



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

17 November 2016

NIAR 479-16

Neil Sedgewick & Ray McCaffrey

Private Members' Bills in other legislatures

1 Introduction

This briefing paper was prepared following a request from the Committee on Procedures.

The Committee asked for information on the following:

- Formal and informal procedures governing the passage of Private Members' Bills (PMBs) and the nature of support that is available (guidance, Standing Orders, conventions/administrative practices);
- The level of support in other jurisdictions;
- The level of resource (both financial and staff) that is provided/available;
- Selection and prioritisation criteria;
- How any conflict is resolved if there are two submissions on the same subject;
- Processes around co-sponsor of Bills; and
- Whether procedures exist to allow other Members to indicate support for a Bill.

The briefing provides information on the different approaches and procedures applied to PMBs across legislatures in the United Kingdom and Republic of Ireland. The briefing has drawn on two main types of information:

1. Publicly available information including Standing Orders and guidance documents; and
2. Direct correspondence with other legislatures. This is contained in Figures 1, 2, 3 and 4.

For each legislature, the opportunities for members to introduce legislation are set out, followed by the information provided by each legislature in response to the information requested by the Committee.

2 House of Commons

Opportunities for members to introduce legislation

There are three ways in which an MP can attempt to progress a PMB¹:

- **The Ballot:** Ballot Bills have the best chance of becoming law, as they get priority for the limited amount of debating time available.
- **Ten Minute Rule:** Ten Minute Rule Bills are often an opportunity for Members to voice an opinion on a subject or aspect of existing legislation, rather than a serious attempt to get a Bill passed. It is a good opportunity to raise the profile of an issue and to see whether it has support among other Members.
- **Presentation:** Any Member may introduce a Bill in this way as long as he or she has previously given notice of their intention to do so. Members formally introduce the title of the Bill but do not speak in support of it - they rarely become law.

Administration of the process

The Ballot

The names of Members applying for a Bill are drawn in a ballot held on the second sitting Thursday of a parliamentary session. Normally, the first seven ballot Bills are most likely to get a day's debate. The first reading (formal presentation - no debate) of ballot Bills takes place on the fifth sitting Wednesday of a parliamentary session².

In order to enter the ballot, Members need to enter their names against a number in the ballot book. Members have two opportunities to sign the ballot book with the ballot itself held in public in a committee room on the second Thursday after the Queen's Speech.

¹ House of Commons website: Private Members' Bills.

² As above.

Twenty numbers - against which Members have signed their names - are picked at random by the Clerk Assistant under the supervision of the Chairman of Ways and Means. Precedence is assigned in reverse order, i.e. the last name out is awarded the No. 1 slot for his or her Bill³.

Formally, a list of the successful Members' names, 1-20, is pinned up in the 'No' Lobby, and then made available from the Vote Office (and via the website), as soon after the ballot as possible. The successful twenty Members are contacted directly by the Public Bill Office⁴.

Members drawn at the top of the ballot can expect a very large number of approaches from individuals and organisations with suggestions of the legislation they should bring forward⁵.

Ten Minute Rule

On each sitting Tuesday and Wednesday, one Member may make a short speech asking for the 'leave of the House' to introduce a Bill. For this, notice is required, in person, by the Public Bill Office not more than 15 sitting days (including non-sitting Fridays) – and not less than 5 sitting days – in advance. In practice, these opportunities are almost invariably taken up at the first possible moment⁶.

Information received via direct correspondence

Figure 1: Information provided by the House of Commons on administering Private Members' Bills

<p>The level of support in other jurisdictions/Level of resource (both financial and staff) that is provided/available</p>	<p>On level of resource it's the clerk of Private Members' Bills and part of the time of a deputy. On drafting, the Government (Office of Parliamentary Counsel) drafts most "hand-out" bills; the Clerk of Private Members' Bills drafts some ballot bills and draws in drafting resources from other parts of the House such as lawyers in the Scrutiny Unit. Others are drafted by outside organisations and lawyers. On Ten Minute Rule and presentation bills a very limited service is offered: help is provided with drafting if the bill is short and plenty of notice is given. Many Ten Minute Rule and presentation Bills never get beyond the short and long titles; their purpose is to draw attention to an issue.</p> <p>The first ten Members in the ballot are entitled to claim up to £200 from public funds towards the cost of drafting assistance for their Bill.</p>
<p>Selection and prioritisation criteria</p>	<p>On selection and prioritisation criteria, when it comes to drafting the priority is to get the ballot bills drafted. Any spare resource goes to Ten Minute Rule Bills then Presentation Bills.</p>
<p>How any conflict is resolved if there are two submissions on the same subject</p>	<p>It's first come first served; in terms of the ballot winner the one at the top would have priority. Member confidentiality has to be respected. If two ballot winners came up with the same idea for a bill (and this is possible as</p>

³ House of Commons Library briefing Note, *Private Members' Bill: Ballot 2016*, May 2016.

⁴ As above.

⁵ House of Commons Library briefing Note, *Private Members' Bill: Ballot 2016*, May 2016.

⁶ House of Commons: *Business of the House and its Committees*

	they get intensely lobbied by the same group) the situation has to be managed, for example ensuring the lower Member has a back-up proposal. If they are in the same party it could be suggested to them that they have a conversation.
Processes around co-sponsor of Bills	A bill may have – but does not need – up to 11 Members as ‘supporters’, in addition to the Member in charge. Supporters’ names must be provided to the Public Bill Office before presentation in time to be entered on the dummy bill, and cannot be added or removed after presentation.
Whether procedures exist to allow other Members to indicate support for a Bill	There is no formal way to indicate support in advance other than through sponsorship.

3 Scottish Parliament

Opportunities for members to introduce legislation

The Scottish Parliament refers to legislation introduced by a Member of the Scottish Parliament (MSP) as a ‘Member’s Bill’, rather than a ‘Private Member’s Bill’.

There is no limit to the number of **proposals** that each member may lodge. A member cannot, however, have more than two proposals – whether draft proposals or final proposals – in progress simultaneously. A proposal continues to count towards this quota until it falls or is withdrawn, or until a Bill introduced to give effect to it is passed, falls or is withdrawn⁷.

Each Member⁸ may **introduce** no more than two Members’ Bills in the same session.

Administration of the process⁹

Before introducing a Member’s Bill, the MSP must first lodge a draft proposal and then a final proposal. The draft proposal must be accompanied either by a consultation document or by a statement of reasons why the MSP does not consider consultation necessary. The committee to which the Bill is referred may decide that it is not satisfied with the reasons given by the member for not consulting. In such circumstances, the proposal falls unless the member, within two months, lodges with the Clerk a consultation document¹⁰.

The final proposal, which must be broadly similar to the draft proposal, is published in the Business Bulletin for a month. By the time a final proposal is lodged, the member’s policy is expected to be reasonably well developed. A Member’s Bill should “give effect” to a final proposal. Therefore, a Bill which contained provisions extending substantially beyond the terms of the final proposal or which did not provide a

⁷ Scottish Parliament: Guidance on Public Bills

⁸ Rule 9.14.1 prohibits members of the Government from introducing Members’ Bills.

⁹ As above.

¹⁰ Information in this section is taken from the ‘About Members’ Bills’ section on the Scottish Parliament’s website:
<http://www.parliament.scot/parliamentarybusiness/Bills/30584.aspx>

substantial element of what was outlined in the final proposal could not be introduced. This test (of conformity between the final proposal and the eventual Bill) protects the interests of members who have supported the final proposal with a reasonable expectation of what the Bill resulting from it would be like¹¹.

If, by the end of that period, it has been supported by at least 18 other MSPs from at least half of the parties or groups represented in the Parliamentary Bureau¹², and the Scottish Government has not exercised its right to block the proposal (on the grounds that either it or the UK Government will legislate in similar terms), the MSP secures a right to introduce a Bill to give effect to the proposal. This right may be exercised until the beginning of June in the penultimate year of the session¹³. A member can, exceptionally, seek the consent of the Parliamentary Bureau to introduce a Bill up until the last sitting day of September in that year¹⁴.

Role of the NGBU¹⁵

Members can avail of the support of the Non-Government Bills Unit (NGBU) during the process. Working closely with Parliamentary lawyers and external drafters, NGBU can assist with policy development, summarise consultation responses, secure the drafting of a Bill, prepare briefing and give procedural advice.

- NGBU's initial aim is to understand what the member is seeking to achieve with a Bill, and then to work with the member to develop an initial policy (or policy options) as a basis for consultation. This early stage is crucial in ensuring that any legal, practical or political constraints are identified and (where possible) resolved before a draft proposal is lodged.
- The draft proposal is consulted on for a minimum of 12 weeks. (In some cases, a member may be able to lodge a "statement of reasons" as to why a consultation is not necessary).
- NGBU prepares a summary of responses to the consultation for the member to lodge alongside a final proposal.
- (As noted above) the final proposal appears in the Business Bulletin for a month. The member secures the right to introduce a Bill if, during that time, the final proposal gains the support of at least 18 other members from at least half of the political parties or groups represented on the Parliamentary Bureau.
- NGBU works with the member to further refine the policy, taking account of feedback from the consultation and (via the Parliament's solicitors) instructs the

¹¹ Scottish Parliament: Guidance on Public Bills

¹² This is the equivalent of the Assembly's Business Committee.

¹³ Information in this section is taken from the 'About Members' Bills' section on the Scottish Parliament's website:
<http://www.parliament.scot/parliamentarybusiness/Bills/30584.aspx>

¹⁴ Scottish Parliament: *Guidance on Public Bills*

¹⁵ Information in this section is taken from the 'About Members' Bills' section on the Scottish Parliament's website:
<http://www.parliament.scot/parliamentarybusiness/Bills/30584.aspx>

drafting of the Bill. NGBU prepares the accompanying documents to the Bill (Policy Memorandum, Explanatory Notes and Financial Memorandum).

- The Bill is introduced and proceeds through the same 3-stage process as other Public Bills. At each Stage, NGBU supports the member, for example by providing briefing material, drafting speeches or accompanying the member when giving evidence to a Committee.

Information received via direct correspondence

Figure 2: Information provided by the Scottish Parliament on administering Member's Bills

The level of support in other jurisdictions/Level of resource (both financial and staff) that is provided/available	The Non-Government Bills Unit (NGBU) currently consists of 6 clerking staff, although the full complement is 8 (roughly 7 full-time equivalent). The main cost to providing this service is, of course, staff salary costs. NGBU is supported by a team of 4 Scottish Parliament solicitors (though supporting NGBU is only part of what they do). Finally, NGBU maintains a panel of external drafters whom it can instruct to draft Members' (and Committee) Bills – and the Unit has a budget of around £30K a year for this purpose.
Selection and prioritisation criteria	Rule 9.14 allows all MSPs (other than Ministers) to lodge proposals and (if successful) introduce Members' Bills, subject to a maximum of two per MSP in each 5-year session, and a maximum of two proposals in progress at any one time. NGBU aims to support every MSP who seeks its support – although it will not provide resources (e.g. policy development, drafting) to proposals that it considers to be outside the Parliament's legislative competence. NGBU does not operate any further selection or prioritisation criteria – although (as a backstop) it would have the option of going to the SPCB (the Parliament's corporate body) to get authorisation to prioritise some over others should it find itself facing a level of demand that it cannot meet.
How any conflict is resolved if there are two submissions on the same subject	There is nothing to prevent two or more MSPs seeking to lodge proposals (or to introduce Members' Bills) to do the same thing (or to do competing or overlapping things on the same topic) at the same time. (There is, however, a rule against introducing a Member's Bill that is the same or similar to one that recently fell or was rejected by the Parliament.) Nor would NGBU withhold support from any member on the basis that another member already had a similar proposal in progress.
Processes around co-sponsor of Bills	Each proposal is lodged by a single MSP, and cannot be "passed on" to any other member; if the proposal is successful, it is only the member who lodged the proposal who can go on to introduce a Bill to give effect to it. However, once a Bill has been introduced, the MSP who introduced it can appoint another MSP as "member in charge". That additional member in charge has the same rights as the member who introduced it, and this provides an "insurance policy" to allow the Bill to be proceeded with in the event of the original MSP dying or resigning, or just being ill or unavailable on a particular occasion.
Whether procedures exist to allow other Members to indicate support for a Bill	The second step in the process requires the MSP to gain the support of at least 18 other MSPs (on a cross-party basis) for his/her final proposal – without this support, the MSP won't have the right to introduce a Bill. Separately, when a Bill is introduced, other MSPs can be named on the

	back of the published Bill as “supporters”, but in this context, this is purely symbolic and makes no difference procedurally speaking. In practice, MSPs signal their support for a proposal or a Bill in a range of ways, including by lodging supportive motions, or by speaking or voting in favour of the Bill during its passage through the Parliament.
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4 National Assembly for Wales

Opportunities for members to introduce legislation

As in the Scottish Parliament, Private Members’ Bills are referred to as ‘Members’ Bills’ in the National Assembly for Wales (NAfW). Any Member, other than a member of the Government, wishing to propose a bill must be included in a ballot conducted under the authority of the Presiding Officer. Standing Orders state that from time to time, the Presiding Officer must “hold a ballot to determine the name of a Member...who may seek agreement to introduce a Member(s) Bill”¹⁶.

In order to be eligible for the ballot, Members must table the pre-ballot information required in accordance with Standing Order 26.90, which is:

- The proposed title of the Bill; and
- An Explanatory Memorandum which must contain:
 - The policy objectives of the Bill; and
 - Details of any support received for the Bill, including details of any consultation carried out.

A Member who is successful in a ballot may table a motion (within 25 working days¹⁷ of the date of the ballot) seeking the Assembly’s agreement to introduce a Bill that will give effect to their pre-ballot information. Such a motion must be debated within 35 working days of the date of the ballot (not counting working days in a non-sitting week).

Any Assembly Member who is not a member of the Welsh Government¹⁸ may submit a proposal for a Bill into the Ballot. However, no member who has previously won the ballot in that Assembly may apply.

Standing Orders do not require a Member to have carried out consultation on their proposed Bill before entering a proposal in a ballot. However, it is recommended that Members consult with interested stakeholders, as they will be able to refer to information gained from such consultation in the ‘leave to proceed’ debate should their proposal be selected in a ballot.

¹⁶ National Assembly for Wales, Guide to the Members Bill Process, Edition 2 – May 2016

¹⁷ Certain exclusions apply such as bank holidays.

¹⁸ Standing Order 26.87 prohibits members of the Government from introducing Members’ Bills

If a motion on the introduction of the bill is agreed, the Member has nine months in which to introduce the Bill, otherwise the opportunity will pass. Once final versions of the Bill and Explanatory Memorandum have been drafted, Standing Orders set out additional criteria that must be met before the Bill can be formally introduced. In particular, a Bill and Explanatory Memorandum must be:

- Introduced in both English and Welsh; and
- Accompanied by a statement by the Presiding Officer setting out whether in their opinion, the Assembly has the power to make the Bill.

Administration of the process

The NAFW Guide to the Members Bill Process¹⁹ contains detailed information for Members wishing to introduce legislation. Below is a summary of the key points from the Guide in relation to the support that a Member can expect during the process:

- A specific Bill Team of Assembly Commission officials is only available to a Member after their proposal has received 'leave to proceed'. However, at any point general procedural advice can be sought from Policy and Legislation Committee Service or Chamber and Committee Service.
- If a Member receives the Agreement to introduce a Bill, they will have the option of being supported by a Bill Team, which may include:
 - The Clerk responsible for Scrutiny Support and Co-ordination;
 - Members of the Research Service, specialising in both the policy area of the proposed Bill and financial scrutiny; and
 - Member(s) of the Legal Service.
- In order for the Bill to accurately reflect the intentions of the Member, specific objectives will need to be given by the Member to the Bill Team's lawyer(s). The lawyer(s) will then be responsible for the drafting of the Bill, in accordance with the Member's instructions. For clarity: the Member is at all times responsible for the content of the Bill and will be asked to formally sign it off at each of the key milestones in the process.
- The Bill Team can work with the Member in Charge and their Support Staff to develop briefing to assist them in responding to questions. The style of the briefing can be adapted to the Member's preferences. The Bill Team can also help the Member to prepare for Committee (for example by holding a 'practice run').

¹⁹ National Assembly for Wales, *Guide to the Members Bill Process*, Edition 2 – May 2016

- A Committee will allow the Member in Charge to bring a number of advisers with them to a committee meeting, to assist them in responding to questions. A Member in Charge may invite members of the Bill Team to accompany them for this purpose. In such instances, members of the Bill Team will only be able to provide answers to factual questions raised by the Committee.
- The Member in Charge may be required to provide further information to the Committee at any time during their evidence taking. The Bill Team can work with the Member in Charge and their Support Staff to develop written papers and correspondence.
- The Bill Team can work with the Member in Charge to develop a speech for debate and assist the Member during Committee consideration of amendments at Stage 2.

Information received via direct correspondence

Figure 3: Information provided by the National Assembly for Wales on administering Private Member's Bills

The level of support in other jurisdictions/Level of resource (both financial and staff) that is provided/available	Bill team usually consists of Bill Manager, one researcher with expertise in that area and one financial researcher, two people from Legal Services – this is minimum level of staffing – might need more than one researcher.
Selection and prioritisation criteria	Ballot process – any Member can enter ballot (not Govt. or if previously successful) – Members can pursue any topic unless outside Assembly's competence. Preference is to keep number of ballots reasonably low ²⁰ prefer not to have two Members' Bills running at the same time – ideally there would be a 3-month gap between Members' Bills.
How any conflict is resolved if there are two submissions on the same subject	Two submissions on same subject: 13 proposals on same subject in last Assembly – Presiding Officer only allows one ballot at a time – could in theory allow multiple ballots.
Processes around co-sponsor of Bills	No process for allowing co-sponsorship.
Whether procedures exist to allow other Members to indicate support for a Bill	Could possibly indicate support in the Explanatory Note.

²⁰ In the 2011-16 mandate there were eight ballots. It appears that one Member was successful twice in the previous mandate. This is not possible under the current rules.

5 Dáil Éireann

Opportunities for members to introduce legislation

Standing Orders of Dáil Éireann set out the process for the passage of legislation:

- 147(2) Any member may move for leave to introduce a Bill. If such motion be opposed the Ceann Comhairle shall permit an explanatory statement not exceeding five minutes in length from the member who moves and from a member who opposes the motion before he or she puts the question thereon. If leave to introduce the Bill is given, an Order shall be made for its second reading and the Bill shall be printed.
- 147(3) A member of the Government, Minister of State or a private member nominated for the purpose under Standing Order 143(4) may present a Bill without previously obtaining leave of the House and any Bill so presented shall be printed and an Order for its second reading shall be made.
- 147(4) If a motion of a private member for leave to introduce a Bill be opposed the debate thereon shall be adjourned to the next day on which private members' business is to be taken.

Standing Order 143(4) (noted above) refers to Groups within the Dáil: "Each group shall have the right to nominate a private member of the group to present a Bill provided that there is not before the Dáil another Bill presented by a member nominated by the group"²¹.

Information received via direct correspondence

Figure 4: Information provided by Dáil Éireann on administering Private Member's Bills

<p>The level of support in other jurisdictions/Level of resource (both financial and staff) that is provided/available</p>	<p>In May 2010 the Committee on Procedures and Privileges agreed that the Houses needed assistance with drafting Private Members Bills and that it should be procured. A tender process resulted in the establishment of a panel on which there are two barristers available for drafting. The project is run by the Bills Office and the allocation is €45,000 annually ((€30,000 for TDs and €15,000 for Senators) with no single Bill to exceed €5,000 per member.</p> <p>During the 2011-2016 Dáil the uptake on this was fairly low. Prior to accessing the fund and approaching the drafters, Members are expected to be clear about the intention of the draft legislation as the drafters have no role in the development of policy.</p>
-----------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

²¹ Standing Orders of Dáil Éireann

	<p>The protocol is that Members produce a policy background/rationale paper and may request Library and Research assistance with this. Private Members' Bills' should be produced to an equivalent standard as Government Bills. In the report of the Sub-Committee on Dáil Reform (May 2016), which was adopted by the Dáil, it was agreed to continue with this framework (there is a contract in place until 2017) pending the development of the Office of the Parliamentary Legal Advisor which will over the course of this Dáil take on this drafting role for PMBs. How exactly this will operate has not yet been finalised.</p>
<p>Selection and prioritisation criteria</p>	<p>All Members have the right to propose a PMB. However, a Member must have the permission of the House (via a vote proposal that leave to introduce be given) to have the bill on the order paper printed and placed on the Order Paper.</p> <p>Parties or Groups (minimum 5 Members formally recognised under Standing Orders) do not need to 'seek leave' to introduce a PMB. However, only one PMB per Group can be on the order paper at any one time (this does not apply to government parties).</p> <p>There are three slots for Private Members' Business each week - 2 hours each on Tuesday, Wednesday and Thursday. (The Official's) understanding of the allocation of time is that the slots on Tuesday and Wednesday are allocated on a rota basis and based on strength in numbers and the slot on Thursday is for Private Members' Bills and is decided by lottery. This is managed by the Business Committee.</p>
<p>How any conflict is resolved if there are two submissions on the same subject</p>	<p>In the previous Dáil, there was a Standing Order which stated that a Bill could be ruled out-of-order on the basis that a similar Bill was already on the Order Paper. This Standing Order has not been re-introduced in this Dáil, so there is no impediment to having numerous Bills dealing with the same matter on the Order Paper.</p>
<p>Processes around co-sponsor of Bills</p>	<p>There is no difficulty with multiple members sponsoring a Bill. This is not an uncommon occurrence.</p>
<p>Whether procedures exist to allow other Members to indicate support for a Bill</p>	<p>The initiation of all Bills is decided upon by a question put to the House and Leave to Introduce can be opposed at this point. In the course of consideration of the Bill, it is open to members to express their support verbally or at a point where a formal decision is taken [e.g. "that the Bill be read a second time"].</p>