

ASSEMBLY MEMBERS (REMUNERATION BOARD) BILL

DELEGATED POWERS MEMORANDUM

Introduction

1. The Assembly Members (Remuneration Board) Bill ('the Bill') amends the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 ('the 2011 Act').
2. The 2011 Act created an independent body to determine the salaries, allowances and pensions payable to Members of the Assembly, former Members, and former office-holders. This body was known as the Independent Financial Review Panel ('the IFRP').
3. The Bill renames the IFRP as the Remuneration Board ('the Board') and removes from it the function of determining the allowances payable to Members and former Members. (Allowances concern matters such as the business costs of running a constituency office and Members' staff costs). The Bill also amends the 2011 Act to provide for temporary appointments to the Board, and removes a disqualification provision which prevents former Members being appointed to the Board.
4. Under the 2011 Act, the independent body is required to take account of the complexity and importance of functions of members of the Assembly in making determinations on Members' salaries. The Bill supplements this duty by requiring the Board to have regard to the salaries payable to members of other legislatures in the United Kingdom and Ireland in determining Members' salaries. It also makes provision in relation to the timing of determinations made by the Board, and sets out a range of consultation duties for the Board.

Delegated powers in the Bill

5. This memorandum explains the purpose of the delegated power contained in the Bill, the reason for the delegation, and the Assembly control on the use of the power.
6. The Bill contains only one delegated power. This is set out at **clause 4**. Clause 4 inserts a new section 6A into the 2011 Act, to permit the appointment of a temporary chair of the Board, and temporary members of the Board, pending the appointment of replacements. A framework governing the appointment of temporary members is already set out in section 6A. However, sub-section 6A(7) also allows the Northern Ireland Assembly Commission ('the Commission') to make further provision about temporary appointments to the Board by order.
7. Any order made by the Commission under sub-section 6A(7) is to be laid in draft and approved by the Assembly

Analysis of the delegated power

8. Under the revised scheme for the making and publication of determinations required by the Bill, the Board will be under a degree of time pressure in preparing and consulting on draft determinations. Given the wide range of disqualifying offices set out in the 2011 Act, vacancies in membership of the Board may arise unexpectedly, should one or more permanent members of the Board take up a disqualifying office at short notice. In addition, vacancies may also arise by, for example, illness. It is desirable that the Board be fully constituted at all times, since it makes determinations for five-year periods. It is appropriate that the Commission may make temporary appointments to the Board to ameliorate this risk.
9. The Bill sets out a high-level framework for temporary appointments to the Board. New section 6A(6) of the 2011 Act, introduced by clause 4 of the Bill, has the effect that a person who has already served two terms on the Board is not eligible for temporary appointment as a member of the Board. However, temporary appointment as member of the Board does not disqualify a person for permanent appointment as a member (new section 6A(5)). These provisions apply equally to those temporarily appointed as the Chair or temporarily appointed as a member of the Board.
10. The other provisions of Part 1 of the 2011 Act which apply to permanent appointments to the Board do not apply to temporary appointments. In particular, section 5 (disqualification from membership), section 6 (termination of membership) and section 7 (code of conduct for members) do not apply to temporary appointments.
11. If the Commission is minded to make temporary appointments to the Board, it may wish to make an order which applies some or all of the rules set out in these sections to temporary appointments, or applies these rules to temporary appointments in a modified form.
12. The Commission may, for example, decide that one or more of the disqualification provisions applicable to permanent appointments should not apply to a temporary appointment. It may, alternatively, decide that different disqualification provisions should apply to temporary appointments. The Commission may wish to provide for an alternative code of conduct for temporary appointments. The sub-section 6A(7) delegated power allows flexibility in this regard.
13. Orders made by the Commission can only supplement the provisions set out in section 6A: an order cannot be used to modify the provisions on temporary appointments already set out in the Bill. For example, orders under sub-section 6A(7) could not modify the rules on when a temporary appointment comes to an end, which are set out at sub-section 6A(3), nor allow a person who has already undertaken two permanent appointments to be temporarily re-appointed to the Board, which is prohibited by sub-section 6A(6).

Reason for delegation and explanation of Assembly control

14. The delegated power gives the Commission flexibility in making provision for temporary appointments to the Board. There was no provision for temporary appointments to the IFRP, and unanticipated issues may arise should temporary appointments to the Board be necessary. It is therefore desirable that further provision for temporary appointments can be made and refined without the need for additional primary legislation.
15. The Commission already possess a power to make orders altering disqualifications for membership of the Board, which is contained at section 5(3) of the 2011 Act. Such an order must be laid in draft and approved by the Assembly.
16. It is suggested that a similar level of Assembly control is appropriate for any order made by the Commission governing temporary appointments under sub-section 6A(7). Such orders may deal with comparable matters – for example disqualification for, and termination of, temporary appointments (other than termination in the circumstances set out in sub-section 6A(3)).
17. The requirement for orders on temporary appointments made under sub-section 6A(7) to be laid in draft and approved by the Assembly will ensure that any decision affecting the membership of the independent body is subject to full Assembly scrutiny.