



**Committee for Finance and Personnel**

**MAXIMISING THE ASSEMBLY'S CONTRIBUTION TO  
THE NORTHERN IRELAND BUDGET PROCESS**

**DISCUSSION PAPER**

**23 May 2012**

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## LIST OF ABBREVIATIONS AND ACRONYMS

|      |   |
|------|---|
| AERC | Assembly and Executive Review Committee |
| CFP  | Committee for Finance and Personnel     |
| CLG  | Chairpersons' Liaison Group             |
| DFP  | Department of Finance and Personnel     |
| MLA  | Member of the Legislative Assembly      |
| MoU  | Memorandum of Understanding             |
| NI   | Northern Ireland                        |
| NIAO | Northern Ireland Audit Office           |
| PAC  | Public Accounts Committee               |
| PfG  | Programme for Government                |
| SSEs | Spring Supplementary Estimates          |
| UK   | United Kingdom                          |

## **Introduction**

### **Background and Purpose**

1. In March 2011, the previous Committee for Finance and Personnel (CFP) completed the final stage in its Budget scrutiny Inquiry, which aimed to maximise the Assembly's contribution to the Executive's budget process, and enhance the role of Assembly statutory committees and members in budget and financial scrutiny. In noting that a significant number of statutory committees had repeatedly expressed dissatisfaction with regard to the provision of financial information by, and the lack of engagement with, their departments, the Committee concluded at that time that decisive measures should be put in place to establish stronger procedures which would enable committees and the Assembly to fulfil its scrutiny and advisory functions. In particular, it was proposed that amendments could be made to the Assembly's standing orders which would:

- *“provide a minimum time period for committees to scrutinise departmental budgetary proposals or spending plans;*
- *codify the role of CFP in co-ordinating budget scrutiny by Assembly committees and in scrutinising cross-cutting public finance issues;*
- *provide a minimum time period in which CFP may prepare co-ordinated reports on Executive budgetary proposals;*
- *provide for CFP to also lead a review of departmental expenditure plans once per year, as part of its annual consideration of estimates and budget bills; and*
- *establish a requirement for the provision of pre-draft Budget information in advance of the introduction of budget bills.”*

The development of a Memorandum of Understanding (MoU) between the Assembly and the Executive, to specifically address the issues regarding the provision of information, was also recommended.

2. In response to the Committee's proposals, the DFP-led Review of the Financial Process in NI recommended that:

*“A Budget Process Agreement should be made between the Assembly and the Executive and the Assembly's Standing Orders should be amended to reflect this Agreement and specify Budget Processes.”*<sup>1</sup>

While welcoming the proposal, and noting that it appears to be wider in scope than the MoU proposed by its predecessor, the new Committee questioned whether this would be a sufficiently robust approach, specifically with regard to an early strategic stage prior to the development of the draft Budget, or whether statutory provision (or a combination of both) would be more appropriate. To that end, it was agreed to bring forward a paper which would further explore the merits of such an agreement compared to statutory provision, and on which views would be sought from relevant stakeholders. To inform the examination of the options on the way ahead, this paper also considers why the Assembly's contribution to the NI Budget process should be maximised and outlines the issues to be addressed.

3. The DFP-led Review contained other proposals in respect of the alignment of budgets, estimates and accounts, which have been generally welcomed by Assembly committees. These will be taken forward by DFP separately but in tandem with the work being undertaken by the Committee.
4. It is recognised that the options set out in this paper, and the previous recommendations to DFP in respect of the reform of the Budget process, will require an investment in terms of time and resources by both the Assembly and DFP in the short- to medium term, in order to design an improved and streamlined process. This, however, will provide greater transparency and understanding, allow for greater scrutiny and accountability and, ultimately, more efficient and effective use of public expenditure.

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<sup>1</sup> <http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Reports/Report-on-the-Response-to-the-Executives-Review-of-the-Financial-Process-in-Northern-Ireland/>

## **The value of effective Assembly scrutiny of the Executive’s budget and expenditure**

5. In the paper, *Effective Legislative Scrutiny*,<sup>2</sup> Assembly research notes the World Bank’s acknowledgement that in-depth, technical debates can take place in Committees as opposed to in plenary session and that

*“When discussion takes place mainly on the floor of the house the budgetary influence of the legislature tends to be weak.”*

Therefore, whilst the Assembly approves budget bills and supply resolutions – thus giving departments authority to spend – detailed scrutiny of spending plans and performance should be undertaken by statutory committees. This affirms Strand One, paragraph 9 of the Good Friday/Belfast Agreement, which states that Assembly statutory committees have a “*scrutiny, policy development and consultation role*” in respect of their Executive department, and

*“...have the power to:*

- *consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation...*”
6. Assembly research also notes that the three key elements of financial scrutiny are:
- affordability – the balance between revenue and expenditure;
  - prioritisation – the division of allocations between different sectors/programmes; and
  - operational efficiency, or value for money.

Of these, the Public Accounts Committee (PAC) has lead responsibility for undertaking scrutiny in respect of operational efficiency and value for money. The first two elements are undertaken at the policy development and budget planning stage, before expenditure is committed. It is at this stage that statutory committees can not only play an important role in scrutiny, but also assist Ministers by operating as advisory bodies. As the Centre for Public Scrutiny states, as well as ensuring accountability for decisions, scrutiny ensures

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<sup>2</sup> [http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/finance\\_personnel/8412.pdf](http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/finance_personnel/8412.pdf)

*“that the decision-making process is clear and accessible to the public and that there are opportunities for the public and their representatives to influence and improve public policy”.*<sup>3</sup>

7. As the predecessor CFP has recognised, a reformed system of Assembly scrutiny which enhances the capability of committees would also support constructive engagement between departments and committees, with the latter being better placed to put forward alternative spending proposals, with indicative costings, as options for consideration by Ministers and the wider Executive.
8. In addition to contributing to budget planning, statutory committees have an important role to play in the ongoing or in-year scrutiny and monitoring of public expenditure. In examining a range of issues relating to budget implementation, including the reasons for departmental in-year bids and surrenders, the measures to minimise over/under spends and progress in delivering planned programme benefits and policy objectives, committees would be in a position to assist Ministers by identifying problems early enough to allow for corrective action to be taken. This should also help to mitigate the risk of departments being the subject of future criticism by the PAC and/or the NI Audit Office (NIAO). Moreover, it would contribute to the effective and efficient delivery of the Executive’s strategic priorities and key policy commitments, including as contained in the Programme for Government (PfG).
9. In short, therefore, it is considered that more effective Assembly input to and scrutiny of the Executive’s budget and expenditure will help to further demonstrate that devolution is making a difference in delivering accountable, responsive and efficient governance in Northern Ireland.

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<sup>3</sup> <http://www.cfps.org.uk/introduction-to-scrutiny>



## **Section 1 – Issues identified by Assembly committees**

### **1.1 Improving and Regularising the Budget Process**

#### **Pre-draft Budget scrutiny stage**

10. The early phases in the budget process have, for some time, been considered by the Committee, the wider Assembly and other stakeholders to be among the most important stages in the process as they play a significant role in shaping the draft Budget. The DFP-led review of the 2008-11 Budget process found that many stakeholders perceived the draft Budget to be a “fait accompli”, and that formal consultation at this stage was too late to significantly influence departmental spending proposals. Indeed, DFP officials confirmed to the Committee that

*“Movements between draft and final Budgets tend to be minimal. The reasons for that are as follows. If one maps out the work process, the vast amount of substantive engagement and dialogue predates publication of the draft Budget, so the hard work has been done by then.”<sup>4</sup>*

11. It follows, therefore, that that the Assembly’s input to the Budget process will be maximised by having structured, formal engagement with departments in advance of the development of the draft Budget.

12. The Committee noted the following recommendation in the DFP discussion document published in October 2011:

*“That, if circumstances and time permits, the Budget timetable should include an early strategic phase, allow sufficient time for consultation by Committees and with the public and be strictly adhered to by all concerned.”<sup>5</sup>*

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<http://archive.niassembly.gov.uk/record/committees2009/FinancePersonnel/100512ReviewofBudgetProcesses2008-2011.htm>

<sup>5</sup> [http://www.niassembly.gov.uk/Documents/Reports/Finance/nia28\\_11-15.pdf](http://www.niassembly.gov.uk/Documents/Reports/Finance/nia28_11-15.pdf), Appendix 3

13. While there was general support for this Review recommendation, concerns were raised by the majority of committees about the inclusion of the caveat “*if circumstances and time permits*”. The Committee regards this phase as an essential requirement rather than an aspiration and, as such, has called for the removal of the caveat from the recommendation. In addition, the Committee considers that a budget process which unequivocally provides for an early strategic phase would enhance the potential for streamlining the latter stages of the budget process, which are currently considered to be convoluted and repetitive, as highlighted in the Review.

### **Ideal timetable**

14. The Committee has repeatedly called for a timetable which includes key milestones to be set out at the start of each Budget process. In the context of a settled budget process, such a timetable would ensure that all stakeholders are aware of the most opportune times to influence spending proposals. The DFP review recommended an ‘ideal’ timetable (below), which received broad support from Assembly committees, and which Assembly research noted includes elements that are in line with international best practice:

|                       |  |
|-----------------------|--|
| 1 February            | Detailed Budget Guidance and Timetable issued to key stakeholders  |
| February – April      | Engagement by Committees with Departments and other key stakeholders on spending priorities and availability of resources  |
| May                   | Committee for Finance and Personnel (CFP) collate Committee reports and prepare a Report to the Assembly on proposals for living within the expected funding envelope                      |
| By 31 May             | CFP’s ‘Take Note’ debate in the Assembly on spending priorities and proposals for the funding of those priorities  |
| 1 June                | Submissions of spending proposals etc. from departments to DFP   |
| June to August        | Consideration of spending proposals etc. by DFP from a central strategic perspective and advice provided to the Finance Minister on a range of scenarios for presentation to the Executive |
| By mid-September      | Draft Budget agreed by Executive and launched for public consultation  |
| September to December | Public consultation  |
| By 31 December        | Final Budget agreed by Executive and approved by the Assembly  |

## **Early consultation**

15. As noted above, it is considered that the early stages of the Budget process afford the best opportunity for influencing the draft Budget proposals. The Committee notes that the Scottish Government's approach to budget consultation is at the early, formative stage. It is the view of the Committee that public consultation should be undertaken by the Executive at an earlier stage, and completed in sufficient time for the outcome to inform the Committee's co-ordinated pre-draft Budget report. Provided the intention is confirmed at the outset, meaningful consultation with Assembly committees and the wider public at the pre-draft budget stage may reduce or remove the need for a full public consultation once the draft Budget is published, subject to ensuring that any legal obligations are fulfilled.
  
16. The question of responsibility for public consultation on the budget was raised by a number of committees during their recent consideration of DFP's recommendations for improving the budget process, which appeared to suggest that Assembly statutory committees should take the lead in this regard. It remains the Committee's position that the responsibility for consulting on departmental expenditure plans should rest with the Executive. It is not appropriate for Assembly committees to lead such consultation, particularly as they have no authority to act on the outcome.

## **Codifying the role of CFP**

17. It is important that the Assembly provides a "joined-up" response in respect of budgetary and financial matters, which also gives consideration to wider cross-cutting and strategic issues. By convention, the Committee co-ordinates responses from relevant Assembly committees to the Executive's budgetary proposals, leads debates on financial matters and scrutinises public finance issues at a strategic level. The Committee also determines whether Budget Bills, which make public expenditure for all ministerial and non-ministerial departments, should pass by the

accelerated passage procedure (paragraphs 48-49 below). Additionally, during the previous mandate, the Committee undertook an inquiry aimed at maximising the Assembly's contribution to the budget process and enhancing the role of committees and Members in budget and financial scrutiny.

18. In its Third Budget Scrutiny Inquiry report, the previous Committee pointed out that, in its reports in response to Executive Budgets, the Committee will:

- take evidence from a range of expert witnesses;
- take account of views of other Assembly committees; and
- lead a “take note” debate on the Executive's proposals.

It was also noted that, to ensure the Committee is fully informed in completing these cross-cutting reports, consideration should ideally be given to the outcome of the public consultation undertaken by the Executive. The tight timescales provided for response in previous budget processes have proved challenging, not just to the Committee but also to other committees.

19. The Committee's co-ordination role in this regard is undertaken by convention, rather than as a consequence of a specified duty. The Third Budget Scrutiny Inquiry Report therefore noted:

*“consideration should be given to amending standing orders to codify the co-ordination role of CFP in respect of the Assembly response to the Executive's budgetary proposals.”*<sup>6</sup>

### **Time for scrutiny by committees**

20. As noted above, the time afforded for CFP to bring forward a co-ordinated report on behalf of the Assembly will impact on the time available for Assembly statutory committees to scrutinise their department's spending proposals. Concerns were previously raised by committees that past budget processes have not afforded sufficient time to committees to scrutinise, take evidence and agree a

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<sup>6</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/reports/report\\_61\\_10\\_11R.htm](http://archive.niassembly.gov.uk/finance/2007mandate/reports/report_61_10_11R.htm) , paragraph 33

position on departmental budgetary proposals. Standing orders currently provide timescales for a committee's consideration of a Bill (e.g. standing orders 33(2) and 35(7)). It may therefore be advisable to amend standing orders to provide for Assembly statutory committees to be afforded a minimum period for budget scrutiny.

### **Non-ministerial budgets: NI Audit Office; NI Assembly Commission**

21. The draft 2011-15 Budget proposed real-term cuts to the budgets of both the NIAO and the Northern Ireland Assembly Commission which were far in excess of the proposed reductions for any Executive department, and for comparable institutions such as the Welsh Assembly and the Scottish Parliament. The process by which the proposed cuts were determined appeared to be in contravention of established practice which, while not codified, was set out in the Executive's 2010 Budget guidance document.<sup>7</sup>
22. Revised allocations in the final Budget allayed concerns about the ability of the Assembly to effectively carry out its scrutiny functions. Nevertheless, the Committee considered that, in the context of international best practice and to ensure the independence of the legislature, robust arrangements should be put in place for scrutinising and agreeing future budgets for the Assembly. The Committee looks forward to receiving an update from the Assembly Commission on any current consideration in this regard.
23. Similarly, the Audit Committee remains concerned regarding the process of budget setting for the NIAO, and considers that

*“it is a fundamental principle that an Executive should not control or direct an Audit Institution's access to resources.”*<sup>8</sup>

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<sup>7</sup> The Executive's 2010 Budget guidance document stated that *“In line with previous arrangements, the NI Assembly and the NI Audit Office will be provided with the level of funding required by each organisation (both current expenditure and capital investment) in order to carry out their respective functions, as agreed by the Assembly Commission and the Public Accounts Committee (sic) respectively.”*

<sup>8</sup> Audit Committee Chairperson to the Minister of Finance and Personnel, 21 February 2012,

24. The Audit Committee has called for a stage to be included early in the budget process (i.e. prior to publication of a draft Budget by the Executive) during which input is sought from those who are responsible for agreeing the expenditure of public bodies which fall outside the Executive's remit.
25. CFP believes that the proposal for independent input into the Budget from those oversight bodies that fall outside the Executive's remit but which are included in the provisions of the Budget has considerable merit. Agreement is therefore needed on how the budget process should be amended in order to ensure that the independence of the NIAO and the Assembly Commission is upheld, and their ability to scrutinise and hold the Executive to account is not compromised.

## **1.2 Meeting the information needs of Assembly committees**

### **Pre-draft Budget information**

26. It is important that, with the inclusion of an early strategic stage, committees are provided with relevant financial information in an appropriate format to enable them to undertake detailed scrutiny. In response to DFP's recommendation for early, more structured engagement with committees, CFP recommended that the Department should develop

*“standard guidance [for] NI departments on the timing and provision of relevant information to Assembly statutory committees”.*<sup>9</sup>

27. In response, DFP noted that Budget Guidance encouraged early engagement between departments and their committees; however, DFP is unable to compel departments to do so.<sup>10</sup> The Committee considers that it would be advantageous for guidance and templates to be developed in consultation with committees and DFP, and agreed by the Executive, which should be used by departments to

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<sup>9</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report\\_66\\_09\\_10R.html](http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report_66_09_10R.html)

<sup>10</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/reports/dfp\\_response\\_2nd\\_budget\\_report.htm](http://archive.niassembly.gov.uk/finance/2007mandate/reports/dfp_response_2nd_budget_report.htm)

structure their engagement with committees at the early strategic stage. Such templates would facilitate information-gathering, analysis and scrutiny.

### **In-year scrutiny**

28. As well as scrutiny of multi-year draft budgets, statutory committees are involved in an ongoing process of financial scrutiny. This includes: the examination of reduced requirements declared or additional bids for resources made within the monitoring round process; in-year forecasting information; and provisional outturn position in respect of year-end over/underspends. Additionally, outwith the multi-year budget and in-year scrutiny processes, committees were required to undertake scrutiny at a more strategic level during the previous mandate within the Executive's "Strategic Stocktake of the Budget Position for 2009/10 & 2010/11" in late 2008, and its subsequent "Review of 2010/11 Spending Plans for NI Departments" in early 2010.
29. A concern for committees and the wider Assembly within all of these processes was the level of engagement with their respective departments, and the repeated failure of the majority of Executive departments to provide appropriate and timely information to facilitate detailed scrutiny. Indeed, CFP has recently received correspondence from the both the Chairpersons' Liaison Group (CLG) and the Committee for Enterprise, Trade and Investment expressing dissatisfaction with the timing of the receipt of departmental submissions in respect of monitoring rounds. CLG also noted that, in a number of cases,
- "...submissions only contain high-level figures that are not broken down to any meaningful level of detail. The result is that some committees are not in a position to adequately scrutinise the departmental position."*
30. The Committee considers that the provision of information and data, of which departments are sole holders and gatekeepers, is essential to enable committees to fulfil their scrutiny and advisory role. For example, if detailed information had been provided to committees to enable them to undertake ongoing scrutiny

throughout the 2011-12 year, the significant underspends within departments might have become evident before the final monitoring round of the year. More recently, committees were not provided with sufficient information or time to contribute to the review of 2013-14 and 2014-15 budget allocations, which was undertaken by DFP in response to the level of underspends by departments in 2011-12. It is therefore critical that steps are taken to ensure the deficiencies in the provision of information, such as timeliness and consistency, are addressed moving forward. It is also important that the principle of early consultation is applied in respect of exceptional exercises undertaken by DFP/the Executive, such as the Strategic Stocktake and Review of 2010/11 Spending Plans referred to at paragraph 28 above.

### **Strategic Scrutiny**

31. Members note that the previous Committee concluded that “Assembly consideration of the medium-to-long-term strategic finance issues facing the Executive will also be important in terms of minimising and managing any further public expenditure pressures in the years ahead.”<sup>11</sup> There are likely to be benefits in this longer-term approach to strategic financial planning, where possible, extending across the timeframes set down in UK spending reviews.
  
32. Related to the issue of strategic financial scrutiny, as part of its budget scrutiny inquiry, the predecessor Committee briefly looked at the possibility of establishing a central budget committee within the Assembly, commissioning research on issues for consideration in this regard.<sup>12</sup> While noting that a number of issues would need more detailed consideration, the Committee concluded that *“the idea of reforming the Assembly financial scrutiny system to establish a more powerful central budget committee should be reconsidered in the*

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<sup>11</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report\\_41\\_09\\_10R.html](http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report_41_09_10R.html)

<sup>12</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/research/Research\\_Central\\_Budget\\_Consid.pdf](http://archive.niassembly.gov.uk/finance/2007mandate/research/Research_Central_Budget_Consid.pdf)



*future, if the proposed reforms to processes and procedures that are set out in this Report failed to have the desired outcome.”<sup>13</sup>*

33. The Committee is of the view that this is something that should be considered in the future in the context of any legislative provision. The Committee also notes that the Assembly and Executive Review Committee (AERC) is currently undertaking a review of the size of the Northern Ireland Assembly and the number of government departments. The Review will take evidence on, amongst other things, proposals to mitigate the impact of reducing the number of MLAs on the effectiveness of the Assembly in delivering its key functions, including, in particular, proposals to ensure a robust and effective committee system. The outcome of this Review may impact upon the desirability or practicality of establishing a central budget committee.<sup>14</sup>

#### **Linkage between financial and performance scrutiny**

34. The majority of committees who responded to the recommendations in the recent DFP-led Review of the Financial Process expressed concern at the proposal that:

*“Performance outcomes and the delivery of the Programme for Government should not be directly attributable to allocations in budgets but should be monitored and delivered regardless of budget inputs.*

35. A clear view was expressed that there should be strong, visible links between spending and priorities, and that mechanisms should be put in place to facilitate such scrutiny.

36. During evidence to the Committee on 7 March 2012, DFP officials advised that they did not consider that an entire budget could be mapped to the PfG, as much of the budget is used to deliver ongoing services while *“the PfG is about*

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<sup>13</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/reports/report\\_61\\_10\\_11R.htm](http://archive.niassembly.gov.uk/finance/2007mandate/reports/report_61_10_11R.htm), paragraph 55

<sup>14</sup> If it is agreed to proceed with the preferred option (Section 4 below), any proposals or recommendations emerging from the AERC review can be taken into account in the development or review of an MoU

*delivering better services at the margin*". It was also suggested, however, that reporting on departmental delivery against the PFG key commitments will look at resources, one element of which will be expenditure, and that resource requirements may be reported on "*to the extent that it is a material factor in any shortfall in performance*".<sup>15</sup> This may therefore offer committees an opportunity – albeit somewhat limited – to scrutinise performance against expenditure in the absence of the clear, visible linkages that statutory committees and the wider Assembly have repeatedly called for.

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<sup>15</sup> <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/PEDU-Role-in-Monitoring-Programme-for-Government-Delivery/>

## **Section 2 – Options for Way Ahead**

The following three options are offered for consideration:

### **Option 1 – Memorandum of Understanding on the Budget Process**

37. A memorandum of understanding is defined as

*“ a formal document embodying the firm commitment of two or more parties to an undertaking, and setting out its general principles, but falling short of constituting a detailed contract or agreement ”<sup>16</sup>*

As such, an MoU is an indicator of mutual intention, which does not create legal duties or obligations. It should set out the roles and responsibilities of each party to the agreement.

38. As noted at paragraph 1, the predecessor CFP recommended the development of an MoU between the Executive and the Assembly to address the deficiencies regarding the provision of information by departments to Assembly committees. The Committee heard that such an agreement is in place within the Scottish Parliament, and noted that

*“under this agreement, the Scottish Parliament’s Financial Scrutiny Unit will not request information that may be readily available elsewhere, or which may be unnecessarily burdensome, while the Scottish Government will provide timely information which will be helpful to the Scottish Parliament and the Scrutiny Unit.”<sup>17</sup>*

39. Officials have observed that the agreement in Scotland works fairly well, and it may prove a useful example in the development of any similar MoU between the Assembly and the Executive. That said, the Committee considers that the Budget

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<sup>16</sup> Oxford English Dictionary, <http://www.oed.com/view/Entry/116345?redirectedFrom=memorandum%20of%20understanding#eid37224863> , accessed 10 May 2012.

<sup>17</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/reports/report\\_61\\_10\\_11R.htm#footnote-369760-12-backlink](http://archive.niassembly.gov.uk/finance/2007mandate/reports/report_61_10_11R.htm#footnote-369760-12-backlink) , paragraph 37

Process Agreement recommended by DFP should address a wider range of issues, including (but not limited to):

- establishing a timetable which sets out the key milestones for multi-year budget processes;
- specifying measures for an early, strategic phase in the budget process;
- clarifying the arrangements and responsibility in respect of public consultation in the budget process;
- affording sufficient time for Assembly committees to scrutinise departmental positions, priorities and spending plans;
- setting out the processes and protocols to be followed in establishing the budgets and estimates for NIAO and the NI Assembly Commission in a manner which protects their independence and ability to scrutinise the Executive;
- stipulating a minimum timeframe for CFP to prepare co-ordinated reports to DFP and the Executive;
- setting out Assembly committee requirements for in-year scrutiny, including in terms of monitoring rounds, forecasting and outturn information; and
- confirming the guidance and templates for departments to follow in meeting the financial information needs of Assembly committees (the details of these to be set out in separate protocols and updated as required<sup>18</sup>).

40. Whilst it may not be legally binding, a number of elements included in an MoU may be underpinned in standing orders. It was noted at paragraph 20, for example, that timescales are set out in standing orders for committee scrutiny of a Bill; it may be possible for similar provision to be included in respect of budget scrutiny. It will also be important to set out the recourse available in the event of a breach of obligations specified within an MoU – see Section 3 below.

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<sup>18</sup> It will be important to note the role of Secretariat staff in facilitating the information needs of the Assembly and committees; it would therefore be essential to formally include staff within the scope of the protocols.

41. It is likely that the costs associated with developing an MoU would be in terms of in-house resources for both the Assembly and the Executive/DFP. From the Assembly's perspective, these would include support and guidance from Legal Services and Assembly Research. It would also require a time commitment from others, such as the Procedures Committee, should it be agreed that any elements of an MoU are reflected in standing orders.

### **Option 2 – Statutory provision**

42. Statutory provision is a potentially more robust option, as it sets out duties and obligations which are legally binding. Assembly research found that

*“good practice guidance suggests that the overall budget and financial process should be established in statute, but that some of the detail should be left to subordinate legislation, or to the Assembly's Standing orders.”*<sup>19</sup>

43. In response, DFP argued that the budget framework is already provided for in primary legislation. Section 64 of the 1998 Act requires the Finance Minister to lay before the Assembly a draft budget, which has been agreed by the Executive and which is subject to scrutiny by Assembly committees, before the beginning of each financial year. It is the Department's view, however, that this duty is discharged by the laying of draft budgets for multi-year periods. In addition, both the 1998 Act and the Government Resources and Accounts Act (NI) 2001 make provisions in respect of the Consolidated Fund, accounts, supply and audit.

44. While accepting that some aspects of the budget process are provided for in legislation, the Committee considers that there are gaps in terms of the scrutiny and advisory role of Assembly statutory committees, particularly with regard to an early strategic phase (see paragraphs 10-13 above). It is the Committee's view that this may need to be enshrined in legislation, with provision to signify the start of an early strategic stage. In its Review of the Financial Process, the Department

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<sup>19</sup> <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2011/Finance-and-Personnel/6211.pdf>

cautioned against the inclusion of definitive dates within legislation, such as that for the presentation of a draft or final budget, as any unforeseen or external circumstance may require the dates to be amended.<sup>20</sup> However, initial legal advice provided to the Committee at that time by the Assembly's Legal Services suggested that statutory provision to facilitate a pre-draft budget scrutiny stage could be made to be sufficiently flexible to allow for such factors as cited by DFP.

45. Statutory provision would require the Committee to bring forward a Committee Bill, and it is therefore considered to be a longer-term option. In addition to being subject to a legislative timetable, it could require input from, for example, the Procedures and Audit Committees, the Assembly Commission and Assembly Legal Services. It is not possible at this time to quantify the level of expenditure that would be involved in bringing forward such a Bill. The Committee is aware, however, that there would be costs in terms of drafting (of both the Bill and any subsequent amendments) and other costs such as advertising, consultation and printing.

### **Option 3 – Maintain the status quo**

46. Two main options that the Committee considers offer potential for maximising the Assembly's contribution to the budget process are set out above, and it may be that, in the longer term, a combination of the two is the most appropriate approach. The option also remains for no action to be taken. It should be pointed out that, if this was to be the case, budgetary and financial scrutiny by the Assembly and committees would continue to be subject to timetables set out by the Executive and reliant on the provision of relevant, full and timely information by the individual departments. There would be no mechanisms to address the issues set out at Section 1 of this paper, which have been informed by committees' experiences of previous budget processes.

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<sup>20</sup> See [http://www.niassembly.gov.uk/Documents/Reports/Finance/nia28\\_11-15.pdf](http://www.niassembly.gov.uk/Documents/Reports/Finance/nia28_11-15.pdf), Appendix 3

### **Section 3 - Assembly Committee Powers**

47. In examining the potential options on the way forward, the Committee believes that it will also be necessary for greater consideration to be given to the exercise of existing Assembly powers that could influence the effective operation of any new measures.

#### **Granting of accelerated passage for Budget Bills**

48. Standing order 42(2) provides that the Committee for Finance and Personnel may agree that a Budget Bill (which covers planned expenditure for both Executive and non-Executive departments) shall proceed by the accelerated passage procedure, provided that:

*“the committee is satisfied that there has been appropriate consultation with it on the public expenditure proposals contained in the Bill”.*

49. When considering whether accelerated passage should be granted under this provision, the Committee will have regard to the level of engagement with DFP in the ongoing process of public expenditure scrutiny, both at a Departmental level and at a strategic, cross-departmental level, to which the Budget Bills give legal effect. The Committee will also have regard to issues and concerns raised by other committees in respect of the level of engagement with their respective departments on budgetary issues, and consideration should be given to strengthening this process including, for example, amending standing order 42(2) to formally reflect this. In this respect, it will be important that sufficient time is afforded for committee scrutiny of estimates and budget bills. This is not currently the case, as highlighted by the Spring Supplementary Estimates (SSEs) process for 2011-12, in which the debate and vote took place just one week after the SSEs were laid, thereby not affording committees adequate time for scrutiny. If the Committee is not satisfied that appropriate consultation has taken place, it could potentially elect to undertake a full committee stage on a budget bill.

## **The implications of accelerated passage not being granted to budget bills**

50. DFP has in the past advised the Committee that, should a budget bill not be granted accelerated passage, “*departments would not have authority to spend and all services would have to stop*”.<sup>21</sup> This is not the case however; section 59 of the NI Act 1998 and section 7 of the Government Resources and Accounts Act (NI) 2001 provide for an authorised officer to authorise the payment of sums out of the Consolidated Fund and the use of resources. This is clearly not an ideal scenario, and therefore sufficient time should be built into the budget process to allow for the possibility of a full committee stage of budget bills.

## **Exercising the powers to call for persons and papers**

51. Section 44 of the NI Act 1998 provides that the Assembly (or a committee)

*“may require any person –*

*(a) to attend its proceedings for the purpose of giving evidence; or*

*(b) to produce documents in his custody or under his control”*<sup>22</sup>

52. A committee would need to clearly set out the information that it requires, and it is expected that all efforts to obtain that information should be exhausted before the powers are exercised. Committees may also need to seek legal and procedural advice before passing a motion seeking to exercise the powers. On passing such a motion, the matter will be referred to the Speaker, who will decide whether or not a notice should be issued to call for persons or papers. It should be noted that such a notice may be subject to challenge by way of judicial review.

53. The power conferred under Section 44 has not yet been used, and to do so would clearly be a lengthy and complex process and therefore a less efficient approach. However, it remains a potential avenue for seeking financial information that has not otherwise been made available by a department, despite repeated requests by a

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<sup>21</sup> <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/Committee-for-Finance-and-Personnel---Main-Estimates-and-Budget-No-2-Bill/>

<sup>22</sup> <http://www.legislation.gov.uk/ukpga/1998/47/section/44>



committee. CFP endorses the recommendation of its predecessor that “committees should consider exercising these powers in circumstances where there is a continued failure by departments to provide the financial information needed for scrutiny of departmental budgets and expenditure”.<sup>23</sup>

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<sup>23</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/reports/report\\_61\\_10\\_11R.htm](http://archive.niassembly.gov.uk/finance/2007mandate/reports/report_61_10_11R.htm)

## **Section 4 – Preferred Option**

54. The Committee considers that, to prevent repeated marginalisation of committees and the Assembly in future budget processes and to address many of the difficulties that have been previously encountered, it is necessary to put formal arrangements in place for engagement between Executive departments and the Assembly and its committees. In being mindful of the costs of statutory provision, in terms of both time and expenditure, it is the Committee's preferred option to proceed with the development of an MoU based on genuine commitment from both parties to the agreement and underpinned by Standing Orders. The drafting of the MoU would be led by the Committee, supported by the Assembly Secretariat, with input from the other relevant Assembly committees and DFP. The Committee would recommend that the MoU is reviewed within a specified timeframe to confirm that it is meeting the needs of the Assembly. If genuine commitment has been demonstrated and the MoU is operating effectively, then there would be scope for further streamlining of the end stages of the Budget process. Should it not be the case that the MoU is effective in meeting the needs of the Assembly, consideration should be given to proceeding with the legislative option.
55. An indicative timetable for progressing the proposed MoU is provided at the Appendix.

## **Section 5 – Questions for Consideration**

56. The following key questions are offered for consideration and comment and alternative or additional views will also be welcomed.

1. Do you agree that the Assembly could add greater value to the budget process if the issues set out in Section 1 are addressed?
2. Are there any additional issues that need to be addressed to enhance the effectiveness of Assembly committees in fulfilling their financial scrutiny and advisory functions?
3. Do you agree with the preferred option for the way ahead as set out at Section 4 (i.e. an MoU between the Assembly and the Executive on the Budget Process)?
  - If so, are you content that the range of issues set out at paragraph 39 should be covered by an MoU?
  - Should any additional issues be addressed in the MoU?
4. If you do not agree with the preferred option, what is your preferred way ahead and why?
5. Have you any comment to make on any other issues arising from the Discussion Paper?

## APPENDIX

### PROPOSED MEMORANDUM OF UNDERSTANDING ON THE BUDGET PROCESS

#### INDICATIVE TIMETABLE

| Action/Milestone  |   | Target Date                             |
|---|---|---|
| Final consideration of discussion paper   | CFP                                       | 23 May 2012                             |
| Discussion paper issued to stakeholders   | CFP                                       | by 28 May 2012                          |
| Responses provided to CFP   | All stakeholders                          | 25 June 2012                            |
| <ul style="list-style-type: none"><li>• Consideration of analysis of responses to discussion paper</li><li>• Agreement on the way forward</li></ul> | CFP                                       | 4 July 2012                             |
| Drafting of Memorandum of Understanding <sup>24</sup>   | CFP in consultation with key stakeholders | 26 Sept 2012 (for consideration by CFP) |
| Draft MoU issued to stakeholders for comment  | CFP                                       | w/c 1 Oct 2012                          |
| Responses provided to CFP   | All stakeholders                          | 19 Oct 2012                             |
| Finalise MoU for issue to departments/the Executive for consideration   | CFP                                       | 31 Oct 2012                             |

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<sup>24</sup> Provided the Preferred Option set out in the discussion paper is agreed