bodies. As such, DPER sign off on directions provided under the Bill would not be necessary or appropriate.

5. **The Department has suggested an amendment which suggests the explicit inclusion of the NI Public Services Ombudsman in the provisions of the Bill i.e. allowing the Department to issue guidance to this organisation regarding Estimates and ARAs. It is requested that the Department explain why the amendment is necessary.**

Details of the consequential amendment were sent to the Committee on 30 September (GM-0699-2021. Section 2 (1)(c) of the Public Services Ombudsman Act (Northern Ireland) 2016 states that "The Ombudsman is not subject to the direction or control of a Northern Ireland department", but section 2 (2)(c) then states that "this is subject to the power of the Department of Finance and Personnel to direct the form of accounts the Ombudsman must prepare, under paragraph 7 of Schedule 2, or sections 9 to 13 of the Government Resources and Accounts Act (Northern Ireland) 2001". An amendment to the Public Services Ombudsman Act (Northern Ireland) 2016 is therefore required to insert similar provision in relation to directions issued for Estimates.

6. **The Northern Ireland Audit Office suggested that as an improvement, the Bill could include a clause to prohibit designation of a body that is funded from a Consolidated Fund other than the Northern Ireland Consolidated Fund. NIAO contends that while it is welcome that clause 8A(5) requires the Department of Finance to consult with HM Treasury where appropriate before designating a body, similar pieces of legislation in other areas of the UK go further to include clauses that**

prohibit designation of a body that is funded from another Consolidated Fund. NIAO has explained that the idea of the amendment is to prevent double-counting for say cross-border bodies i.e. to avoid that body's resources from being counted in the Estimates of 2 different jurisdictions and thus giving a false impression of its resources. It is therefore requested that the Department provide commentary on the need for such an amendment.

OLC were consulted throughout the process of drafting the Bill, and on this point in particular.

In relation to other jurisdictions, Section 4A of the Government Resources and Accounts Act 2000 provides that where, in a financial year, a body will use resources out of a devolved consolidated fund **but not** out of the UK Consolidated Fund then the body **cannot be designated** in relation to a UK government department in relation to that year. This does allow for such a designation to be made where the body is funded by **both** the UK Consolidated Fund and a devolved consolidated fund, but consultation with the relevant jurisdiction would be required.

Section 126A of the Government of Wales Act 2006 provides that where, in a financial year, a body will use resources out of the UK Consolidated Fund or a fund of one of the other devolved administrations, the Welsh Ministers may not designate the body for that year unless the Treasury consents. This is a lower threshold in that the restriction applies when the body is expected to use resources involving **any** payments out of those other consolidated funds, but the restriction itself is a consent requirement rather than a complete prohibition on designation.

The advice from OLC on the matter, as it pertained to Northern Ireland, was that such a clause was not necessary within our Bill. The purpose of the Bill is to allow the Department to issue directions under section 8A(2) in relation to the departmental preparation of Estimates. Clause 8A(5) requires consultation with the Treasury before designating a body. Any cross-funding of particular bodies should be highlighted at this stage. If it is still thought to be a problem that a body is designated, then the Department has power to revoke its designation for that year. OLC were of the view that the consultation with the Treasury and the power to revoke is sufficient. On this basis, a clause to prohibit designation of a body that is funded from a Consolidated Fund other than the Northern Ireland Consolidated Fund was not deemed necessary.

7. **The Northern Ireland Fiscal Council (NIFC) has reported "a lack of transparency with regards to EU funding in both the Budget and Estimates" and that it has "..encountered similar opacity in the use of net spending (i.e. negative DEL)." The NIFC recommends an amendment to the Bill is necessary in order to address this. It is requested that the Department provides commentary in this regard.**

In the formulation of a budget there is often limited time between the finalisation of overall budgets for departments and the presentation of those budgets to the

Assembly. This limited time period does not allow Ministers to make final decisions around income, based on their budget allocation and therefore the budgets are presented on a net basis.

Departmental Estimates are provided slightly later in the financial process and do allow for decisions to have been made on income levels and therefore allow departments to present financial data which includes income.

The Fiscal Council make an important point about transparency of income, and the Estimate documentation does set out accruing resources for each area within a department. The Department of Finance will engage with the Fiscal Council to investigate what additional transparency it feels may be required to address the Commission's concerns and is of the view that this can be achieved without recourse to amending the financial reporting Bill.

8. The Northern Ireland Assembly Commission has written seeking an amendment to the Bill. It suggests that - in Clause 1 at line 18 on page 2 of the Bill - the exemptions which relate to the NIAO should also apply to the Assembly Commission. It is argued that the designation process set out in new section 8A should also be a matter for the Assembly Commission or the Assembly to determine. It is requested that the Department provides commentary in this regard.

The Department has sought clarification from OLC on the position of the Northern Ireland Audit Office (NIAO) and the Northern Ireland Assembly Commission (NIAC) and provided a response to NIAC on their comments.

The NIAO is exempted from the new power in the Bill for DoF to direct how estimates are prepared, not because of its independence from departmental control, but because there is already other legislation in place governing how it prepares estimates. The Audit (Northern Ireland) Order 1987 governs the preparation of an estimate, the preparation of accounts and the scrutiny of accounts in relation to NIAO. Hence, there is already a similar exemption in relation to accounts of NIAO in section 13 of the Government Resources and Accounts Act (NI) 2001 (GRAANI).

However, there is no additional primary legislation other than GRAANI that governs the preparation of estimates or resource accounts by NIAC.

Section 13 of GRAANI applies sections 9, 10 and 11 of that Act to NIAC just as they apply to NI departments (where an estimate is approved by the Assembly for NIAC). No exception is made in relation to NIAC, only in relation to NIAO. That means that currently, NIAC has to prepare resource accounts in accordance with directions issued by DoF (by virtue of section 9 of GRAANI), the Comptroller and Auditor General then examines and reports on those accounts (by virtue of section 10 of GRANNI) and DoF may direct that NIAC prepare financial year accounts in relation to any specified matter (by virtue of section 11 of GRAANI). Such powers to direct haven't been taken to affect the independence of NIAC. As such, it would seem reasonable that estimates should be similar.

In our view, a power for DoF to direct the content or form of accounts and estimates of a body is not in relation to controlling the functions of the body and so doesn’t affect the independence of that body. As such, we do not think an exclusion from the new power to direct how estimates are prepared is necessary in relation to NIAC. In addition, such an exemption could be misleading in that it could give the impression that independence would be affected if no such exemption was specified, which is not the case.

Yours sincerely

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DEPARTMENTAL ASSEMBLY LIAISON OFFICER