



Northern Ireland
Assembly

Committee on Procedures

OFFICIAL REPORT (Hansard)

Review of Private Members' Bills:
Office of the Speaker,
Northern Ireland Assembly

15 December 2021

The first one is that you need to have well-developed legislation, which means that it needs proper consideration and scrutiny, and all that that entails. You need to be fairly clear-minded about the purpose and nature of PMBs. In other jurisdictions, the convention is that they come from Back-Bench Members, although I do not like to use that term because we are a small organisation. Nevertheless, they are traditionally from Members who are not Chairs of Committees or Ministers and so on. They tend to be narrowly focused. Some of our Bills are complex, as you can see from the process at the minute. Private Members' Bills are better if they have a narrower focus than some of the larger Bills. Legislation is a complex area of work. As you know, it takes up a lot of time and effort. It also takes up a lot of resource, which I will come to in a moment. I would not rule out private Members' Bills being more complex and lengthy, but, by the same token, Departments are far better placed and have much greater resource at their disposal to take forward complex and significant Bills. As I said, it is better for PMBs to focus on narrower, singular issues, so to speak, that are more easily dealt with by Members.

Resources are also an issue. I am happy to hear Members say that their experience of working with Bill Office officials has been positive, but there is a big resource issue around all that. We will have spent probably £500,000 in the past two years to support private Members' Bills. That is a lot of public money. We need to be able to stand over the efficacy and good value of that. I am not suggesting for one second that it is not, but resources include public finance. They also include staff requirements. The whole process takes up Members' time and Assembly time, so a lot of resources are needed to service it.

When we are looking at the future legislative programme and all that it entails, we would be wrong to work on the premise of the experience of the past two years. It has been a unique couple of years in which we have tried to process legislation. There is, thankfully, much greater interest in PMBs. You have a tranche of Executive legislation as well. All of that has been condensed in to a time frame of more or less two years, whereas, normally, we would like to be thinking about a five-year mandate. You could deal with the legislation that we have on our hands much better in a five-year period. If you have a full mandate, you have a much longer time in which to process legislation. It would not be frantic, there would be no panicking, and Committees would not have to add extra days to consider Bills.

It is reasonable to suggest that private Members' Bills should have a time limit when it comes to being processed. If you had a five-year mandate, most Members who come forward with a private Member's Bill would do so on the basis of their manifesto commitments. You would assume that they would come early in the mandate to start the process of a private Member's Bill. Executive legislation generally takes longer to prepare because Ministers are only in place, they are getting to know their Departments, they are getting their portfolio work out with their Executive colleagues and are looking at their legislative programme. Therefore, that tends to come later in the mandate.

In fairness, our experience tells us that we get a significant volume of legislation quite late in the mandate from the Executive. It is reasonable to say that there will be a cut-off date for Members. I suggest that that should be at least nine months. If the current period had been normal, it would have been reasonable to call a halt to PMBs in June 2021, given that the Assembly will dissolve in March 2022. That is a nine-month period during which we could say that Members cannot introduce PMBs. That would allow for the volume of Executive business to be processed but not in a frantic or hurried way and not with Bills coming forward for accelerated passage because we are running out of time, as opposed to there being some other time-sensitive issue relating to the Bill. That all goes to making sure that we have proper and appropriate scrutiny.

I would like to address the matter of what we call the "ready-drafted Bills". We need to be careful that there is not an unfair advantage conferred on people who can get access to pre-drafted Bills. I am not suggesting that there is any issue around integrity, but, if a Member is able to go to an outside organisation and it produces a Bill and then the Member introduces that, they go straight to the top of the queue, so to speak, because they are not using the normal internal Bill Office support. We need to watch that that does not confer a disadvantage on the main PMBs, given that the PMB process should be designed to help private Members — the Back-Benchers who do not necessarily have the support of bigger organisations behind them. PMBs are for private Members; they are not for parties or big organisations. We need to be careful about how we do it.

Three of the seven PMBs that came already drafted did not get through when they were brought to the Speaker's Office. They were not immediately competent, so a bit more work had to be done on three out of the seven, whereas every other PMB went through at the first count. The quality control that Frank talked about pays dividends. When you do the work through the support of the Bill Office, the quality is there from day one. That is not necessarily the case with others that are prepared by outside

organisations. Sometimes, outside organisations have drafted Bills for here, but they did a cut-and-paste job from legislation elsewhere and the legislation was not always compatible with here, so there had to be a bit of reworking. There were simple things like an oversight. For example, people did not realise that you had to go to the Secretary of State to see whether his consent was needed. It can be a disadvantage to Members to use a Bill that is already prepared from outside and to have a sponsor from outside prepare the work for them.

As Speaker, I have to fundamentally guard the impartiality not only of my role but of processing legislation. The Assembly takes its role seriously when it challenges, scrutinises or processes Executive legislation, so the same principles need to apply to PMBs. In his evidence, John O'Dowd remarked that, if you are on a Committee and are working with the members daily and, generally speaking, have good working relationships across all parties, we might find that, if the Assembly is not careful, Members could end up almost being empathetic towards the Bill because the sponsor is a colleague of theirs on their Committee. I am not suggesting that you would not have people who are sponsoring Bills on a Committee, but that should be accidental rather than deliberate. If you were to make someone an ex officio member, you would have to consider whether you are giving that sponsor Member an advantage. People should not have an advantage; they should have equality of opportunity to process their legislation and to have their say to promote that. We need to be careful that we do not give a sponsor of a PMB some type of status that would confer on them an advantage. You would not expect the Minister to be able to come to a Committee meeting and sit there all the time. People would think, "Well, why would you do that?". The same question has to be put: "Why would you want to do that for a private Member's Bill?". It is still legislation. At the end of the day, the Assembly has to process that with integrity and the same degree of impartiality. That is important.

I will make a couple of points in conclusion. Our officials have been continuing to learn in what has been an intense period. The period from 2020 has been challenging — we all know that — but our officials are still learning and are learning well. As I said, I am glad to hear Members thanking the staff and commenting that they have been well supported by them.

We are starting to develop a parliamentary culture. You can see that. More Members are interested in private legislation, and more Members are talking about it. Even some of our local journalists and media commentators are starting to refer to that. There is a lack of understanding of what is First Stage, Second Stage or the next stage, but all that is technical. The fact is that a number of private Members' Bills have been addressed in recent weeks and months, even in the last days, and the media are commenting. That is a good thing, because I always remember that, at the end of the day, the title above the door is that we are Members of a legislative Assembly, so we are about legislation. The stop and start that we had over many years meant that we did not develop the parliamentary and legislative culture that we probably need to develop. We are starting to get into that, which is a good thing. There are now more Members with more experience of that, there is more expectation, and there is certainly more interest in looking at that in the future. We can look forward to the fact that we will have much greater interest in PMBs and a greater volume of them. I am pleased that, even as we speak, we have probably more private Members' legislation going through the House than we have had in any former mandate, including full-term mandates, and that is a good thing.

I commend Committee staff, Committee members and Assembly Members in general for coping with the unusual circumstances that we have had to deal with in the past couple of years and, at the same time, getting on with business. That is not always fully acknowledged by some of the wider public commentators.

That is my final comment, Chair. As I said, I presented a paper to the Committee for its consideration outside the meeting. I am happy to address any issue that I talked about or any issue that I may have left out. At any time in the future, I would be more than keen to support the Committee in its review.

The Deputy Chairperson (Mr T Buchanan): Thank you for coming and for giving us a clear insight into the process of private Members' Bills and how you see it from your side of things. Your paper refers to the purpose of private Members' Bills:

"The objective of the Assembly in offering support to PMBs should be to develop good legislation."

The paper also refers to the need to ensure that they are properly scrutinised. You spoke about a cut-off time for private Members' Bills. We heard from the Bill Office earlier that, in this mandate, 11 are fairly well through and another 12 are in drafting. Obviously, at this stage, not all of those will get through. Would it not have been prudent to have had a cut-off date in this mandate for private

Members' Bills, because we have ones that will fall and will not go through? Again, there is a cost element associated with that.

Will you give us some clarity on what stage a private Member's Bill has to be at to enable it to be picked up in a new mandate to be taken on from where it left off?

Mr Maskey: In one sense, all draft legislation falls at the end of a mandate, so it is all equal on that basis. By the same token, if Members have already done work to get their Bill drafted, consulted on and all the rest of it, it will be good to go in the next mandate. No Assembly can produce Bills or half-processed draft legislation and expect the next Assembly to pick those up, because there will be new Members, new mandates and all sorts of different dynamics. You cannot bind the incoming Assembly to what you do now. However, the fact that Members have already done a lot of the work prior to dissolution means that those Bills can be picked up much more quickly at the start of a new mandate. New MLAs will not come in the door of the Assembly with Bills, but Members who were already working on Bills will have done a fair amount of work. You would still have to formally reintroduce a Bill to the Assembly, but, because a lot of the work has been front-loaded, you will have shortened the time frame. That means that the Bill will not sit for another year before it gets support from the Bill Office. Members would be able to reintroduce draft legislation fairly seamlessly in the new mandate.

The Deputy Chairperson (Mr T Buchanan): There has been an influx of private Members' Bills in the recent short term. Do you see the demand for PMBs continuing at that level in the new mandate and beyond?

Mr Maskey: I would not rule it out; in fact, it is fairly certain that there will be greater interest, now that Members see that they can get this stuff done. Private Members have already got their Bills to Second Stage and so on. That enables them to say that they have draft legislation in the process and that it has been debated. Again, that helps to create an overall environment where people expect Members to produce legislation here. Yes, I think that there will be greater interest in PMBs in the next mandate and that that will continue. However, there will always be finite resources. At the end of the day, the Assembly — maybe this Committee — might have to consider further restrictions or ballots. There are such systems elsewhere. I am not advocating any of them; I am saying that, from the experience that we have had thus far, we can expect greater interest from a wider number of Members in taking forward private Members' Bills. It is realistic in that context. However, you still have to say that there are finite resources.

The Assembly has only a certain amount of money that it can justifiably spend. It must also be recognised that people have only a certain amount of time to give. The system is already fairly busy. Committees meet on Wednesdays and Thursdays. The Assembly sits on Mondays and Tuesdays. A financial resource is required, and there is a requirement for Members' time and the Assembly system itself to cope with all of that. Depending on the volume, you might have to find ways to reduce the amount of draft legislation going through. However, that would be a good complaint to have.

Remember that we already have Standing Orders, which allow us, the Business Committee and the Committees, to look at the draft legislation that is before us and work out what we can realistically deal with. For our purposes, we need to ensure that we find criteria for doing that, rather than simply saying, "We like that Bill", or, "We do not like that one". We need to ensure that we prevent any partial or partisan reasoning for saying that we cannot deal with Bills. Equally, people should not be able to say that they will deal with a Bill because it has only two clauses. Those two clauses could be contentious, significant and complex, as we have seen. One clause out of a Bill of 10 clauses could be the substance of that Bill.

Yes, there will be more interest. At some point in the next mandate, the Assembly will probably need to look at how to filter out Bills when it thinks, "Realistically, that will not get the chance to be processed. Let us not waste any public money on it". That is a discussion for another day, in the new mandate.

Ms Bunting: Mr Speaker, thanks very much for your evidence and your paper. The points in your paper that really struck me are at paragraphs 11, 12 and 13 on the definition of a PMB, how you see a PMB and the financial responsibility contained therein.

If you do not mind, I would like to get your views on a couple of points. At present, we are dealing with two Bills on exactly the same massive issue. Do you have views on that? Should there be a private Member's Bill on a subject when a Department is taking forward a Bill on the same issue?

Mr Maskey: I want to make sure that, in my role as Speaker, I am not seen to stray into favouring one Bill.

Ms Bunting: I ask purely about the principle.

Mr Maskey: There are two things that strike me in all of that. As you know, when Members are developing a PMB, they are asked to talk to the Department, because one of the criteria that we have to look at is whether there is an alternative way of dealing with the legislation that the private Member advocates. However, if a private Member comes back and says to us that they cannot get a commitment from, for example, a Department or a Minister to produce similar legislation, that Member is free to table that Bill. The Speaker's Office has no role in deciding, "Well, actually, we will not take that Bill": once it is eligible to be put forward, we have to process it.

We now have two Bills — you are right — on the one general topic, and both will be complex. It probably would have been better to have one Bill. The scope and facility is there for the sponsor of the PMB and the Department to haggle and try to sort it out. If they are unable to do that, the Assembly will process both Bills in parallel. I am not overly concerned about the complexity of that, because there will come a point when one Bill is before the House and its clauses will be voted down or voted in and that will determine what happens to the other Bill. It is entirely in the hands of Members. I do not see it as complicated. I have heard some people say that they are horrified; I cannot remember the terminology. Some people seemed to be inflating the difficulty, but that is the process of legislation.

When a single Bill comes to the House — members here will have been involved in a number of those — it might be complex and sometimes even contentious. You then get amendments and counterarguments. Members are able to deal with that and take their decisions. They might do that quite easily; it might be with difficulty, great passion and all the rest of it. However, Members are well able to process legislation. They have proved that, including, as I say, in recent times, when we have dealt with legislation involving some difficult issues. Members and Committees have managed to navigate their way through that with political maturity.

Yes, it is better to have one Bill on the same topic at all times. As I say, the facilities are there so that, if a Member wants to sponsor a Bill, they need to make sure that they are able to tell us that they do not have a commitment to another similar Bill from a Department, for example. However, when that does not happen, we have to deal with it and process it. We can do that; I am confident about that.

Ms Bunting: That is fair enough. It is about the strength of the processes. Engagement between the Department and the Bill sponsor is absolutely key in all of this, but so is scope. The private Members' Bills that have come through the Assembly since its inception have primarily been niche, narrow in focus and addressing a gap in legislation. My party has expressed a preference that things beyond that are probably more suited to being taken forward by a Department, with all the resources that a Department brings. You mentioned some of that in your paper. In evidence to us, Members have suggested that the resources available to Ministers and Departments should be equally available to Members who are taking forward private Members' Bills. Do you have views on that?

Mr Maskey: People need to go back to our roots. Our primary responsibility and function is to hold to account the Executive and to process Executive legislation. We also have a role on PMBs and in helping to shape and develop policy and all of that. The larger, complex issues are better suited to being dealt with by Departments. That makes sense for the obvious reason that Departments have a lot more capacity to develop, propose and pursue substantial and complex legislation. As I said, PMBs, generally speaking, are seen as the reserve of Back-Benchers; again, I do not like that term, but, nevertheless, it is commonly used. There is a role for private Members' Bills. All legislation is important and has to be handled in a professional and mature way. However, our primary role is to work with the Executive to scrutinise their legislation and hold that Executive to account on how they work.

For a range of reasons, it makes sense that PMBs should be used to deal with more niche and narrow issues. I do not rule out private Members having some capacity to take forward bigger Bills, but that goes against the grain of what, generally speaking, PMBs are perceived to be about. There is also the matter of the resources required for PMBs. At the end of the day, if we treat all draft legislation the same, we will still be making high-standard requirements of Members in producing PMBs. We must also ask these questions: how many private Members have the capacity to deal with the process of big, complex Bills? How many Members can do that without being well supported by outside organisations or their party? Do some Members have more of an advantage than others?

It is all about fair treatment. If a private Member is in the queue and is getting support from the Bill Office for a long and complex Bill, a lot of time, resource and finance will be needed to support that Member. Does that mean that you disadvantage five or six other Members who cannot get the same resource or time because the Assembly will run out of time on those PMBs? There are questions of fairness and capacity to be addressed in all of that. It is a big commitment for any private Member to take legislation through the Assembly. However, a private Member will need extra support to produce a complex Bill, which will cost money and take up staff time, Members' time, Committees' time and all of that. We would be safer looking at having PMBs for more narrowly focused issues.

Ms Bunting: Mr Speaker, paragraph 13 is about the financial responsibility of sponsors of private Members' Bills. Some Members take the view that they will come forward with a proposal, get it to a certain point and, ultimately, the Minister will have to live with whatever the Assembly decides. A Member is perfectly entitled to take that view, and the Minister may have to live with it if it is passed. However, you have indicated that there should be a consideration of the financial implications of a Bill because those could be significant for a Department's budget. Can you elaborate on that, please?

Mr Maskey: When you look at institutions and Parliaments elsewhere, you see that there is a specific role for PMBs. There are PMB processes for Back-Bench MPs and members of various political institutions and Parliaments, such as Dáil Éireann. However, people need to bear it in mind that, as I said, we have not yet fully developed our parliamentary culture. An Executive Department is expected to know the cost of a Bill that it is taking forward and outline the associated implications, benefits, costs and so on. An Executive Department will be expected to work with the Department of Finance to get some costings for Bills. Given that we believe that there will be increased interest among Members in taking forward private Members' Bills, we cannot ignore the fact that there will be a cumulative associated cost. It is reasonable that Members who are taking forward private Members' Bills should also take forward some of the costs attached to those Bills, so that people can understand where it will end. Members should know the totality of the implications for the efficacy of the legislative programme.

Ms Bunting: Even if they do not have access to the information that, obviously, Departments have?

Mr Maskey: They can engage with the Department of Finance. Whether they will get the degree of information or cooperation that they want, I am not so sure; I would not want to speculate on that. However, there should be some onus on Members when they take forward draft legislation. Legislation is binding, and it is important. It is up to Members to pass whatever legislation they deem fit. By the same token, while it has policy outcomes, we need to look at the financial outcomes. It is reasonable to draw Members' attention to that as well. That is reasonable and rational, and it happens elsewhere.

Ms Bunting: Chairman, I just have one more question. Mr Speaker, we are looking at whether there should be a threshold of support for a private Member's Bill before it progresses. Do you have any views on that?

Mr Maskey: Given the nature of our institution, it might be difficult to square that circle. You would not want to be accused of saying that a bigger party is able to sway that decision. If you take away Ministers and all the rest, you are down to 75 Members or whatever. All of those Members are private Members who are as entitled as any other Member to take forward draft legislation. If we were to say that there is a threshold, how would that accommodate smaller parties or independent Members, who are as entitled to take forward draft legislation as the big parties are? We would need to be conscious of that danger if we were to go down that road.

Ms Bunting: Thank you.

Ms Brogan: Thanks, a Cheann Comhairle. It is good to have you and your expertise at the Committee. That is really important for us in going forward with the review, so thank you for taking the time

You have made some really valid points. You talked about Bills coming through to your office already drafted and how that can have advantages and disadvantages. You might have heard Colin McGrath giving evidence earlier and our discussion about the potential issue of lobbyists from outside organisations coming in. Colin said that he had not experienced it — nobody has — but there is that potential. You made the point that three of the seven private Members' Bills that have gone through in this mandate did not go through initially because they did not meet the quality checks or criteria. Given

that there are advantages and disadvantages, is it still fair to accept both routes for the drafting of Bills: externally or through the Bill Office?

Mr Maskey: I would not rule out Bills that have been drafted externally; I am simply saying that some things could be built into a framework that everybody understands and is clear about and that is within the Standing Orders and so on. You could build in protections to make sure that no one is advantaged or disadvantaged. All private Members are entitled to take forward draft legislation, but we need to make sure that everybody is treated equally.

If you want to get support from an outside organisation, you can. Colin referred to the potential down the line for vested interest and so on. Yes, you could get that; in the longer run, we will need to make sure that we do not. Hopefully, the Assembly will run for several years and we will continue to develop our parliamentary culture. In the early days of the Assembly, from 1998 onwards, a number of organisations came together as lobbyists, which was fine, appropriate and fair. However, we have seen how that has evolved in other institutions over the years and where things — not all the time but periodically — have got out of hand and organisations have stopped being lobbyists and become something else.

It is about making sure that there is efficiency. I drew attention to the fact that three out of seven Bills did not go through in the first instance. Most of that was due to technical issues. There was nothing major wrong with the policy. Some of it was to do with drafting issues or Members thinking that you could lift legislation from Scotland or somewhere else and transpose it to here; that did not work. Some of it was about speaking to the likes of the Secretary of State to see whether the Bill might need consent or whatever. It was about dotting the i's and crossing the t's. All the Bills that went through the Bill Office went through straight away and without any glitches, because they were using the internal expertise that we have on hand here. I would not rule out Bills that are already drafted or crafted, but we need to make sure that we have rules and regulations in place so that Members are not disadvantaged.

Ms Brogan: I totally agree with that point, and we will reflect that in our review. The important bit is having built-in protections.

I have a final question. You mentioned that, over the past two years, it cost around £500,000 for those PMBs to go through. In order for that to be money well spent, should there be an additional plenary day to ensure that PMBs can be taken forward before the end of the mandate?

Mr Maskey: It is wise and prudent for the Assembly to give itself flexibility in these matters. There may be times when you do not have a rush of legislation. You may have set days that you then need to cancel, which is not a good look and is not the wisest time management. As I said, in these two years, the Assembly is condensing a lot into a short time: Executive legislation, private Members' business and all other business, not least that relating to the pandemic, which has taken up a lot of time and effort in the institution.

If we look at it in the round, we see that, in a five-year mandate, all of that could be managed much more easily and less frantically. The need for extra days may not always be as pressing. We have that availability; it is there for us if we want to use it. As we speak, we can roll over into Wednesday mornings without a second thought. If you get into that process in the next year or couple of years in the next mandate, you will probably want to reflect on the question of whether we need to set aside a different time.

At one point, I would have liked to see the Assembly's plenary days being Tuesdays and Wednesdays, rather than Mondays and Tuesdays, because I know that officials, Members and Members' staff work on Sundays to prepare for Mondays, which I do not think is compatible with family-friendly or even normal working hours; it is a bit of a burden. We can always look at how to do our business more efficiently. However, we can wait until the next mandate before looking at whether we need to dedicate days for particular legislation and so on.

Ms Brogan: You make a very important point about changing the days. Sundays are often taken up by preparation for the Monday. Thanks very much for that, a Cheann Comhairle.

Ms Ferguson: You have definitely given us all food for thought, particularly on the purpose of a private Member's Bill, how it goes through and the resources that that requires. The point about equality of opportunity for Members in taking forward a private Member's Bill hit hard, particularly

regarding the external support that may be available to some and not others. That is definitely food for thought.

I want to pick your brains. In the previous session, James and Frank mentioned experiences elsewhere. Is there anything on private Members' Bills from our counterparts in other legislatures that inspires you or that, you feel, the Assembly could consider taking forward?

Mr Maskey: Do you mean by way of legislation?

Ms Ferguson: Yes.

Mr Maskey: I will not venture into that territory, because I have to remain genuinely impartial. When a Bill comes to the Speaker's Office for competence and so on, I do not look at the party. I am blind to the party and the policy intent. I have to make sure that the Bill is compatible, compliant and so on. You will forgive me for not speculating on what might be good legislation to take forward. If I did that, I might bring my personal interests to bear.

Ms Ferguson: OK, thanks.

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

Mr Maskey: I want to make one last point on something that came up earlier. Early in the year, officials, normally and professionally, said, "You need to draw the curtain on PMBs". Their arguments for that were, "You will be spending money on it", and, "You will be cramming the system". Back in June and even September, I certainly felt that that was not the time to draw that curtain. We are a legislative Assembly. We had been bedevilled by the pandemic. There was legislation in the queue. I had no way of knowing what volume of Executive legislation, for example, we would get. Like everybody, I was hopeful that the Executive would get what they wanted to do produced and processed. I was determined not to pull the curtain down on the ability of private Members to take forward legislation when there was time to process it. That has been proven to have been right.

Yes, it is busy at the minute. We probably have less than three months of Assembly time in which to process the rest of the draft legislation. However, we will produce more legislation than we have in any previous mandate. That is a good thing. It is a good thing that the Assembly, while not resting its case or being in any way complacent, can say to people out there, "We are now doing what we are supposed to be doing", which is legislating. As I said, that is a good thing. I took the decisions to leave open and extend the deadlines for Members to take their Bills forward in the context that we still had some time left. However, I am clear that it is much easier to regulate things when you are looking ahead at a five-year mandate and when Committees do not have to work frantically on three or four Bills at the same time and have extra sittings. We have to avoid that in the future, but I have no compunction about doing what we did and leaving the books open to allow more legislation to come forward.

The Deputy Chairperson (Mr T Buchanan): I suppose that it shows what can be done when the will is there to do it.

Again, thank you for taking the time to come to the Committee to present your evidence. It is very much appreciated.

Mr Maskey: Thank you, Deputy Chairman and members.