



Northern Ireland  
Assembly

## Appendix D – Responses to Questionnaire

## Andrew Muir MLA

### Scrutiny of subordinate legislation

- What works well and should be encouraged in how we currently scrutinise subordinate legislation?  
Thinking in terms of effectiveness and efficiency of how we currently do things.

Officials attending at Committee and opportunity for Questions

- What could/should be done differently to deliver improved, more effective, scrutiny?  
What are the quick wins, and what are the longer-term or 'ideal world' goals?

Briefing paper which is concise

Opportunity for one to one briefings with officials including Researchers

More information and advance notice before legislation tabled at Assembly Plenary. Sometimes get very short notice and no papers never mind an explanatory briefing.

- Any other comments...

### Pre-legislative Scrutiny

- Pre-legislative scrutiny is undertaken in some other legislatures but is limited in the Assembly. What do you see as appropriate pre-legislative scrutiny? Should it happen and what might it look like for committees?

This would be useful especially if opportunity for both informal and formal engagement

- Any other comments...

## Committee involvement throughout the passage of legislation

- To what extent does the current approach of referral to a committee for committee stage work or should committees be involved more at other stages? Thinking in terms of whether there is potentially a meaningful role for committees at amending stages, or even at introduction?

Informal workshop with officials would be useful off camera with researchers able to attend

Opportunity for one to one briefings including Researchers

Formal Question and Answers session also

Focus needs to be kept on overall Objectives and Aims of legislation

- How might scrutiny throughout the Stages be improved? Thinking in terms of both process and resources.

Context of Amendments needs detailed, rather than just the formal legal wording of the amendments. Need to explain why amendment being proposed and impact.

- Any other comments...

## Post-Legislative scrutiny

- Given the limited degree of post-legislative scrutiny currently undertaken, how might post-legislative scrutiny be improved and how would the degree to which the legislation delivered its policy objectives be measured and assessed; and what could be done to address any shortcomings of the legislation?

High level strategic review one year following commencement should be standard

- Thinking in terms of the added work for committee members and staff, would the additional resource implications be justified in terms of value added?

Additional resources yes but only if real interaction with members, researchers and tangible outputs

- Any other comments...

Assembly Officials should have a role in Independent briefings beyond just Departmental personnel

## Kellie Armstrong MLA, Alliance Party Chief Whip

### Scrutiny of subordinate legislation

- What works well and should be encouraged in how we currently scrutinise subordinate legislation?  
Thinking in terms of effectiveness and efficiency of how we currently do things.

- What could/should be done differently to deliver improved, more effective, scrutiny?  
What are the quick wins, and what are the longer-term or 'ideal world' goals?

More training needs to be provided to the MLA's on subordinate legislation and access to legal advice for committees.

Committee Packs should include a link to the original legislation.

Not enough time is allocated to subordinate legislation compared to draft legislation this makes it too easy for things to slip through.

So more time to scrutinise, more access to a legal briefing, maybe even extra committee meetings.

There also needs to be a standardised approach across all committees.

- Any other comments...

In Scotland they have a separate committee which looks at statutory instruments and then reports back to the lead committee and Parliament, this could be something to explore.

### Pre-legislative Scrutiny

- Pre-legislative scrutiny is undertaken in some other legislatures but is limited in the Assembly. What do you see as appropriate pre-legislative scrutiny? Should it happen and what might it look like for committees?

This is a difficult area as if we went to more pre-legislative scrutiny it could hold things up. The Assembly is not the quickest at getting legislation done. However but it could make for better legislation.

- Any other comments...

Pre legislative scrutiny for legislation that is cross departmental could work better.

There is concern the Assembly doesn't have the capacity or resources to do pre legislative scrutiny properly

## Committee involvement throughout the passage of legislation

- To what extent does the current approach of referral to a committee for committee stage work or should committees be involved more at other stages? Thinking in terms of whether there is potentially a meaningful role for committees at amending stages, or even at introduction?

Committees do not need to be involved in other stages of the Bill other than committee stage.

Committees should be kept abreast of what stage a bill it is at and if they see something they think is going to cause issues at committee stage could call Department officials and the Minister ahead of committee stage.

- How might scrutiny throughout the Stages be improved? Thinking in terms of both process and resources.

If a Minister / Department want to get certain aspects through, they need to work with the committee on that.

It would help if Legal and Assembly Researchers were available a lot earlier.

Added resources could be that legal and researchers were available for individual MLAs to ask questions and to be briefed.

More of the scrutiny to be done in public not private sessions to show constituents and stakeholders who is actually engaging with the process.

- Any other comments...

All papers relating to the passage of a bill need to be published and available to all MLAs.

Indeed all Committee papers should be published on the day the Committee meeting takes place.

## Post-Legislative scrutiny

- Given the limited degree of post-legislative scrutiny currently undertaken, how might post-legislative scrutiny be improved and how would the degree to which the legislation delivered its policy objectives be measured and assessed; and what could be done to address any shortcomings of the legislation?

This is more important than pre-legislative scrutiny.

There are Acts that parts have never been enacted e.g. Steven Agnews PMB and the Shared Education Act where schools should be open to the community after school hours.

Proposers of Bills want someone to scrutinise the resulting Act to make sure that the Department is meeting its policy objective and actually implementing the strategy and action plans.

A committee could then call the department officials and the Minister to answer why things haven't been done. Would this be a standalone committee meeting or one meeting a month to look at legislation passed in either in the last or current Mandate.

- Thinking in terms of the added work for committee members and staff, would the additional resource implications be justified in terms of value added?

The added resources would match the added value.

This exercise would actually make MLA's and staff think differently about legislation and actually might make better legislation as an outcome.

Sometimes it can seem a bit abstract if the Bill you are passing isn't really going to affect your everyday life or you don't think it will but by doing post legislative scrutiny it changes that.

- Any other comments...

To reiterate, in order to improve scrutiny, all bill papers, including Committee papers, should be available to all MLAs and publicly published to enable review of the original intention and any amendments. This would improve post legislative scrutiny.

## Steven Gordon on Behalf of David Hilditch MLA

### Scrutiny of subordinate legislation

- What works well and should be encouraged in how we currently scrutinise subordinate legislation?  
Thinking in terms of effectiveness and efficiency of how we currently do things.

Often zero minutes are assigned to SR and SL1 agenda items, this discourages scrutiny and perpetuates the impression that they aren't important compared to other items.

- What could/should be done differently to deliver improved, more effective, scrutiny?  
What are the quick wins, and what are the longer-term or 'ideal world' goals?

Quick wins – encourage chairs to assign a meaningful amount of time to subordinate legislation

Longer term – departmental staff provide oral briefings, almost like pitches, for any subordinate legislation on the agenda

Getting a pair of independent eyes to look over subordinate legislation proposals at committee sittings.

- Any other comments...

Nope.

### Pre-legislative Scrutiny

- Pre-legislative scrutiny is undertaken in some other legislatures but is limited in the Assembly. What do you see as appropriate pre-legislative scrutiny? Should it happen and what might it look like for committees?

Like to see:

Committee questioning of departmental officials (or private members for PMBs) as regards the need for the legislation, lessons taken from other jurisdictions or past interventions, and the perceived benefits/costs of the legislation.



- Any other comments...

Committees must regularly have the responsibility of their committee positions impressed upon them. They aren't just there to ask the odd question of invited guests, they're there to ensure the output of their meetings and departmental work is something they are happy to put their name to.

"With great power..."

## Committee involvement throughout the passage of legislation

- To what extent does the current approach of referral to a committee for committee stage work or should committees be involved more at other stages? Thinking in terms of whether there is potentially a meaningful role for committees at amending stages, or even at introduction?

Committees could have a role to weed out non-starters at introduction, they could also offer tweaks to make the legislation more effective from the outset. Industry shows that the earlier corrective action is taken the more cost effective it is, in Stormont terms we could consider that the earlier corrective actions are taken the less time is wasted.

- How might scrutiny throughout the Stages be improved? Thinking in terms of both process and resources.

Perhaps introducing a standard scoring rubric on cost, problem solving, time to implementation, and ease of compliance could be introduced for committees to have a standard benchmarking process for legislation.

- Any other comments...

Nope.

## Post-Legislative scrutiny

- Given the limited degree of post-legislative scrutiny currently undertaken, how might post-legislative scrutiny be improved and how would the degree to which the legislation delivered its policy objectives be measured and assessed; and what could be done to address any shortcomings of the legislation?

Introducing mandatory one-year reviews of legislation post-implementation (although sooner reviews may be merited in some cases) for which evidence is sought from the relevant department, the public, public services, industry etc on the impact the bill has had. To this end measures of success should be agreed at the drafting stage of the legislation, along with projected costs and resource requirements for implementation. This would then enable comparison with actuals at the one year review.

Ministers could then be charged with a statutory requirement to present a corrective plan (with measures of success, costs, and timescales) for approval by the committee and implantation – subject to the a one year (or sooner) review for its efficacy.

- Thinking in terms of the added work for committee members and staff, would the additional resource implications be justified in terms of value added?

Yes, the committee is there to scrutinise and lead to better legislation and implementation. Increasing the proportion of legislation that we 'get right first time' would ultimately reduce wasted time and resource of ad hoc fixes and corrections after the fact.

Again, in industry early intervention and investing the effort up front is almost always preferable in terms of cost, time, and resource consumption.

- Any other comments...

Thanks for allowing us to air our thoughts.

## Ernest Purvis, Researcher, Rachel Woods MLA

### Scrutiny of subordinate legislation

- What works well and should be encouraged in how we currently scrutinise subordinate legislation?  
Thinking in terms of effectiveness and efficiency of how we currently do things.

The current approach is efficient but not necessarily as effective as it could be with regard to scrutiny. In terms of what works well, the process is clear; from the receipt of an SL1, right through to the relevant approval procedure. Committee members know what to expect at each stage of the scrutiny of subordinate legislation. The report from the Examiner of Statutory Rules provides crucial evidence and analysis. Generally speaking, the procedure adopted to approve specific subordinate legislation matches how significant or wide-ranging its implications will be.

- What could/should be done differently to deliver improved, more effective, scrutiny?  
What are the quick wins, and what are the longer-term or 'ideal world' goals?

**Increase transparency and accessibility.** With regard to quick wins, the Assembly should consider how it makes information about subordinate legislation available and accessible to the public. For example, Members are not notified when a Statutory Rule is laid; and they are not provided with a clear, authoritative explanation of the purpose and meaning of legislative provisions. This information is reserved for Members of the relevant Statutory Committee, often buried in correspondence with the Department. As a researcher, it is a time-consuming and onerous task to constantly review the various Committee Agenda items and search for Explanatory Memoranda online when subordinate legislation comes up. All Members of the Assembly, and their staff, should be provided with an easily digestible and accessible repository of subordinate legislation; which also provides regular updates, reviews and communications. This could be achieved through a weekly email, in the style of a blog post or newsletter; and a dedicated space on the Assembly website where information related to subordinate legislation can be easily accessed.

**Set out formal steps for all Committees to follow, before and after the SR is laid.** Before a Statutory Rule is laid, a Committee will consider the proposals and communicate its views with the Department. How it proceeds with consideration is a matter for the Committee to decide. Similarly, after the SR has been laid, it is up to the Committee to decide how it will scrutinise it. In terms of longer-term or 'ideal world' goals, the Assembly should implement a formal set of instructions for all Committees to follow at each stage. This would aid scrutiny by ensuring that all legislation is assessed and analysed by the same standard, and not according to the particular strengths and weaknesses of a Committee. This could be achieved by developing a protocol of legislative standards, where all subordinate legislation is critically appraised against a set of criteria or principles. All Committees would follow the same basic approach to conducting this work and make their findings available to both the Assembly and the public. There would be nothing to prevent a particular Committee going above and beyond the steps in the protocol if it wished to strive for a more detailed and comprehensive level of scrutiny pre or post the subordinate legislation being laid.

- Any other comments...

**Committees cannot amend subordinate legislation.** There are pros and cons to giving them such powers, but the Assembly should consider how to improve the process so that government officials are not tempted to simply view the Committee as just another consultee and legislative scrutiny as just another box to be ticked along the way to delivering policy outcomes. In my view, this could partly be achieved through greater Pre-legislative Scrutiny (see below) if it was deemed to complex and unwieldy to grant Members to powers to amend subordinate legislation. Perhaps a formalised procedure, prior to the Statutory Rule being laid, where the Department has a responsibility to consider the Committee's views would suffice.

**Other recommendations to consider.** The CLG should note some pertinent suggestions from the Reform UK think-tank with regard to the scrutiny of Secondary Legislation (from a Westminster perspective): that committees should be given the power to call hearings and propose amendments on

statutory instruments laid before the House; that committees should be able to refer legislative scrutiny to a subcommittee of itself to be chaired by the committee's deputy chair; and that Joint legislative subcommittees should be established where needed to scrutinise cross-departmental legislation.

## Pre-legislative Scrutiny

- Pre-legislative scrutiny is undertaken in some other legislatures but is limited in the Assembly. What do you see as appropriate pre-legislative scrutiny? Should it happen and what might it look like for committees?

As noted by the Law Commission, there are many benefits to Pre-legislative Scrutiny: it provides an opportunity for those in Opposition to have a real input into the form of the actual legislation that emerges because Ministers are likely to be more receptive to suggestions for change before a Bill is published; it opens up the legislative process to those outside the institution, especially those affected by the proposed law; and it should, in theory, benefit the Executive by resulting in less time being required at later stages of the legislative process, with better legislation and less likelihood of amendments (see: [http://www.lawcom.gov.uk/app/uploads/2015/03/cp178\\_Post-legislative\\_Scrutiny.pdf](http://www.lawcom.gov.uk/app/uploads/2015/03/cp178_Post-legislative_Scrutiny.pdf)).

In my view, it is imperative that the Assembly improves Pre-legislative Scrutiny. Especially if, as argued by the Hansard Society report 'Making Better Law', the recent trend of governments to increase the volume of legislation before parliaments is driven by the view that it is increasingly perceived as "a sign of action and therefore...a powerful public relations measure and communications tool; a heavy legislative programme suggests a breathless pace of reform, energy and endeavour" (see: <https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>). In the current Assembly Mandate, I would point to the example of the Minister of Justice, who has (at the time of writing) introduced four pieces of primary legislation and intends to bring forward a fifth. As of March 2021, three of these Bills are being scrutinised by the Justice Committee, which has put significant pressure on staff workloads. Time pressures affect the quality of legislative scrutiny.

The House of Lords, in its report on Parliament and the Legislative Process have noted that if a Bill is only published upon introduction, so much political capital is invested in the bill that officials and Ministers "often consider it their task to defend their legislation, as drafted, regardless of the merits of arguments for improvement" (see: <https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>). Again, here I would point to the example of the Justice Minister, and her rejection of amendments tabled by Rachel Woods MLA at the Consideration Stage and Further Consideration Stage of the Domestic Abuse and Civil Proceedings Act.

Put simply, to continue with this trend of more and more Bills, with less time for scrutiny, and a strong reluctance to accept amendments and changes is not only unsustainable, but it will lead to less optimal legislative outcomes.

At its most basic level, Pre-legislative Scrutiny would mean the publication of Bills in draft form, followed by a comprehensive consultation exercise. The relevant Committee could assist with this process by conducting a pre-legislative inquiry of the Bill and the issues to which it pertains. Essentially, a similar but more in-depth exploration of the legislative proposals to that which normally happens at committee stage. Similar in the sense that this would involve a call for evidence, witnesses, presentations, deliberations, and a report with recommendations and so on; but more in-depth and far-reaching in terms of covering tangential topics and not limiting inquiry and scrutiny by the proposed scope of the Bill. The Assembly should compel Ministers and Departments to publish Bills in draft form and fulfil a comprehensive pre-legislative process where appropriate. I accept that this will not be needed for a lot, possibly even the majority, of legislation; but it will significantly improve scrutiny of large, complex Bills.

- Any other comments...

The Modernisation Committee of the UK Parliament recommended pre-legislative scrutiny by committees in 1997, but analysis of government bills in Westminster demonstrates the reluctance of departments to publish bills in draft (see:

<https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>).

The House of Lords notes that “many committees and groups over the years have recommended an increase in the amount of pre-legislative scrutiny, but such recommendations have had little effect in overcoming Government resistance.” They accept that it would be unfeasible to publish all bills in draft, but argue that it should be the norm, rather than the exception, for many of the reasons already discussed. The suggested exceptions include emergency legislation, Finance Bills, and technical legislation. For others, especially those that embody important policy changes, if the government does not publish the Bill in draft, then it should formally explain and justify its approach to the House.

Above all, pre-legislative scrutiny aims to dilute some of the politics of law-making and legislative procedure in return for better legislation. It will take political will and a leap of faith from government departments to make it work effectively.

## Committee involvement throughout the passage of legislation

- To what extent does the current approach of referral to a committee for committee stage work or should committees be involved more at other stages? Thinking in terms of whether there is potentially a meaningful role for committees at amending stages, or even at introduction?

In my view, the Justice Committee’s scrutiny of the Domestic Abuse and Civil Proceedings Act at committee stage is an exemplar of how a Committee should approach this stage of a Bill. The experience of the Clerk and the Chair is noteworthy in this regard. The work of the Committee staff and the commitment of Members should also be highlighted. As a researcher for a new MLA, and a new member of the Committee, I was surprised that no specialist training or induction to legislative scrutiny was provided. The Assembly should address this urgently. Nevertheless, the time and effort that myself and the Member invested in committee stage of the Bill resulted in significant and important changes to the legislation. I feel that the Committee’s role at Consideration Stage was appropriately respected and relevant, and I do not see any clear changes required in that regard.

However, there may be an important function for Committees (or a Committee) to fulfil at introduction. In my view, the Assembly should consider how to improve legislative standards; and in order to make its own scrutiny of legislation more effective, the Assembly should be more assertive in ensuring that Bills meet minimum standards. As noted elsewhere there is already a degree of consensus on what such standards could be, such as the “principles of good legislation” published by the Better Government Initiative (see: <https://www.bettergovernmentinitiative.co.uk/wp-content/uploads/2013/06/Good-government-17-October.pdf>).

The House of Lords has recommended the UK Parliament create a “Legislative Standards” Committee, to assess all Government legislation against agreed criteria, and to make its findings available to both Parliament and the public (see:

<https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>). In their view, the Committee’s role would not be to consider the underlying policies or the drafting, but rather to ensure the Bill’s technical and procedural compliance with agreed standards of best practice in bill preparation. They suggest that this could be achieved simply through developing a legislative standards form, which departments would be required to complete and present at the same time as publishing a bill. As noted, “much of the required information is already available, but across a range of places and formats. The form would bring the key information together in one place, forming a reference point - in essence, a “business case” - for the proposed legislation.”

In my view, this kind of scrutiny could be achieved without the creation of a new Committee; and it should apply to all Bills, both from the Executive and Private Members. Essentially, the relevant Statutory Committee would have to be given sufficient notice of the Bill to be introduced, a copy of the text, Explanatory and Financial Memorandum, and a completed Legislative Standards form. They would review the latter form only, prior to the Bill being introduced. Then at First Stage, after the Proposer has moved, the Committee Chair would deliver a short statement to certify compliance (or not) with the Legislative Standards of the Assembly. The criteria should be developed according to best practice in other legislatures. This kind of exercise would shine a light on key issues such as: lack of consultation; failure to

accurately estimate financial implications; whether pre-legislative scrutiny occurred or not; how the Bill fits within the current legal framework; failure to consult statutory equality and human rights bodies etc. This will improve scrutiny and better inform Members prior to the Second Stage debate.

- How might scrutiny throughout the Stages be improved? Thinking in terms of both process and resources.

The Assembly should commission research similar that conducted by the Institute for Government in 2015 that looks in detail at how Committees are functioning (see: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Under%20scrutiny%20final.pdf>). This will provide an accurate picture of the breakdown of a Committee's time and workload, and how much emphasis is placed on legislative scrutiny, inquiries, policy development etc. The research should also examine who the Committee is engaging with, and the sorts of witnesses they call to provide evidence. For example: Departmental officials; academics; NGOs etc.

Following such a review, the Assembly can then implement any recommendations and changes required to optimise Committee work and improve scrutiny.

From my experience, Committee's need to engage more with leading academics in their field and government officials in other jurisdictions. This is part of an overall shift that I feel is required to increase the diversity of those with whom the Committee chooses to engage. Generally speaking, Committees have developed strong connections and relationships with relevant sector organisations. Yet, with regard to legislation, they rarely engage with the scientific community (who often set the foundations for policy changes through research) or civil servants in other legislatures (that have already implemented something that we are seeking to pass into law). To support the Member I work for, and to inform my own research, these were two avenues that I focused on during scrutiny of the Domestic Abuse and Civil Proceedings Act; and they proved instrumental in developing key amendments to our legislation.

I feel it goes without saying that Committee staff need urgently reinforced. Staffing levels are insufficient, and much more could be done to further strengthen the quality of their work in scrutinising legislation and policy implementation. The staffing complement of committees is very stretched and this should be increased. Again, as an example, I would point to the Justice Committee and the Clerk's assessment (on the public record) of March 2021 that the sheer amount of legislation coupled with current staff limits would result in less scrutiny if the Minister's suggested timeframe for the committee stage of the Damages (Return on Investment) Bill was followed. With increased staff numbers, a balance must also be struck between administrative support and more specific roles. I would suggest that each Committee should rely on its own dedicated researcher and/or statistician. Such roles would require staff with relevant expertise, skills and knowledge to be able to critically examine, investigate and report on Departmental work.

- Any other comments...

Prior to any changes or improvements in Committee staffing arrangements, a full audit should be carried out, which clearly outlines current roles/functions and demonstrates the case for additional resources by showing relevant gaps in skills/knowledge and expertise.

## Post-Legislative scrutiny

- Given the limited degree of post-legislative scrutiny currently undertaken, how might post-legislative scrutiny be improved and how would the degree to which the legislation delivered its policy objectives be measured and assessed; and what could be done to address any shortcomings of the legislation?

The Assembly needs to address the dearth in Post-legislative Scrutiny, which is now widely acknowledged as a key factor in improving the law-making process. In response to a 2006 report by the Law Commission that listed relevant benefits, the UK government proposed that “henceforth the department currently responsible for a particular Act should in most cases – generally [when] between 3 and 5 years have elapsed after Royal Assent – publish a Memorandum, for submission to the relevant departmental select committee”; to establish “a formal and automatic process” so the committee “could assess the state of play in relation to the Act and could decide on what further action to take or propose” (see:

<https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>). The Law Commission had recommended a new Parliamentary Joint Committee on Post-legislative Scrutiny, but this was rejected by the UK government who argued that there would be too much crossover and replication of work with departmental committees. However, as noted by the Hansard Society, “the current ad hoc approach to post-legislative scrutiny, although valuable for what it may reveal about specific pieces of legislation, is insufficiently embedded into formal procedures in Westminster and Whitehall to truly make an impact” (see: <https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>).

In my view, government departments should bring forward reporting requirements and mechanisms already built into Bills where appropriate. I accept that not all legislation will require a comprehensive review. I am also convinced by the arguments put forward by the Law Commission that Post-legislative Scrutiny might best be improved through new structures. A balance needs to be struck in terms of additional pressures on Committees and what outcomes can be achieved. In an ideal world, and specifically in relation to large, complex Bills, I would envisage a process that begins with a departmental report or review, followed by a Post-legislative Scrutiny Committee inquiry, which leads to a report with recommendations referred to the relevant Statutory Committee and government department. I believe that this would be the best way to manage the additional resources required for Post-legislative Scrutiny without overloading current Committees.

- Thinking in terms of the added work for committee members and staff, would the additional resource implications be justified in terms of value added?

Post-legislative scrutiny will require significant resources; but the outcomes would justify the investment in my view. It would facilitate a process that identifies problems, costs, savings and advantages associated with new legislation much sooner than what is available at present; and it would lead to legal issues being dealt with much quicker.

The additional workload for the Committee needs to be carefully managed. New structures may be required (e.g. subcommittees or a new Committee); and forward work programmes may need to be much more clearly defined.

- Any other comments...

There is bigger issue at play when discussing Post-legislative Scrutiny: that is the reliance on government departments to review their own work and implementation of legislation. In the Westminster context, it has been suggested that Ministers should “commit themselves to greater willingness to accept amendments to Bills requiring some form of regular report to Parliament – or better still to provide for such reports in Bills presented to Parliament” (see: <https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>). Yet, the issue remains that the substance of such a report will be determined by those who have been tasked with implementing the law. In my view, this is far from ideal. Either relevant committees or a stand-alone Post-legislative Scrutiny Committee (as recommended by the Law Commission) should carry out this work precisely because, as noted by the Hansard Society, “they can be more candid than government-led or government sponsored reviews, and more responsive to the views of stakeholders” (see: <https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>).

## Rachel Woods MLA

### Scrutiny of subordinate legislation

- What works well and should be encouraged in how we currently scrutinise subordinate legislation?  
Thinking in terms of effectiveness and efficiency of how we currently do things.

The current approach is efficient but not necessarily as effective as it could be with regard to scrutiny, given the actual process that we are dealing with. The absence of the Assembly for 3 years meant that there was a backlog of subordinate legislation to be passed, much of which was already in place. I am aware that this is an exceptional circumstance given the context, but whilst the process was efficient when the committees were functioning, there was limited scrutiny, if any available.

The report from the Examiner of Statutory Rules provides crucial evidence and analysis which members could not do without.

- What could/should be done differently to deliver improved, more effective, scrutiny?  
What are the quick wins, and what are the longer-term or 'ideal world' goals?

The Assembly should consider how it makes information about subordinate legislation available and accessible to the public, and to other MLAs. This should be available in real time. There should also be an 'explainer' available online for the public too to understand the SR processes and what it means/the powers of MLAs and committees to scrutinise them.

Members are not notified when a Statutory Rule is laid; and they are not provided with a clear, authoritative explanation of the purpose and meaning of legislative provisions.

This information is reserved for Members of the relevant Statutory Committee, often buried in correspondence with the Department. This is incredibly difficult, if impossible, for political parties who do not have representation on every committee of the Assembly.

All Members of the Assembly, and their staff, should be provided with an easily digestible and accessible repository of subordinate legislation; which also provides regular updates, reviews and communications from all committees. This could be achieved through a weekly email, in the style of a blog post or newsletter; and a dedicated space on the Assembly website where information related to subordinate legislation can be easily accessed.

#### **Set out formal steps for all Committees to follow, before and after the SR is laid.**

All committee members should be given regular training on SRs and the subordinate legislative process. It is complex to understand, and whilst training is available when an MLA is elected, or replaces another, a refresher or reminder of the process would be of assistance for committee members.

Before a Statutory Rule is laid, a Committee will consider the proposals and communicate its views with the Department. How it proceeds with consideration is a matter for the Committee to decide. Similarly, after the SR has been laid, it is up to the Committee to decide how it will scrutinise it. In terms of longer-term or 'ideal world' goals, the Assembly should implement a formal set of instructions for all Committees to follow at each stage. This would make it easier for MLAs who may be moved around committees, or sit on different ones depending on the mandate.



All Committees would follow the same basic approach to conducting this work and make their findings available to both the Assembly and the public. There would be nothing to prevent a particular Committee going above and beyond the steps in the protocol if it wished to strive for a more detailed and comprehensive level of scrutiny pre or post the subordinate legislation being laid.

- Any other comments...

There are pros and cons to giving Committees powers to amend subordinate legislation, but consideration needs to be given on how to improve the process so that actual scrutiny can take place and avoid a box ticking exercise in the process. I agree that Pre-legislative Scrutiny could be utilised (see below) if it was deemed to complex and unwieldy to grant Members to powers to amend subordinate legislation. Perhaps a formalised procedure, prior to the Statutory Rule being laid, where the Department has a responsibility to consider the Committee's views would suffice. I appreciate the workload that this may bring – however it is the committee's job to scrutinise all legislation passing through it.

The CLG should note some pertinent suggestions from the Reform UK think-tank with regard to the scrutiny of Secondary Legislation (from a Westminster perspective): that committees should be given the power to call hearings and propose amendments on statutory instruments laid before the House; that committees should be able to refer legislative scrutiny to a subcommittee of itself to be chaired by the committee's deputy chair; and that Joint legislative subcommittees should be established where needed to scrutinise cross-departmental legislation.

## Pre-legislative Scrutiny

- Pre-legislative scrutiny is undertaken in some other legislatures but is limited in the Assembly. What do you see as appropriate pre-legislative scrutiny? Should it happen and what might it look like for committees?

In the current Assembly Mandate, which was cut short because of the Assembly being down for 3 years has increased the pressure and workload of committee members, committee staff and those consultees that are required to be spoken to and part of the process. As of March 2021, in the Justice Committee, three of the five proposed Bills (one has been dealt with and received Royal Assent) are being scrutinised by the Justice Committee at the same time, which has put significant pressure on staff workloads. Time pressures affect the quality of legislative scrutiny and the ability to get to know an issue or react when say, the consultees bring up a matter that has not been considered and the committee or an individual member may wish to address or bring amendments on.

The House of Lords, in its report on Parliament and the Legislative Process have noted that if a Bill is only published upon introduction, so much political capital is invested in the bill that officials and Ministers "often consider it their task to defend their legislation, as drafted, regardless of the merits of arguments for improvement" (see: <https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13606.htm>). This has been clear to me as a Justice Committee member through my experience of the Domestic Abuse Bill, and also in informal conversations on the Committal Reform Bill too. Whilst I appreciate that there may be merit in keeping some bills 'tight' and addressing only the issues it seeks to – the very nature of scrutiny brings up other issues that are not related to the scope of the bill for example, but that need to be explored and bottomed out – or become an integral part of the bill and it is the job of the committee to provide that scrutiny and have that lee-way. Given members of committees are from different backgrounds and have different experiences, there may be merit in their positions or coming from a matter from a different angle that has not been considered, or bring direct experience of a matter to the table. There may be unintended consequences, but this is the role of the committee and members to consider.

To continue with a trend of more and more Bills, with less time for scrutiny, and a strong reluctance to accept amendments and changes is not only unsustainable, but it will lead to less optimal legislative outcomes – ultimately not allowing for ‘good law’.

At its most basic level, Pre-legislative Scrutiny would mean the publication of Bills in draft form, followed by a comprehensive consultation exercise. The relevant Committee could assist with this process by conducting a pre-legislative inquiry of the Bill and the issues to which it pertains. Essentially, a similar but more in-depth exploration of the legislative proposals to that which normally happens at committee stage. Similar in the sense that this would involve a call for evidence, witnesses, presentations, deliberations, and a report with recommendations and so on; but more in-depth and far-reaching in terms of covering tangential topics and not limiting inquiry and scrutiny by the proposed scope of the Bill. The Assembly could compel Ministers and Departments to publish Bills in draft form and fulfil a comprehensive pre-legislative process where appropriate. I accept that this will not be needed for a lot, possibly even the majority, of legislation; but it will significantly improve scrutiny of large, complex Bills, especially those with far reaching consequences.

- Any other comments...

The suggested exceptions by the Modernisation Committee of the UK Parliament and House of Lords include emergency legislation, Finance Bills, and technical legislation. For others, especially those that embody important policy changes, if the government does not publish the Bill in draft, then it should formally explain and justify its approach to the House. Whilst I have some sympathy in this – finance bill and emergency legislation also require scrutiny and we have seen through this last year of the Assembly sitting that this has not always been the case. I appreciate emergency legislation had to be passed to deal with COVID-19 however the way in which scrutiny has occurred has jarred with the role of committees – indeed most have had no role or opportunity. Regulations are debated retrospectively. Accelerated passage has been somewhat commonplace.

Above all, pre-legislative scrutiny aims to dilute some of the politics of law-making and legislative procedure in return for better legislation. It will take political will and a leap of faith from government departments to make it work effectively.

## Committee involvement throughout the passage of legislation

- To what extent does the current approach of referral to a committee for committee stage work or should committees be involved more at other stages? Thinking in terms of whether there is potentially a meaningful role for committees at amending stages, or even at introduction?

The experience and expertise of the Clerk and the committee staff is crucial to the committee involvement throughout the passage of legislation. The experience of the chair too cannot be overlooked given the volume of work, and at times, incredible complexity. The commitment of Members should also be highlighted.

As a new member of the Committee and new MLA, having never sat in a committee before in the Assembly, I was surprised that no proper training or in-depth induction to legislative scrutiny was provided for me and my team. I agree with my researcher (who has submitted a response to this too) that this should be addressed urgently.

I luckily had a research background and have a researcher who is exceptionally good but to understand the details of the scrutiny processes and committee roles, we relied on the committee staff at length. Perhaps if new MLAs and teams come on board, this specialised training could be considered.

Committee could engage prior to second stage if the mechanisms were in place as above for pre-legislative scrutiny as a start.

- How might scrutiny throughout the Stages be improved? Thinking in terms of both process and resources.

Research could be commissioned on the processes of committees in other jurisdictions and share feedback and pros/cons from learning. I know as part of the justice committee there were issues over devolved powers and the Sewel Convention over pieces of legislation that we were dealing with. A comparison to how other legislatures dealt with this could be done and if any changes could be made for committees to have a greater role in scrutiny of these and what it means for NI.

Committee's need to engage more with leading academics in their field and government officials in other jurisdictions. This is part of an overall shift that I feel is required to increase the diversity of those with whom the Committee chooses to engage. Committees have developed strong connections and relationships with relevant sector organisations, depending on the issue at hand. For example, during the Domestic Abuse Bill, it was clear that the relationships that individual members had with a number of organisations was good, and engagement on such an important issue was clear.

However, with regard to legislation, they rarely engage with the scientific community (who often set the foundations for policy changes through research) or civil servants in other legislatures (that have already implemented something that we are seeking to pass into law). This is something that my researcher and myself brought to the conversation, engaging with others who had experience in this field, looking at academic reports, research from other countries and spoke to those who had been through the process and were given the time to reflect. This was incredibly useful in the context of lobbying for amendments and for the committee and myself to look at areas which could be put in the bill and were not, for example, review periods and training.

Committee staff complement holds the committee together and without them, members would not be able to do any of the scrutiny that is required to the level that is required. The staffing complement of committees is very stretched to deal with the level and volume of legislation, as well as the 'regular' workload of the committee, and this should be increased. Again, as my researcher has indicated in his own response, I would point to the Justice Committee and the Clerk's assessment (on the public record) of March 2021 that the sheer amount of legislation coupled with current staff limits would result in less scrutiny if the Minister's suggested timeframe for the committee stage of the Damages (Return on Investment) Bill was followed. With increased staff numbers, a balance must also be struck between administrative support and more specific roles. I would suggest that each Committee should rely on its own dedicated researcher and access to a statistician, or another member to fulfil this role. Such roles would require staff with relevant expertise, skills and knowledge to be able to critically examine, investigate and report on Departmental work. This would assist members in their scrutiny and to pinpoint issues if and when required.

Again, consideration as to what happens in other jurisdictions and the provision and resources available

- Any other comments...

Accelerated passage and use of this mechanism undermines the roles of committees and its members. I do not agree with its use in the majority of occasions.

The budget setting process and budget bills is also an area of concern for me, given the complexity of it and its importance in the allocation and spend of public money. I have not been through a 'normal' budget process given the Assembly was down for 3 years, and the effects of COVID-19 on the budgets, perhaps the experience is skewed, but there could be budget training for individual committees reflecting the Departmental responsibilities in order to fully appreciate the information that is given to committees by the Departments, and what the role of the committee is in the budget setting process, and what extent changes can be made. I would see this training as a collective for members, not for parties or MLAs on their own, but from a committee viewpoint.

## Post-Legislative scrutiny

- Given the limited degree of post-legislative scrutiny currently undertaken, how might post-legislative scrutiny be improved and how would the degree to which the legislation delivered its policy objectives be measured and assessed; and what could be done to address any shortcomings of the legislation?

The Assembly needs to address the dearth in post-legislative scrutiny, which is now widely acknowledged as a key factor in improving the law-making process.

Departments should bring forward reporting requirements and mechanisms already built into Bills where appropriate. I accept that not all legislation will require a comprehensive review, however, new laws, especially new criminal offences such as the Domestic Abuse Act and the future Stalking Bill should have review mechanisms built in. These are new offences, and will require changes in the way things are done which would necessitate training, knowledge etc, and new ways of working. If after a period of time things have not changed and say for example, prosecutions are not forthcoming or behaviour has not changed much, then reviews are crucial to see where the gaps are. It could be the way in which the offence is worded in the legislation, its roll out or training and knowledge thereof, for example. Committees, given their role in formulating the legislation and asking the questions at the start, should have a scrutiny role in this too.

A balance needs to be struck in terms of additional pressures on Committees and what outcomes can be achieved. However, it seems beneficial for everyone involved – the Minister, the Department, Committee and public to know if legislation passed is reviewed and ensuring it meets the purpose, and there is a role for committees in that, as I have said above. This point also applies to guidance produced

- Thinking in terms of the added work for committee members and staff, would the additional resource implications be justified in terms of value added?

Yes, it will require significant resources, but these resources would be justified given what they seek to achieve. This is the fundamental role of the committee members.

The additional workload for the Committee needs to be carefully managed. New structures may be required and forward work programmes and focus may need to be much more clearly defined at the start of the term or mandate. There is a lot of work that committees are expected to deal with which say are not committee matters, and this can be clearly defined at the start of the term but if relevant issues arise there does need to be some flexibility there too. For example, it would have not been expected that committees would have to deal with COVID-19 regulations but they have adapted their workload to address the emergency situation.

- Any other comments...

N/A