

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 Member”) 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 provides for the passing of an Assembly and Executive Transfer of Responsibilities Motion and 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

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Act has been 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 Member conducted a consultation exercise over a seven-week period on the policy objectives and proposed options for the Bill.
10. The Member 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 Member 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 Member 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 Member 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 Member was sure this was the only fitting way for the Assembly to determine whether and how it might reform the institutions.
14. The Member 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 Member'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 Member 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 allows the passing of an Assembly and Executive Transfer of Responsibilities Motion which may request the Secretary of State to allow the arrangements and timeframes for agreeing the Programme for Government to be dealt with as reserved instead of excepted matters.
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 provide for the passing of an Assembly and Executive Transfer of Responsibilities Motions, 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 if one or more qualifying parties form it, qualifying parties being parties which could have a Ministerial office but don't, or parties which do not contain a Minister but whose members comprise 8% of the total number of Members of the Assembly..

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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 or by one or more qualifying parties before 30 June 2016.

Clause 4: 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 5: Leadership of the Opposition

The Opposition will be led in accordance with this section. Where the Opposition is formed by one qualifying party, then that party will nominate a Leader of the Non-Executive Party. Where the Opposition is formed by two or more qualifying parties, then the largest party must nominate a Leader of the Largest Non-Executive Party and the second largest party must nominate a Leader of the Second largest Non-Executive Party. These names may be changed by standing orders.

Clause 6: Topical questions from the Leadership of the Opposition

The leadership of the Opposition has the first opportunity to question the First Minister and deputy First Minister during topical questions.

Clause 7: Speaking rights in the Assembly

Standing orders will provide that speaking rights in the Assembly are allocated according to party strength.

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 10 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: Assembly and Executive Transfer of Responsibilities Motion

With cross-community support, the Assembly can pass an Assembly and Executive Transfer of Responsibilities Motion requesting the Secretary of State to bring forward legislation which is

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beyond the legislative competence of the Assembly to allow matters to be dealt with as Reserved instead of Excepted matters.

Clause 13: Tabling of Assembly and Executive Transfer of Responsibilities Motion

The Assembly and Executive Review Committee is responsible for ensuring that an Assembly and Executive Transfer of Responsibilities Motion is tabled within 5 days of this clause coming into operation.

Clause 14: Reports by the AERC

The Assembly and Executive Review Committee 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 15: Topical questions and debate on legislative timetable

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 16: Interpretation

This clause defines some phrases used in the Bill.

Schedule: Content of Assembly and Executive Transfer of Responsibilities Motion

The Schedule sets out that the Motion can request arrangements and timeframes for agreeing the Programme for Government to be dealt with as reserved rather than excepted matters.

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 Member points out that these are minimal.

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.

HUMAN RIGHTS ISSUES

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

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EQUALITY IMPACT

22. 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

23. At Introduction the Member in charge of the Bill, Mr John McCallister, had made the following statement under Standing Order 30:

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