

Assembly and Executive Reform (Assembly Opposition) Bill

Research and Information Service Bill Paper

Response John McCallister MLA

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Clause 3 of the Bill places a similar timeframe on the formation of technical groups if it falls to one or more of these groups to form the Opposition. The Bill Paper cautioned that this could be overly restrictive and suggested that it may be beneficial to allow more flexibility in terms of the formation of such a group. Would the Sponsor agree with this view?

1. The Bill makes provision for a four-week period to negotiate a Programme for Government prior to the running of d'Hondt and the formation of a Government, and potentially an Opposition. Whilst I recognise that relevant parties may not take the full four weeks to agree a Programme for Government, I am content that if relevant parties can agree a Programme for Government prior to running d'Hondt, parties and independents, which either do not qualify for Government or have chosen not to join the Government, will have sufficient time to agree to form a technical group in this period. I further note that the Stormont House Agreement settled on a period of fourteen days to agree a Programme for Government prior to the running of d'Hondt and the formation of a Government.

In response to the issues raised in the Bill Paper on technical groups, the Committee sought more detail on the power of technical groups to admit or bar prospective members and clarify where, in legislation, this power will be set out?

2. It is my intention that the only bars to joining a technical group should be:
 - a. Membership of a political party which in the Northern Ireland Executive;
 - b. Reaching a threshold of 5% of MLAs with regards its membership; and
 - c. A member is not a member of another technical group

The policy intent of allowing technical groups has always been to enhance the ability of the non-government parties and individuals to hold the Executive to account. This is particularly pertinent in a situation where the overwhelming majority of the MLAs are in a political party in Government, which has been the situation in Northern Ireland until relatively recently.

Whilst I would not seek to place a bar on political parties joining together in a technical group, I suggest that political reality will dictate that a larger political party, which is in Opposition, is very unlikely to join a technical group, when alone, it will be afforded the benefits of being in Opposition, as outlined in the Bill. I would also draw the Committees attention to the fact that the threshold for creating a technical group in the European Parliament is 3.3% of members, in the Dáil it is 4.2% and the current membership of the existing technical group in the Scottish Parliament is 3.8% of total membership.

After consultation with the Bills Office I intend to inform the Committee of where in the Bill the amendment to detail this would be best placed.

In the drafting of the Bill was consideration given to how large a technical group might be and indeed in how many technical groups there may be? Could the Sponsor also clarify if legislation, and/or Standing Orders will the circumstances which would lead to the formation of more than one group?

3. As per above, I am content that the only bars on entering a technical group should be:
 - a. Membership of a political party which is in the Northern Ireland Executive;
 - b. Reaching a threshold of 5% of MLAs with regards its membership; and
 - c. A member is not a member of another technical group

There should be no upper limit to membership of technical groups.

Clause 19: The Committee noted that the Bill Paper found that budget committees are not common in legislatures in the UK and Ireland and that budget scrutiny is typically carried out by a range of committees, namely the Finance Committee. In light of this, can the Sponsor elaborate on what work and indeed added value, he would foresee the Budget Committee undertaking which is not currently provided by either the existing Finance Committee or the Public Finance Scrutiny Unit (PFSU) within the Research and Information Service Unit (RaISe)?

4. Clause 19, as drafted, does not adequately deliver my policy intent with regards to a Budget Committee, in that linking it directly to Section 64 of the Northern Ireland Act, in my opinion, significantly reduces its potential. Section 64 is quite narrowly related to the creation and scrutiny of the draft budget. It was my policy intention to create a Budget Committee, which would have a broader remit to focus on the following issues:
 - a. More co-ordinated and centralised process of Assembly scrutiny of the Budget;
 - b. To carry out a rolling review process of the delivery of Budget and PFG targets, with particular focus on public spending against outcomes;

- c. The examination of the financial memorandum of all pieces of legislation produced by the Executive and the Northern Ireland Assembly; and
 - d. To carryout reviews of the Executive's budget process and related financial issues such as devolving tax varying powers when appropriate.
- 5. In this regard I would envisage that the role of the current Finance and Personnel Committee would change, with it focusing primarily on the non-financial aspects of the remit of the Department for Finance and Personnel, for example, issues related to civil law the civil service and building regulations. The current workload of the Finance and Personnel Committee is, in my opinion, too burdensome to adequately scrutinize the Executive's Budget and ongoing spending programmes in a focused and strategic way. For example, the Legal Complaints and Regulations Bill, which is being scrutinised by the Committee for Finance and Personnel, is a significant piece of legislation, which has no link to the Budget or public spending in Northern Ireland.
- 6. Based on reports of the Committee for Finance and Personnel, there is general acceptance that the current budget process and scrutiny provided is inadequate, with the budget effectively driven through the Assembly by accelerated passage. If the power to vary Corporation Tax is devolved, the inadequacy of the current process and scrutiny will likely become more pronounced as the Executive would have to plan public spending based on tax returns from one of the most volatile taxes. The current deficit in financial scrutiny would also hinder the ability to analyse whether further tax varying powers should be devolved and to provide scrutiny to any future devolved powers - placing Northern Ireland at a disadvantage to other regions of the UK. I note that a proposed Memorandum of Understanding between the Committee for Finance and Personnel and the Minister for Finance and Personnel, with the specific purpose of improving information sharing and engagement on the budget, has yet to be signed. My proposals, I suggest, could become a catalyst for enhancing the process and improving the standard of information sharing and engagement between the Assembly and the Executive, due to the focused and dedicated work of a Budget Committee.
- 7. It is my intention to amend Clause 19 of the Bill to provide more detail and enhance the role of a Budget Committee. Whilst I would like to provide a robust legal framework outlining the purpose of the Budget Committee and

what it should do, I am content that there should be enough flexibility to allow Standing Orders to provide additional detail and ensure functionality. An additional Committee in the Northern Ireland Assembly is likely to create an additional cost, however, this should be set against the potential benefit of being able to significantly improve the scrutiny of public spending in Northern Ireland. Members should also consider that if the Executive, reduces the number of its Departments, this will result in a cost saving to the Northern Ireland Assembly as the number of Committees will reduce correspondingly, offsetting some of the additional costs of creating a dedicated Budget Committee, also reducing the additional burden on MLAs.

The Bill Paper queried how the convention of collective cabinet responsibility which Para 9 seeks to introduce into the Ministerial Code will fit with an Executive that is not formed by political bargaining, but through the automatic entitlement to seats if a certain electoral threshold is reached? A similar point was also raised by Professor McCrudden and Dr Alex Schwartz in their briefing to the on 3 November 2015 in which they stated that: "Collective ministerial responsibility and the inability of Departments to take legal action against one another would be awkward fits and perhaps dysfunctional, in the context of the power-sharing system that we have." Could the Sponsor respond to the concerns raised in the Bill Paper and in evidence from Professor McCrudden and Dr Schwartz?

8. As a means of background before addressing the issue raised directly, Northern Ireland is suffering from a governance crisis and a policy development deficit. The failure of Government Ministers to gain agreement on certain issues such as Higher Education funding and reforming the Health Service, is having an extremely negative impact on institutions, the public and Northern Ireland's ability to succeed economically and socially going forward. Similarly the ability of Government Ministers to act discordantly further exasperates this situation. Whilst not the only driver of this dysfunction, a significant contributing factor is the ability of political parties and Ministers in Government to openly disagree with each other and act in a disparate manner in relation to Government policies. This has resulted in power not being actively shared, with a view to delivering for the people of Northern Ireland, but rather shared out. The evidence provided to the Committee by Dr Eoin O'Malley 3 November was illustrative of this point.
9. Professor McCrudden and Dr Schwartz, I believe, have largely ignored this reality when they make an argument for seeking to maintain stability and reduce the potential for future dysfunctionality. The Northern Ireland Executive currently exists within a context of perpetual instability and dysfunction which has resulted in a crisis of governance. This has been the main driver for seeking the introduction of Collective Responsibility.

10. The desire to move to a system that maintains access to the Executive via d'Hondt – therefore securing power sharing – whilst introducing Collective Responsibility and Government as a single legal entity, is an attempt to address the two issues of historical division and a governance crisis simultaneously.
11. Taking into consideration current demographics in Northern Ireland, unless there is a seismic shift in voter preferences, it is difficult to envisage a scenario, for the foreseeable future, where power would not be shared between 'unionists' and 'nationalists'.
12. In recognition of some of the complications in this approach I have proposed a package of change.
13. By focusing the running of d'Hondt on the creation of a Programme for Government, the Executive parties will be able to focus their consensus on a robust document, which, if negotiated appropriately, should help create cohesion amongst Executive parties over the mandate. It is for this reason that I have suggested a four-week period to ensure the Programme for Government is as robust as possible. Creating a cohesive Programme for Government also has the potential of reducing some of the tension in relation to which political party attains which Ministry during the running of d'Hondt. The Executive parties should be delivering upon, and sticking to, the policies set out in the Programme for Government.
14. I note that the paragraph 61 of the Stormont House Agreement states:

"61. After the Assembly meets following an election and before the FM/DFM are selected and the d'Hondt process runs, representatives of the parties who are entitled to take up places in the Executive and who confirm their intention to do so will meet to resolve the draft Programme for Government. Changes to Westminster legislation (as soon as time permits) could extend the time available from seven days to fourteen days. The draft Programme would, once the Executive was formed be passed to the Assembly for approval."
15. Paragraph 61 demonstrates that the principle of agreeing a Programme of Government before the running of d'Hondt has been conceded by the

political establishment in Northern Ireland. My contention is that the next logical step is to instill Collective Responsibility to ensure that the collective agreement is implemented over the course of a mandate.

16. Placing a threshold for gaining automatic entry into Government increases the potential for a smaller number of parties being in Government in Northern Ireland. I suggest that the ability to gain agreement on a robust Programme for Government, and to maintain Collective Responsibility, will be greatly enhanced by the Executive consisting of two/three parties instead of five. The role of the First and deputy First Ministers should take on a much more coordinating and policy driver role than is currently the case. I believe that this is the intention of the current First and deputy First Minister in relation to their proposals on reforming the Executive.
17. The nature of our Programme for Governments may also need to change from an extremely detailed technical document, driven largely by the civil service, to a more headline agreements document, which is based much more on negotiation around the policy priorities of each party in the Executive, therefore instilling a greater sense of collective ownership.
18. By providing an Opposition, which has the potential to develop a space for an alternative Government to emerge, there is also a means for greater policy development and for parties to work together on alternative Programme for Governments, which has the potential to drive greater cohesion when and if those parties ever enter Government.
19. The conclusion that I draw from seeking to maintain the status quo is that the Northern Ireland Assembly and Executive are to be viewed primarily as an extension of the peace process, i.e. a space to exclusively contain conflicting identities and ideas about the future constitutional makeup of Northern Ireland, and not a Government with a view to governing in the interests of the people of Northern Ireland. This approach, however, is resulting in extremely negative approval ratings for the Northern Ireland Assembly and falling voter turnout.
20. What we should be seeking in Northern Ireland is a solution that addresses our existing problems. Our two major problems are historical divisions and poor governance. In this regard the proposals in my Bill are born out of pragmatism and not any sense of ideological preference for a different system of Government. All coalition Governments struggle with Collective Responsibility, however, other coalition Governments appear to recognise

that without it Governments are significantly impaired in their ability to deliver for the public.

In respect of paragraph 13 of the Schedule relating to the Programme for Government, the Bill Paper notes that “the Schedule is silent on what consequences, if any, would follow from a failure to agree a programme for government and budget outlines”. Can the Sponsor elaborate further on this?

21. As noted above, the provision in the Bill to allow four weeks between an election and the running of d’Hondt is designed to enhance the likelihood of meaningful agreement. I note that this period is twice as long as the provisions in the Stormont House Agreement, which is also silent on what consequences, if any, would follow from a failure to agree a Programme for Government and budget outlines. Politics in Northern Ireland currently suffers from a lack of consequences with regards to failure to gain agreement, poor governance and maintaining fiscal responsibility. In most other jurisdictions if a coalition Government cannot be formed and there are no other options, the next step is to have another election. I think this would be the appropriate response to such a situation, as another election is preferable to five years of ineffective and divided Government. However, I suggest that the potential consequence of an election - and the associated costs - may be the catalyst required to deliver agreement on a Programme for Government within the four week period.

In respect of Paragraph 12 of the Schedule ‘Leaving the Opposition and re-joining the Executive’, the Bill Paper expresses concern that this appears to allow for the potential scenario that at any time, a qualifying party that originally decided not to take it Ministerial seat or seats could request its entitlement, which could then have implications for the stability of the Executive. Can the Sponsor explain whether the Bill as drafted allows for this possibility to arise or indeed if it provides safeguards against such a possibility emerging in the future?

22. The policy intent behind Paragraph 12 of the Schedule was that I want to ensure stability by preventing opting back into the Executive within an Assembly term. However, I do not want to rule out the circumstances in which the Executive may wish to bring a party into Government through negotiation, in which case the whole d’Hondt process should not be run again. I acknowledge that the wording of Paragraph 12 of the Schedule does not amply clarify this position and may lead to some confusion with regards the Bills intention. I am satisfied that there is nothing in the Bill which

currently precludes the scenario I have outlined so I am content to seek the removal of Paragraph 12 from the Schedule at Consideration Stage.