

POLITICAL APPOINTMENTS BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum relates to the Political Appointments Bill and has been prepared by Mr Jim Allister ("the Sponsor") to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, nor is it meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

POLICY OBJECTIVES

3. The first objective of the Bill is to provide that no person shall be appointed as a political member of The Education Authority or The Northern Ireland Policing Board, or any other non-elected public body if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more (a "serious criminal conviction"). In exceptional circumstances, a person with such a conviction can be appointed, (or can remain in post if they have an historical conviction), but only if an independent review panel agrees to this. The review panel is to be established by the Commissioner for Public Appointments where an appointment or proposed appointment is referred to it.
4. The Bill also amends the Commissioner for Public Appointments (Northern Ireland) Order 1995 to add to the functions of the Commissioner such obligations as arise under this Bill in respect of establishing a review panel, when required.

BACKGROUND

5. Early in 2021 the nominating officer of Sinn Fein appointed, pursuant to Schedule 1 of the Education Act (Northern Ireland) 2014, a person to serve on the Education Authority who has serious criminal convictions. In 2013 the Sponsor had secured the passage of The Civil Service (Special Advisers) Act (Northern Ireland) 2013 which barred such persons from the post of Special Adviser.
6. The aforesaid appointment to the Education Authority revived the controversy about such nominations and the lack of restraint in respect of same where the gift of appointment lies in the nominating officer of a political party. A victim of the person appointed to the Education Authority publicly articulated his objections and other victims of terrorism and politicians echoed his concerns. The fact that such a facility of appointment equally exists for The Northern Ireland Policing Board also brought appointments to that authority into renewed focus.

7. The Education Minister also criticised the appointment and publicly declared his desire to amend the law to prevent such appointments. However, proposed departmental legislation requires the approval of the Northern Ireland Executive. Accordingly, no such legislation has yet materialised.

CONSULTATION

8. The Sponsor has previously conducted a positive consultation exercise in respect of the principle of barring persons with serious criminal conviction from the public office of Special Adviser, which led to the 2013 legislation.
9. Thus the principle addressed in this Bill has been extensively ventilated and publicised. Accordingly, the Sponsor resolved that a further consultation was unnecessary.
10. The Sponsor did, however, engage with the Commissioner for Public Appointments in respect of the review role anticipated for that office.

OPTIONS CONSIDERED

11. In developing this legislation, the Sponsor considered the following options:
 - Option 1: do nothing.
 - Option 2: to introduce and enact the Political Appointments Bill to disqualify prospective and existing board members in Education and Policing with a serious criminal conviction.

The Sponsor concluded that a Bill was necessary.

OVERVIEW

12. The Bill consists of 10 clauses and 1 Schedule.

COMMENTARY ON CLAUSES

A commentary on the provisions follows below: Comments are not given where the wording is self-explanatory.

Clause 1: Meaning of "political appointee"

Clause 1 defines a political appointee as a person appointed by a nominating officer of a political party to The Education Authority or the Northern Ireland Policing Board or otherwise appointed by a nominating officer to any other public body.

Clause 2: Political members: serious criminal convictions

Clause 2 prohibits a person with a serious criminal conviction from being appointed to the aforesaid public bodies. Appointees in post with a serious criminal conviction and those who incur such a conviction while in post will have their appointment terminated by this legislation. In exceptional circumstances, however, a review panel, to be established by the Commissioner

for Public Appointments can determine that prospective appointees and existing post-holders with a serious criminal conviction are eligible to become or to remain on the public body. Subsection (2) provides that, where a nominating officer proposes to appoint a person who has a serious criminal conviction, that person may refer the appointment to the Commissioner for review. Under subsection (5) an existing post-holder with a serious criminal conviction at the time this legislation comes into operation may make such a referral. A duty is placed on nominating officers to inform the Commissioner whether any person appointed by them has a serious criminal conviction.

Clause 3: Determination of eligibility of political members by review panel

Under Clause 3, a review panel to be established by the Commissioner can determine that a person referred to them under Clause 2(2) or (5) is eligible to be appointed or to remain in post only if there are exceptional justifying circumstances. In making their determination, the panel must have regard to matters set out in subsection (5). The matters to be taken into account are: whether contrition has been shown; whether the person has assisted in the investigation and prosecution of persons connected with the offence; and the views of victims or their family.

Clause 4: Appeals against review panel's determinations

Clause 4 provides for a right of appeal to the High Court by anyone who is the subject of a determination by the review panel under Clause 3, on the ground that the determination was not reasonable. The appeal must be brought within 21 days of the determination being made.

Clause 5: Meaning of "serious criminal conviction"

Clause 5 defines "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed.

Clause 6: Amendment of Commissioner for Public Appointments (Northern Ireland) Order 1995

Clause 6 amends the 1995 Order to give the Commissioner the power to perform the review function bestowed by Clause 3.

Clause 7: Interpretation

This provision contains definitions of words or terms used in the Bill.

Clause 8: Transitional provisions

This clause gives effect to the provisions of the Schedule.

Clause 9: Commencement

The Act, save Section 2(4), will come into operation on the day the Act receives Royal Assent, with 2(4) coming into effect two months later so as to protect the appeal rights of any affected person.

Clause 10: Short title

Clause 10 sets out the short title of the Act.

The Schedule: transitional provisions: termination payments

The schedule makes provision for payment to existing appointees whose appointment is terminated under the legislation.

FINANCIAL EFFECTS OF THE BILL

13. The Bill has no significant financial implications. Modest compensation may be paid to any existing appointee whose appointment is terminated under the legislation.

HUMAN RIGHTS ISSUES

14. The Sponsor is satisfied that the application of a straightforward eligibility criterion to political appointees, with provision for a review to determine eligibility in exceptional circumstances, is human rights compliant.

ADDITIONAL LEGAL CONSIDERATIONS

15. In assessing the legislative competence of the Bill, in accordance with Section 6 of the Northern Ireland Act 1998, careful consideration has been given to the nature and effect of Clause 2(4) of the Bill, which terminates the appointment of any existing political member with a serious criminal conviction. Although the provision has a retrospective dimension, in so far as it relates to an appointment that took place in the past, it is clear that its application is wholly prospective. The Bill does not provide that the appointment of a political member with a serious criminal conviction was void from the outset, therefore it does not change the legal nature of a past event; it simply enables disqualification to be imposed for the future. The competence of the Bill is therefore unaffected.

LEGISLATIVE COMPETENCE

16. At introduction, the Sponsor of the Bill, Mr Jim Allister, had made the following statement under Standing Order 30:

"In my view the Political Appointments Bill would be within the legislative competence of the Northern Ireland Assembly."



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