



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Civil Service (Special Advisers) Bill: Clause-
by-clause Scrutiny

30 January 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

The Chairperson: I refer members to the secretariat paper on the Committee's clause-by-clause consideration of the Bill. We will start at page 2. Point 4 refers to the Committee's previous meeting, at which members gave initial consideration to the Bill's clauses. A number of members advised that they may propose amendments to the Bill through the Committee. Members should go through the Committee or liaise directly with the Clerk of Bills to table any amendments. However, to date, no amendments have been received from members. It will be necessary to establish a clear Committee position at the meeting today on any proposals for amendments from the Committee, irrespective of how fully formulated they are. Do members want to make any comment?

Mr Mitchel McLaughlin: I wish to introduce amendments to a couple of clauses, but not today, because work is ongoing. I want to establish that any decision taken by the Committee today will record the fact that — there may be other members for all I know — the Committee decisions were, I presume, by majority. I am not in a position today to process the arguments, but I would be concerned if the impression was given that the clause-by-clause consideration resulted in unanimous positions in all circumstances, as I am signalling very clearly that I intend to introduce amendments to some clauses. If the record of the discussion reflects that, I will be content.

The Committee Clerk: For clarity, when there is no consensus in the Committee, the report on the Bill will, as with any Bill, reflect a majority position. There is precedent that the Committee can agree to make a reference in the report to divisions being detailed in the minutes of proceedings that is attached to the report.

Mr Mitchel McLaughlin: OK; thank you.

Clause 1 (Meaning of "special adviser")

The Chairperson: Clause 1 refers to the meaning of "special adviser", which is defined as a person appointed to the NI Civil Service (NICS) to advise a Minister or junior Minister. In written evidence, the Office of the Legislative Counsel (OLC) advised that the Civil Service Commissioners (NI) Order 1999

did not make provision for a junior Minister to appoint a special adviser. The sponsor of the Bill subsequently advised that the order had been amended by the 2007 Order and that junior Ministers are among those who can make such appointments. The Bill sponsor has also advised that he will move an amendment to address a technical issue raised by OLC about the clause. Details of the issue raised and the Bill sponsor's response are in members' papers. Is the Committee content with clause 1, subject to the proposed technical amendment from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 1 agreed to.

Clause 2 (Special adviser not to have serious criminal conviction)

The Chairperson: This clause prohibits a person with a serious conviction from being appointed as a special adviser. Those in post with such an offence or who incur such a conviction while in post will have their appointment terminated. A duty is placed on Ministers to inform the Department whether a special adviser appointed by them has a serious conviction.

Members will wish to refer to the evidence received regarding clause 2 in the table of themes and issues provided in their Bill folder. Theme 1 is consideration of the needs of victims; theme 2 is blanket disqualification versus individual assessment; theme 3 is compatibility with other human rights requirements; and theme 4 is commitments under the Good Friday/Belfast Agreement and the St Andrews Agreement.

The Bill sponsor has advised that he will move amendments to address technical issues raised by OLC in relation to clause 2. Again, information on that is in your Bill folder. So, I will put the question: is the Committee content with clause 2, subject to the proposed technical amendments from the Bill sponsor?

Mr Mitchel McLaughlin: May I record my intention to introduce an amendment to this clause, as well? In recording my intention, I would like to take the view of the Committee.

The Chairperson: We will take a vote on clause 2.

Question put, That the Committee is content with the clause, subject to the proposed amendments.

The Committee divided:

Ayes 5; Noes 3.

AYES

Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.

NOES

Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.

Question accordingly agreed to.

Clause 2 agreed to.

The Clerk of Bills: May I just clarify that agreement has been made that clause 2 is subject to proposed technical amendments by the Bill sponsor?

The Chairperson: Yes.

Clause 3 (Meaning of "serious criminal conviction")

The Chairperson: This clause defines a "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed. Members may wish to refer to the evidence received regarding clause 3 in the table of themes and issues provided in their Bill folder, and those are listed. The sponsor has advised that he will move amendments to address

technical issues raised by OLC in relation to this clause. Again, that information is provided in the Bill folder.

Is the Committee content with clause 3, subject to the proposed technical amendments from the Bill sponsor?

Mr Mitchel McLaughlin: Sorry — before you put the question — an issue about conflict-related sentences came up in the evidence and that particularly interested me. It is not so much a subject for an amendment to clause 3, but it may be an issue that requires an additional clause. How would you propose to deal with that eventuality? For example, would acceptance of clause 3, subject to the sponsor's amendment, preclude the possibility of introducing a clause that addresses the issue of conflict-related sentences?

The Clerk of Bills: No. You have kind of clarified now that you have an issue there. The Committee is indicating its position —

Mr Mitchel McLaughlin: So, you could support clause 3, as presented today —

The Clerk of Bills: In an ideal situation, you would have amendments beforehand, but any Member may introduce a new clause or amendment any time up to 9.30 am on the Thursday before Consideration Stage. You would probably address that in the House as to the fact that things developed or whatever —

Mr Mitchel McLaughlin: Yes.

The Clerk of Bills: — but the member has put his view on the record now.

Mr Mitchel McLaughlin: What you are advising is that it is possible to support clause 3, as presented today, without prejudice to the ability to introduce a new clause or amendment at Consideration Stage.

The Clerk of Bills: It does not prevent an individual Member from doing that.

Mr Mitchel McLaughlin: OK; I understand.

The Clerk of Bills: The Committee Clerk may want to reflect that position in the report.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 3 agreed to.

Mr Mitchel McLaughlin: I want to record the fact that that was unanimous.

Clause 4 (Annual report)

The Chairperson: Clause 4 places a duty on the Department to prepare, and on the Minister to lay before the Assembly, an annual report about special advisers. There was general support for this clause in evidence received. Members should see theme 5 in the table of themes and issues in their Bill folder. The Bill sponsor has advised that he will move an amendment to address a technical issue, again raised by OLC, in relation to clause 4. That information is provided. Is the Committee content with clause 4, subject to the proposed technical amendment from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 4 agreed to.

Clause 5 (Code of conduct)

The Chairperson: This clause places a duty on the Department to issue, and on the Minister to lay before the Assembly, a code of conduct for special advisers. This code forms part of the adviser's

contract of employment. No issues were raised in the evidence in respect of this clause. Members should see theme 5 in the table of themes and issues. The Bill sponsor, again, will move amendments to address technical issues raised by OLC. Is the Committee content with clause 5, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 5 agreed to.

Clause 6 (Code for appointments)

The Chairperson: This clause places a duty on the Department to issue, and on the Minister to lay before the Assembly, a code governing the appointment of special advisers. It must provide that an appointment must be subject to the same vetting procedures as those that apply when appointing senior civil servants to the NICS. Members may wish to refer to the evidence on clause 6 in the table of themes and issues. The Bill sponsor has again advised that he will move an amendment to address the concerns of OLC. Is the Committee content with clause 6, subject to the proposed technical amendment from the Bill sponsor?

Mr Mitchel McLaughlin: I intend to table an amendment to this clause. I wish to record that in the proceedings.

The Chairperson: Shall we take a vote on this clause?

Mr Mitchel McLaughlin: Yes, please.

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 5; Noes 3.

AYES

Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.

NOES

Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.

Question accordingly agreed to.

Clause 6 agreed to.

Clause 7 (Advisers to the Presiding Officer)

The Chairperson: This clause amends the Civil Service Commissioners (NI) Order 1999 to remove the Speaker of the Assembly from the list of those entitled to appoint a special adviser to the NICS without adhering to the merit principle of appointment on the basis of fair and open competition. For the evidence received relating to clause 7, members may wish to refer to theme 6 on Secretary of State consent in the table of themes and issues in the Bill folder.

Question, That the Committee is content with the clause, put and agreed to.

Clause 7 agreed to.

Clause 8 (Interpretation)

The Chairperson: This provision contains definitions of words or terms used in the Bill. OLC has raised some technical points in relation to this, and the Bill sponsor has agreed to table amendments to address those. Is the Committee content with clause 8, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 8 agreed to.

Clause 9 (Transitional provisions)

The Chairperson: This clause gives effect to the provisions of the schedule. No issues were raised in the evidence.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 (Commencement)

The Chairperson: This clause provides for clauses 5 and 6 to come into operation on the day that the Bill receives Royal Assent. Clause 2(4) will come into operation one month after that. All other provisions will come into operation two months after Royal Assent. OLC raised some concerns, and the Bill sponsor advised that he will move amendments to synchronise the timings of the commencement provisions. That information is contained in the Bill folder. Is the Committee content with clause 10, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 10 agreed to.

Schedule 1 (transitional provisions: termination payments)

The Chairperson: The schedule makes provision for payment to existing advisers whose appointment is terminated under the legislation. A special adviser is entitled to a payment of three months' salary or the amount stipulated in their contract, up to a maximum of six months' salary. Members may wish to consider the evidence provided under theme 3 in the table of themes and issues in the Bill folder. Is the Committee content with the schedule as drafted?

Mr Mitchel McLaughlin: I will state our position, and maybe there should be a vote. An amendment that I am considering tabling to an earlier clause may have a consequence for this provision. I have recorded my interest in the earlier clause. Is that sufficient, or should I indicate that there may be a possible consequence for this provision? I suppose that, for safety, I should.

The Clerk Of Bills: Yes. If you feel that there may be a consequential amendment to the Bill, you should. I urge the Committee Clerk to note that you registered this at the time.

Mr Mitchel McLaughlin: OK. I would like the Committee to vote on the schedule.

Question put, That the schedule be agreed.

The Committee divided:

Ayes 5; Noes 3.

AYES

Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.

NOES

Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.

Question accordingly agreed to.

Schedule 1 agreed to.

Long Title

Long title agreed to.

The Chairperson: The next step is that the initial draft of the Committee's report to the Assembly on the Bill will be considered at our meeting on 6 February, with a view to agreeing the final draft report on 13 February before the Committee Stage expires on 15 February. Members may wish to consider, at this stage, whether they have any recommendations or requests for assurance that they wish to be included in the report. Consideration Stage is a matter for the Bill sponsor to bring forward in line with the requirements set out in the Assembly's Standing Orders. Any agreed Committee amendments are required to be tabled in advance of Consideration Stage.