



Northern Ireland
Assembly

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**Consideration of the Size of the
Assembly; Review of Sections 16A to 16C
of the Northern Ireland Act 1998**

2 November 2010

NORTHERN IRELAND ASSEMBLY

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Consideration of the size of the Assembly; Review of Sections 16A to 16C of the Northern Ireland Act 1998

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Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
Mr Alex Maskey (Deputy Chairperson)
Mr Fred Cobain
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Mr John O'Dowd
Mr Declan O'Loan

Also present was:

Mr Alan McFarland

The Chairperson (Mr Spratt):

We now move to the consideration of submissions. To help with our discussions, a copy of the Northern Ireland (St Andrews Agreement) Act 2006, which includes sections 16A to 16C, has been included in members' packs. There is also a copy of the formal work programme, which indicates that the deadline for consideration by the Committee of sections 16A to 16C is 1 February 2011. The research paper on the Parliamentary Voting System and Constituencies Bill that I mentioned is also in members' packs.

I am quite happy for members to take a few minutes to look at the submissions that have just come in. I will take the nod from members when they are ready.

Members indicated assent.

I will be led very much by members on what happens now. You have all read the various submissions from the parties. The discussion now needs to take place around the table on how we move things on and what sort of agreement, if any, we can come to.

Mr Hamilton:

It is so long since we asked for some of this documentation that it may be worthwhile to remind ourselves about why we are doing this. It might also be of benefit to remind ourselves of the timescales that we are up against. We are not carrying out this exercise on these two issues for the sake of it; one was in response to a request from the Speaker about the Parliamentary Voting System and Constituencies Bill and the other is a statutory duty.

The Chairperson:

Yes; a letter was sent from the Speaker to me about the Bill, which he referred to the Assembly and Executive Review Committee.

Mr Hamilton:

We need to decide which issue to discuss first.

The Committee Clerk:

The timeline for the Parliamentary Voting System and Constituencies Bill is in front of members. The Third Reading of that Bill is taking place today, and it will go to the House of Lords in 2010-11. The Secretary of State wrote to the Speaker on the issue and met with him to discuss it. The Speaker then forwarded the Secretary of State's letter to this Committee, because the size of the Assembly, as referred to in the St Andrews Agreement, is within its remit.

The issue has assumed more importance principally because the Bill is going through Westminster. If the Committee wants to influence the number of MLAs in the Assembly, it

would seem appropriate to try to do so at an early stage, instead of waiting for the Bill to become an Act, after which an amending Act would be required.

As members know, there will be a referendum on 5 May 2011 on a number of issues relating to the Parliamentary Voting System and Constituencies Bill. If that Bill is passed in its current form, Northern Ireland is likely to have 15 MPs following the reduction in the number of Westminster constituencies. That would mean that there would be 90 Members in the Assembly from the 2015 election. Therefore, the reason why the issue is on the work programme at what might seem like an early stage is principally so that the Committee can exert influence if it wants to move away from the set figure of 90 Members.

Sections 16A to 16C of the Northern Ireland Act 1998 as amended by the Northern Ireland (St Andrews Agreement) Act 2006 are on the agenda again and have assumed more importance because of the timeline involved. As the Chairperson indicated, the Committee has to respond by 1 February 2011. The Northern Ireland (St Andrews Agreement) Act 2006 states:

“If, by no later than 1 February 2011 —

(a) the committee established by virtue of section 29A of the 1998 Act makes the recommendation set out in section 29B(1)(b) of that Act, and

(b) the committee’s recommendation is approved by the Northern Ireland Assembly with cross-community support”.

Section 29B refers to the review of the operation of sections 16A to 16C of the Northern Ireland Act 1998. The Committee is mandated to report on that issue by no later than 1 February 2011, because, by that stage, the Secretary of State must, by order, make a statutory instrument to amend that Act. Whatever the Committee and the House agree will help take that issue forward.

The two issues are separate, but they are being taken forward at the same time because of the timeline involved.

Mr A Maskey:

The Committee Clerk is saying that any submissions that we want to make on sections 16A to 16C will have to be made by that date.

The Chairperson:

We will have to report to the Assembly by 1 February 2011, which means that we will have to have broad agreement by the beginning of January. The report will probably be very short, but we will probably need about two or three weeks to compile it.

The Committee Clerk:

In response to Mr Maskey's point, the Northern Ireland (St Andrews Agreement) Act 2006 states that the Committee will decide on the review of the operations of sections 16A to 16C and that:

“the Secretary of State must by order made by statutory instrument amend that Act and any other enactment so far as may be necessary to secure that they have effect, as from the date of the election of the 2011 Assembly, as if the executive selection amendments had not been made.”

The key point is the part about the date of the election. If one is going to amend section 16A to 16C as if they had not been made, one would have to do so no later than 1 February 2011.

The Chairperson:

It may be that we will go to the Assembly and say that it will be 2015 before any change is made. My understanding was that the next Assembly would be the same size. Simon, does that clarify the point?

Mr Hamilton:

Yes, it was useful. Two issues are pressing, but one is more pressing than the other. The more pressing issue is the impact that the Parliamentary Voting System and Constituencies Bill will have. It strikes me that it can decide how we move forward.

The Chairperson:

We also need to be mindful of the Christmas recess, which is two weeks. We need to factor in all of those things to be able to get to the timeline that we need for 1 February.

Mr McFarland:

I want to recap the effect of this. The changes to the boundaries will come in 2015, and not before. Is that correct?

The Chairperson:

Yes.

Mr McFarland:

We could bring amendments to section 16 before next May, but you thought that that might be a bit early, Chairperson. The amendments would also be applied in 2015, subject to the Assembly.

The Chairperson:

That was my understanding. A lot of the background work and preparation for the Assembly election, on the number of Members, and so on, will be done by around February or March. Although we may recommend that it will be 2015 before there is a downsizing, we can say that the agreement has already been made, if that is what the Committee decides.

Mr McFarland:

I see that a number of parties believe that section 16 should be amended before the next election. Technically, if the Assembly voted for that, it could happen. Clearly, there are other parties who think that it should not happen for the next election but the one after.

Mr McDevitt:

That is an interesting point. As I heard from the Committee Clerk's clarification, the statutory mandate on us is to provide a position on section 16 in time for the next Assembly election so that, if, for argument's sake, we were to agree that it should be changed, there would be ample time for it to be changed.

The Committee Clerk:

It is set out on page 12 of the Northern Ireland (St Andrews Agreement) Act 2006.

Mr McDevitt:

I will play devil's advocate on Simon's point. To some extent, from a statutory point of view, we need to form a view on that within a specific timescale. Those of us who have participated in the debate on the Bill that is going through Westminster know the party positions because we have

been there in the past couple of months. Today is the final big debate, and I have heard little idea that there will be a big rebellion in the House of Lords. Therefore, one could nearly anticipate what the Westminster position will be after tomorrow. As you said, the consequence for us will be, potentially, down the line, whereas the statutory duty on us is to come to some sort of opinion on section 16, as you rightly pointed out Chairperson, by the end of January. I am wondering whether that should inform how we might want to approach our debate in the next few weeks.

The Chairperson:

That should inform us. We need to be doing some work on it to get to the stage of producing a report.

Mr O'Loan:

That is how I read it. We have a job to do, and we must do it. There seem to be more disparate opinions about the size of the Assembly, and there is also much more uncertainty about it, because we do not know the final outworkings of the Bill that is being discussed at Westminster today becoming an Act. It is hard to come up with definitive conclusions until that works its way through somewhat more.

Mr Hamilton:

On that issue, there are ramifications that we might wish to discuss at the appropriate point as to how the Assembly deals with that. The Committee Clerk can put me right, but I believe that we are not obliged to accept whatever comes through in respect of the size of the Assembly. I think that I am right in saying that we can decide to put the size up or down. I am being devil's advocate now.

Mr McDevitt:

Yes, we can; but we are bound to coterminosity at the moment, so we have a substantial challenge to re-legislate to break coterminosity.

Mr Hamilton:

The point that I am getting at is that there are stages and processes that we would have to follow. If we decided to keep it as it is, we would obviously have to take that process into our view as

well.

The Chairperson:

Where are we? We agree that work needs to be done. The parties have submitted papers, which are in front of members. Do members want to get into a discussion today in relation to those papers?

Mr O'Loan:

It would be quite useful if we were presented with a summation of the submissions from the parties and independents in tabular form.

The Chairperson:

We did that with the policing and justice stuff. We could have a one-page or two-page summary to indicate party positions in bullet points and in some sort of order, perhaps according to subject size and things such as that. We could have the DUP position, the SDLP position, the Sinn Féin position, and so on, set out so that we could run our eyes up and down one or two pages. That was very helpful previously. I know that the Committee Clerks did some good work on that, and I have no doubt that they will be able to do it again, so we request that that be done.

I am totally open to discussion, if that is what members want to do. Perhaps you want to wait until you get that document. Do you want to meet now on a weekly basis? Those are the issues that we need to discuss.

Mr A Maskey:

We only got some of the submissions in the last couple of days. It is a useful idea to tabulate them so that that is a ready reckoner for us. There is another bit of information that I would be interested in having. I think that the Welsh have brought in an exemption from the Westminster Bill. If, for example, this Committee and the Assembly decided that we did not want to reduce the number of MLAs to 90 by 2015, and the argument was made to remain as we are with 108 MLAs, what is available to us to seek to affect that amendment of the Westminster legislation? Is there anything? I am curious to know about that.

The Committee Clerk:

I could get formal legal advice from the Assembly Legal Services, but I have had some initial discussions with them on that. If the Committee decided that it wanted to retain all 108 Members, its decision would go to the Floor of the House. If it was agreed on the Floor of the House, the Speaker would write to the Secretary of State to say that that was the Assembly's will. In his letter, the Secretary of State stated that he would take the Assembly's view under consideration and that he had no interest in telling the Assembly what size it should be. That would be the approach to take. Whether the Secretary of State would actually do it is what we would have to get clarification on. If the Assembly so wills that it should have 75, 108 or 208 Members, is the Secretary of State obliged to follow that course?

Mr A Maskey:

Will you get that information? I think that would be important.

Mr McDevitt:

Alex's point is well made, and this is where we could do with further research. Scotland and Wales do not elect their Assemblies coterminously, so their constituencies do not always meet exactly. Where they do, they have top-up and regional lists and all that sort of stuff.

If we come at the debate from the view of having a proper conversation about how we would continue to have a Northern Ireland Assembly of 108 Members but under a 15-constituency model, we should look at the alternative models that exist in Scotland and Wales, which have not just multi-seat proportional representation constituencies but a mixed, hybrid system. That may be useful to see, particularly on the question of coterminosity, because, when we set out in 1998, we kind of hung our hats on that basic principle of having everyone elected from the same boundaries. If we ended up with legislation that brought us down to 15 seats at Westminster and we still wanted 108 here, we would have to break the boundaries or to have a list system or something on top of that. I am thinking aloud. It would be useful to understand the situation that we are dealing with.

Mr McFarland:

We need to separate it out. The reason the boundaries are changing is so that, right across the

UK, we can have largely the same number of voters in each constituency. Therefore, seeking to have different numbers here from the rest of the UK is breaking parity. If we then look to keep 108 MLAs, presumably, we are looking at moving to seven Members in each constituency.

Colleagues will be aware of the debate about 108 being far too many anyway, and I think that the DUP is looking at a figure of 75. So, if there is a move to reduce the number of MLAs anyway, and we are trying to keep some sort of sense on the size of the voting pool in each constituency, we need to keep those two elements in balance throughout our discussions. I cannot see any agreement being reached on a top-up lists or the forum-type system that we had, whereby people are brought in off a list. That moves outside the agreement and everything that we have had since, so I cannot see that being endorsed, certainly in the short term. We should wish to keep those issues in mind as we discuss the size of a future Assembly.

Mr Hamilton:

Whether people like it or not, the important point is that, on this issue, there is a downward pressure. My party's position on the size of the Assembly is well known, and I will not repeat it now. Although we have made it perfectly clear for a long time that our position is that less is appropriate, we have never been rigid about how we get to that less. We have been fairly stuck on the idea that we just replicate parliamentary constituencies because that makes it simpler for electors to know who they are voting for and causes less confusion.

Anybody who has canvassed for votes knows that there is always confusion among people about where boundaries are. It does not matter that we may get quite precious about where boundary lines are, because that is our business — most people do not know or care even less. There are other ways in which to reach the same point. There is no harm in looking at other ways of getting to a lower number, and I am quite content to do so. However, we have to accept that changes are coming. We have an issue about the reduction in Westminster seats and the loss of representation there.

The Chairperson:

Does anybody else wish to speak? We are not going to get to a consensus today. I sense that parties probably need to continue their internal discussions on the subject. We have agreed that a

paper will be produced to provide us with a more user-friendly document. Rather than us going through all the submissions, that paper will contain bullet points on each party's position and will be available at our next meeting.

You are now aware of the timelines. One issue is the influence of the Westminster legislation. I suppose that we would need to be getting a reply back to the Secretary of State, but I do not think that we are in a position to do that either. Is the consensus around the table that we want to see how the debate taking place at Westminster today goes? If we can have a rundown on the sorts of positions that are adopted in that discussion, that will give us a pretty clear indication of what will be passing on to the House of Lords. That will not be done until December or February, which is the timetable for the Lords. So, this time next week, we will have a better idea of the House of Commons position. Can that be done as a short research paper giving members a fairly clear rundown of how today's debate goes?

The Committee Clerk:

Yes.

The Chairperson:

Are members agreed that we will now meet weekly? Or do members want to continue to meet fortnightly? I am open to whatever you agree. Bear in mind, however, that we have recess, and we need to present something, whatever that may be, to the Assembly by 1 February. We may well have to say at that point that we have not agreed a position, but we are duty bound to present something to the Assembly. We should also remember that whatever paper goes to the Assembly, it has to be agreed by a cross-community vote.

Mr Hamilton:

Why not meet weekly, and we can always alter that?

The Chairperson:

I would have thought that meeting weekly would be the best idea to see whether we can make some progress. We are at about the same position as we were with the policing and justice stuff at an early stage, and we eventually got through that. So, I have every confidence in members

that we will be able to move. Obviously, everybody will not get everything that they want. We will have to have some sort of a — I will not use the word “compromise”, because that does not really help anybody.

A Member:

But you just have.

The Chairperson:

I imagine that we can get to some sort of a position and some sort of a paper. I get the view that members are keen to discuss it further. It may be helpful if you can have more discussions within parties. I do not know how you will deal with that, Alan.

Mr McFarland:

I will discuss it with myself.

The Chairperson:

You may have a discussion with yourself.

A Member:

See whether you can get a consensus. *[Laughter.]*

Mr A Maskey:

Get a seconder. *[Laughter.]*

The Chairperson:

That is not very fair.

As there is no further business, we agree that we will meet next week on 9 November at 11.00 am. Thank you.