



Northern Ireland
Assembly

**Assembly and Executive Review
Committee**

**OFFICIAL REPORT
(Hansard)**

**Northern Ireland Act 1998:
Review of Parts III and IV**

7 February 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Pat Sheehan (Deputy Chairperson)

Mr Roy Beggs

Mr Gregory Campbell

Mr Pat Doherty

Mr Paul Givan

Mr Simon Hamilton

Mr Raymond McCartney

Mr Conall McDevitt

Mrs Sandra Overend

The Deputy Chairperson: We move on to the review of Parts III and IV of the Northern Ireland Act 1998 in the context of reviewing the size of the Assembly and the number of Departments. The purpose of this agenda item is for the Committee to consider and agree the wording of the revised terms of reference for its review, a detailed stakeholder list and a revised timetable for the review. Finally, the Committee will consider the first draft of a framework for a stakeholder call for evidence paper, which is tabled today. If any member does not have a copy of that to hand, there are some spare copies.

I propose to take each of those areas in turn and will ask the Committee Clerk to speak to the memo at tab 2 of today's papers, starting with the revised terms of reference at tab 3.

The Committee Clerk: Thank you. A revised draft terms of reference can be found at tab 3. It has been developed based on the Committee's discussions and decisions at its meeting on 31 January 2012.

Members will note that the draft reflects the agreed approach to the review, following the decision to include in the review:

"the number of Northern Ireland departments and associated re-allocation of functions".

The phased approach to the review is also reflected in the revised wording of the draft terms of reference. It will also be reflected when the Committee looks at the redraft of the timetable for the review in a few moments' time. The wording of the revised draft terms of reference is at tab 3 for members' consideration.

The Deputy Chairperson: Are members content with the revised terms of reference?

Mr McCartney: In relation to the final three bullet points, our party is looking to insert a section about being consistent with the safeguards around inclusivity, as under the Good Friday Agreement and St Andrews Agreement.

The Deputy Chairperson: Are members content with that?

Mr Beggs: I do not think that there is any question about that. Does that need to be explicitly mentioned? It is a given, considering that there is an understanding among everybody that that is how it operates. Do you need to say that which is in legislation?

Mr McCartney: In one sense, you are right, because we know that. However, it is about giving our terms of reference to other people beyond the Committee. The bullet point states:

"the effectiveness of the Assembly in delivering its key functions is maintained".

I think that we should have a clause about that being consistent with the safeguards around inclusivity.

Mr Beggs: Where exactly is that in the paper?

Mr McCartney: The final three bullet points under phase 1. It is on the page at tab 3.

Mr McDevitt: I wonder whether Raymond's concern could be dealt with, because it is a fair point, from the point of view that someone who is coming at it cold could read too much into it. It could mean that we get all sorts of responses back saying that we should move to voluntary coalition models, for instance, which is clearly not included. I cannot put my hand on it now, but I remember reading somewhere that we had taken an active decision to exclude certain things from the review. Given that those are decisions that we have already taken at Committee, to include in the first paragraph an explicit statement to say that this does not include a review of the current mandatory coalition model, and so on, might be a way of dealing with it.

The Committee Clerk: I remind members that, as stated in the minutes that were agreed a few moments ago, the Committee agreed that alternative electoral systems/models and the statutory basis for the current Committee system were the two items outside the scope of the review.

Mr McDevitt: At an earlier stage in our conversations, we did discount throwing this wide open, because there was not enough consensus. I know that Roy would probably like us to be able to do that, as would Gregory, I am sure. However, we discounted the idea of going back to the drawing board around the way we make up our government. We agreed, did we not, to focus on the questions of the number of Departments and the size of Assembly.

Mr Campbell: I was a bit confused when Raymond McCartney talked about the three bullet points, and, rather than clarifying it, Conall has exacerbated it. From what Raymond McCartney said, I thought that there was an attempt to give an overarching inclusivity; from what Conall said, I took it as being almost exclusivity, in that certain things are going to be ruled out.

Mr McCartney: Perhaps I could make it easier by suggesting that the first of the three bullet points might say:

"The reduced number of MLAs required to ensure that the effectiveness of the Assembly in delivering its key functions is maintained, consistent with the safeguards on inclusivity".

Mr Campbell: And where would you put that?

Mr McCartney: In the third bullet point — the first of my three — where the semicolon would become a comma.

Mr Beggs: I hope that we would all want inclusivity included, consistent with the —

Mr McCartney: One of the reasons why there were 12 Departments and so many MLAs was to ensure inclusivity, so you do not want people saying that we are ignoring the inclusivity part of it while making the place more effective. I think that you can combine the two.

Mr Beggs: I do not want to rule virtually anything in or anything out. The one thing that is factually correct and which no one can dispute is the fact that any change will require cross-community support, and, therein, there is protection for everybody. If we were simply to state that, it stops somebody coming up with a model that has no chance of getting cross-community support and, therefore, to a degree, wasting our time in discussing it in detail. I think that we should simply state upfront that any change will require cross-community support. To a certain extent, that deals with that issue as well, and it is factually correct.

Mr Campbell: I do not think that much turns on including the phrase. I think that it is almost self-evident that that is the case anyway. Regardless of whether stating it adds to it or draws attention to it in a way that somebody might ask why we were considering not doing it, I do not think that much turns on it.

The Deputy Chairperson: If that was a proposal —

Mr McDevitt: I am happy with Gregory's proposal.

The Deputy Chairperson: Agreed?

Mr Beggs: What have we agreed?

Mr McDevitt: To add a couple of words at the end of bullet point three.

Mr McCartney: "Consistent with the safeguards on inclusivity".

Mr Beggs: The one issue that I have is that your interpretation of that and somebody else's could be different. But let that be. There will have to be inclusivity.

Mr Campbell: That could be the case with it not being in as well.

Mr Beggs: Yes.

The Deputy Chairperson: "Consistent with the safeguards on inclusivity".

Are there any other questions?

Mr Doherty: I am just throwing this out, and we can talk about whether it needs to be included or not. We have the review of public administration (RPA). It may be that some functions that we currently hold here will be delegated to councils in their new format. Does that have an impact on what we are undertaking here?

Mr Beggs: Undoubtedly, it does. If the Department of the Environment was to lose the Planning Service, which I understand is destined to happen under RPA, that would have a major impact. Is that something that we need to specifically mention and to be aware of?

The Deputy Chairperson: Do we have a proposal?

Mr Doherty: It is not a proposal as such, but we certainly need to be aware of it as we proceed. However, do we need to put it into the terms of reference?

Mr McDevitt: Pat makes a very good point. However, there is a risk with putting it into the terms of reference, because we have not done the legislation on RPA. Therefore, we are asking people to be mindful of something that we, as a House, do not have a mind on yet. I think that we should encourage people privately to factor it in but that putting it in the terms of reference could be a bit of a hostage.

The Committee Clerk: The Committee agreed that there would be a wide range of stakeholders and all 26 councils are now stakeholders through NILGA. They could come back with RPA issues, but that ties in with the wider issue of the number of Departments in terms of devolving functions, etc. You will get what you will get as regards the views of local government and, no doubt, that could take in RPA.

Mr Doherty: As long as we are aware that it could have a knock-on effect.

The Deputy Chairperson: Are members content with that as it is? We will move on. Are you happy enough to move on?

The Committee Clerk: Yes, on the basis that that is the revised terms of reference agreed now with that wording included.

The Deputy Chairperson: Do members agree?

Members indicated assent.

The Deputy Chairperson: We move to the detailed stakeholder list at tab 4. Members will note that the stakeholder list includes some of the Clerks to the relevant Parliaments and Assemblies. If members are content, I propose that Trevor Reaney, the Clerk and Director General of the Assembly, also be included in the list.

Members indicated assent.

The Committee Clerk: Members will recall from last week that the stakeholder list was widened to include all political parties in Northern Ireland; the First Minister and deputy First Minister, their Department and its Committee; selected constitutional experts; and the Clerks to a number of Parliaments and Assemblies. The others included NILGA; the chief administrative officers of the 26 local councils; and Platform for Change, an organisation that contacted the Committee and wished to be included. Furthermore, the Committee agreed that there would be some form of public notice to encourage wider responses to the review.

Members will see a summary of the list at tab 4. A total of about 87 stakeholders will be written to directly by the Committee and asked for their views. There is a list of some 40 registered parties at tab 4a; the list of constitutional experts considered by the Committee last week; the list of the Clerks to the Parliaments and Assemblies; and, finally, the list of the 26 councils and NILGA. That is a total of 87 stakeholders, if I have my count right.

The Deputy Chairperson: Are members content with the detail of the stakeholder list?

Members indicated assent.

The Deputy Chairperson: We move to the revised phased timetable for the review, which is at tab 5. I ask the Clerk to speak on that.

The Committee Clerk: The proposed timetable for the review has been revised to take into account the wider scope of the review's terms of reference that were agreed at last week's meeting, and the phased approach. It is set out at tab 5 in three phases. In mid-February, the plan is that the Committee will begin evidence gathering for the review. That would continue right up to Easter. After Easter, we would move into phase 2 of the review, the consideration of and preparation of a report on the number of MLAs in the Assembly. The plan is that the report would be ready to be signed off by the Committee and be presented to the Assembly towards the end of May or early June. There may be a plenary debate in June, before summer recess.

The evidence gathering for phase 3 of the report would commence mid-February, but the consideration of that evidence as a discrete area — the number of Departments — would start immediately after summer recess in September and go through to report stage at the end of October. That is the revised timetable.

The Deputy Chairperson: Are members content with that?

Members indicated assent.

The Deputy Chairperson: Finally, members, we move to the draft framework for the stakeholder call-for-evidence paper. I ask the Clerk to speak on that.

The Committee Clerk: I apologise because the aim was to get this paper to members yesterday evening, but we did not manage that. We were still doing some thinking on it late yesterday evening. This is, first of all, a call-for-evidence paper. The Committee is not making proposals in relation to the size of the Assembly, or, indeed, the number of Departments, but asking for stakeholder views. We have retitled it as a stakeholder call-for-evidence paper, rather than a consultation paper.

I will talk members through the paper. The introduction includes the niceties that the Committee is well familiar with in terms of the powers, the proposal from the Secretary of State on the opportunity for a Bill that could change the Northern Ireland Act 1998 through Westminster, and the terms of reference for the review, subject to the amendment agreed earlier. It also highlights matters outside the scope of the review, as was mentioned earlier. Pages 4, 5, and 6 are background notes. Those are primarily to inform stakeholders of the factual position and the legislative position on the issues that are subject to the review. Many of them are drawn from research papers that have been presented to the Committee. That has been drafted as a factual document to inform stakeholders.

The five areas of the review have been mentioned. Those are repeated from the terms of reference on pages 7 to 11. The interesting point for members in terms of new material is the inclusion of the questions to be put to stakeholders in the call-for-evidence paper. There are two or three questions on each area. In preparing the draft, every effort was made to ensure that they were not leading questions but that they reflect discussions by the Committee to date on the two subjects and that they are open-ended questions to seek the views of stakeholders. At the end of the day, the job of the Committee is to analyse, consider and make recommendations from this exercise, so there is a need for some kind of structure to tease out the issues in discrete units, as such. The questions have been drafted as best we can, but it is a work in progress. The intention is, subject to members' agreement, to bring it back to the Committee in completed form next week to finalise the call-for-evidence paper. Members may want to focus on the questions.

The Deputy Chairperson: Are members content with the draft paper? Are there any points or questions?

Mr McDevitt: I am just getting first sight of it, obviously. I think that question 2 probably needs a little more reflection. From the way in which we are asking it at the moment, applying the man-from-Mars rule, you would think that we were asking people what they think will be the impact of the consequential change in Westminster. Then, in the second bit of the question, I know what we are trying to ask, but I do not think it is sufficiently clear yet. We are going to have to think about the wording. I presume that what we are trying to ask is: do you think we should go even further beyond that, and, if so, how far? I think that is what we are trying to find out, otherwise you will get a lot of responses about whether people like or do not like an Assembly of 96 Members. That suits me, because that is my negotiating position, but I do not think it is the objective of the exercise.

My other question is about the background paper. I am sorry, John, for not having the chance to read it in detail, but do we give people the total background about the consequence of remaining coupled? In other words, do we make it clear that Assemblies could go up or down in the future?

The Committee Clerk: There is an attempt at page 4 to reflect the Act that, if implemented, would bring the total membership of the Assembly to 96.

Mr McDevitt: Yes.

The Committee Clerk: There is the comparison with how the Welsh and Scottish dealt with that.

Mr McDevitt: Given what is in the research papers, under the heading of the Parliamentary Voting System and Constituencies Act 2011, I see that you point out that that is what will happen. I think that we need to issue a disclaimer, which research validated for us, that if there were a change in the number of registered people in England, for example, the number of constituencies in the North of Ireland could go back up. Therefore, the size of Assembly size could increase if we were to stick with the coupled model. I think that the assumption out there is that it is one-way traffic — that it can only ever go down — which is not true, as we have established.

The Committee Clerk: Yes.

Mr Campbell: I suspect that there will be a range of responses from political parties and movements, but I suspect that they will, presumably, know the implications of what we are talking about. In all probability, the wider stakeholders will know as well. However, if stakeholders are like the rest of us, this will probably be skimmed through and they will go straight to the nub of it. The question is whether there is merit in spelling out more elaborately the current 18 constituency/six Member system; the change at Westminster, which would lead to 16 by six; or whether there is a wish to go further. To go beyond that — for example, 16 by five, equalling 80 Members — creates the difficulty of leading questions, rather than leaving it open for a response. However, you might have to be a bit more specific because I think that the tendency will be, as most of us do, to scan through something that we know vaguely about and go to the nub of it, rather than go through the intro. I think that we might have to spell that out a bit more.

Mrs Overend: I get what Gregory is saying, but I wonder whether it would be easier to number this a bit better and state, "please refer to", to reach the full detail, rather than saying things twice.

Mr Campbell: Yes. Although, even in the intro, it does not spell it out in those terms. The parliamentary voting system tells us how many constituencies there are — so that is reduced by 50 down to 600 throughout the UK, and in Northern Ireland that is a move from 18 to 16. However, the obvious consequential is not there, namely that, at the moment, it is 18 by six — do we go to 16 by six or are there any implications for further reductions? They need to know the exact position if they go straight to the questions.

Mr McDevitt: It is important that we debate this. Linking that point with the question around decoupling, if a respondent is saying that they want to decouple, they could argue that they do not want a reduction at all because they would like to keep membership at 108. I do not think that we have quite framed the question in a way that means that answer is possible, if you know what I mean. It is really about making sure that everyone feels that they can give us their genuine opinion.

The Committee Clerk: Yes. The only point that I was making — and I did not do this in my summary or draw members' attention to it — is that the Committee has, of course, commissioned and received a number of research papers. Those will be linked to this, so the stakeholders can dig down into detailed research, which reflects the points that members have just been making. We can take those points and redraft this for consideration and final sign-off next week, if members are content.

The Deputy Chairperson: I seek the Committee's agreement that the Committee staff complete the drafting of the stakeholder call-for-evidence paper on the basis of today's Committee discussion and agreements, for consideration at the Committee's next meeting. Are members agreed?

Members indicated assent.