Northern Ireland Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous Provisions) Bill: Mr Jim Allister MLA

17 June 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Colin McGrath (Chairperson)
Mr Doug Beattie (Deputy Chairperson)
Ms Martina Anderson
Mr Trevor Clarke
Mr Trevor Lunn
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin

Witnesses:
Mr Allister MLA - North Antrim

The Chairperson (Mr McGrath): The Bill's sponsor, Jim Allister, will give us a short presentation about his thoughts and views on the clauses that are relevant to this Committee, and then we will ask questions.

Mr Jim Allister (Northern Ireland Assembly): First of all, thank you for the opportunity to be here. Leaving aside for a moment the controversy about the number of special advisers that there should be, the key issue that MLAs have to address concerning the Bill is whether the conduct and performance issues about special advisers, civil servants and Ministers are better addressed in legislation or better addressed, as Mr Sterling told you last week, in codes; in other words, codes are enough. I do not see a great dichotomy of controversy about what needs to be done; it is more the how. Whether it is enough to have it in codes or whether it needs to have the bite of legislation is the real area for debate about this.

There are a couple of points that I want to make to you about what I see as the inadequacy of simply relying on codes. I have probably quoted it before, but Lord Bingham, a famous law lord in a quite notable case — the case of Ashworth — in dealing with a code said this, and it is a truism, but it sums up the distinction:

> *"It is in my view plain that the Code does not have the binding effect which a statutory provision or a statutory instrument would have."*

That is it. The real question for every MLA is this: do we want changes in response to RHI? Do we want them to be binding or not? If we want them to be binding, we put them in legislation; if we want

them to be flexible, we put them in codes. That is the defining issue; indeed, Mr Sterling, when he gave evidence a month or so ago to the Finance Committee, agreed:

> *"Yes, legislation gives you stronger protections".*

That is the fundamental choice.

The second thing that I want to say about codes is this: they can be unmade as easily as they are made, and they have failed us in the past. Schedule 1, paragraph 24 of the old code of conduct for special advisers was clear about the necessity to maintain confidentiality in respect of work being done. Paragraph 5 of the second schedule spoke robustly about the need for integrity and honesty. Yet, none of us would be sitting here today considering the issue if there had not been the most flagrant of breaches of those codes: distribution of material to family members, surreptitious sending for political reasons, leaking emails from your own Department and abuse of private email systems to hide material. The code said that you should not breach confidentiality. The code said that you should behave with integrity and honesty. It did not stop RHI. The codes are a failure in their capacity to provide a foolproof protection.

It is not really a choice between one or the other. The fabric is clear. You have legislation, and, under it, you have the codes making such provisions as, the legislation says, they must make. Indeed, it was the passing of my Civil Service (Special Advisers) Act (Northern Ireland) 2013 that created, in the first place, the necessity for statutory codes.

RHI showed a lamentable, demonstrable failure of codes, so the question is simple: why put your faith in them again? What is there to fear from legislation? If some people in the Stormont bubble are deluded enough to think that patching up the codes addresses the public confidence issue, I suggest that you are deluded and in a bubble.

Last week, David Sterling told you that legislation was not needed. He is the man who told the public inquiry that civil servants had consciously and deliberately not recorded some decisions that, he believed, would be embarrassing in order to evade freedom of information law. He said:

> *"it is safer sometimes not to have a record that, for example, might be released under Freedom of Information".*

He talked about the parties being sensitive to criticism. He is the head of the Civil Service, and he urged on you a do-nothing approach. Do I have to say more about that?

Some people seem to have the mentality that, despite RHI, there is nothing broken that needs to be fixed. As the Deputy Chairman said last week, where have they been? RHI puts up in lights that things are broken and need to be fixed.

Let me make one point, because I know that some people have said, "Oh, it is only Jim Allister. He is against these institutions anyway". Let me be plain: I am no champion of these institutions, but I am embarrassed, as we all should be, by what went on. I want to put in place real impediments to its repetition. The question that I ask you is this: what, do you think, is the best deterrent to that? A code or legislation? Whether or not I endorse the process of government here — everyone knows that I abhor mandatory coalition — I want to improve the functioning of government, whatever the system is. That is what the Bill is all about.

I turn briefly to the specific clauses that the Committee sees as being within its ambit. Clause 1(2) deals with the issue of the hierarchy of spads. That, of course, flows from the evidence in the RHI inquiry that a hierarchy of spads operated in some of the parties, at least, and creates a situation where there is a hierarchy only in the Executive Office, where there is more than one spad. That links, of course, to clause 1(6), which is very important. We all recall the evidence of how, in order to circumvent the provisions of the 2013 Act, a "super spad" was appointed to whom other spads reported, who was not a spad himself and, as Sir Patrick Coghlin said, could never, by law, have been eligible to be appointed. That is why clause 1(6) puts a statutory duty on the permanent secretary to:

> *"ensure that no person other than a duly appointed special adviser is afforded by the department the cooperation, recognition and facilitation due to a special adviser."*

That is an important provision that arises from the history.

Then, we come to clause 2, which deals with the number of spads. Presently, the number is eight. Let us remind ourselves that, in the Executive Office, it is eight: three for the First Minister, three for the deputy First Minister and one for each of the junior Ministers. That is the legal entitlement. I remind you that, before 2007, there were no spads for the junior Ministers. I believe that, when the Assembly started, there was a maximum of three spads in the Executive Office. Then, in 2007, extra spads were added.

My view is that no Executive Office needs eight spads, almost the equivalent of what the entire Welsh Government have. That is why I suggest that the relevant number is four. I draw your attention to the fact that eight is obviously surplus, because, since the Assembly came back, the Executive Office has been operating with just six; indeed, it has been operating presently and for the past month, through a large part of the pandemic, with just five, because one of the First Minister's spads resigned. The First Minister has come through the pandemic, since the beginning of May, with two spads. The deputy First Minister has had three.

I say that four is an adequate number. There is certainly room for debate about that; indeed, there is room for debate about how you do it. It would be possible to approach it differently in the Bill, and the difference of approach would be to remove the statutory right of the junior Ministers to appoint any spad and, therefore, automatically reduce it to six and then address the issue of whether the First Ministers need three or two or one. That would be another way of doing it, and I am open to suggestions about that.

Clause 3 is on the issue of prerogative powers. I suggest to you that, as MLAs — as Members of a legislative Assembly — each one of us should be not just uncomfortable but somewhat appalled by the fact that, in 2016, by the exercise of royal prerogative powers, the First Minister and the deputy First Minister of the time made law. They drafted an amendment to the Civil Service Commissioners Order 1999. They drafted that amendment, which had the effect of legislation, under royal prerogative powers, and they did it in secret. The Assembly was never told that the law of the land had been changed, and it was changed so that David Gordon, at the time, could be appointed. The change that was made gave them the authority to appoint, as it turned out, David Gordon. My fundamental position on that is that a legislative Assembly should not allow the law of the land to be changed behind its back. That is exactly what happened in the 2016 amendment.

Clause 3 does two things. It repeals the change that was made, and it decrees that any future changes to the Civil Service Commissioners Order must be subject to the approval of the Assembly; in other words, if the First Minister and deputy First Minister decide at some point that they need extra expertise under the Civil Service Commissioners Order, they come to the Assembly, tell the Assembly and the Assembly approves it. My Bill says that we do that by positive resolution. Another way of doing it is by negative resolution. What happened in 2016 was that you were never told at all. The law was changed behind our back. Is it right that legislatures should sit back and allow the law of the land to be changed behind their backs? I do not think that it is, and that is why clause 3 exists.

Clause 4 is a follow-through for compensation for anyone who has lost their special adviser position by reason of the reduction in numbers.

Clause 5 is an important one, because it gives to the independent Commissioner for Standards of the Assembly the power to investigate not just MLAs but breaches of the ministerial code by Ministers. ‘New Decade, New Approach' suggests that breaches of the ministerial code should go not to the independent commissioner but to three hand-picked commissioners appointed by the First Ministers. Let me draw your attention to two or three significant distinctions between what is in 'New Decade, New Approach' and what is in the Bill. Under the Bill, the powers would lie with the independently appointed standards commissioner. He is appointed in an open competition that meets public appointment requirements. The three commissioners will certainly not be appointed under legislation, so they are effectively hand-picked. When appointed, the independent Commissioner for Standards has the power to compel papers, witnesses and to take evidence under oath. The three commissioners anticipated in 'New Decade, New Approach' have no such powers. The documentation says that they can ask the secretary of the Executive — the head of the Civil Service — for the factual information that they require.

There you have it, members. You, as an MLA, can be investigated by a process where the independent standards commissioner is independently appointed and there are multiple disqualifications so that he cannot be someone from a particular background who might come in skewed by their views. You can be investigated by an independent Commissioner for Standards, held to your code of conduct through a process that involves the compelling of witnesses and the

compelling of taking evidence under oath. However, if you are a Minister, three hand-picked commissioners, of whom the independent commissioner might be one ex officio, will investigate but will have no powers to compel evidence and no powers to take evidence under oath. You, as a lowly MLA, will be subject to all of that process, but our lofty Ministers will not be; indeed, the independent commissioner, if he sits as an ex officio member, will have none of the powers that he would have as the standards commissioner. He will not have the power to compel witnesses when he sits as a commissioner for Ministers. The thing is farcical. Why are we reinventing the wheel under 'New Decade, New Approach' when we have a ready-made process, whereby all you have to do it extend the independent Commissioner for Standards' functions to look at not just Assembly Members' code of conduct but the ministerial code. He can then provide the independent report or whatever action is thought appropriate. That is clause 5. Sorry, I am going on a bit.

Clause 12 is about ensuring that improvements to the functions of government are not a one-off event but a process. That is why it says that, every two years, the Executive Office should report to the Assembly any improvements that need to be made in the functioning of government. That might well be informed by reports from the various commissioners but more likely by adverse findings in judicial reviews about how administration has worked over the previous two years. It puts a statutory obligation on the Executive to ensure that a process of ongoing improvement is put in place, rather than a one-off event. Whatever your politics are or your view of the Assembly or of its worth is, it has to be a good thing that we have a process in place that constantly improves rather than stagnates and allows old practices to grow. Those are my comments on the clauses.

Of course, I am here to advocate for my Bill, but I am also here to listen, because it can be improved. I am happy — indeed, I have some amendments in mind from what other people have said — to take on board what is said. However, for now, thank you.

The Chairperson (Mr McGrath): OK, thank you very much, Mr Allister, for that breakdown of your perspective on each of the clauses. We will move to questions to make it a bit more interactive.

One of the questions that I wanted to ask — I think you have eloquently answered it — was about the behaviours that, you feel, necessitated your Bill. I think you have highlighted some of the activities that took place during the RHI debacle and have been able to articulate from that the need for it, because of the shortcomings that there were in managing that process, and how something addressing that would have been helpful.

You mentioned the other jurisdictions in relation to the number of spads. In the most recent figures, Wales is up to 15, and Scotland is at 14. Those are still slightly fewer than we have here. One of the remarks made last week by David Sterling was that we have a different type of Government from those other jurisdictions. I am interested in what impact, you think, that might have. For example, in Scotland, where, I think, all the Ministers are from one party — the Scottish National Party — there is less competition between spads. They could nearly move between Departments, work to two Ministers or in work different ways. If you look at Wales, the whole of the Government is from the Labour Party, and, likewise, spads could move back and forward. However, here, there are five parties. There will be connections between the five parties and their spads. In the Executive Office, which is effectively a dual-party office, there are nearly two structures in place. That was the suggestion from the head of the Civil Service last week. How do you feel about that?

Mr Allister: I have often heard it said, "Two heads are better than one", but it seems the opposite, if you are telling me that the Executive Office, because there are two heads, needs more spads, but there we are.

I have made the point: by their own actions, they have demonstrated that eight spads are too many. They started the process in January with six and are now down to five. It speaks for itself, and that is passing through one of the most unimaginable periods of difficulty that there has been. I compare the potential number of spads in the Executive Office — eight — with the entirety of other Governments. When I first drafted the Bill, Wales had eight. It went up to 10, and now the number seems to have crept up further. I do not know the explanations for that, but one thing is clear: the fundamental question is whether the Executive Office needs eight spads. It seems to me excessive. I think the right number is four; others might think it is six, as, notionally, it presently is, but is that not the sort of issue that the Assembly should resolve on the Floor of the House, by way of amendments? If people do not like the four, someone who thinks it should be six simply tables an amendment. The House debates it; the House decides. However, without any legislation, it simply remains at eight.

Why have eight not been appointed already? Maybe there was an embarrassment with 'New Decade, New Approach' and all that came with the legacy of how spads had conducted themselves, the numbers and the controversy about that. Maybe there was a realisation, "We cannot overdo it. It has to be six". Maybe, when things settle down, it will go back to eight. Who knows? Patently, it does not need eight, if we have passed through a pandemic with six. The Assembly has the right to and should set the upper limit, and then let the Executive Office work within that.

The Chairperson (Mr McGrath): You mentioned that one of the clauses refers to a hierarchy of spads. Obviously, if you have multiple special advisers in one Department, that could create a hierarchy, and that is for them, within the one Department, to manage. Given that you will have undertaken some research, conversations and investigations in preparation for this, do you feel that the special advisers outside the Executive Office were influencing some form of unofficial hierarchy around other Departments, where they were saying, "I am the First Minister's special adviser. I will talk to you in a Department where you are the special adviser or, indeed, the Minister, so I come with the full authority of the office of the person I represent"? Did you get any sense that that was creating difficulties anywhere?

Mr Allister: We do not need to think about it; we know. We know that, in the RHI evidence, Timothy Johnston, having first denied it, eventually changed his evidence to admit that there was a hierarchy operating outside the Executive Office of which he was the head — the chief spad, as it were. Timothy Cairns, who was a spad in another Department, had given evidence about that. He gave clear evidence, back in September 2018, about the hierarchical role performed by Timothy Johnston, who denied it, then came back and changed his evidence to admit it. Mr McCormick, permanent secretary, gave evidence of the rank structure of spads. Sir Patrick Coghlin, in volume 3 of his report, found as a fact that there was a core DUP spad team where that operated, and he made findings about that. There is no doubt about it. That is why my Bill provides that you can have a hierarchy but only within the Executive Office, because it had a bit of a poisonous consequence in the past.

The Chairperson (Mr McGrath): Thank you for that. In clause 4, which is about the appointment by royal prerogative of a —.

Mr Allister: Clause 3.

The Chairperson (Mr McGrath): Is it clause 3? We know what that appointment achieved when it was used, but what is your understanding of the reason why that capacity was there? Maybe you feel that the way in which it was used was an abuse, but what is your understanding of what it is there for? If you removed it, what, potentially, would you prevent?

Mr Allister: Section 23 —subsection (3), I think it is — of the Northern Ireland Act 1998 reserves royal prerogative powers to the First Minister and the deputy First Minister in respect of the Civil Service. It was in the exercise of those powers that they then made an order, which is legislation, giving themselves the power to appoint the person who turned out to be David Gordon. They exercised that royal prerogative power to do that. In the Bill, I say that we should trim the exercise of that royal prerogative power to make it subject to Assembly approval. As a legislative Assembly, we cannot be governed by powers that existed in the 17th century. We cannot be governed by the making of laws in a 17th-century mode behind our backs and of which we know nothing. If we are a legislative Assembly at all, we need to assent to legislation; it is not something to be done in secret.

The Chairperson (Mr McGrath): A goal maybe —.

Mr Allister: It does not mean that they could not still bring forward a proposal to make changes affecting the Civil Service Commissioners Order; it means that they could bring that forward only with the assent of the Assembly.

The Chairperson (Mr McGrath): Again, this is from a point of not knowing rather than forming an opinion: is that normal? In other jurisdictions, are the First and Deputy first Minister or whoever able to make the appointments? Are you just saying that it applies in the case of a senior position? Obviously, that rule is there for a reason. There is a suggestion that it was abused — that might be going too far — but they used the system that was there to appoint a person but that was not really the purpose of that legislation. If we remove that ability, are we preventing something else happening when it should be used?

Mr Allister: Two things about that. Undoubtedly, there is still a trickle-down of prerogative powers. The Prime Minister has prerogative powers over various things, and they have traditionally been pretty allied to the Civil Service. At prime ministerial level there are prerogative powers, and you will recall the controversy about going to war and all of that. However, as time has gone on, Parliaments have, more and more, trimmed those powers to make them subject to themselves. Is it necessary? Let me make this simple point: if the reason for doing it was to appoint David Gordon as a super-spin doctor, David Gordon could equally have been brought in as a consultant. The Civil Service engages specialist consultants every day of the week. My goodness, a fair share of PwC's profits must come from Civil Service consultancy. It is not that you could not do it another way. You could have a consultancy arrangement with someone to perform that role. However, what this did was make David Gordon a member of the Civil Service, subject to all the benefits of that, and it did it by a change in the law. It could not have been done without changing the law. The change in the law was effected not by the Assembly but by the prerogative order of Martin McGuinness and Peter Robinson — I cannot remember whether it was Peter Robinson or Arlene. However, it was by their prerogative order. That is unnecessary.

If the law is changed, it should at least be subject to negative resolution in the Assembly. I suggest affirmative resolution, because it is a change in the law. However, if someone proposed an amendment saying, "Let the Assembly decide whether it should be by negative or affirmative resolution", that would be a legitimate debate. However, we cannot leave it as it is.

The Chairperson (Mr McGrath): Accepting that, if it does, the two larger parties have the numbers in the House to put it through anyway.

Mr Allister: Absolutely.

The Chairperson (Mr McGrath): At least it would be done in the open where there would be debate and discussion.

Mr Allister: It would not be done in secret.

The Chairperson (Mr McGrath): My final query is on clause 12: the "Biennial report". Can you give me a flavour of the nuts and bolts of the report? A number of organisations make annual reports. If things are already highlighted in an annual report, is there a need for a biennial report?

Mr Allister: Chair, the difference that clause 12 makes is that it will impose a duty on the First Minister and the deputy First Minister to examine what has come out of those reports and to look at what has been happening in the courts and to proactively address any criticisms of how the administration works. Reports sit on shelves for years; that is the reality. We should create a biennial obligation to report to the Assembly on changes that need to be made or do not need to be made. The report may say, "Everything is hunky-dory. We do not need to change anything. We have affirmations from all the commissioners about how wonderful things are, and the High Court has praised us to the rafters". What is the fault? What is the problem in having a report twice a year, which, I think, is modest? Effectively, it means twice in an Assembly's term. What is the problem with the Assembly being reported to so that people can feed in? The Committee would get the report, interrogate it and report how happy it was with the report. That is all good for transparency, openness and improving government. As I said at the beginning, I see my Bill as something that, in the here and now, corrects some wrongs, but I do not want it to die on the date that it passes. I want the Bill to be a living organism that keeps producing functional change as and when necessary.

Mr Beattie: Jim, thank you. You clearly know this inside out. You probably know a lot more than I do, so bear with me. I would like to reflect on your opening statement about legislation and codes. Having sat here last week, I was aghast as I got the feeling from David Sterling that everything was hunky-dory, everything was perfect and we never had a problem. I was taken aback that we kind of ignored what happened with RHI and why we had had no Government for the past three years. Even now, saying that the Executive and the spads are working well, while ignoring the issues in the Executive Office with the victims' payment scheme, it is as if we were in denial.

I also reflect on what I want to get out of this. It is absolutely key that we need confidence, transparency, accountability and good government at the end of this. When I look at legislation and codes, the only way to achieve those things is to have legislation. That does not mean that all legislation is right or that it has open support, but we can look at it, change it slightly and make it workable so that we all benefit from it.

Clause 1 would limit the perceived hierarchy of special advisers. How do you see that actually stopping the perceived hierarchy, given that so much happens behind closed doors?

Mr Allister: I suppose that the answer to that is that, if legislation does not succeed in preventing it, codes certainly never will. The best legislation is legislation that never needs to be used, because it sets parameters that people respect and adhere to but has the deterrent and the bite, if they do not. If it says in law that there shall not be a hierarchy of spads outside the Executive Office but that hierarchy evolves and comes to the surface, one is in a much stronger and better position to deal with it, because it is a patent breach of a statutory provision. That is not something that I would ever have thought of but for RHI. Just as, frankly, I would never have thought it necessary to say that, in law, that you will keep a note of a meeting. RHI told us that all the things that we took for granted were being abused. That is why this legislation has to embrace those issues and address them. By addressing them, we lay down a standard in law — not in a code that can be unmade as quickly as it is made — that has more flexibility in its interpretation. It is the unique experience of RHI that drives much of the need here.

Mr Beattie: Would that be expanded to say that spads should not be involved in party-political activities? I am reading the story of the DUP chief spad, Timothy Johnston, who, although being paid by the taxpayer, was doing party-political activities. Is that part of it?

Mr Allister: It is not part of it at the moment, but it might make for a good amendment to state what people would obviously expect: that a spad should not be conflicted with party-political functions. The code of conduct for spads allows a spad to be a councillor. It does not allow him to campaign in elections, stand for the Assembly or anything else, but it allows him to be a councillor. It was something that I thought about but did not feel strongly enough about it to prohibit it in drafting the Bill, but, if others did, so be tithe real mischief here is not the public office held by the spad, which is out in the open. They are a councillor, and, of course, they are party-political, as they would never have been appointed in the first place if they were not, in most cases. The mischief being addressed is that someone, under the guise of a generous public authority salary, is nonetheless performing exclusively party-political roles. I will think about a suitable form of words that can address that.

Mr Beattie: I will look, maybe, at the same issue but in a slightly reverse way, Jim. You said that we should not have a hierarchy, but can you see any merit in a hierarchy where it could work for the benefit of good government? For example, spads gathering spads together to say, "Look, this is where mistakes are being made. Here is what we could do to fix the mistakes", in a positive way. I am trying to look at this from a slightly different angle; it might be that there is no other angle to it. Can you see any merit in having a hierarchy?

Mr Allister: There is no prohibition in this legislation on liaison between spads; the prohibition is on a hierarchy. That comes from the experience exposed by RHI, where the spad in the Department for the Economy felt that he owed his loyalty and position not to the Minister who technically appointed him but to Timothy Johnston. That sort of hierarchy speaks against good government. A spad should serve his Minister and the interests of that Department, not serving some extraneous interests. Departments are accountable for themselves within a collegiate system. However, again, the mischief is the overbearance on the ordinary spads' role by super spads.

Mr Beattie: It is the insidious nature of one directing the other and of people not being able to act in their own capacity. It makes perfect sense.

I will not go into clause 2. You have explained it well, and I am kind of with you. If we now have four spads and we are allowed four spads for each Minister in the Executive Office, even going down to six is probably a good thing. However, you have explained your rationale well.

On clause 3, in 2016, I had just come into the Assembly, and I remember the law change well. They made that change without telling anyone. It was clear then that they did not need to amend that law up to 2016. For the previous 10 years, things had been operating fine without having to amend that law. In your Bill, are we saying that we revert to the situation as it was in 2016, before the law was changed, and any subsequent requirements for support will then be put before the Assembly? Is that it in a nutshell?

Mr Allister: I am saying those two things. The change that was made secretly in 2016 should be repealed, because it was made without the knowledge of the Assembly. It still survives to allow someone to be appointed into the Civil Service under the powers that were created for that. It has not

since been used, but it would be better off the statute book. I am saying that, if you are ever again to exercise prerogative powers under section 23(3) of the Northern Ireland Act 1998 relating to the Civil Service, you have to come to the Assembly.

Mr Beattie: That promotes confidence, transparency and accountability.

Mr Allister: Absolutely. It is the fundamental point: laws should be made by the legislators. That law was not. That law was made in the ignorance of the legislators.

Mr Beattie: Jim, my last point is on clause 5, where you talk about the Assembly Commissioner for Standards. The proposed panel would include the Assembly Commissioner for Standards as part of that three-person panel. You are right: that would be ex officio, so he would lack an awful lot of the powers. I can honestly see the benefit of the three-person panel. I can see positives in it. Would it be better, then, if the Commissioner for Standards were not ex officio; that he was part of the three-person panel but retained all his powers as an Assembly commissioner? Would that work better?

Mr Allister: Today, all his powers as Assembly commissioner are restricted to his investigation of MLAs. If, as an ex-officio member of the panel, he investigates Ministers, he sheds those powers. I was just pointing out how absurd that is. If you or I, as MLAs, were being investigated, we would be investigated by a man who can compel papers, compel evidence, administer an oath, take evidence for and against you under oath. Yet that same man, if he were investigating a Minister under the New Decade, New Approach position, as an ex-officio commissioner, would have none of those powers. How absurd is that?

Mr Beattie: Absolutely. I understand that. The point that I am trying to make is that he retains powers. I am trying to extrapolate that.

Mr Allister: The other way of doing it would be to add to the legislation that established the standards commissioner the power to appoint extra commissioners or experts on a case-by-case basis. If he were doing something and thought that he needed an accountant or whatever, that would give him the power to draw in an expert. I would have to check, but I do not think that he has that power currently. Fundamentally, I am saying that the one office should investigate MLAs, as well as MLAs when they act as Ministers.

Mr Lunn: Thanks, Jim. I can see that you have put an awful lot of work into the Bill. I hope that it bears fruit at the end of the day. There are undercurrents that indicate to me that it may not go the distance. I certainly hope that it does, because there is a lot of good stuff in it.

Mr Allister: I will just comment there. The principles of the Bill were approved at Second Stage. Therefore, if people want to play fast and loose with that, that is a matter for them. I am just pointing out that, when you approve a Bill at Second Stage, you approve its principles.

Mr Lunn: I want to deal with clause 2, which relates to the number of special advisers. We keep coming back to the issue. Your recommendation is for four: one each for the First Minister and the deputy First Minister and one each for the two junior Ministers. If your Bill were passed on that basis and it became obvious that one of the Ministers needed an extra special adviser, what would be the procedure for that? Would it just have to be brought to the Assembly for agreement?

Mr Allister: There would be two ways of doing that. One, probably the longer, would be to amend what would then be the Act to lift the threshold or, linking across to clause 3, exercising functions under the Civil Service Commissioners Order but subject to the Assembly's approval.

Mr Lunn: Yes. That is exactly where I was going with that. I am glad that my brain is in concert with yours for once.

Was the use of prerogative powers in the appointment of David Gordon a one-off, or does it remain on the statute book?

Mr Allister: It remains on the statute book. It is in section 23 of the Northern Ireland Act. It has been exercised only once, as I understand it, but the exercise of it stays on the statute book; both in how it was done — in other words, they could make another appointment tomorrow — and in that they could

continue to make prerogative changes to the law affecting civil servants without the Assembly knowing about it.

Mr Lunn: Going back to the possibility of an extra adviser, do you think that the simple way of doing it would be to leave the prerogative legislation in place in some way but with the caveat that it must be brought to the Assembly?

Mr Allister: Yes. I am not removing the royal prerogative. Clause 3 states:

> *"An order under section 23(3) of the Northern Ireland Act 1998"* —

that is a prerogative order —

> *"may not be made unless a draft of the order has been laid before and approved by resolution of the Assembly."*

I cannot take out a power that is in the 1998 Act, but I am making the exercise of it subject to the Assembly's approval. It is still there. This is about how it can be exercised. In other words, it can no longer be exercised in secret; it can be exercised only in the open — in the legislature.

Mr Lunn: I notice under clause 3 as well that the prerogative is in relation to the Northern Ireland Civil Service but also to the Commissioner for Public Appointments for Northern Ireland.

Mr Allister: Yes.

Mr Lunn: Does that appointment still come within the remit of what was the Office of the First Minister and deputy First Minister (OFMDFM)?

Mr Allister: I believe so.

Mr Lunn: I remember Felicity Huston complaining bitterly about that to the Committee, and that she was actually part of the —.

Mr Allister: She was before my Committee — the Committee for Finance — a fortnight ago complaining bitterly about it again.

Mr Lunn: Good.

Mr Allister: It is something that I might move an amendment on, in respect of this Bill.

Mr Lunn: You might not have to; somebody else might do it for you.

Mr Allister: I have plenty to do, so, if somebody else would, that would be great.

Mr Lunn: It just seems an unnecessary anomaly.

Mr Allister: There are questions about her budget and the independence of it.

Mr Lunn: Yes, absolutely. If you will bear with me for a second, as this is complicated stuff. On the business of the Assembly Commissioner for Standards effectively being given extra powers to investigate a Minister's actions — yes, that is fine. Is the current procedure not that the commissioner can report on the conduct of MLAs but it then goes to the Committee on Standards and Privileges?

Mr Allister: Yes.

Mr Lunn: I have seen reports being knocked back by that Committee a number of times, either by a combination of one side of the House, if you like, and the other or entirely by one side. It only takes a majority on that Committee and the report goes nowhere, except, perhaps, to cause a bit of embarrassment to a particular Member once in a while. Would it be the same thing with regard to the investigation of a Minister's conduct? Would it have to go to the Committee? It is meant to be an

independent investigation — it is in the title — but it still has to be passed by an all-party Assembly Committee, which I always find a bit strange. Generally, as I say, there is some embarrassment but no sanction.

Mr Allister: Yes, it is the Committee on Standards and Privileges that brings the report to the House, and it can be blocked from getting there. I confess that I probably need to do a little more work on that. I think that there is a mechanism whereby the report from the standards commissioner in respect of Ministers could go to the Executive, but will that be any different?

Mr Lunn: No.

Mr Allister: A large part of this is, in truth, about the openness and transparency of a public report from an independent source. If you have a system that closes in to protect itself, it is very difficult to devise a mechanism that makes that impossible, if people are bold enough to do it.

Mr Lunn: Yes, as I said, it can be a combination of, let us say, unionists in some situations —

Mr Allister: Yes.

Mr Lunn: — or a combination of unionists and nationalists.

Mr Allister: Yes. We even have, on the Floor of the House, petitions of concern exercised. Initially, I anticipated preventing the use of the petition of concern on reports from the Committee on Standards and Privileges, but I discovered, on further advice and research, that I cannot do that because the petition of concern is a reserved matter, which is unfortunate.

Mr Lunn: OK, I will leave it there. I hope that you are getting the impression that I have a lot of sympathy with what you are trying to do.

Mr Allister: Thank you.

Ms Sheerin: Thank you, Jim, for joining us again. We have already spoken about clause 2 and the number of spads, and that issue comes up a lot. We had a presentation last week from David Sterling. From his position in the Civil Service, he has some awareness of the workload, and he felt that the current number of spads was necessary. That is worth bearing in mind. Obviously, I have not been a Minister and you have not been a Minister, so it is difficult to judge the workload and what is going on. Your insinuation, it would be fair to deduce, is that it is being abused or that there is not the workload suitable for that number of spads. If that was the case, currently the maximum number is not being employed. You referred to that and to the resignation of a spad during the pandemic. Why do we need to change the limit, if, at present, the ministerial team is aware of what it needs and has not employed four spads just because it could? It has chosen to employ the number of spads that, it feels, is adequate for the workload. Why do we need a change?

Mr Allister: That is the reason to change to at least to six, because if, by their actions, the First Ministers have demonstrated that eight is more than they need, why are we sitting with a legislative position that still allows the option of eight? They have demonstrated that six is all they need, and I think that Mr Sterling, when I listened to him last week, confirmed that six seemed to be enough, without putting words in his mouth. If that is the case, what is the problem with reducing the number to at least six — I say to four — but at least to six? Why would you keep it at eight and feed a public perception that up here is just some great gravy train, when you could knock out one of those props by reducing the number of spads capable of being appointed?

Ms Sheerin: The gravy train that you refer to is not being utilised at present. Politics is in flux.

Mr Allister: So why do we need it?

Ms Sheerin: That is what I am saying: we do not need it now, but we do not know what will happen in the future.

Mr Allister: Is that another way of saying that, when this blows over, we can safely, under the radar, go back to eight?

Ms Sheerin: That is a very cynical position *[Inaudible]* your viewpoint, obviously.

Mr Allister: We have been at eight before.

Ms Sheerin: As things change, Ministers have some autonomy, and they have made a decision to employ the number that, they feel, is adequate.

Mr Allister: And I say, "Let the law reflect that". If it turns out to be too low, as you heard in my discussion with Mr Lunn, there is at least one route for rectifying it. Fundamentally, as MLAs, we need to get with the programme of the public, who look on this place and think that, in large measure, it is a great take-on and gravy train. If we say, "Let's maintain the option for eight spads. Let's give the First Ministers the same number of spads as, at a time, the entire Welsh Government had", we are not responding to the public mood at all.

Ms Sheerin: They are not being utilised when they feel that they are not necessary.

Mr Allister: So why do you need them?

Ms Sheerin: They do not need them at present —.

Mr Allister: What is the urgency in holding on to something that you do not need?

Ms Sheerin: What is the urgency to change it?

Mr Allister: Because you show a direction of travel that respects a public mood that we do not want to waste or have the opportunity to waste public money on highly paid posts that we do not need.

Ms Sheerin: Well, in my view, the view of the public at the minute is that a decision has been made that it would be a waste and they are not going down that avenue.

Mr Allister: Well, let us see. The Assembly will make the decision.

Ms Sheerin: I want to move on. Chair, I have a couple more questions. In clause 3, you are obviously advocating a removal of British interference. That might be somewhat ironic *[Laughter.]*

Mr Allister: I am intrigued to look at the signature of Martin McGuinness exercising the royal prerogative on behalf of Her Majesty Queen Elizabeth II.

Ms Sheerin: We have a differing opinion —.

Mr Allister: I am intrigued by —.

The Chairperson (Mr McGrath): Order. These evidence sessions work much better if somebody asks a question and somebody answers it, rather both speaking at the same time. Let us take a breather.

Mr Allister: I am corrected.

Ms Sheerin: Thanks, Chair. You are trying to get us to a place where Ministers would have to get Assembly approval.

Mr Allister: To change the law, yes.

Ms Sheerin: But Ministers have autonomy —.

Mr Allister: Not to change the law; they should not have.

The Chairperson (Mr McGrath): Again, order. Let the member ask the question, Jim, and then you can give the answer.

Ms Sheerin: You refer to that one appointment. Ministers make decisions all the time that Members do not have sight of, and Executive meetings are held in private for that reason. That should be borne in mind.

Mr Allister: We need to get back to the momentous thing that is at stake here: it is the making of law. I see that it was Arlene Foster and Martin McGuinness who, on 8 September 2016, by royal prerogative order, changed the law. The law of the land was changed secretly by the First Minister and deputy First Minister behind the back of the Assembly. The Assembly was not informed. Of course they make Executive decisions, but, when it comes to changing the law of the land, my basic point is that surely we — the lawmakers — should have knowledge, input and authority in that regard?

I am really astounded that somebody who comes from what they would perceive to be an anti-royalist perspective would want to cling for Sinn Féin to a royal prerogative power to change the law behind the backs of elected Members. If that is the Sinn Féin position, that is the Sinn Féin position, but it somewhat intrigues me.

Ms Sheerin: You have made judgements on my position there without speaking to me about them first, but anyway.

Turning to clause 5, the briefing paper highlights that the arrangements have been set out in NDNA, which was agreed by all the Executive parties. Those arrangements are set, so I do not feel that it is necessary to start picking at that.

Mr Allister: I suggest that any arrangements can be improved, and I ask this simple question: is it better to have a system where the investigator has real powers to compel witnesses, to take evidence under oath and to act independently, or is it better to have a facade of a system where hand-picked commissioners have no such powers and can acquire facts only by asking the head of the Civil Service for facts and cannot compel any evidence? Is that a better, more respectable, more credible position? It is pretty clear to me that it is not, and, therefore, I believe that, whatever was in 'New Decade, New Approach', it is a very old approach not to have independent investigation.

Ms Sheerin: To follow on from what you said, 'New Decade, New Approach' was agreed at the start of the year by all Executive parties and that is — *[Interruption.]*

Mr Allister: Oh, I have heard that disputed.

Ms Sheerin: That is the case, Doug.

Mr Beattie: It was not.

Ms Sheerin: The UUP is in the Executive. That is the basis on which we are in the Executive.

The Chairperson (Mr McGrath): OK, hold on. The member is asking questions, and tuts and others from the sides are not helpful. Continue with your questioning.

Ms Sheerin: That was just my final comment. That is the point: it is a received agreement. That is the basis on which we are in the Executive: 'New Decade, New Approach'. We are not six months into it.

Mr Allister: I heard it disputed no longer than an hour and a half ago when civil servants from the Department of Finance were giving evidence to the Finance Committee. I heard it disputed by the leader of the Ulster Unionist Party that that was ever agreed by him. I was not a party to that, so I do not know, but I do know this: for public perception purposes and for the practicalities of a real working system, it is essential, in this day and age, to have an independent process that is seen to be above reproach and that the system that prevails for MLAs should be good enough for Ministers.

Ms Sheerin: Thanks, Chair.

The Chairperson (Mr McGrath): OK, thank you. I will move now to the phone in the order that people indicated that they were online on the phone. Pat, I will go to you first. Do you have any questions?

Mr Sheehan: Yes, thank you, Chair. First, I have to say that the quality of the line today has been abysmal. It has been dropping in and out, and we have missed quite a bit of the conversation. I hope that everybody will bear with me if I ask questions that have already been asked.

The Chairperson (Mr McGrath): OK.

Mr Sheehan: I think that the conversation was going well until my colleague Emma Sheerin began asking questions and then Jim started to talk over her and shout her down. It was very rude and ill mannered, and I hope that he and I can get on an even keel and try to be nice to each other. It is particularly difficult when we are asking and answering questions over the phone, so a bit of patience might be required.

Jim, going back to an issue that was raised by the Chair at the outset of the discussion, do you agree that the system of government that we have here is completely different from any other institution on these islands?

Mr Allister: Yes, it patently is, and it is distinguished by the fact that, in recent times, it had the most audacious scandal affecting government that probably has been seen for some time in regard to RHI. Therefore, the question is this: do we simply go on as we were with codes that are broken reeds at the best, or do we put something into law to try to make things of necessity better?

Mr Sheehan: Would you say that it was worse, for example, than the claims that were being made by MPs in Westminster?

Mr Allister: Sorry, tell me what you mean.

Mr Sheehan: Would you say that the RHI scandal was worse than the personal claims that MPs were making in Westminster?

Mr Allister: Oh, the expenses abuses. Yes, let us just take that. How did they deal with the expenses abuses? They did not tinker with the codes; they changed the law. It is the way to do it.

Mr Sheehan: Would you agree, Jim, that this is a very young democracy here? We are still finding our way through all the problems and difficulties. You have agreed that the institutions here are completely different, and they are different for a reason. One is that we live in a very divided society. The system of government that existed before 1972 was particularly corrupt, and the Executive and Assembly are dealing with a very divided society. We are dealing with the legacy of conflict and a legacy of division in the North, so, when it comes to a system of government, it is completely different from anywhere else. It has its unique difficulties and peculiarities, and the fact that it is a young democracy means that we need to tread carefully when going through and fixing whatever problems exist, without using a sledgehammer to smash a nut. Would you not agree with that?

Mr Allister: No. Whatever its idiosyncrasies, there is no scope or justification for accepting lesser standards or for making things easier for people not to live up to the expectations of the law. That compounds the problems of the past. Therefore, it is right and appropriate that a law should be in place that applies to all equally and says to all, "These are the dos and don'ts, and, if you breach the dos and don'ts, there are consequences across the board, whoever you are, for doing that".

I do not see why we would want to hide a flexibility so that wrongdoing could be overlooked and swept under the carpet by simply going for codes when we have the opportunity of posting in lights what the legislation says and making sure that the expectation is that everyone lives up to it. Surely, none of us aspires to lesser standards; surely, we should all aspire to higher standards.

Mr Sheehan: Would it not be wise, Jim, to have a graduated response to whatever difficulties exist, rather than just going for the nuclear option from the outset? Let us try to fix whatever difficulties exist in the Executive and the Assembly, without resorting to pushing the nuclear button and bringing in legislation with criminal sanctions and so on for all sorts of issues that can be dealt with within the confines of the institutions that exist.

Mr Allister: I do not see anything nuclear about saying that it is a requirement of the law that you keep minutes of meetings, that you record lobbying that has happened to you as a Minister or as a spad, that you use only official, approved departmental systems so that you cannot hide in secret from FOI

various documents, that you must have a register of interests or that it is an offence to make unlawful disclosure to help your friends and your family. I do not see that there is anything that is severe, unreasonable or nuclear in that. That is the basic expectation of good government.

Mr Sheehan: Are you saying that there is no graduated response? It is either the law or nothing.

Mr Allister: Of course, the law is the law. If you want something short of the law, you are looking for wriggle room to avoid complying with the standards of the law. I do not see why anyone who is committed to the good functioning of government would want anything but the highest of standards. I become suspicious when someone says, "Oh no, don't put it in the law. Put it in a code. That will give more wriggle room, and let us graduate from being half good at government to being wholly good at government". That does not seem like a desirable graduation for me.

Mr Sheehan: Are you saying that the only way to have the highest standards is to legislate? Are you saying that there is no other way that we can expect the highest standards of propriety from elected representatives?

Mr Allister: I am saying two things. I have said that we have tried the route of codes alone, and it did not work: look at RHI. The codes said that you must maintain confidentiality and behave with honesty and integrity. We saw those breached in spectacular form. I am making the point that codes have failed us, but I am not saying that it is legislation or codes. You seem to be saying that; I say that it should be both. You have a pyramid: at the top, you have legislation; under the legislation, codes are made. Indeed, there would not even be codes but for my previous Bill, which your party opposed in 2013, that required statutory codes.

You pass a law that says, "Here are the basic elements. Codes must contain certain things". Codes can and should contain much more outside of that, but you set the parameters and expectations in the legislation, and the codes fill in the blanks, if there are any.

Mr Sheehan: Jim, I will not question your motivation around all of this. However, in your discourse with Emma, you constantly mentioned the "gravy train". I find that offensive, and I think that the vast majority of MLAs and members of the Executive would find that offensive as well. The vast majority of MLAs have not benefited in any way other than what they are legally entitled to from the Assembly and the Executive. You say that your motivation is simply to improve the functioning of government. Your views on the institutions as they are constituted are well known. I suppose, the question that I have to ask is this: are your motivations sincere? Is this about creating a better Assembly and Executive, or is it about trying to undermine the foundations of the Assembly and the Executive, because you do not want them and would prefer to be rid of them? I think that that is a fair question to ask you.

Mr Allister: As you say, my views on the institutions and their inadequacies are very well known. Therefore, it would be easy for me to sit back and do nothing and to say, "Let them wallow in their dysfunctionalism". However, I live in this country, and I want a good system of government. I do not think that this system can ever be perfected, but, so long as it is with us, I want to impose standards and obligations that will improve the functioning and standards of government. I do not see why anyone would be fearful of legislation that has such basic components as "Meetings shall be minuted. You shall not leak information. You shall use only proper systems. Complaints will be investigated independently" etc. I really do not understand, if people like you have no ulterior motive, why you are scared of that, why you are running away from legislation that does that and why you do not want to have the sanction of that upon you. If we are all in this together to improve the system of government, what is there to fear in legislation that does exactly that in improving the functioning of government?

The Chairperson (Mr McGrath): Are you happy enough, Pat?

Mr Sheehan: Yes. The line dropped off at the end, but I will leave it there and allow someone else to come in. Thank you, Jim.

The Chairperson (Mr McGrath): Thank you. Next on the list is George.

Mr Robinson: Like other members, I am having great difficulty with the sound. It is in and out. One minute, I can hear it, and, the next, I cannot. I did not hear quite a lot of Jim's contribution very well. It has been the same with other MLAs: I cannot hear what they say either.

I have observations from my point of view. When David Sterling was before the Committee last week, I made clear to him my views on some aspects of Jim's Bill. There is no point in me repeating those. I will not keep repeating myself and going over things.

I have a couple of observations, and one relates to Timothy Johnston. Someone who spoke — it might have been Doug Beattie — mentioned that at the beginning. They need to check their facts on that, because I noticed that one of the papers, possibly the 'News Letter', had to issue an apology. Just check the facts on the Timothy Johnston situation. That is all that I encourage you to do.

Jim made one or two wee comments about the "gravy train" and so forth. I am not sure whom he is getting at or whom he is mentioning: is that every one of the 90 Members, or is it someone in particular? From my point of view, I have never taken part in a gravy train in my life, nor do I intend to. I have been honest, upright and displayed a lot of integrity throughout my political career, so I hope that I am not one of the ones whom Jim is referring to. As far as my First Minister is concerned, she is another person of high integrity, and I look up to her. In my opinion, the Executive, in the situation that we are in — I alluded to it last week — are doing a very good job in difficult circumstances.

With regard to spads and so forth, we just need to be careful, particularly at present, because, as I said, of the situation. Something, possibly further down the road, can be changed. That is all that I will say at the moment. Those are my observations.

Mr Allister: Well, George, the comments that I made about the gravy train arose from the discussion of whether, even though they are not being used, you should still have the provision for eight spads in the Executive Office. Mr Sterling told you last week that six is working well. I said that we need to be aware — it is easy to operate in a bubble — of the public's perception of Stormont, which, very often, is that it is a gravy train. Why would we feed that perception by holding unnecessary posts that could command salaries of up £85,000, if we do not need them? That creates an impression amongst the public that, one day, those posts, quietly and surreptitiously, will be filled. To assuage public suspicion, it is better to remove posts that are not needed and, therefore, dissipate any idea of a gravy train. That is the point that I was making, and that should offend no one.

Mr Robinson: Thank you, Jim.

The Chairperson (Mr McGrath): Finally, Martina, if you are still on, would you like to ask a question?

Mr Allister: She is eating biscuits.

The Chairperson (Mr McGrath): There was a beep. Maybe someone —.

Mr Clarke: That was me, Chair.

The Chairperson (Mr McGrath): Sorry, Trevor, we did not know that you were there. I will double-check if we have Martina. She was there at the start of the meeting, and I do not think that we heard anybody exit. She might be watching on the live stream, and there is a 30-second delay. I will go to Trevor Clarke and then to Martina, if she comes back on. Trevor, do you have any questions?

Mr Clarke: As others have said, the audio has been terrible, and I have missed quite a bit of what was said. If there is a Hansard report of today's meeting, I would like to read it to see what was said. I will also look at what was said about the Bill in the Finance Committee. The audio is so bad that it is nigh on impossible to follow a full conversation.

The Chairperson (Mr McGrath): I am sorry for that and disappointed that the audio has been so poor, because it is an important session. We will give members who are on the phone the opportunity to email a question that we will ask Jim to respond to, if they feel it necessary.

Mr Allister: I am happy to do that.

The Chairperson (Mr McGrath): I understand. I have attended Committee meetings on the phone line. Occasionally, the line completely drops and you cannot pick up anything.

Jim, in the absence of any other questions, I thank you for your attendance and for answering questions. It has been an hour and a half of grilling. We appreciate you coming along to give us an update.

Mr Allister: Thank you, Chair, for the opportunity. It is much appreciated.