

REQUEST FROM: FINANCE COMMITTEE – RESPONSE TO COMMENTS FROM NIFC ON THE BILL

Point 2 – The Committee would request a formal response from the Department in relations to issues raised by the Fiscal Council – these issues are detailed in the enclosed response.

NIFC Comments – Relationships with the Executive and legislature

It is our view that the provisions in Clause 2(4) are consistent with our current practice, with the small addition of a requirement for the Council to formally lay reports at the Assembly. This appears to us to be quite proper and part of the Council's accountability to the Assembly and the public.

Departmental response –

- The Bill ensures that the Council is free from Ministerial, Executive, Committee or Departmental interference and this legislation safeguards the operational independence of the Council. However, the Bill does ensure that Council reports are laid in the Assembly for scrutiny purposes.

NIFC Comments – Independence

We therefore welcome the provisions in Clause 6 which we believe will continue to allow the Council to operate in future with the same freedom from influence that we have enjoyed and the Bill as drafted would not place any additional constraint on how we have interpreted our remit or delivered our functions.

Departmental response –

- This Bill ensures that the Council will continue to remain free from Ministerial, Executive, Committee or Departmental interference and safeguards the operational independence of the Council for the future to enable it to determine its own work programme, as set out in the OECD principles.

NIFC Comments – Access to information

- We welcome a statutory underpinning as it futureproofs the role of the Council and it is international best practice for independent financial institutions to have these powers. We believe the provisions in paragraph 19 of the Schedule to the Bill are sufficiently broad to allow a future Council to seek whatever information and data it requires from Executive departments to discharge its duties.

Departmental response –

- The legislation enables that the Council with the right to access all government information, which it may require for the purpose of the performance of its functions, to produce budget assessments, sustainability reports and any other report it deems appropriate within its remit.

NIFC Comments – Fiscal sustainability reports

- It has been our approach to date to produce reports on matters that seem to be important to stakeholders, and to do so at the time when we hope they will be most useful. While we recognise the importance of setting out a requirement for the frequency of reports in statute, we hope the Committee will be able to confirm that its understanding of the drafting in Clause 4 matches our own. Specifically we want to ensure that the legislation confers upon the Council a level of flexibility to produce each year either a ‘general’ Sustainability report (as our first report was), or a ‘thematic’ one (such as our recent Water report).

Clause 4(2) lists items that the Council must consider. And Clause 4(3) then says the report must include commentary on the items listed in 4(2). The use of ‘consider’ in 4(2) seems to confer discretion to:

- a. Report if there is anything valuable to say; or
 - b. Not report if nothing much seems to have changed from the previous report
- But the ‘must’ in Clause 4(3) might suggest less discretion.

Clauses 4(4) and 4(5) align with how we have operated to date in choosing our subject matter based on what might be most useful at the time. Clause 4(5) prevents the Council exclusively from producing thematic reports by requiring at least two general sustainability reports per decade. This seems reasonable from the Council’s perspective given the relatively lengthy time-horizon over which demographics tend to shift significantly.

Departmental Response –

- The functions in the draft Bill provide the Council with a very broad remit to assess and comment on our public finances, and their sustainability. In line with the OECD principles, it will then be for the Council to determine its own work programme, however the Bill does require the Council to publish a budget assessment report as well as a fiscal sustainability report each year.
- The Bill provides that the Council has to publish an overall fiscal sustainability report at least once every five years (and a thematic report each year an overall report is not produced). This aligns with the views detailed above by the Fiscal Council.
- The Bill must have the precision required for legislation and to ensure it is unambiguous and free from interpretation. The Bill has been drafted so that in order for the overall sustainability report to be comprehensive, and for the Council to cover all areas detailed in clause 4(3), the Council would have to assess each of the areas in clause 4(2)(a) to (c), as set out in clause(4)(a). However, clause 4(4)(b) provides discretion to the Council for the thematic report, in that it states that it should consider those matters, or a description of those matters, the Council considers appropriate. On that basis, the Council can consider only some of the

matters listed in clause 4, subsection (2) (for example, public revenue only); or it can consider a description of all of those matters (for example, all of them so far as they relate to the provision of water services). The Department believes that this provides the Council with the flexibility it desires.