

ASSEMBLY AND EXECUTIVE REFORM (ASSEMBLY OPPOSITION) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared on behalf of Mr John McCallister MLA (“the Sponsor”) in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The principal objective of the Bill is to enable the formation of an Opposition in the Assembly and to confer rights on the Opposition once it has been formed.
4. The Bill also contains measures seeking to enhance the separation of powers by requiring increased co-operation and collective working by the Executive (the Government) while providing an Opposition in the Legislature (the Assembly) with additional financial and logistical support and greater opportunity to examine the work of Government Ministers.

KEY CONCEPTS

5. Members of the Legislative Assembly (MLAs) who are not in a party which has Ministers in Government will often be described as being in opposition. This will continue to be the case but the Bill will create a statutory basis for a formal Opposition, with statutory rights and entitlements, if certain conditions are met.
6. The Northern Ireland Act 1998 devolved power from Westminster to the Northern Ireland Assembly after a referendum endorsed the Belfast/Good Friday Agreement. The Act was updated after subsequent agreements and represents what we mean by “the constitutional settlement”.

7. Standing Orders are the rules of procedure of the Assembly, which give practical effect to the high-level provisions of the Northern Ireland Act 1998.
8. Separation of powers is a term used to describe a system of checks and balances which safeguards the distinct roles of the Government, the Parliament and the Judiciary and prevents intermingling, influence on or arrogation of those roles by the others.

CONSULTATION

9. The Bill's Sponsor conducted a consultation exercise over a seven-week period on the policy objectives and proposed options for the Bill.
10. The Sponsor also shared his legislative proposal with the NI Human Rights Commission and the Equality Commission for NI and awaits their views.

OPTIONS CONSIDERED

11. The Bill's Sponsor reflected upon the changes that can be made directly by the Assembly, within the powers which have been wholly devolved to it (transferred matters), and those which would require legislation by the UK Government (excepted matters). He decided that he wished to present a package of measures which would include changes in both of these devolution categories.
12. The Sponsor considered options for creating an opposition, including whether legislation was necessary at all. After all, the Assembly has the power to change its Standing Orders already.
13. The Sponsor determined that to legislate would represent a conscious, active and authoritative statement of intent. A Bill could bring disparate measures into one comprehensive whole and allow them to be considered in one place. The legislative process is also very transparent so the full and open debate of this scheme would lend it the legitimacy required for constitutional change, as piecemeal changes to Standing Orders might not. Finally, the passage of legislation is a deliberate, formal and discursive process. The Sponsor was sure this was the only fitting way for the Assembly to determine whether and how it might reform the institutions.
14. The Sponsor considered that the mechanism to enable discussion of non-devolved matters might be: resolution by the Assembly to call on the Secretary of State to legislate on a list of matters; referral of the issues to the Assembly and Executive Review Committee for reconsideration under its remit to do so; or delegation of that brief to a new body such as a constitutional convention. One respondent to consultation suggested that the appropriate mechanism should be a referendum, and this option was also considered.

15. The Sponsor's preference was for the first of these, namely a resolution to call on the Secretary of State to make the necessary amendments to excepted provisions of the NI Act 1998 to enable listed reforms to be made.
16. The Sponsor selected this option because he considered that to complete every legislative stage and debate a resolution calling on the Secretary of State to change the constitutional settlement, would involve every MLA in proper deliberation and discussion and represent the most legitimate expression of devolved decision-making.
17. Accordingly the clauses of the Bill describe actions that can be legislated for currently within the Assembly's powers; and the Schedule to the Bill lists the items that would require to be signalled to the Secretary of State by agreement of the Assembly so that legislation to give them force might be enacted at Westminster.
18. Standing Orders are the rules of procedure of the Assembly. Much of the Bill does not directly "do" something. Instead, it requires Standing Orders to be prepared and laid before the Assembly in order to "do" the thing. This allows a measure of flexibility in the detail of how the Bill is implemented.

OVERVIEW

19. The Bill seeks to provide for the formation of an Opposition in the Assembly and to confer certain rights on that Opposition once formed. The Bill also seeks to enhance collective decision-making in the Executive, and to increase scrutiny of the Executive by the Legislature.

COMMENTARY ON CLAUSES

Clause 1 – Purpose

This clause sets out the purpose of the Bill. A purpose clause is not obligatory, but it is helpful in setting out the aim of the Bill. The main purpose is to facilitate the formation of an Opposition.

Clause 2: Formation of the Opposition

An Opposition can be formed in two ways: first, by one or more qualifying parties (parties which could have a Ministerial office but don't) forming it; and secondly, by smaller parties / independents combining to create a technical group and forming it.

Clause 3: Timing of formation of the Opposition

The formation of an Opposition follows the formation of the Executive. It can also be formed whenever a qualifying party leaves the Executive.

Clause 4: Membership of the Opposition

Once an Opposition is formed, all members who aren't in a party of government are automatically part of the Opposition. If a party subsequently leaves government, that party automatically joins any existing Opposition.

Clause 5: Dissolution of the Opposition

If the Executive falls then logically there is nothing to oppose, so the Opposition is also dissolved at that time. It can be re-formed if the Executive is subsequently re-formed.

Clause 6: Leader and Deputy Leader of the Opposition

The Opposition will be led by the persons holding the offices of Leader and Deputy Leader. Where the Opposition is formed by qualifying parties, then those parties decide who the Leader and Deputy Leader of the Opposition are. Where the Opposition is formed by technical groups, it is for the technical groups to decide.

Clause 7: Topical questions from Leader and Deputy Leader of the Opposition

The Leader and Deputy Leader have the first opportunity to question the First Minister and deputy First Minister during topical questions.

Clause 8: Enhanced speaking rights for the Opposition

The Opposition are to have greater speaking rights than their numbers would otherwise entitle them to. They are to have a minimum of 15 days a year for Opposition business in the Assembly.

Clause 9: Opposition rights to chair Public Accounts Committee

It is for the Opposition to determine who the chairperson and deputy chairperson of the Public Accounts Committee are.

Clause 10: Membership of Business Committee for the Opposition

The Opposition are entitled to be represented on the Business Committee.

Clause 11: Financial Assistance for Opposition parties

Political parties within the Assembly are entitled to payments under the Financial Assistance for Political Parties Act (Northern Ireland) 2000. This clause provides for additional payments to be made to political parties in the Opposition.

Clause 12: Salary for office holders of the Opposition

The Independent Financial Review Panel sets the salaries and allowances for members. Different amounts may be payable in different cases. For example, Ministers may be entitled to more than members who are not Ministers. This clause adds office holders of the Opposition (i.e. the Leader and Deputy Leader) to the list of persons who may be entitled to more.

Clause 13: Assembly and Executive Reform Motion

The Assembly can only enact legislation on matters that it has legislative competence for. Many matters to do with forming an Opposition and reforming the Assembly and the Executive are beyond the legislative competence of the Assembly. Therefore, the Bill is limited to making a request that these matters are legislated on at Westminster. This clause (and the Schedule which is linked to it) allows the Assembly to pass an Assembly and Executive Reform Motion calling for legislation to reform the Assembly and the Executive. If the Assembly passes such a motion, the Speaker must transmit it to the Secretary of State for Northern Ireland.

Clause 14: Tabling of Assembly and Executive Reform Motion

The AERC are responsible for ensuring that an Assembly and Executive Reform Motion is tabled within 5 days of this clause coming into operation.

Clause 15: Reports by the AERC

The AERC must report to the Assembly at least once every 3 months on the progress being made by the Secretary of State in bringing forward legislation to reform the Assembly and the Executive.

Clause 16: Formation of technical groups within the Opposition

Even if the Opposition is formed by qualifying parties, the smaller parties and independents can come together to form a technical group.

Clause 17: Membership of Business Committee for technical groups

Where the Opposition is formed by qualifying parties, there is still a role for technical groups in the Business Committee.

Clause 18: First topical question to Minister from chairperson of statutory committee

During topical questions to Ministers, the first question is to come from the chairperson of the committee established to advise and assist that Minister.

Clause 19: Establishment of Budget Committee

A Budget Committee is to be established. The main purpose of the Budget Committee is to scrutinise the draft budget laid before the Assembly.

Clause 20: Renaming of the Office of the First Minister and deputy First Minister

This office is to be renamed as the Office of the First Ministers. The Assembly does not have legislative competence to rename the First Minister and deputy First Minister. The Assembly Opposition Motion includes provision calling for them to have their title changed.

Clause 21: Departments to be a single legal entity

At present, each Northern Ireland Department is a separate legal entity. This clause would make them all one single legal entity. The Department for Finance and Personnel is given power to make more detailed regulations to give full effect to this change.

Clause 22: Interpretation

This clause defines some phrases used in the Bill.

Schedule: Content of Assembly and Executive Reform Motion

The Schedule sets out the kind of requests that could be included in an Assembly and Executive Reform Motion. These are matters which the Assembly are requesting the Westminster Parliament to legislate on. These include the following:

Removing the concept of cross-community support and petitions of concern, and replacing them with weighted majority voting;

- Making the Speaker more independent and above party politics;
- Renaming the First Minister and deputy First Minister as First Ministers;
- Obliging Ministers to exercise collective responsibility for their actions;
- Increasing the threshold of number of members a party must have before it can nominate a Minister;
- Combining the process for nominating Ministers with the process for nominating chairs to statutory committees;
- Leaving the Opposition to join the Executive;
- Requiring the Executive to set out a programme for government at the outset;
- Refocusing the work of statutory committees on scrutinising Ministers rather than advising them;
- Allowing a budget to be approved by a simple majority in the Assembly.

FINANCIAL EFFECTS OF THE BILL

20. Three provisions have been highlighted as potential sources of expenditure, signalling that if implemented as introduced the Bill would not be entirely revenue neutral. However the Sponsor points out that these are minimal.
21. First, costs relating to signage will result from the departmental name change proposed in Clause 20; it is anticipated that the costs so incurred would be negligible.
22. Enhanced speaking times for the Opposition and additional Opposition days might reasonably be expected to generate additional resource requirements for the Assembly. This aspect of the proposal does not contain sufficient information for costing purposes. As the proposal is developed additional research may be undertaken to consider factors such as the extent to which Assembly resources could be rebalanced to take account of this.
23. The Bill proposes that on election of the Speaker, to enhance the ability for this officer to act independently a new MLA should be co-opted from his/her constituency to exercise party and constituency representation in the Speaker's stead. It is reasonably foreseeable that the creation of a 109th MLA will attract salary, pension and other costs which can be rounded to an estimated £72k. These may of course be offset by review of other salary, pension and allowance arrangements under the scheme.

HUMAN RIGHTS ISSUES

24. The Bill is considered to be compatible with the European Convention on Human Rights.

EQUALITY IMPACT

25. It is further considered that the Bill will not have an adverse impact on any of the groups listed in section 75 of the Northern Ireland Act 1998.

LEGISLATIVE COMPETENCE

26. At introduction the Sponsor of the Bill, Mr John McCallister MLA, made the following statement under Standing Order 30:

“In my view the Assembly and Executive Reform (Assembly Opposition) Bill is within the legislative competence of the Northern Ireland Assembly.”