



Northern Ireland
Assembly

Assembly and Executive Review Committee

OFFICIAL REPORT (Hansard)

Report on the Review of
Opposition Entitlements

29 June 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mrs Pam Cameron (Chairperson)

Mr Jim Allister

Mr Robbie Butler

Mr Alex Easton

Mr Gerry Kelly

Witnesses:

Mr Trevor Reaney

Consultant

The Chairperson (Mrs Cameron): I welcome Mr Trevor Reaney to the meeting. It is good to have you here on this lovely sunny day. We will let you loose on your report. We are all very familiar with you, and you will be familiar with us, so we will not have to make any introductions.

Mr Trevor Reaney (Consultant): Thank you very much, Chair, for the opportunity to be involved in the review. It has been a pleasure to renew acquaintances over the last number of weeks. I will put on record my appreciation of the involvement of the consultees, the folk whom I have worked with on benchmarking and the academics and of the support of the Assembly secretariat staff when I was looking for information. I understand that your time is limited and that you are up against deadlines for this meeting, so I will press on and, perhaps, skim through parts of the presentation.

I intended to give an overview of the report and then focus on the findings and conclusions, particularly the recommendations. I will briefly touch on the overview of the report. Members will have seen the structure of the report and will have had an opportunity to read it. My only comment at this stage, because of our time pressures, is on the research element of the report. I wish to highlight that, as I explored with academics and others the research on the entitlements for official Opposition, as opposed to the theory of opposition, there was limited research and, indeed, no specific research on the entitlements and their effectiveness or otherwise. That is something that I have commented on in my observations, and the Assembly may wish to encourage some research in that area for the future.

I focused my benchmarking on the UK and Ireland. That is not to say that I did not look internationally, but the application of international models becomes more difficult when attempting to understand the unique circumstances in different countries. I looked at the procedural and financial elements in particular, and there are common procedural elements, which are consistent across many Parliaments, of the work of opposition. There was reference to that in three of the four comparators that recognised political or technical groups, and I have commented on that later.

The financial comparisons in benchmarking are always difficult because you are attempting to compare apples and pears, while the systems and their structures differ considerably. In the table in

page 28 of the report, I have attempted to explore a comparison using a model of a 10-Member Opposition. I have tried to provide, with some estimates and assumptions, a broad comparison. I will make one small apology to the Committee: the figures for the Assembly in the two boxes in the table are slightly understated, by £500 and £630. There are two elements to the Whips' allowance, and those tables omitted the second of the two, which is a small addition of £500 and £630.

The next slide focuses on the findings and conclusions of the report. Overall, I have looked at this in two ways. The first is the procedural elements, and the second is the financial elements. In my view, taken together, the current procedural elements of the statement of entitlements, along with full implementation of the Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016, provide a sound basis for the work of an official Opposition. However, I have made two recommendations to enhance that: one in relation to questions for oral answer and a second in relation to Statutory Committees. It is clear from the comparisons in relation to finance that the resource entitlements in the Assembly are significantly lower than in many other places, and I have made recommendations for their enhancement. Additionally, I have made recommendations on political and technical groups and on access to information, an issue that was raised significantly during the consultation.

I will now refer to the salaries of leaders of the Opposition or Whips. Those payments do not appear in many other institutions, and the issue was not raised with me during the consultation. Therefore, I have not commented on it, and I make the point that that will be the responsibility of the Independent Financial Review Panel, which is responsible for Members' salaries. That might be a matter for the panel when it is reconstituted at some point in the future.

Since I am conscious of time, I will skim through the recommendations relatively quickly, although I will pause to say a bit more about one or two of them. My first recommendation is that the Assembly adopt a principle for all this work: that the resources, profile and status provided to an official Opposition should not of themselves be an incentive or a deterrent for any party considering or opting for official opposition. On the one hand, they should not be so generous as to be attractive to influence thinking; on the other, they should not be so limited that they discourage opting for opposition.

My second general point is that it is important to codify clearly the arrangements and the statement of entitlements, however that may be produced in the future, whether through Standing Orders, which would be the primary focus, or other arrangements. They should certainly be codified to avoid misinterpretation or dispute in their implementation.

My third recommendation is in relation to review. I looked at the operation of the official Opposition in 2016 and early 2017, but that is too limited a period to draw any meaningful conclusions from. However, it would be useful to look at it again after a substantial period of operation, perhaps two years.

Recommendation 4 deals with the operating procedures, as I have described them, for an official Opposition if it comprises more than one party. It is important for the operation of the Assembly that its operating procedures on how it determines speaking rights and how it communicates with the Business Office, the Speaker's Office and so on are put in writing and clearly understood at the commencement of a mandate when an official Opposition is chosen and more than one party is involved.

Recommendation 5 deals with timing. It is my recommendation that all the recommendations adopted by the Assembly ultimately be put in place in a timely manner and, ideally, before the end of the mandate. As for technical groups, a little bit of further work needs to be done, which might delay that a little, but, generally, there should be a move to implement the relevant Standing Orders by the end of the mandate. The next slide focuses on the procedural recommendations. Recommendation 6 deals with the speaking rights currently in the statement of entitlements. Each of those, on Question Time, Executive business, statements, Matters of the Day and opposition entitlements, is reasonable and should continue. I will make one passing comment on Matters of the Day. They are designed not to be on issues of government business, and it could therefore be argued that the official Opposition is not scrutinising government at that point, but I did not think that that was significant enough to make a recommendation on it.

Recommendation 7 is on the questioning of the Executive where there is an existing entitlement under the statement. I recommend that the official Opposition have the first question to all Ministers in the time for tabled questions.

Recommendation 8 addresses the Standing Orders that are outstanding from the 2016 Act. It is appropriate to proceed with each of them, and I note that Standing Order 45A has already been amended. In my view, the Procedures Committee should take them all forward. Together with the other recommendations on the statement of entitlements, they would produce a sound basis for an official Opposition.

Recommendation 9 deals with speaking rights. The current statement of entitlements refers to apportioning speaking rights if more than one party is involved. That is sensible. It should be formalised and linked to recommendation 4 on operating procedures.

Recommendation 10 deals with Statutory Committees and something that may happen only occasionally or in limited circumstances in which an Opposition is of a smaller number than the number of Statutory Committees. That may be the case, or the number of Statutory Committees may increase. The principle is that an official Opposition should have a representative on each Statutory Committee to enable it to scrutinise government properly.

Recommendation 11 deals with political or technical groups. As I note in my research and benchmarking, three of the four Parliaments that I looked at in detail have some degree of recognition for technical or political groups in how they deal with procedural matters. I suggest that further consideration is required to explore the value of that in the Assembly.

I will move to the financial recommendations. Recommendation 12 deals with resources, and it reflects my view that a significant increase in resources should be provided to support the effectiveness of an official Opposition. In my report, I used the model of a 10-member Opposition. Other numbers could have been chosen, but it seemed reasonable to work with that figure for the purposes of comparison. I recommend a £100,000 per annum allocation to a party of 10 in official Opposition, over and above the general level of funding. That would, of course, vary if there were a smaller or larger number of seats. It is difficult to get a realistic comparison with other institutions. Suffice it to say that, in the Scottish Parliament, the differential between a party in government and a party in opposition is about £69,000 to £70,000. In the Welsh Parliament, it is about £90,000. The figure of £100,000 sits at the upper end of the scale, but, in my view, that is reasonable.

Recommendation 13 deals with the financial assistance for political parties (FAPP) scheme. Some of my comments apply to the whole FAPP scheme, including parties in government; it is important that the principles apply to all. Originally, under part of the statement of entitlements, the additional funding was to be cost-neutral; in other words, if there were an official Opposition, it would receive extra funding at the expense of the other parties. I recommend that that principle cease, that additional funding be made and that no reduction be made in the funding of other parties if an official Opposition is in place.

Recommendation 14 deals with the conditions and guidance associated with FAPP scheme funding. Again, that applies across opposition parties, government parties and others. My recommendation is that the detail be enhanced. The scheme under the determination, for example, has many conditions relating to it to ensure transparency, openness, probity and so on. It would be wise for the Commission, when it considers that, to explore such conditions and, indeed, to include a cap on the maximum salary. It is still important that leaders of the opposition parties have the discretion to appoint the nature and level of staff that, they feel, are appropriate to support their work. However, that should have some limit by way of a cap.

Recommendation 15 deals with the simplicity or complexity of the FAPP scheme. I recommend that a single stream of funding, incorporating the Whips' allowance and any funding relating to the office of the leader of the Opposition, should be provided in one streamlined set of funding. That would, for example, follow the model in Scotland, where there is a simple, single line of funding.

Recommendation 16 deals with inflation and the passage of time. There has been no increase in the figures under the FAPP scheme since 2016. I recommend that the Commission take account of that when it reviews the scheme in due course. You would see, possibly, an uplift of 10%-plus to cover the consumer prices index (CPI) or that type of increase. The downside is the impact on the ability to pay staff, which is the primary use of FAPP funding. That has issues of fairness for individuals who may be employed by parties. That would be unreasonable.

Related to that, recommendation 17 is to ensure that an annual cost-of-living increase is built into a revised FAPP scheme so that it does not slip further and further behind.

Finally, with regard to recommendation 18, one issue that was raised consistently in my consultation was access to information; indeed, it is a problem, if I can describe it in that way, across all Parliaments: the Opposition or the Parliament and its Committees receiving information from Ministers and Departments to enable them to scrutinise effectively the work of the Executive or Government. A more robust approach to that should be explored. For example, I have quoted a Cabinet Office model of a protocol that has some value. I am conscious of recent changes to legislation on providing information to Committees. Therefore, it would be worth exploring how access to information could be provided for more robustly in the framework of governance and in the work of the Assembly and the Opposition as part of that in total.

Chair, I am conscious that that was a quick rattle through. I could have spent significantly longer covering the ground and relating to some of the research and interesting facts and figures that have arisen during my review. However, I will conclude there and take questions.

The Chairperson (Mrs Cameron): Thank you very much, Trevor. Much appreciated. I have a couple of questions. Alex has indicated that he wants to ask a question. I will take any other questions from the room as they arise.

You indicated that the Assembly and Executive Review Committee (AERC) can take forward recommendations 3 and 18 as part of its forward work programme. With regard to recommendation 18, on providing an official Opposition with adequate access to information from Ministers and Departments, what do you see as the most effective means to achieve that aim? Are there any comparators to draw on?

Mr Reaney: In the report, I quote a couple of issues that provide a useful starting point. There is a Cabinet Office protocol, which I have quoted, that might merit consideration as to whether, with the Executive, a protocol could be agreed. I am conscious that protocols can be flexible in their interpretation and application —

Mr Allister: Some can [*Laughter.*]

Mr Reaney: — and, therefore, it may not be the answer, but it is worth exploring and spending more time on; indeed, the legislation that was recently passed here on providing information to Assembly Committees provides a model as well. There is no ready answer to that, but there are examples that the Committee could explore, and there could be more contact on that issue with other Parliaments to see how it could be enhanced. Certainly, to enable effective scrutiny, it is important that an Assembly Committee, its members and, in this case, the official Opposition have the information that they need to scrutinise and that they receive it promptly.

The Chairperson (Mrs Cameron): OK. Thank you.

Recommendation 11 is about creating:

"political or technical groups which may have the potential to meet the criteria for recognition as part of the official opposition."

How do you see that working in practice?

Mr Reaney: It is problematic, because you have potentially so many diverse voices. However, three of the four comparator Parliaments have arrangements that recognise, as the Dáil does, technical groups or, as in Scotland and Wales, political groups, and there is some value in exploring that because it gives those outside an official Opposition a greater opportunity to contribute, challenge and scrutinise government. That is worthy of exploration. I do not underestimate the difficulties in how that would work in practice if you have three or four parties with very differing political perspectives, so I have made a recommendation to explore it further rather than recommend that it be done. There is value in it, but it needs further work.

The Chairperson (Mrs Cameron): OK. That is great.

The final question from me is on the financial implications of the recommendations. Do any of those fall within the remit of the Independent Financial Review Panel or its successor body, or are they all within the remit of the Assembly Commission?

Mr Reaney: Chair, as I mentioned, they are all within the remit of the Assembly Commission. If the Independent Financial Review Panel, at some point in the future, looks at this and decides to change the salary structure for Members or office holders, that is a separate issue, and I have not addressed it, as it was not raised with me during the consultation with parties.

The Chairperson (Mrs Cameron): OK. That is lovely. Thank you.

Mr Easton: Thank you, Trevor, for your presentation on the report. I have a couple of questions. I am not sure about the opposition bit; hopefully, you can clarify it. If an Opposition were set up, can you have more than two parties in it? Theoretically, for example, could the Ulster Unionists be the Opposition by themselves, or do you have to have the SDLP as well? Theoretically, could the Opposition have three parties plus independents? That is my first question.

My second question is this: can political parties that do not want to be in opposition or in government sit outside both?

My third question is about costs. You mentioned £100,000 to run the Opposition. If there were, say, three parties in the Opposition, is that £100,000 for those parties to use jointly as the Opposition, or does it get divided up in some way? How would it work?

Mr Reaney: I will deal with the first two questions. The composition of the official Opposition is referenced in the 2016 Act and in the statement of entitlements. There can be more than one party in the official Opposition; that is why there are recommendations about operating procedures. If there is more than one party — it could be one, two or three — they would have to develop procedures on how they work together, how they apportion speaking rights, how they use the opportunities that they have on Committees and so on. So, yes, it can be more than one party.

The second element of your question was on funding. It is my recommendation that the funding be for the party itself. Theoretically, you could have two parties of 10 that get £100,000 each or one opposition party of 20 that gets £200,000. It is a pro rata issue between those two. If there were two parties, they would get, depending on the number of seats that they have, the ratio pro rata to £100,000 for 10.

Mr Easton: OK. Thank you.

Mr Allister: I want to ask you some things about technical groups. I had the experience of being a member of a technical group in the European Parliament, and it worked surprisingly smoothly, despite its diverse composition. So that I understand it, your vision is that a technical group that draws together disparate independents and small parties, if they wish to join, and which is recognised as such could itself, if there were no others and provided that it passed the threshold in the 2016 legislation, be the Opposition or a component part with others of the Opposition. Is that correct?

Mr Reaney: That is my view, yes. The purpose of that recommendation, drawing on the examples in the three other institutions, is that it provides an additional element to strengthen the work of the Parliament in scrutinising government. I have no doubt that the Government will see it differently, given that another voice will be resourced and strengthened to scrutinise, but that adds to the value of the work of the parliamentary institution and is, subject to the challenges that I have mentioned, worth exploring.

Mr Allister: Of course it is still a very uneven playing field, given the vast resources of government versus the modest resources of opposition, so it will never be an equal bout, as it were, in financial terms.

Mr Reaney: No, and I do not think that it ever will be. It is not in any other parliamentary institution.

Mr Allister: I accept that. Under the present arrangements, it is toothless and unfunded, essentially.

Mr Reaney: Yes, the official Opposition, under the current FAPP scheme, has a small element of funding that would not, on its own, be enough to employ a full-time member of staff. From my judgement and from what I have looked at in other places, a significant enhancement is merited in this situation.

Mr Allister: On the point about delivery of information, you referred to the change made for Statutory Committees in the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021. A similar statutory obligation could be placed on government in respect of an Opposition, could there not?

Mr Reaney: Yes. That is why, in the recommendation, I suggest looking at protocols, Standing Orders and legislation as ways to strengthen and have a more robust arrangement. I do not need to go into the issues on the supply of information and the difficulties that that creates for the Parliament, its Members, Committees and the Opposition.

Mr Allister: Thank you very much.

Mr G Kelly: Trevor, I want to go back over some of that stuff so that I can understand it. Alex asked whether you can be outside the Opposition, and Jim talked about the technical groups. To deal with finances first, are you working on the basis that, if you were not in the government parties, there would be £100,000 available to you as an independent, or would you have to set up a technical group? If so, what size does the technical group have to be? As for the Opposition, are you talking about — I may have picked this up wrongly — a series of Oppositions, essentially? If they pull together, although it does not matter whether or not they do, do they have to go beyond a certain threshold that brings them beyond a technical group or an individual independent? Can you explain the structure a bit more?

Mr Reaney: The official Opposition can be recognised in two ways: by declining a ministerial seat and, under the 2016 Act, by having 8% of the Members of the Assembly. I think that those are reasonable thresholds and that the 8% threshold in the 2016 Act should be put into a Standing Order, so that it is there clearly to be actioned.

A group would have to cross the 8% threshold, which is, let us say, eight seats. There would have to be eight seats held by small parties or independents coming together into a group of eight or more Members. They would have to develop their operating procedures and demonstrate a coherence in order to be recognised and to operate as the Opposition. Under the current arrangements — I see no reason to change them— could that grouping operate with one or two other parties in official opposition? The answer is yes, but, again, they would have to have procedures for working together. My recommendation is that individual independent Members or a small party outside the official Opposition would not qualify for funding; they would have to get above the threshold to qualify.

Mr G Kelly: So the official Opposition needs to be agreed and demonstrated by those parties?

Mr Reaney: Yes.

Mr G Kelly: Outside that, if there were others, they would simply operate as—.

Mr Reaney: They would continue to operate as they do at present.

Mr G Kelly: Thank you.

The Chairperson (Mrs Cameron): Thank you. If there are no other questions, I thank you for your report and your time today. It has been very pleasant to see people in person around a table.

Mr Reaney: I am delighted to be here in person, albeit in a quieter Building. It is a pleasure to be here and to meet you face to face. Thank you very much, Chair.

The Chairperson (Mrs Cameron): Thank you for your time.