



Northern Ireland  
Assembly

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Local Government (Disqualification)  
(Amendment) Bill**

3 June 2010

**NORTHERN IRELAND ASSEMBLY**

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**Members present for all or part of the proceedings:**

Ms Cathal Boylan (Chairperson)

Mr Roy Beggs

Mr John Dallat

Mr Danny Kinahan

Mr Ian McCrea

Mr Alastair Ross

Mr Peter Weir

Mr Brian Wilson

**The Chairperson (Mr Boylan):**

We shall now formally consider the clauses of the Local Government (Disqualification) (Amendment) Bill. We shall go through the Bill's three clauses and the long title in sequence to ascertain the Committee's position on each.

**Mr Weir:**

I declare an interest as a member of North Down Borough Council.

**Mr B Wilson:**

I also declare an interest as a member of North Down Borough Council.

**Mr I McCrea:**

I am a member of Cookstown District Council.

**Mr Beggs:**

I am a member of Carrickfergus Borough Council.

**Mr Weir:**

The memorandum and the proposed amendments to the Bill that we received from Dawn were quite helpful. However, they perhaps did not cover all the issues, and they also highlighted ones that need to be covered. I was giving the matter a bit of consideration — it may be helpful if I come back to the Committee with a formally worded amendment next week — and two problems appear not to have been resolved entirely by Dawn’s proposed amendment to clause 1. I think that it was Roy who said last week that if an individual were elected to be a councillor, only to be disqualified immediately, how could that individual be deemed to have been elected in the first place. That raises the issue of creating a vacant seat. Dawn’s suggested that the wording of existing legislation meant that an individual essentially takes office on the fourth day after an election. That would suggest that if it were solely a local government election taking place, the next day and possibly the day after would be covered. Most councils do their counts in one day, but some councils stretch to two days, particularly Belfast City Council and some of the other bigger councils.

Dawn suggested was that that would create a gap between being elected and assuming office. The problem with that is that the timing does not work if the local government election is coupled with another election, as happened in 2005 and is likely to happen in 2011. In 2005, local government elections took place at the same time as elections to Westminster. The elections were on a Thursday, the count for Westminster took place on Friday, the local government count was on the Monday, and, in some cases, it ran into Tuesday. Monday was the fourth day and Tuesday was the fifth, so there was no gap. Therefore, the proposed amendment from “being elected a councillor” to “being a councillor” does not address the problem.

A second issue that Dawn’s response did not entirely address is that the timetable to deal with immediate disqualification stretches to between a month and six weeks.

**Mr Kinahan:**

In my case, it was three weeks.

**Mr Weir:**

Yes, but that was because you were a serving councillor. However, disqualification can take a shorter time. According to existing legislation, the relevant council's chief executive must be notified first that the disqualification timetable will kick in. The chief executive has seven days to notify the Electoral Office, and the nominating officer then has 28 days to disqualify the individual.

Most councils hold their annual general meeting (AGM) one month after an election, so there is a real possibility that, if councillors were to be disqualified immediately on election, a gap would be created that would not be filled by the time that the AGM took place.

As I said, I will come back to the Committee with a formally worded amendment. I reiterate that I am sceptical about the Bill, but if it is to work properly, a way around the problems may be to introduce a commencement provision so that disqualification kicks in two months to the day after the election and runs to the end of the council term. The period of disqualification would then be repeated for each council term. First, that would remove the issue that Roy raised about the technicality that is the fourth or fifth day. Secondly, it would mean that no party would have a vacancy at the time of the AGM. Those changes would still achieve the spirit of the Bill, which is to prevent an MLA from holding two positions. I may need to tidy the wording up, but that appears to be a practical solution to the problem.

**Mr Beggs:**

If I have understood Dawn's proposed amendment correctly, she is trying to distinguish between the concept of being declared elected and that of becoming a council member, which happens after the fourth day. The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010, which allows for the filling of casual vacancies, does not refer to someone's being declared elected but to "members". That proposed method might not work because one would have to be a council member — that is, after the fourth day — to qualify to fill a casual vacancy.

**The Committee Clerk:**

New procedure has come into place on filling casual vacancies. Details of that are in the

members' files.

**Mr Beggs:**

I am referring to the legislation, rather than the guidance notes. New section 11E(1)(a) of the Electoral Law Act (Northern Ireland) 1962, as amended by article 3 of the 2010 Order, states that the legislation applies if:

“a casual vacancy arises in the seat of a member of a district council”.

My understanding of Dawn's suggestion was that she was trying to distinguish between being elected and becoming a member. My understanding is that the casual vacancy would apply only to those who took up the post. Her proposed amendment may not deal with that. The choice would then be between dealing with the issue in the manner in which Peter suggested and having another mechanism kick in before the election so that people do not get elected who cannot be replaced.

**Mr Weir:**

To be fair to Dawn, one of the few points on which I agree with her is that she said the purpose of the legislation was not to prevent councillors from running for the Assembly. As you said, there are two ways of dealing with the situation. The mechanism could either kick in after the election or a councillor could be prevented from being a candidate. Technically, the second method could be adopted, but the problem with it is that it would make it difficult for a councillor to switch and move up to become an MLA.

For example, under such a system, especially if an Assembly election and council elections were held at the same time, someone who is running for a reasonably marginal seat would have to not run for the council, plumping instead for the Assembly. A councillor would do that if he or she were 100% confident of winning the Assembly seat, which would mean putting all his or her eggs in the same basket. That is grand for candidates who are pretty confident of being elected to the Assembly, but it creates a difficulty for those who are standing in marginal seats. The general principle is that councillors and Assembly Members should have one mandate but that there should be flexibility for people to be able to move between the two positions. However, the weakness is that that option would create a barrier to councillors being candidates and moving up to the Assembly.

**The Chairperson:**

In the light of Mr Weir's comments, I propose that we go away and think about the amendment. We will have to talk to the Bill Office about a formulation of words based on what has been suggested. We will revisit the Bill during our clause-by-clause scrutiny at next week's meeting, if that is agreeable to the Committee.