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Technical groups and opposition access to information

1 Introduction

This briefing paper has been prepared following a request from the Assembly and Executive Review Committee (AERC). The Committee asked for information on:

- technical/political groups in other applicable legislatures (e.g. the Dáil, the Scottish Parliament and the Senedd (Welsh Parliament), including potential sources of evidence for the next AERC in the new mandate to pursue; and
- on how the protocol contained in Chapter 5 of the UK Government's Cabinet Manual has been applied in practice and on any applicable arrangements in other comparator legislatures.

At a subsequent meeting the committee extended the request to include:

- establish whether/how the information supplied to the official Opposition, under the Cabinet Office Manual protocol and in any other comparator arrangements, extends to backbench members of the legislature.

2 Technical groups

The basis for AERC's consideration of the issue of technical groups is recommendation 11 in Trevor Reaney's report, which it had commissioned:

That consideration be given to facilitating the creation of political or technical groups which may have the potential to meet the criteria for recognition as part of the official opposition.¹

Dáil Eireann

The most well-established provision for technical groups in the UK and the Republic of Ireland is in Dáil Eireann. There must be five Members to form a Group; a party is automatically recognised as a 'Group' if it has at least five members. Groups are referred to as technical groups if they are made up of a combination of parties and/or independents. There is no limit on the number of technical groups which can be established.

Standing Orders 163 to 168 set out the composition of groups and technical groups:

Groups.

163. (1) A group is a body of members in Opposition who may avail of the rights provided for in these Standing Orders for groups.

(2) The minimum number of members required to be recognised as a group is five.

(3) Where members of a registered political party are elected to the Dáil, those elected members are referred to in these Standing Orders as a "party", and such a party is automatically recognised as a group where it has five members or more.

(4) A body of members which includes any combination of the following categories of members—

- (a) members of a party with five members or more,
- (b) members of a party with fewer than five members,
- (c) non-party members,

may also be recognised as a group, and shall be referred to as a technical group.

(5) A group may not include—

¹ Review of the Adequacy and Effectiveness of the Statement of Entitlements for an Official Opposition at the Northern Ireland Assembly, June 2021: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/aerc/independent-review-of-opposition-entitlements/trevor-reaney-report-on-an-official-opposition-at-the-northern-ireland-assembly.pdf>

- (i) a party which contains a Minister or Minister of State;
- (ii) a member who is a Minister or Minister of State;
- (iii) some of the members of a party but not the others.

(6) A member of a technical group may not also be a member of another technical group.

(7) There is no limit on the number of groups which may be recognised in a Dáil.

Recognition of groups: writing to the Ceann Comhairle.

165. (1) A party with five members or more is automatically recognised as a group, and need not write to the Ceann Comhairle for recognition.

(2) Members who seek to be recognised as a technical group shall send a request in writing to the Ceann Comhairle, signed by each of the members making the request.

Joining a group.

166. The addition of a member to a technical group is recognised where the coordinator of the technical group and the new member sign a notification in writing to the Ceann Comhairle to that effect.

Cessation of group status.

168. (1) A technical group shall cease to be recognised as a group where any and all of the remaining members of the group sign a notification in writing to the Ceann Comhairle to that effect.

There are currently three technical groups in the Dáil:

- Regional Group – nine members
- Rural Independent Group – six members
- Independent Group – six members

Each of the three technical groups has a representative on the Business Committee.²

Technical groups do not appear to be entitled to any additional financial benefit beyond the individual allowance paid to independent members (currently €37,037).³

Scottish Parliament

The Rules (Standing Orders) of the Scottish Parliament allow for the establishment of political groups. Rule 5.2.2 states:

Members who represent a political party with fewer than 5 representatives in the Parliament and members who do not represent a political party may join together to

²² Membership of the Business Committee at Dáil Eireann: <https://www.oireachtas.ie/en/committees/33/business-committee/membership/>

³ Parliamentary Activities Allowance, Dáil Eireann: <https://www.gov.ie/en/publication/762d55-parliamentary-activities-allowance/>

form a group for the purposes of nominating a group representative under paragraph 1(c). The number of members in any such group shall be at least 5.

Paragraph 1(c) refers to membership of the Parliamentary Bureau, the equivalent of the Assembly's Business Committee.

There are currently no such groups constituted under Rule 5.2.2, although they were established in sessions (mandates) two and four of the Parliament.

In November 2012 a group was formed composed of 5 Members of the Scottish Parliament - three Independents and two members of the Green Party. That group did not contain spokespersons who spoke on behalf of the whole group.⁴

There does not appear to be any additional financial benefit available to such groups within the Scottish Parliament.

Senedd – Welsh Parliament

Political groups are provided for under Standing Order 1.3 and 1.4, which state:

...a political group is:

(i) a group of at least three Members belonging to the same registered political party that won at least one seat at the previous Senedd election; or

(ii) three or more Members not satisfying the criteria in Standing Order 1.3(i), who have notified the Presiding Officer of their wish to be regarded as a political group, and satisfied the Presiding Officer that exceptional circumstances apply.

The Presiding Officer must issue guidance to Members under Standing Order 6.17 on the interpretation and application of Standing Order 1.3(ii).

The Presiding Officer must decide any question as to whether any Member belongs to a political group or as to which political group he or she belongs.⁵

Standing Order 11.3 applies to membership of the Business Committee:

As soon as possible after a Senedd election, the Minister with responsibility for government business must table a motion to appoint as members of the Committee, the Presiding Officer, one Member nominated by each political group represented in the Senedd and (if any three or more Members who are not members of a political group decide to form a grouping for the purposes of Standing Order 11) a Member nominated by each grouping of Members. No amendments may be tabled to a motion under Standing Order 11.3.⁶

⁴ Correspondence from Scottish Parliament official on 15 October 2015, obtained for a previous research paper.

⁵ Standing Orders of the Welsh Parliament: https://senedd.wales/media/hzlf2rf/clean_sos-eng.pdf

⁶ As above

The Determination on Members' Pay and Allowances for the Sixth Senedd⁷ defines a political party as:

*(i) a group of Members who belong to the same political party registered with the Electoral Commission, or (ii) a group recognised as a group under Standing Order 1.3(ii), Standing Orders of the Welsh Parliament, or (iii) an individual Member who has notified Members' Business Support that they are a member of a registered political party.*⁸

The Sixth Determination of the Independent Remuneration Board of the Senedd in March 2021 provided that:

any Political Party not represented in the Welsh Government, with three or more Members, will be entitled to a core administration allowance of £55,390.⁹

3 The Cabinet Manual and access to information for the opposition

The basis for this part of the Committee's information request was the final recommendation in Trevor Reaney's report in which he recommended:

*An official Opposition should have adequate access to information from Ministers and Departments. A more robust approach should be explored through the development of protocols, Standing Orders or legislation, or a combination of these.*¹⁰

The most obvious method for elected representatives to obtain information from Ministers and Departments is via parliamentary/assembly questions, a facility which is common across western parliamentary democracies.

The *Guidance for Ministers in the Exercise of their Official Responsibilities*, published by the Executive Committee in March 2020, sets out the obligations on Northern Ireland Ministers when dealing with provision of information to the Assembly. This supplements the requirement contained in the Ministerial Code, whereby Ministers must:

ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that departments

⁷ Determination on Members' Pay and Allowances for the Sixth Senedd (Number Two), March 2021: <https://senedd.wales/media/vtkvcpy/gen-ld14244-r-e.pdf>

⁸ As above

⁹ Determination on Members' Pay and Allowances for the Sixth Senedd (Number Two), March 2021

¹⁰ Review of the Adequacy and Effectiveness of the Statement of Entitlements for an Official Opposition at the Northern Ireland Assembly, June 2021

*and their staff conduct their dealings with the public in an open and responsible way.*¹¹

Mr. Reaney's report referenced the Cabinet Manual¹², Chapter five of which sets out the relationship between Parliament and the Executive, including the transparency and accountability requirements expected of Ministers towards Parliament. The report cited the following extracts from the Manual:

- Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant legislation, including the Freedom of Information Act 2000.
- Ministers should require civil servants who give evidence before Parliamentary committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code.

The Civil Service Code sets out the standards of behaviour expected of civil servants and states that: "You (the civil servant) must not deceive or knowingly mislead ministers, Parliament or others".¹³

The document *Giving evidence to departmental select committees – guidance for civil servants*, published by the Cabinet Office, states:

Officials appearing before Select Committees do so on behalf of Ministers and are therefore accountable to the Minister for the evidence they give. They are therefore responsible for ensuring that their Ministers are aware of the invitation and the evidence they intend to give...

*Should it be discovered subsequently that the evidence unwittingly contained factual errors, these should be made known to the Committee, usually via the Clerk, at the earliest opportunity. Where appropriate, a correcting footnote will appear in the published transcript of the evidence.*¹⁴

It goes on to say:

The Government is committed to being as open and as helpful as possible with Select Committees. The presumption is that requests for information from Select Committees will be agreed to. Where a department feels that it cannot

¹¹ Northern Ireland Ministerial Code:

<https://www.northernireland.gov.uk/sites/default/files/publications/nigov/Northern%20Ireland%20Ministerial%20Code.pdf>

¹² *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government:*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf

¹³ Civil Service Code: <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

¹⁴ Osmotherly Rules:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/364600/Osmotherly_Rules_October_2014.pdf

meet a Committee's request for information, it should make clear its reasons for doing so, if appropriate in terms similar to those in the Freedom of Information Act (without resorting to explicit reference to the Act itself or to section numbers). If the problem lies with disclosing information in open evidence sessions or in memoranda submitted for publication, departments will wish to consider whether the information requested could be provided on a confidential basis.¹⁵

The Cabinet Manual itself was published in 2011 and has not been updated since. It is not a constitutional document but rather is intended to be a guide to convention.¹⁶ In its review of the Manual in 2021, the House of Lords Select Committee on the Constitution highlighted that:

The Manual does not require ministers or officials to behave in a particular manner beyond what is already required by the Codes or by law. Accordingly, the Manual does not include enforcement mechanisms.¹⁷

The House of Lords Select Committee was silent on the provision of information to the opposition. The Manual itself addresses the matter in the context of a pre-election period:

At an appropriate time towards the end of any Parliament, as the next general election approaches, the Prime Minister writes to the leaders of the main opposition parties to authorise pre-election contacts with the Civil Service. The meetings take place on a confidential basis, without ministers being present or receiving a report of discussions. The Cabinet Secretary has overall responsibility for co-ordinating this process once a request has been made and authorised by the Prime Minister. These discussions are designed to allow the Opposition's shadow ministers to ask questions about departmental organisation and to inform civil servants of any organisational changes likely to take place in the event of a change of government. Senior civil servants may ask questions about the implications of opposition parties' policy statements, although they would not normally comment on or give advice about policies.¹⁸

A previous report by the Lords Select Committee on the Constitution, published in February 2014, set out two potential options in relation to coalition governments:

The first option is to allow ministers of any rank to commission confidential briefings from across a department's remit. At present such briefings may be

¹⁵ Osmotherly Rules

¹⁶ Institute for Government, The Cabinet Manual: <https://www.instituteforgovernment.org.uk/explainers/cabinet-manual>

¹⁷ House of Lords Select Committee on the Constitution 6th Report of Session 2021–22 HL Paper 34 Revision of the Cabinet Manual <https://committees.parliament.uk/publications/6598/documents/71481/default/>

¹⁸ The Cabinet Manual: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf

provided only with the permission of the secretary of state, who may see the briefing. When planning for an election, junior ministers may not want ministerial colleagues from another party to see this material. Therefore, if this option were chosen, a junior minister would be able to request factual information from beyond his or her area of responsibility without the secretary of state being privy to that briefing; equally the secretary of state could request briefing about that junior minister's area of policy without the junior minister seeing the information.

The alternative option is to treat all major parties on the same basis, with coalition ministers on the same footing as shadow ministers. This was the approach in Scotland in 2003 and 2007; it "allowed the coalition parties to engage with the civil service without concerns about propriety on either side". There may be practical implications, though, as it could constrain the capacity of ministers to receive briefings from their own officials. If briefings on matters beyond the next election are restricted to this common pre-election briefing process, would officials be able to brief ministers on long-term issues?¹⁹

The Committee recommended that:

...ministers should be able to commission confidential briefings from officials within their departments for the purpose of developing policy for the next Parliament without those briefings being disclosed to ministers from their coalition partners. Arrangements should be put in place in those departments where one party has no ministers to allow for briefing to that party. The Official Opposition should be granted pre-election contact with the civil service in the normal way. These arrangements should be added to the next edition of the Cabinet Manual.²⁰

A 2015 report from the House of Commons Political and Constitutional Reform Committee²¹ also addressed the issue of contact between the Government and opposition parties:

It is manifestly in the interests of good government for pre-election contacts between the Civil Service and Opposition parties to be authorised as a matter of course 12 months before each general election held in accordance with section 1 of the Fixed-term Parliaments Act 2011. We recommend that the Directory of Civil Service Guidance be amended to provide for a standard 12-month pre-election contact period, and that at its next revision the Cabinet Manual be amended accordingly. It should be noted that the Committee was commenting in the context of the Fixed Term Parliaments Act 2011. That Act

¹⁹ Select Committee on the Constitution 5th Report of Session 2013–14 Constitutional implications of coalition government, February 2014: <https://publications.parliament.uk/pa/ld201314/ldselect/ldconst/130/130.pdf>

²⁰ As above

²¹ House of Commons Political and Constitutional Reform Committee, *Revisiting the Cabinet Manual*, January 2015: <https://publications.parliament.uk/pa/cm201415/cmselect/cmpolcon/233/233.pdf>

is due to be repealed by the Dissolution and Calling of Parliament Bill, which is currently before Parliament.²²

The Institute for Government has highlighted the fact that:

Opposition MPs may seek information or demand answers to hold ministers to account through other forms of parliamentary questions, for instance written questions which are submitted and replied to in writing. When granted by the Speaker, urgent questions require a minister to give an immediate answer in the Commons. Business questions to the Leader of the House can be used to influence the agenda of the Commons but can also cover wider issues.

In recent years, while the government had no majority in the Commons, the opposition used a mechanism called a 'humble address', or motion for a return, to demand papers from the government. This motion had not been used since the 19th century until it had a resurgence and was tabled several times in 2017. Then shadow Brexit secretary Sir Keir Starmer tabled a humble address in June 2017 to make the government release papers on the impact of Brexit, which it had not done despite being obliged to.²³

Commenting on the opposition's relationship with the civil service, the Institute commented:

Shadow ministers and opposition MPs usually have little contact with the civil service. However, select committee requests to departments are supposed to be given priority, which means in practice that MPs chairing or working in select committees do sometimes communicate with some civil servants. MPs may also directly write to a department, official or minister to raise an issue from a constituent.

In the run up to an election, the opposition engages in 'access talks' with the civil service. It is an opportunity to discuss the policies it wants to enact if elected. The talks enable the civil service to understand the intent behind the opposition's manifesto pledges and give guidance on their feasibility. Access talks are also a way for the opposition to familiarise itself with the civil service, which has little contact with political parties that are not in government. Concerns and misconceptions, arising from lack of familiarity between the two groups, can be smoothed out. They happen at the prime minister's discretion and can also be granted to smaller parties at their request. The Scottish National Party and Liberal Democrats were granted them during the 2019 general election.²⁴

²² House of Commons Political and Constitutional Reform Committee, *Revisiting the Cabinet Manual*, February 2015: <https://publications.parliament.uk/pa/cm201415/cmselect/cmpolcon/233/233.pdf>

²³ Institute for Government, The Official Opposition: <https://www.instituteforgovernment.org.uk/explainers/official-opposition>

²⁴ [As above](#)

In a 2018 opinion piece for Civil Service World, Norman Strauss, a former advisor to former Prime Minister Margaret Thatcher, argued for the creation of a Department of the Opposition. He stated:

National interest demands that elected governments should be as well prepared and knowledgeable as possible. It follows that the most likely next government should have the same meritocratic advice available to it whilst forming manifesto policies and not just for their execution having gained a mandate...

The critical success factor, notably absent from conventional wisdom, is to spread and split the influence of civil service advice, by allowing meritocrats to work in parallel with opposition parties likely to form the next government, as well as with the government of the day. In this way advice and expertise may be diffused more widely across society; governance and governments would be progressively challenged or reformed; and the opposition become better prepared for office.²⁵

The House of Commons Library was asked for further information in relation to this query. The response noted that it was difficult to obtain directly relevant information but the most relevant extracts are reproduced below.

Information provided by the House of Commons Library

It is customary for the Minister to provide copies of their statements to their counterparts in the Opposition and the second largest parties in advance of making their statement.

The principle of ministerial accountability to Parliament is enshrined in resolutions of both Houses of Parliament of 1997:

That, in the opinion of this House, the following principles should govern the conduct of ministers of the Crown in relation to Parliament: ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and Next Steps Agencies; it is of paramount importance that ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister; ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute, and the government's Code of Practice on Access to Government

²⁵ Civil Service World, *Time to create a Department of the Opposition*, September 2018:
<https://www.civilserviceworld.com/news/article/opinion-time-to-create-a-department-of-the-opposition>

Information (second edition, January 1997); similarly, ministers should require civil servants who give evidence before parliamentary committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information, in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code.

The Ministerial Code also confirms that ministers must comply with this resolution:

Ministers must also comply at all times with the requirements which Parliament itself has laid down in relation to the accountability and responsibility of Ministers. For Ministers in the Commons, these are set by the Resolution carried on 19 March 1997 (Official Report columns 1046-47), the terms of which are repeated at b. to e. above. For Ministers in the Lords, the Resolution can be found in the Official Report of 20 March 1997 column 1057. Ministers must also comply with the Codes of Conduct for their respective Houses and also any requirements placed on them by the Independent Parliamentary Standards Authority.

Paragraphs (b) to (e) of para 1.2 stated:

b. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;

c. It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;

d. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with the relevant statutes and the Freedom of Information Act 2000;

e. Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;

Senior opposition MPs who are members of the Privy Council are occasionally briefed on matters of national interest etc on Privy Council terms. The Library Briefing Paper on the Privy Council states that:

Anyone joining the Privy Council is required to swear an oath or a solemn affirmation to “keep secret all matters...treated of in Council”. This allows the sharing of sensitive information relating to national security. However, according to the Privy Council Office, it is only in very special circumstances

nowadays that matters will come to a Privy Counsellor on “Privy Council terms”. These will mostly concern matters of the national interest where it is important for senior members of Opposition parties to have access to Government information.

A new Leader of the Opposition, if not already a member of the Privy Council, will therefore be made one. This is to enable him or her to be able to receive briefings on Privy Council terms.

New Zealand Cabinet Manual

New Zealand has had a Cabinet Manual since 1979. The research examined the Manual for references to relationships between Ministers and members of the New Zealand House of Representatives. There was limited information beyond the requirement to answer parliamentary questions and engagement with select committees.²⁶

²⁶ New Zealand Cabinet Manual: <https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual>