



Northern Ireland
Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous
Provisions) Bill: Draft Report

4 November 2020

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Members present for all or part of the proceedings:

Dr Steve Aiken (Chairperson)
Mr Paul Frew (Deputy Chairperson)
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Philip McGuigan
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

The Chairperson (Dr Aiken): This is the Committee's opportunity to consider the draft Bill report for its formal consideration and agreement. I ask members if they wish to make any further suggestions or amendments to the report.

Mr Wells: We have had a long and detailed examination of Jim's Bill, and members and other MLAs have made very legitimate suggestions. I thought that it was worth including a paragraph in the report to show that numerous amendments have been offered by the Bill's sponsor to try to reach a consensus on it. The Bill is very different from the document that was presented at First Stage, so I thought that it would be useful to put that into the executive summary to indicate that process. It shows the health of the Committee and the fact that it has been a good revising chamber for what is very important legislation.

Mr Frew: I would tend to agree with that. I think that the Committee should acknowledge the movement that has been made with the Bill from when it was first introduced in the Assembly. If that should be acknowledged by the Committee, there is no reason why it should not be in the report. I agree with Jim Wells 100% when he says that it shows the strength of the Committee.

We probably had an advantage in that Jim Allister is on the Committee. Notwithstanding that, the work that the Committee and the staff have done on the scrutiny of the Bill has been very impressive and productive. I have certainly enjoyed my time scrutinising the Bill and working through all the angles, issues and detail of it. That is what we are here to do. We are designed to undertake that scrutiny, and it has worked very well.

I want to take the opportunity to thank the Chair, the Clerk and all the staff and members for their good work on it.

The Chairperson (Dr Aiken): Thank you very much. Jim Allister, do you want to speak about your remaining proposed amendment to the report?

Mr Allister: I sent the Clerk a number of points, which, thankfully, he took up and made some changes to clarify a few things. I asked whether, having gone through the analysis, it would make the report more readable if it were to indicate, at each point, what the Committee thought when it came to the clause-by-clause consideration of the Bill. It is all in there, but it is just whether there needs to be a linkage.

The Chairperson (Dr Aiken): It is not normal custom and practice to do that.

Mr Allister: If it is not custom and practice, I will not die in a ditch over it. I just thought that it might make it more readable. I am content with the report as it is and — surprise, surprise — I support Jim Wells's amendment to it. I reiterate what Paul said about the work of the staff; I really appreciate that.

The Chairperson (Dr Aiken): Correspondence has come back from the Department of Justice. Could you outline what that was?

Mr Allister: Yes, you will recall that the Department of Justice initially raised some issues about proportionality in the criminal offences clauses.

The Chairperson (Dr Aiken): Are those clauses 9 and 11?

Mr Allister: Yes. When I made the relevant amendments to those clauses and reduced the penalty in, for example, clause 11 and made further provisions about available defences etc, I sent those clauses back to the permanent secretary in the Department of Justice, because it was he who had written to me in the first place. I received a letter, after the Committee had concluded its deliberations, saying that, effectively, the Department thought that the penalties proposed were consistent and proportionate, which was its initial query. I thought that it was important to state that, because I know that those two clauses have caused some concern to some. I think that that is a useful letter from the Department, and it needs to be in the report.

Ms Dolan: I want to make two points. If you compare the section of the report that deals with the clause-by-clause consideration of clauses 9 and 11 with the minutes of the meeting, it is wrong. On clause 9, it states that there were 4 Ayes and 5 Noes, but the minutes state that there was one abstention. Have I picked that up wrong? On clause 11, the minutes state that there were two abstentions, but the report states that there were no abstentions.

The Chairperson (Dr Aiken): Clerk, will you check that?

The Committee Clerk: I will check that. If it requires amendment, I will make the amendment next week to either the minutes or the report.

The Chairperson (Dr Aiken): OK. Thanks.

Ms Dolan: My other point is that I do not agree with Jim Wells's amendment to the report. The first sentence does not reflect the views of all the Committee, so I do not agree with it.

Mr Wells: This is the group that voted against even the title and the colour of the front cover —.

The Chairperson (Dr Aiken): Through the Chair.

Mr Wells: Through the Chair, they objected to the title of the Bill. Nobody objects to the title of a Bill; that is unheard of. I have been here for 26 years, and nobody has ever objected to the title of a Bill. Had you been asked if you wanted it in blue or white, you would have said, "No colour". Regardless of whether —.

Ms Dolan: Here! Sorry. That is not relevant to what I said. I said that I do not agree with the first sentence of your amendment. End of.

Mr Wells: Through the Chair, no matter where you stand on the Bill itself, obviously, three members of the Committee have been instructed to vote against the Bill absolutely and completely. However, can you not accept that you can be against the Bill but accept that Jim Allister has, on many occasions, listened to concerns raised by MLAs and changed the Bill accordingly?

Ms Dolan: Yes, but, Chair, do you remember that I raised a concern and said that I thought Jim's being here was a conflict of interest? I am bringing through a private Member's Bill, but I will not have the chance to sit on the Economy Committee and change the Bill as the Committee suggests. No, I do not agree with it.

The Chairperson (Dr Aiken): Thank you, Jemma.

Mr Allister: May I say — *[Interruption.]*

The Chairperson (Dr Aiken): One second, Jim. Jemma, that has been noted. Matthew is next, and then Jim.

Mr O'Toole: I want to make a couple of narrow points. Most of Jim Allister's paragraph-by-paragraph amendments seem reasonable. I do not have strong views on the clause-by-clause recording. If it is not custom and practice, I do not see a reason to change that. I agree with the broad thrust of Jim Wells's statement, but I would amend the words slightly. I am happy to provide alternative words, or I suggest that the Clerk does. I would amend them slightly and calibrate them to state that the majority of the Committee acknowledges the fact that the Bill's sponsor responded with significant amendments. That is worth acknowledging. I would lose some of the language around general support, but that is not to say that we do not have general support. It is more the case that I am not sure that the content is right for the Bill. We clearly voted for most of the Bill's clauses and are supportive of large parts of it. I am happy to come back with alternative wording, if that would work.

The Chairperson (Dr Aiken): Does it add anything to the Bill?

Mr Wells: Yes, it does, Chair. This has been a very good process. We have teased out the nuances of the Bill and members have raised issues. We have heard the words "Jim Allister" and "reasonable" in the same sentence, several times. I have never heard that before. *[Laughter.]*

Mr Frew: The Committee has done a great job.

Mr Wells: Yes. I will be serious about it. We have been able to improve the Bill. I have seen private Member's Bills on which a Committee has been entrenched: it did not budge an inch, nobody changed, and the Bill came out completely unchanged. This Bill has been improved and strengthened by the process. It is worth mentioning that, because it is unusual for that to happen.

The Chairperson (Dr Aiken): Would you be content for Matthew to provide revised wording?

Mr Wells: I would be interested to see it.

Mr O'Toole: I am happy to suggest something. I will put it in my diary to remind myself to do it.

Mr Frew: That will delay the report being published, which will then delay the legislation.

Mr O'Toole: Paul, I will do it in the next day or two. I will send it round by email.

Mr Frew: We were to approve the report today.

Mr O'Toole: In that case, I suggest — *[Interruption.]*

The Chairperson (Dr Aiken): Excuse me.

The Committee Clerk: The formal approval of the report will be next week, because there were a number of amendments. It is normal to look at the first draft. I have brought forward a second draft to speed things up, so this can be considered next week. If there were to be a further amendment, informal Committee agreement could be sought on it when Matthew brings it. That could be included in the third draft of the report and formal agreement made next week.

Mr O'Toole: My intention is to suggest a couple of changes to Jim's paragraphs, not to delay the process. I do not want to do that. If members are happy to do it via correspondence, I can email the amended wording to the group.

The Chairperson (Dr Aiken): Through the Clerk, if you are content.

Mr O'Toole: Yes, I can email the Clerk. Now that I have said it on the record, unlike with other business, I can be held to it. There is a camera on me.

Mr Allister: I am anxious that we wrap this up as soon as possible, because I want to get the Bill to Consideration Stage. I hope that we do not add a week to it.

The Chairperson (Dr Aiken): Yes. I need to seek your agreement to stand fast to Jim Wells's amendment being included in the revised draft of the Functioning of Government (Miscellaneous Provisions) Bill report. All those in favour say "Aye".

Some Members: Aye.

The Chairperson (Dr Aiken): Who are those who are against?

Mr McHugh: I am against it.

The Chairperson (Dr Aiken): Jemma?

Ms Dolan: Sorry.

Mr Allister: It is not a facetious suggestion, and it might be a difficult one to act on, but because Jemma makes a legitimate point about an MLA who brings a private Member's Bill not having the input that I have had because I happen to be on the Committee, I respectfully suggest that she brings an amendment to the Bill directing that Standing Orders should provide that any MLA who brings a private Member's Bill, for the currency of the consideration of that Bill, should be an ex officio member of the Committee that deals with its Committee Stage. That would be very fair.

The Chairperson (Dr Aiken): Yes, that would be fair.

Ms Dolan: Thanks, Jim.

The Chairperson (Dr Aiken): We will call it the "Jemma amendment". *[Laughter.]*

Mr Allister: Yes, the "Jemma amendment".

Mr Frew: "Jemma's law". *[Laughter.]*

Ms Dolan: That is interesting. Thanks, Jim.

The Chairperson (Dr Aiken): Are you content with that? Pat, go ahead.

Mr Catney: I do not want to hold it up or anything, but I have just one point to make about the Department of Justice's response to the Bill. Does that relate to the High Court or a lower court? Have I got time to try to amend the sentencing structure? Rather than the two years, can it be reduced to one year in a lower court?

Mr Allister: You are talking about the prescribed sentences in clauses 9 and 11.

Mr Catney: Yes.

Mr Allister: At present, it provides that it can be dealt with either in the petty sessions, where there is a maximum sentence of six months, or in the Crown Court, where there is a maximum sentence of two years. It would be possible for someone to move an amendment to remove the reference to the Crown

Court and allow those offences to be dealt with only in the petty sessions. If they did that, but did not change the tariff in the petty sessions, the accused would lose the right to a jury trial.

Mr Catney: What if the tariff were changed?

Mr Allister: The available tariff in the petty sessions has to be over six months to give someone the right to elect a jury trial. If, for example, the provision was that, in the petty sessions, the maximum sentence could be 12 months, the accused would have the right to elect for jury trial.

Mr Catney: And that would not weaken it in any way or hold it back on time? The mechanism is there to do that. I am waiting on a response to amend an amendment.

Mr Frew: Yes, you can.

Mr Allister: Can you amend an amendment? I do not know. Maybe the Bill Office would have to answer that.

Mr Frew: I think that you can.

The Chairperson (Dr Aiken): OK. I need your agreement. Further amendments are only minor in nature. Will we move to formal consideration and agreement of the report at next week's meeting?

Members indicated assent.

Mr O'Toole: I can confirm that I have just emailed my suggested amendment through. It is only slightly slower than my casework — *[Laughter.]*

Mr Frew: Brilliant. Well done, Matthew.

The Chairperson (Dr Aiken): OK. Let us move on the next item.

The Committee Clerk: Chair, if members are content, I can forward that now.

The Chairperson (Dr Aiken): Yes, let us do that now.

Mr Frew: This is real time.

The Chairperson (Dr Aiken): Just before your computer craps out on you.

Mr Frew: That is how this Committee rolls.

The Chairperson (Dr Aiken): There we go. I now have the wording in front of me.

Mr Wells: Yes, so do I.

Mr Frew: Bells are ringing.

The Chairperson (Dr Aiken): I am content with it. *[Pause]* I will watch for when everybody's lips have stopped moving.

Mr O'Toole: Obviously, I am content.

Mr Allister: Can Jim read out his amendment?

Mr Wells: I will have to go back.

Mr Frew: This is where we need two screens.

Mr McHugh: Where are we at?

The Chairperson (Dr Aiken): You should have an email that has just come through from the Committee Clerk.

Mr Wells: I said that:

"The Committee is approving of the fact that the Bill sponsor responded to the many concerns raised in the evidence by tabling significant amendments. These provide a better basis for the Bill going forward and enables the majority of the Committee to extend their general support."

That is my amendment, not Matthew's.

The Chairperson (Dr Aiken): I will read out Matthew's amendment for the record.

"There was broad welcome from the majority of the Committee that the Bill sponsor responded to the many concerns raised in the evidence by tabling significant amendments. These provide a better basis for the Bill going forward and allow broader support for the Bill at Committee."

I am content with that.

Mr Allister: As the Bill sponsor, I am content.

Mr Wells: I am happy enough, yes.

The Chairperson (Dr Aiken): All those in agreement say "Aye".

Some Members: Aye.

Mr Wells: To the "O'Toole amendment".

The Chairperson (Dr Aiken): Yes; the "O'Toole amendment".

Mr McHugh: I just want to point out, through the Chair, that there is a value judgement there:

"These provide a better basis for the Bill going forward and allow broader support for the Bill at Committee."

That is very much a value judgement with regard to the support. You know that the support was not there, unanimously, one way or the other. It is very much a value judgement in that respect. I am not sure about it. That is why I cannot agree with it.

The Chairperson (Dr Aiken): That is fine. Your point is noted.