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Assembly

Committee on Procedures

# OFFICIAL REPORT (Hansard)

Review of Private Members' Bills:  
Northern Ireland Assembly Bill Office

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consideration. The first one is around the level of service that you want in private Member's Bill (PMB) development and support for the Member throughout the process. The second principle is how accessible the service should be and the rules around Members' accessing it. The third principle is about fairness between Members and how you manage the system to ensure that it is fair amongst all MLAs. The fourth one is how you plan and manage the legislative programme across the mandate and how PMBs fit into that structure.

Before we go into reflections on the evidence so far, there are a few points that I will make. First, there is a certain trade-off at play here between, if you like, breadth and depth of support. Obviously, the greater the number of Bills you have in the system, the more the support is thinly spread across that higher volume. That begs the question of what rules you have in place to manage the demand that you have. Ultimately, that is not the only consideration. The other consideration is the particular circumstances of the Assembly: for example, the fact that it is a power-sharing model and our model prioritises Members being able to legislate and places a high value on that. It is balancing those two things out. The other thing to say, having looked at different systems, is that there are different ways in which that can be managed. It is usually a mix of procedural rules — how you access it and what the rules are before and after a Bill is introduced — and then resources and capacity. There is a certain amount of rationing that comes by necessity because of the finite capacity in the system to support the volume of Bills. Those are the sorts of issues that I will touch on. I will move to the first element of that paper, which is reflecting on some of the themes from the evidence to date.

The first thing to say — it has been mentioned already — is that we are in a unique mandate. We have a two-year compressed time frame. With the resource that the Commission had invested in private Members' Bills at the beginning of this shortened mandate, we have been able to draft and introduce 11 supported private Members' Bills. That is equal to the number drafted and introduced in the full five-year mandate of 2011-16. That gives you a sense of where that resource has paid off in supporting Members.

The challenges that we have are, of course, the time frames. That has been touched on as well. Traditionally, there is a minimum of 18 months between the initial proposal — the policy idea and the outline — and introducing the Bill on the Floor of the Assembly. There is a lot of complexity in that process, but one thing to note is that the development process is new to this mandate. If members are minded that the process, at least, should be maintained — before you look beyond it at how to configure that — you will want to consider at least whether the retention of the resource that was provided should be taken forward into the next mandate and to look again at how to build on and configure that.

One theme that emerged was the time that it takes to get from one end of the development process to the other. There are a few things in there, and, again, they have been touched on. There is an issue around the steps that are required of the Member: consultation, engagement with the Department, submission of the final proposal to the Speaker and then the drafting and redrafting of the Bill as well as the Bill documents, including the explanatory and financial memorandum (EFM). It is worth highlighting the benefits of those steps and why they are in place, which has been touched on. One of the key elements is ensuring that the Member has an opportunity to get behind the depth of the policy issues that their Bill provokes, to take research from the Research and Information Service (RaISe) and be supported with the policy background and to get legal advice on the competence of the Bill to make sure that the Bill can be drafted within competence. It is also about beginning to engage with the implications of the Bill more broadly, including any financial implications that it may provoke. Those things are designed primarily to equip the Member at the point at which they introduce a Bill, so that a lot of the thinking is developed through that process. There is a method to that, when it comes to those steps and how they are managed.

Another thing that was mentioned was the drafting process and the model that we have. We have a panel of external drafters. The benefit of that system is that it is flexible and we can instruct the drafters when we need to and when we get to the point of demand. That is a different situation from an in-house service. You may have fluctuations in demand throughout a mandate. If you have a steady cost at all times, it is different, whereas we can manage this in line with the demand, maintain costs and do it in a cost-effective way. That is a little bit about that.

On resourcing in general, the other thing about the current mandate is that, obviously, we are balancing a number of things. The way that the process is managed is that Members are rewarded for making progress at each stage. The quicker you make progress through the stages, the better chance you will have when you get to the far end of the process. That is managed through a queuing system, because making any value judgements about which Bills should proceed before others in another way

would be challenging for the Speaker and Members. Obviously, we want to maintain impartiality and preserve fairness, which is one of the principles that I mentioned.

I noted that pre- and post-introduction support was mentioned. There is a lot of intensive support at the developmental stage, and then, when the Bill is introduced, the Member steps across into the scrutiny process. In that process, they are supported by the Bill Clerk when it comes to getting advice on amendments, but so are the Committee and other Members in the process. It is a different experience. Later, I will mention other systems that have support at a later stage, after introduction, but the trade-off that must be taken into account is that those other systems have controls on the volume that they have. When it comes to the resource that you spend, there is a trade-off to consider. I outlined some of that for the Committee in the paper to clarify those roles and show how Legal Services, the Bill Clerk and the drafters work. The drafting process has been effective and has turned things around at good pace, generally speaking. The issue is not so much the drafting process as getting through all the steps that get you to that process. Again, they are put in place with the aim of developing good legislation, having those processes and giving the Member a platform on which to promote their Bill.

The last thing to say on the first part is that there are issues with communications and how things operate. We have noticed from the experience during this mandate how things have gone at different stages and how Members have found that. The team is conducting a business process review to say, "Right, what is the communication to the Member at the beginning and throughout the process? How do we support Members and make them aware of the challenges that they face at each step?". As I said in the paper, we will look to develop a manual to support the existing guidance from the Speaker and see how we can improve communications and develop that. We have the experience of this mandate now.

One of the challenges with timescales is the trade-off between volume and the fact that, when Members get to an advanced stage with drafting and redrafting their Bill, quite a bit of resource is assigned there. Again, that is managed against trying to help other Bills proceed. There is a balance to be struck there.

The consultation is published on the Assembly website. I know that there was some discussion about that. We could look at how the consultation process is rolled out and supported. There are different ways that we can improve the process generally and learn from this mandate.

The second part that I mentioned was consideration of your terms of reference and developing options. I will outline in broad terms some of the things that the paper talks about in that regard. The first part of your terms of reference asks about use of resources and whether it is the right use of resources. I have mentioned that there is a balance to be struck between access to the system and the management of that across a mandate, and we will talk about that.

We looked at approaches in other jurisdictions. For example, the closest comparator to our model is in the Scottish Parliament, and it has an entry threshold of support for Members. You have to achieve the support of 18 Members of the Scottish Parliament (MSPs) and half the parties in the Parliamentary Bureau. You can set that at various points. The advantage of that is that you can signify some support at an early stage before you expend money on drafting. The other side of that is that it sets that bar at that stage. In the Assembly, you could have a pre-legislative debate on a PMB that requires a simple majority in the House, but I do not think that that is where we are with the Assembly as an institution, because we want smaller parties to be involved and we want a broader contribution to the legislative process. You can strike that at different levels to get the balance right between access and ensuring that it is and remains a relatively open system. The Scottish model has support after introduction, and, again, that is linked to how many Bills you have in the system.

I talked a little in the paper about the Welsh model, which is more restrictive in its balloting process. It is different from where we are and is a much more restrictive system than we have, but I have unpacked that anyway and compared it.

There is also the issue of external Bills and Bills that are developed outside the system as opposed to Bills that are developed within the system. There are a couple of points on that. The first point is that, if you are putting in place principles for developing legislation, there might be a perceived unfairness if Members who have certain access to resources can potentially develop Bills through the middle of that, if you like, or if there are incentives to go around that process. The other side of that coin is that Members then have another avenue to take legislation forward.

There are different approaches outlined in the paper. For example, you could require consultation, which has been mentioned already. You could place procedural requirements on all Bills. Again, that happens in the Scottish Parliament. Equally, you could require all Bills to come through one channel. I have unpacked some of the advantages and disadvantages of those approaches in the paper.

I will move on to the issue of ex officio membership of a Committee. There was a really interesting discussion amongst members on that. There is a slight difference when a Member is an existing member of a Committee. Nicola and others said that it would be natural for a Member to sponsor a Bill in their policy area of interest; that is different from ex officio Committee members doing so, because there has to be regard to the balance of voices on a Committee, and ex officio membership would inject an additional member. There are specific requirements in the Northern Ireland Act 1998 and Standing Orders about the balance, using the d'Hondt method, of a Committee. Those things need to be taken into consideration. The management of that and whether it is beneficial for witnesses have been touched on. There are certainly benefits to the Members and potentially to the Committee, but there are other issues to weigh in the balance that are useful to talk about.

Having scheduled plenary days was also mentioned, Deputy Chair. The paper talks about that. It would have an impact; a balance would have to be found. You could have a rigid approach when, in fact, demand is likely to fluctuate. Flexibility in scheduling can be advantageous, so it is important to weigh that in the balance.

Co-sponsorship was discussed, and the paper talks about that option as well. I mentioned that there would be advantages for Members because they could split the load and you might have more support. The counter to that, however, is that some of the benefits that I mentioned about getting under the skin of the Bill, the depth of knowledge, a single point of contact and a single sponsor are important when you get to the post-introduction stage. There is a single point of development for the team supporting the development of the Bill and for the Member. On the other hand, there are other options: for example, you could have registered supporters of a Bill. I noted members asking whether that could be of assistance in spreading consultation and awareness of consultation, and that might be an aspect of that option.

The last issue that I will mention, you will be pleased to hear, Deputy Chair and members, is management across the mandate and the potential for deadlines. The Scottish Parliament has a deadline of the beginning of the first sitting day in June that immediately precedes the next parliamentary election. I should say that there is flexibility: there is an exceptionality provision, but it is quite narrow and extends the deadline only to September. There is a hard and fast deadline there, however. In our system, that is managed by the Speaker. The question is whether it should be put in Standing Orders. The benefit of that, obviously, is that it gives greater certainty of the volume of work at the end of the mandate, when, traditionally, a lot of Executive business goes through. We have to balance that with the rest of the considerations about supporting Members and at what point we spend public money and resources on supporting Bills.

There is a lot in the paper, Deputy Chair, but I will close by coming back to a few things that are worth considering about our system. One is that we have a relatively open system for PMBs that reflects the ethos of the Assembly. We would want to look at our particular circumstances and ask whether changes that we were considering would fit within our rules. We could look at other examples in the Irish and Welsh systems, but we would have to think about how they would fit within our framework. The last point is about going back strategically to the core principles: what sort of a service do we want? It is a breadth versus depth issue: how do we get a system that is fair, reflects the Assembly's ethos and helps us to plan across a five-year mandate?

That is more than enough from me, Deputy Chair. I am happy to take any questions, along with James, that members may have.

**The Deputy Chairperson (Mr T Buchanan):** Thank you very much for that, Frank. James, do you want to add anything before we open up the session for questions?

**Mr James Gilsenan (Northern Ireland Assembly):** Not really, Deputy Chair. I will just make two quick observations in addition to Frank's material. He mentioned that 11 Bills had been introduced; the other 12 of the 23 Bills that were submitted before the Speaker's deadline have been or are being drafted. Work on those is ongoing in the background. We are not resourcing only the 11 that have been introduced, if you like, via the Bill Office; there is still work to be done. The Speaker mentioned in his last letter to Members, of 27 October, the idea of a bridge into the next mandate, which John

O'Dowd spoke about. If the work is done, it can, at least, be carried forward into the next mandate, if time does indeed beat some of the PMBs.

**Mr Geddis:** I want, quickly, to reiterate what James has said. It would bring you to a situation where you would be drafting almost double the largest number of PMBs that was drafted in a previous mandate. That gives you a sense of the "money in the bank" that will come from the development service and the work that has been done in this mandate to date.

**The Deputy Chairperson (Mr T Buchanan):** Thank you.

**Mr Gilsean:** If I may, Deputy Chair, I have just one last point. There was some talk about stakeholders and third-party groups working with Members on ready-drafted Bills. It is fair to point out too that, with plenty of the supported Bills, there has been proactive engagement between the Members and charities and so on in the development of their policy and to assist the Members in working through drafts and that sort of thing. However, it is important that we, at each stage, ensure that only the Member signs off any decisions or works made. That interaction happens proactively.

**The Deputy Chairperson (Mr T Buchanan):** Thank you for that. Just before opening up the meeting to members' questions, I want to ask about the concern for the continuity and turnover of staff in the Bill Office. Are there any measures in place to maintain continuity, so that a plan is in place for the same staff to provide support from pre-drafting right through to the Committee scrutiny stage?

**Mr Geddis:** There are a couple of things to say on that. There is a slightly different system in place, and it comes back to the point about resources. Ultimately, that would require you, in effect, to fully separate the systems. The model that we have in place in the Bill Office is that you have a development unit, and the plan then was that, at a certain point in the mandate, as we get towards the end of it, the resource would recombine to clerk the existing Bills in the system. The issue is intensity of resource, pre- and post-introduction. That is connected closely to the volume of Bills. There is a reason why a Bill Clerk is different on the other side of the system, after a Bill has been introduced. It is because they are advising the Committee, the Member and other Members. In practice, we have shared that resource. It is not a hard and fast separation, but, in general terms, they are distinct roles.

On the general continuity of staff, we have been focused on growing the experience of staff in the Bill Office and the planning of that in the resources that we have put in, in order to get us to a position in the next mandate where we can draw on that corporate memory and staff experience. I hope that is helpful.

**The Deputy Chairperson (Mr T Buchanan):** Thank you for that. I open the meeting to members' questions.

**Ms Ferguson:** Thank you, Frank and James for your comprehensive overview. I appreciate the scale of the work that you do. Congratulations to you for getting through what you are doing. I have a couple of questions based on what our previous witnesses said.

I am just trying to unpick the pre-consultation stage for private Members' Bills. What are your thoughts on that? Should it be mandatory, given that, if it gets through to Committee Stage, there will be a consultation? If you believe on principle that it should be mandatory, does the Bill Office provide any general training on the overall process and, in particular, on the pre-consultation process for Members on private Members' Bills? Is it feasible to do so?

**Mr Geddis:** That is a good question, Ciara. There is support from the current development unit for the Member in the consultation process. However, the Member holds the responsibility for that. Again, if you are looking at striking a balance in the system, you might think that we could be more involved with the Member. That could be one area where you could increase support. Again, it is about looking at the balance across the piece, deciding when to inject greater support and looking at how to manage the resource as a whole. After the consultation, there is a lot of intensive drafting work. Certainly, however, the development of the consultation element of that process is important.

You asked whether the process should be mandatory. Ultimately, through our processes, the Assembly is clearly signalling that all those steps to consult and to engage with the Department are fundamental in developing good legislation. It would have the benefit of ensuring that, when Members come to debate a Bill, they can say that they have a broader perspective coming from that

consultation. All of that development work is money in the bank for the Member, in order for him or her to build their capacity to take a Bill forward and to promote it in the House. There are benefits to that approach, as I have outlined. There is a variety of approaches: do you require only certain steps of all Bills, or do you require a much broader range of steps? That is all up for consideration.

**Ms Ferguson:** OK, that is great. My second question is about deadlines for the submission of private Members' Bills. It is good that we have an open process, and we would like to retain that ethos. What are your thoughts on easing the burden of Assembly business and managing the resources that we have? What are your thoughts on having deadlines? You mentioned Wales and elsewhere, but what are your thoughts about managing the burden of Assembly processes? Would having deadlines help?

**Mr Geddis:** Ultimately, yes, particularly at the end of the mandate. A clear rule could help to give certainty to Members. A clear date for a deadline, perhaps in Standing Orders, could help the team to work with the Member to plan that. That is not to say that there are no deadlines in the system managed by the Speaker. This mandate has been unique, in that the Speaker has relaxed deadlines to allow Members to progress PMBs and to get a return on the investment that the Assembly has made in PMBs.

Looking ahead to a full five-year mandate, there are definite advantages to having a deadline because then you unlock resources that might be spent on supporting Bills that have less chance of passage to help Bills that have a greater chance. In this mandate, however, there are reasons why that approach was not taken.

**Ms Ferguson:** That is great, thank you.

**Ms Bunting:** Thanks very much for your briefing. You will appreciate that, although you have given us a comprehensive oral briefing, given the timing of the written submission, most of us have not had the opportunity to consider it. We may have to come back to you on the issues in the paper, once we have had a chance to read it.

I have a couple of questions arising from your oral briefing. I want to ask about the selection process for private Members' Bills. Members who have given evidence have mentioned a draw. I am not familiar with that or with what the process is at the start. What is that, exactly?

**Mr Geddis:** There is not a draw, Joanne. After the resumption of business in the mandate, the Speaker set a deadline for initial proposals. It was open to all Members to submit a proposal by a certain date. Again, that date was extended, but, if you met that date, you were in the process and you could move forward. You had to achieve certain milestones, which took you to a final proposal, which is where the Speaker signs off for you to get access to the drafting service. Just for clarification, there is no ballot system or system of chance, as happens in other legislatures such as Westminster or Wales.

**Ms Bunting:** Before you came in, the Members who gave evidence today mentioned an additional sitting. You may be aware that there has been discussion of that at the Business Committee. Given the current pressures, it is fine to introduce additional legislation into the mix. However, ultimately, that would be one phase of the process coming at the expense of another. If we introduced an additional sitting or plenary day for legislation, it would eat into Committee time. Committees are considering legislation; therefore, Committee meetings would be perpetually extended, and it would go on and on.

I appreciate that it is a political decision to some extent, but do you have views on the implications for the Bill Office in circumstances where there would be an additional plenary day for legislation whilst Committees were still scrutinising legislation?

**Mr Geddis:** I discussed that a bit in our paper, Joanne. I also mentioned that I am obviously happy to come back on those points at a later stage. Of course, the issue there is how to avoid a system that is rigid and might create some of the challenges that you have highlighted, such as the knock-on effects for Committees and so on, versus the current model, which is flexible.

There are other ways of doing it. You might look at your procedural rules on PMBs generally. There may not necessarily be dedicated sittings. Other approaches could be used; indeed, the current Standing Orders provide for Bills that are further on in the process to be prioritised, and the Business Committee can avail itself of those in its decision-making.

There would be pros and cons to that. You would not want to institute something that was quite rigid and would have those negative effects. Equally, you would want to balance that and look at how the system operates as a whole and is flexible.

**Ms Bunting:** Thank you. For internal Bills, you mentioned that the Assembly has a panel of external drafters.

**Mr Geddis:** Yes.

**Ms Bunting:** Those Bills are shipped out to be drafted. How is that different, better or worse than a Member using a third-party drafter?

**Mr Geddis:** Ultimately, through the supporting process, they will have gone through a procurement process. There is quality assurance and rigorous process, and drafters who have gone through that will have demonstrated their skills and their experience in drafting. That is part of the quality that is added by the Assembly process: if you go through that process, you are assured of accessing a drafter with that level of skill and experience. That, added to the other steps in the process, means that you are less likely to encounter challenges later in the process. As we know, it is a matter of politics whether there will be disagreement on the policy in a Bill and so on, but the idea of having a panel of drafters is to give Members access to a quality drafting service with the skills and experience to deal with the complexities of legislation. We can vouchsafe that through that process.

**Ms Bunting:** OK. Finally, unless you say something in your next answer that will make me want to delve deeper — *[Laughter.]*

**Mr Geddis:** Do not hold your breath.

**Ms Bunting:** We are all fully aware that Bills are being progressed that will not make it by the end of the mandate and will fall. At this point, staff in the Bill Office will have invested considerable time, energy and expertise in those Bills, yet they will not make it. That is at the expense of other Bills. As somebody who manages that department, what views do you have about the maximisation of resources in the Bill Office?

**Mr Geddis:** One of the things in our paper that will hopefully come out when you get a chance to read it, Joanne, is the balance between the volume that the Bill Office has to contend with, deal with and manage and the level of resource and support that can be provided. Those things are closely connected. Some of the issues that were mentioned about deadlines for the introduction of Bills in the latter part of the mandate and other potential procedural mechanisms that could occur could help to manage that. Against that, the Committee will obviously want to consider how it strikes the right balance whereby we have a system that encourages and supports Members to develop legislation but avoids the volume and capacity challenges that you outlined as much as we can.

**Ms Bunting:** OK. Thanks very much, Frank.

**Mr Geddis:** Thanks.

**Ms Brogan:** Thank you for all that information, Frank and James. That was a comprehensive breakdown. Thanks for that.

I was going to ask for your opinion on extending the plenary days, as an extension of Ciara's point. I will not go into that, however, since you gave detail on that in your response to Joanne's question.

I will ask you this, instead. This may be outside your remit, but maybe you can give me your opinion anyway. I think that Chris Lyttle raised an issue, when he gave evidence to the Committee about his PMB, about individual MLAs having access to Assembly legal advice. Committees have the opportunity to receive that legal advice, so that we, as a Committee, get a full understanding of the implications of a PMB: individual MLAs do not. One point that he made was that, essentially, we should have access to that and that it would be better if we could have that access. What are your views on that, Frank and James?

**Mr Geddis:** The first thing to say about that is that there is access to legal advice at the pre-introduction stage that ensures the Bill's competence. The next thing is to distinguish the pre-

introduction stage from what you are talking about, which is the scrutiny stage of the Bill, and to establish at what stage you would access that. Ultimately, the Bill Clerk is there to draft amendments on behalf of the Member, including the sponsor, and to advise them on that. The sponsor then feeds in to the Committee about issues that it might raise if it takes legal advice.

The other thing to bear in mind is that, if issues are raised by amendments at the Bill's Consideration Stage, the Executive Office and the Office of the Legislative Counsel (OLC) often have the incentive to step in and deal with any legal issues that will arise, because they will ultimately have responsibility for operating the Bill and its provisions. Therefore, there are safeguards there. Furthermore, the Bill is checked again for competence before its Final Stage, so there are safeguards in the process to avoid those issues arising.

The other challenge in accessing legal advice is the sheer speed of the turnaround time for amendments. I do not need to tell Members that turnarounds can happen quickly between the Bill stages. There is also the question of who the best person is to give advice at each stage and of looking at that holistically. I mentioned that in the paper. Hopefully that is helpful in letting Members think, "Should we invest resources in this stage and for this purpose or in that stage and for that purpose?". I hope that that is helpful, Nicola.

**Ms Brogan:** It is, Frank. Thank you for that. I have not read the paper, but I will read it. That is an important topic for us to look at as we go through the review. Thank you for that.

**The Deputy Chairperson (Mr T Buchanan):** The Speaker is here to give us his presentation for the next session. Thank you for your in-depth oral presentation, Frank and James. Once we have had time to go through your written response, we will no doubt come back to you with any issues that we have. Thank you again for your attendance at Committee.

**Mr Geddis:** Thank you, Deputy Chair. Thank you, members.