



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Standing Order 35

8 November 2012

NORTHERN IRELAND ASSEMBLY

Committee for Social Development

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann
Mr David McClarty

The Chairperson: Members will recall that we debated Standing Order 35 some weeks ago. The Committee divided four in favour and four against, so no decision was taken. Standing Order 35 will provide for the establishment of an Ad Hoc Committee to ensure the conformity of equality requirements in a broad sense.

Mr Brady: I propose that Standing Order 35 be considered again.

Mr Campbell: I am trying to get my head round the rationale for that. Are we voting on it again because there was an undetermined outcome last time?

The Chairperson: No decision was taken last time, so it is within the gift of members to put it forward as a proposal again. As no decision was taken, there is no decision to rescind. It is competent to put it forward. Members, including me and others, are still concerned about provisions of the Bill and its overall content and direction. That is in light of evidence that was presented to the Committee from a range of stakeholders. The Bill is complex, and, to some people, contentious. People have their own views on it, but there has been a varying degree of opposition, and concerns have been expressed about the Bill. Some members felt that they wanted to table the debate again about the establishment of an Ad Hoc Committee. I remind members that, as was expressed on the previous occasion, its purpose was to establish an Ad Hoc Committee to do a short, time-limited and discrete piece of work on this. We had advice from the Assembly officials that it could not be run in parallel with the Committee. This has never been done by the Assembly before, and I imagine that the Assembly has the right to make the decision. For me, it is within the gift of the Assembly to do whatever we want, but that is another discussion. You heard the formal advice; I am giving you my opinion.

Mr Campbell: My query is on the procedural process, Chairman. At the conclusion of the previous vote, I asked what happens now, given that it was a four/four split and that you did not have a casting vote. I remember that you or the Committee Clerk said that it just falls. Obviously, we will not know until the outcome of this vote, but if there were a repeat, would we then be faced with a possibility of it falling again to be tabled at a subsequent meeting?

The Chairperson: Technically, it would be up to members to put any proposal that they want. We are at a fairly advanced stage of the business. My support for such a move would be in the context of whether we can get it done and whether it is worth doing. All that I am saying is that I support it for now; that does not mean that I will support it next week.

Mr Campbell: It is to try to get the procedural proposition. Our vote was a four/four split. The response, after a query by me, was that the proposition then fell. It now appears to be on the table again. We can take a vote, and that will certainly answer it, but if that does not sort it — if it is a re-run of the previous time — do we, it having fallen twice, have the potential for a third run?

The Chairperson: Technically, yes, we could. However, I am not sure that that is anyone's intention, although I cannot read somebody else's mind. If no decision is taken, the Committee can have that discussion again, but I am not sure that that is anyone's intent.

Mr McClarty: Chairman, could you outline just why this vote is being put out to form an Ad Hoc Committee? What would its purpose be?

The Chairperson: I would support such a motion, and I made this point a few weeks ago, only if it were a time-bound and discrete piece of work. It is not intended by any stretch to supplant the work of the Committee, which has a formal statutory obligation. On behalf of the Committee, I have made it clear, publicly and privately, that the Committee will give maximum scrutiny to the Bill, given its nature and the interest expressed in it by a wide range of organisations and sectors. We have made it clear that we will give the Bill full and robust scrutiny, and I am satisfied that we are doing that. This Committee will complete that task.

I support the proposal to establish an Ad Hoc Committee on the evidence that we have heard from the Human Rights Commission, the Law Centre, and all the various mental health organisations and charities. They made compelling arguments, and I am not prepared to go forward on a Bill that I am not satisfied in my own mind is compliant with a wide range of rights and entitlements. I want to satisfy the many organisations that came here — and myself — that we are doing our job.

If the vote is successful and agreed by the Committee, an Ad Hoc Committee will be established. My support for it is basically on the clear premise that it is a short-term piece of work. My assumption is that it will require two or three meetings of an Ad Hoc Committee because it does not have to talk to all those organisations. It will talk to the legal people and to the two commissions and report to the Assembly in short order.

Mr McClarty: How do you envisage the make-up of an Ad Hoc Committee?

The Chairperson: The Assembly will determine that. An Ad Hoc Committee would have members from outside this Committee, so we would not be doing it. In a sense, it is a belt-and-braces exercise. I presume that all Committees established by the Assembly are populated by d'Hondt, which will mean a proportionate Committee. It is a discrete piece of work; it is not an overhaul of all the provisions of the Bill. Specific concerns were raised by credible organisations; they are not people who would be out on the streets every day of the week. The organisations that I heard here made compelling arguments, and I want to make sure that I am doing my job.

Whatever the work of the Ad Hoc Committee, it will come back to this Committee and we will take it on board. However, there is no intention, either on my part or my colleagues', for this to be a delaying tactic. This is not the reasoned amendment. The reasoned amendment was a deferral for negotiation; it fell and is over and done with. This is a discrete piece of work, and I believe, and am certainly advocating, that we would be well advised to make sure that we cover all the bases on this one because of the complexity and the contentious nature of the Bill.

Mr Campbell: On the timing, Chairman, I think that the Minister made clear, as did the departmental officials, the exceptionally tight timescale. As you outlined in response to David, if the Committee was minded to proceed down that route, I presume the very earliest that the Assembly could debate the matter and decide would be next Monday or Tuesday, or would it be the following week?

The Chairperson: I am sorry, Gregory, I do not want to interrupt your flow, but there is a timeline in your information folder.

Mr Campbell: That would be Monday week, which would be eight days before we had intended to have our conclusions forwarded to the Assembly. I do not know how long an Ad Hoc Committee would take to deliberate, although I appreciate that a timeline is there. Given the difficulties that we have already faced and the complexities of the arguments that will undoubtedly be put and have already been put on previous occasions in other jurisdictions, I find it, as I said several weeks ago, exceptionally difficult to establish how we will keep within the time frame. It is exceptionally unrealistic.

Mr Brady: This is not introduced to supplant, as is stated, the work of the Committee. It starts with the premise that when the debate was held initially a couple of weeks ago, every party expressed discontent with the Bill. You voted against it in the House of Commons, as did your party's Members of Parliament. The stakeholders have expressed a great deal of concern about the Bill. It is the most wide-ranging Bill on social welfare since 1948, so it is important that all aspects of it are covered.

With Standing Order 35, an Ad Hoc Committee could be established to do a forensic analysis of human rights and equality issues that have been raised about the Bill. It is not my intention to reintroduce this ad infinitum. A conclusion was not reached last time; it was almost stalemate. It will give people the opportunity to have another look at it. The Bill is wide-ranging and will affect the lives of my constituents, yours and everybody else's, and those people need to realise that we have covered all the angles of equality and human rights and how that will impact on the most vulnerable in our society because that is the vast majority of people who will be affected. That is my considered opinion. It is not a ploy to delay necessarily. At the end of our scrutiny, we have to be able to say that we have covered all the angles so that people cannot say, "You should have done this or that." Ultimately, it is up to the Assembly to decide, and an Ad Hoc Committee would give it the opportunity to do that. It is not mischievous; that is not the intention. I want to put that on the record. It is for the right reasons, from my point of view.

Mr F McCann: The difference between the first vote and the second is that all the groups have explained their positions, and in each of them there was an opinion against various aspects of the Bill for different reasons. I give guarantees to anybody whom I meet outside that I will give the fullest possible scrutiny to the Bill. This is just an extension of that, and I remind people that the Chair has actively worked to ensure that we keep within the timeline. It is within the Committee's power to ask for an extension to the Bill, but you have added the work to the Committee, and everybody here has abided by that. I think that we should go to a vote.

The Committee Clerk: Can I point something out to the Committee? The Ad Hoc Committee would have a statutory 30-working day period unless it is constrained if a motion is agreed by the Committee to go to the Assembly. The motion might be, for example, to establish an Ad Hoc Committee in conformity with equality requirements and observance of human rights and report by 15 November or 23 November, or whatever date you consider. The Committee can place no constraints on how an Ad Hoc Committee carried out its work. It could decide to speak to a whole range of organisations as well. Moreover, the procedural advice that we have — I know that there is some debate over this — is that the work of this Committee would have to stop. That is what the Clerk Assistant has indicated. We can reflect on that, but the procedural advice has not changed. I am just letting members know that.

Just on the position of the vote, we still have the wording from the previous motion, but, just for procedural purposes, we need a proposer of a motion to establish an Ad Hoc Committee, and a seconder; and then we can read the more formal wording of such a motion.

Mr Durkan: Having heard the evidence, I think that the need for this piece of work is even more glaring now than it was when it was first proposed. It is important that we utilise everything at our disposal to ensure the fullest and most thorough scrutiny of the Bill as possible.

As regards the Committee Clerk's statement on the need for the Committee to stop, I look at the forward work plan and see an extensive piece of work coming up on the Business Improvement Districts Bill. Does it mean that the Committee itself has to stop work or that the Committee's work on the Welfare Reform Bill must stop?

The Committee Clerk: The scrutiny of the Bill must stop.

Mr Durkan: Therefore, we could bring forward some of the work on the Business Improvement Districts Bill in the interim?

The Committee Clerk: That is certainly possible. It is only the work of the Committee that relates to the Welfare Reform Bill that would stop. So, for example, the earliest date that the motion could be considered by the Assembly would be 19 November. Assuming that the motion is passed on 20 November, the work of the Committee on the scrutiny of the Bill would have to stop. However, that is on the assumption that the Committee wants to refer just to equality issues — if you put it like that — and not the entire work of the Committee on the Bill. Subsequently, this Committee would have six working days exactly to scrutinise the Bill when it comes back to it.

Mr Campbell: The Committee Clerk made an important point about the Committee's scrutinising role in relation to welfare reform, and then about the other important issues. However, that work has to stop for the duration of any Ad Hoc Committee. Effectively, we will be voting now on the establishment of a Committee whose work and outcome we cannot determine; the Ad Hoc Committee will determine that. The duration of the Ad Hoc Committee we cannot determine. We know how long it can go for: 30 days. However, there has been no resolution from the Assembly to shorten that. I am not accusing anyone of using a delaying tactic. This is not a case of "Let us, at no risk, comprehensively analyse this through an Ad Hoc Committee, and there has been no risk taken or expended by claimants or others." The Department has made it clear that there is a risk, and that is what we are being asked to vote on.

Mickey Brady made the point about opposition at Westminster. That is absolutely right, and there is a potential in the next few weeks for the issue to be raised again. My party intends to raise it. We welcome any assistance from people who have not gone to Westminster to try to get changes to the Bill. They may want to come and help us again; they absented themselves last time. We have to do what we have to do in the Committee here. The point that I making is that we are going to vote, and it would probably be better to take a vote, but there is not a zero-cost option. It is not a case of "Let us do whatever we can, go to the nth degree to analyse it and get the Ad Hoc Committee — and there is no risk attached to doing that."

If that were the case, I would certainly vote for it. However, the Committee and the Minister have been clear that there is a risk. Therefore, for us, the question is whether we take that risk, not knowing the outcome or the duration, but knowing that this Committee cannot do anything to further examine or scrutinise the Bill in the time allotted for the duration of the Ad Hoc Committee. We would almost certainly be into February by the time we recommenced the scrutiny of the Bill, not knowing what the outcome of the Ad Hoc Committee would be.

The Chairperson: I will just finish off a couple of points. From my party's point of view, the reasoned amendment debate was about a deferral of the Bill. Like colleagues, I made it clear that it was not about having an open-ended, long-term deferral, nor was it about delay; it was about trying to get people's shoulder to the wheel to negotiate what we thought could have been a better deal.

That proposal was not supported in the Assembly. This is an entirely different piece of work. In my view, the only basis on which we are proposing it and being prepared to support it is in pursuance of full scrutiny. Speaking as the Chairperson, there is no question but that the Committee will be able to stand over the fact that we have provided absolutely robust scrutiny and will continue to do so until we finish our job.

I am confident, speaking on behalf of every member of the Committee, that by the time we finish our report, we will be able to demonstrate fully to everyone who has concerns that we left no stone unturned in scrutinising the Bill to the best of our ability. Members have given their time and worked through the recent recess, and, I presume, if needs be, we will work through the next recess for a few days.

We are at an advanced stage of our Committee Stage scrutiny; we have had our stakeholders in, we had a full discussion on this yesterday, and we have another scheduled for today. I am convinced that we could finish the Committee's work in a few days. That is what we have realistically left to us.

Mr Campbell: That is this Committee, Chairperson.

The Chairperson: Yes, but for me, whether that is strung out over another couple of weeks or an additional three or four weeks is not the most important thing. There are a set number of days left that we need to apply ourselves to this. I believe that, if needs be, we can condense the time frame within which all this done, making the point that establishing an Ad Hoc Committee does not take away one

iota from the absolute responsibility that we have, and which we are, in my view, shouldering well, to make sure that there is full scrutiny of the Bill.

I have heard evidence from witnesses, I have read the evidence of the Joint Committee at Westminster, and I have heard the evidence that people have presented here. I believe that it would be unwise to proceed unless we get a discrete discussion on the compliance issues, after which a report will be brought back here.

This is not a delaying tactic; it is intended to get this done ASAP. If we can have that discrete, dedicated report back on our table, we can put it into our deliberations, which will be complete in a number of days. Whether it is completed by 27 November, it will require a number of days for us to do that.

It is not our intention that any delay should be caused by the establishment of an Ad Hoc Committee. My party's point of view is that if an Ad Hoc Committee is established, we will participate in it. There is no intention to do anything other than to get that piece of work done as quickly as possible. It would not be widespread; we would not be going out to stakeholders again. It would be about speaking to two or three stakeholders and advisers; that would be the height of it. It is about doing an important, dedicated and discrete piece of work with which to come back to the Committee. That is the only reason that we are supporting it.

Mr Durkan: Should a motion be tabled in the Assembly, we will stipulate a time frame reduced from 30 days.

The Chairperson: If people want support for it, they would have to make that position known clearly to the other parties. Obviously, parties may or may not be convinced of supporting it on the basis that it is not an open-ended thing and that we have to get this job of work done as quickly as possible.

Mr Douglas: The Human Rights Commission had some serious questions, as did many others. The Minister assured us in the House that the Bill was human rights compliant. I asked their representatives whether they had a copy, and they said no. When I asked whether they had requested a copy, they said no. I also heard this morning — I think that Gregory said it, as did Tara Caul from the Assembly's Legal Services — that the Speaker was assured about that.

I am concerned that even though our Committee has worked very well to date and we have had a consensus on most things, I think that this has the potential to undermine that good working relationship. At the end of the day, right is right and wrong is wrong. You do what is right. The longer this goes on, the more it will undermine that good working relationship. Chair, I think you have done very well; you have been very independent. *[Interruption.]* Does the member want me to give way?

Mr F McCann: I am just saying —

The Chairperson: Let Sammy finish.

Mr Douglas: As we heard this morning, this is an enabling Bill. The Legal Services representative told us this morning that, at this time, she is assured, and she assured us, that this is human rights compliant. As Gregory said, the Speaker is assured, the Minister is assured and, having listened to Tara Caul this morning, I am assured.

The Bible says:

“for such a time as this.”

We were happy with the first phase of this. She said that, when we complete the work, it will be scrutinised. Is that right, Kevin? She said that it would be gone through from a legal point of view. The Minister will also be assured by whomever he gets legal advice from.

The Committee Clerk: The senior legal adviser said that this is an enabling Bill and that it has to be compliant with human rights for it to be competent. The Speaker has been reassured of that. Once the regulations come forward, they will also have to be scrutinised to ensure that they are compliant. The Department cannot bring forward regulations that are not compliant with the UN Convention on Human Rights, etc, as you mentioned.

Mr Douglas: I know that Gregory talked about the cost. Is there a financial cost for this? If you were to bring in legal expertise, who would pay for that? How much would it cost? Have we worked that out?

The Chairperson: We have not been given any cost. The arguments around the cost to the social fund, and so on, were in the context of a reasoned amendment discussion, and that could defer the Bill for a number of months. That is not the intention; it is far from it. This is a discrete piece of work to be done ASAP. If I were on the Ad Hoc Committee, I would be telling the two commissions to come back in here to go through all of that. I would be putting them through their paces on the arguments that they made. Both of them sat in this room and told us that —

Mr Douglas: Are we talking about solicitors and barristers? Is that the sort of people we are talking about?

The Chairperson: I am saying that, if I was on the Ad Hoc Committee, I would be talking to Legal Services. They are the people who are here at our disposal; it is their responsibility. The commissions that have the statutory responsibility for this matter raised very serious concerns. I specifically asked the Equality Commission, for example, "Of all the assurances that you have been given, can you give me one example of one thing that has been met?" The answer was no. I am going to cover my responsibility by making sure that I take those two organisations back through their paces again and go through the concerns that have been raised and, if needs be, talk to the Department again.

If I was on that Committee, I would be asking them to come into this room and to hammer it out together. For me, it seems easy to do. The fact that it has not been done sounds alarm bells, and that is why I am supporting this. It is a short-term, dedicated piece of work. It is not, by any stretch of the imagination, designed to delay. I am sitting here as the Chairperson. You are right; I endeavour to do my job as Chairperson professionally and impartially. I want to be able to stand up in the Chamber and say, hand on heart, that we did our job on this, regardless of what the outcome is. I am satisfied that we will be able to do that, regardless of whether the motion is agreed. We will do it, because we will take the Bill through its paces, and rightly so, because of the contentious nature.

Mr Campbell: I think we should take a vote, Chairman.

The Chairperson: If members are content, we will take a vote on the motion. Mickey Brady and Fra McCann are the proposer and the seconder.

If members wish to abstain, they may declare an abstention.

The Question is, That under Standing Order 35(2)(b), the Committee recommends that the Welfare Reform Bill be referred to an Ad Hoc Committee on conformity with equality requirements.

Question put.

The Committee divided:

Ayes 5; Noes 4.

AYES

Mr Brady, Mr Durkan, Mr F McCann, Mr Maskey, Mr McClarty.

NOES

Mr Campbell, Mr Douglas, Ms Brown, Ms P Bradley.

Question accordingly agreed to.

Mr Campbell: On the outworking of that, I take it that that is now referred to the plenary session. Obviously, the Business Committee will have to decide how that is handled.

The Committee Clerk: I will make one further point on that. The restriction on the time limit for that particular Committee may be an issue. The Committee has agreed that it should be established. The

Committee will consider the time in which that Ad Hoc Committee should report. If a simple motion goes like that to the Business Office, then that Ad Hoc Committee will have, in effect, 30 working days, unless the motion that is placed before the House is that the Ad Hoc Committee reports by a certain date. I have given examples of the standard 30 working days and 15 days just to give a broad indication of when that Committee would have to report by. However, if this Committee wants to shorten that time period to five working days, for example, it is entirely up to the Committee to propose that, and that motion will be debated in the House.

Mr Campbell: When is that likely to be?

The Committee Clerk: I refer members to the timeline that I indicated, based on the Committee agreeing the motion today. Those first four dates. If the Committee agrees the motion today, the motion will be referred to the Business Committee for scheduling on 13 November. The earliest date that the motion could be considered by the Assembly is 19 November.

Mr Campbell: That is the earliest date?

The Committee Clerk: Yes. Then, on 20 November, assuming that the motion is passed by the Assembly, the motion before the House would be that the Committee has agreed to refer the Welfare Reform Bill to the Ad Hoc Committee on conformity of equality requirements, etc, and that that Committee reports by such-and-such a date.

Mr Campbell: Chairman, now we are in even deeper waters, because 19 November is the earliest date, and there is an assumption, which is the only assumption the Committee Clerk can make, that the motion is passed that the Ad Hoc Committee be set up, and then that this Committee's work on the Welfare Reform Bill ceases for the duration of that time, whatever that might be. What happens if that motion is not passed?

The Chairperson: We will go back to our work again.

Mr Campbell: But between now and then?

The Committee Clerk: Between now and then, the Committee continues its work —

The Chairperson: We continue our work from now. This is not a motion passed anywhere, so we are still in work, if you know what I mean. We have to take some more evidence on the Welfare Reform Bill, particularly in relation to fraud, for example. Officials are here, and, notwithstanding the vote that was passed a moment ago, we will start that session in a couple of minutes. So, we will continue our work until and if the motion is passed in the Assembly. What I would like to do, if members would consider it, is go to the Speaker on behalf of the Committee, because the timeline that we are dealing with can, I personally believe, be truncated. That is the timeline in front of us, so it may not be. From the point of view of supporting the motion, our party colleagues will go to the Speaker to see how quickly it can be done. I believe that it can be truncated. I accept that when it is returned to us as a Committee, there will be no delay at our end of it. In other words, if we need to take a couple of longer days to finish our work, we will do that. I am speaking with the indulgence of the members, but the evidence to date has been that members have made their time available to do that work. We are very well advanced in our deliberations, so I would like to be able to return to the Speaker's office on the time frame.

The Committee Clerk: I will explain it just one more time. This is a motion that is going to the Assembly. If members want to take time to consider what date would be more appropriate, they have to remember that amendments could be made to the motion in the House in order to put a date in subsequently for debate. So, the motion that will go to the Business Office will be that an Ad Hoc Committee on conformity with equality relations, etc, be established. Then, a subsequent amendment will be put down after Consideration Stage to say that the Committee is to report by whatever date a member — whichever member — feels is more appropriate.

The Chairperson: We will do that.

Mr Douglas: May I just check something, Chair? You talked about extra days. In the past, there was agreement around the table that we would commit as much time as it takes. The only thing is that all of us have been pushing work commitments back to December. So can we get some sort of projected

timeline and cost details as soon as possible? I am still not quite sure who will actually pay for this if there is a cost. Where will that come from?

The Chairperson: At this moment in time, the Committee has agreed a motion, which will go to the Business Committee, and so on and so forth. I am committing to go to the Office of the Speaker, and I am asking party colleagues to do so too just to clarify how this can be processed. Whether the motion is eventually passed or is amended, the consensus around the table, even from those who do not support the motion, is that it should be dealt with as quickly as possible. That is the clear consensus, and it is certainly the intention. Subject to when we get that information, we will obviously revise our time frame. Certainly, I am making a personal commitment to get this back on track again as quickly as we can. It is a dedicated area of work, and there are literally only a number of working days left to deal with it, be that before or after the work of an Ad Hoc Committee. So it is a finite process. From my point of view, I just want to assure members that there is no intention to prolong the agony any longer than necessary, because we all have to pick up our work schedules and the rest of it.

Mr Durkan: I just want to back you up on that, Chair. When you compare the 15-day timeline and our forward work plan, you see that we are effectively going to lose three sessions on the Welfare Reform Bill.

The Committee Clerk: The clause-by-clause stage of the Committee's work is to conclude on, I think, 20 November. We can see from the timeline that the earliest date on which the motion can be considered by the Assembly is 19 November. There is every possibility, of course, that the Committee will have concluded that work by that stage. If successful, the Bill will be referred to an Ad Hoc Committee on 20 November. So Mr Durkan is right: there will be a small number of days left for the Committee to consider this, but by that point, it will have concluded almost all its deliberations. It will then consider the Bill clause by clause — Patricia may correct me if I am wrong — in the context of the report by the Ad Hoc Committee. The Assembly will consider the Ad Hoc Committee report, and then the Committee will consider it and whether it has implications for its considerations to date.

Mr Campbell: Following on from what Mark said, that minor slippage is dependent on the 15-working-day period and on the Assembly debating and then agreeing to the motion at the earliest possible opportunity. Those are three fairly significant suppositions to bring us to a small timeline, and we do not yet know the cost of this.

The Chairperson: They are. However, as I pointed out earlier, for what it is worth, everybody, even those who do not support the motion, wants to get this done ASAP, and I presume that that will be reflected in the Business Committee. Yes, it is an assumption, but it is an informed one in so far as we know that everybody wants to get this done.

Mr Douglas: Apologies if you have already answered this question, which relates to David's one. What will the make-up of the Ad Hoc Committee be?

The Chairperson: It will be established by the Assembly under the normal rules.

Mr Douglas: Will it include members of this Committee?

The Chairperson: No, I do not think so. That probably is not advisable.

Mr Campbell: It would be better if that was not the case.

The Chairperson: I thought the general view was that it would be a better if a group of members, external to this Committee, would look at it. It is a discrete piece of work. Members, thanks for that.

Sammy, I take your earlier point about the potentially divisive nature of some of this stuff. However, I think that the Committee has very diligently —

Mr Douglas: As least we have reached a decision. We may not agree with it, but that is clear anyway.

The Chairperson: We want to continue on the basis of maximising consensus around the table.