



Northern Ireland
Assembly

AD HOC COMMITTEE

OFFICIAL REPORT
(Hansard)

**Assembly Members (Independent
Financial Review and Standards) Bill**

13 December 2010

NORTHERN IRELAND ASSEMBLY

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Assembly Members (Independent Financial Review and Standards) Bill

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Members present for all or part of the proceedings:

Mr Fred Cobain (Chairperson)
Ms Sue Ramsey (Deputy Chairperson)
Mr Kieran McCarthy
Mr Daithí McKay
Mr Paul Givan
Mr John Dallat

Witnesses:

Ms Tara Caul)	
Mr Paul Gill)	Northern Ireland Assembly
Mr Tony Logue)	
Mr Hugh Widdis)	

The Chairperson (Mr Cobain):

Officials from the Committee on Standards and Privileges will brief members on the amendments to the Assembly Members (Independent Financial Review and Standards) Bill.

Mr Paul Gill (Northern Ireland Assembly):

Thank you, Chairperson. The Committee on Standards and Privileges met last Wednesday and agreed to table four minor amendments to the Bill.

The first proposed amendment is to clause 17, which refers to investigations into breaches of the code of conduct. It subsequently refers to investigations into complaints that:

“the conduct of a member of the Assembly has...failed to comply with the Code of Conduct”.

There is no reason why the Bill should be inconsistent in that regard. The amendment provides for the clause to be consistent by referring to investigation of breaches of the code whenever they occur, rather than investigating the conduct of Members. The amendment would also ensure that the Assembly was not unduly fettered if it wished to provide for the admissibility criteria for complaints to allow for complaints to be made against former Members. The Committee is aware that the admissibility criteria for complaints will be set out in a direction to the Commissioner under the provisions of clause 24. The Committee on Standards and Privileges will determine the admissibility criteria.

The second proposed amendment is to clause 31(2). It seeks to remove the unnecessary words “or make an affirmation” as the reference to oaths in the clause automatically extends to affirmations. The next proposed amendment is to clause 34. Clause 34(1) correctly refers to a “complaint or matter”, but subsection (2) and subsection (3) refer only to a “matter”. It is proposed that those references should be changed to “complaint or matter” for consistency.

The final proposed amendment is to schedule 4(6), which sets out the duty of the commissioner to consult the commission on any liability incurred by the commissioner that the Assembly Commission may be required to discharge. On reflection, the Committee was concerned that that paragraph read awkwardly and was not easily understood. The proposed amendment would not in any way alter the essence of schedule 4(6), but would improve the clarity of the duty in question. Those are the four proposed amendments that the Committee on Standards and Privileges has agreed that it will table.

Mr Givan:

I want some clarity on clause 17 and the admissibility criteria that you mentioned. Are we specifically putting a provision in the legislation that will allow for the investigation of former Members?

Mr Gill:

No; that is not the case. As drafted, the Bill is ambiguous on whether the commissioner would ever be able to investigate former Members. If the Assembly later decided that it wished the admissibility criteria to extend to former Members, there would be ambiguity about whether the functions of the commissioner would allow him to do so. In agreeing to the proposed amendment, there would not necessarily be an agreement that former Members may be investigated. Rather, if the Committee on Standards and Privileges and the Assembly agreed at a later date that the commissioner should be able to do that, the legislation would not prevent that.

Mr Givan:

Do the current arrangements allow the Committee on Standards and Privileges to investigate former Members?

Mr Gill:

The current arrangements are not set out in legislation, and there is no existing statutory provision in respect of former Members. However, the Committee is of the view that, if it receives complaints about Members who subsequently resign, for example, there should be no difficulty and those investigations should continue.

Mr Givan:

I am trying to establish the reason for including the amendment. Why was it necessary to draft that amendment?

Mr Gill:

There is an inconsistency in the language that is used in the Bill. There are references to breaches of the code of conduct and subsequent references to the conduct of a Member being inconsistent with the code of conduct, but there is no reason why the Bill should refer in separate places to those terms in different ways. The Committee has also agreed that it does not want the Bill to prohibit the commissioner from being able to carry out investigations in respect of former Members at this stage. That is not to say that the Committee has taken the decision that the commissioner should launch those investigations; it just does not want to create a legislative provision that would prevent the commissioner from undertaking such investigations in the

future. The concern is that, as drafted, there is ambiguity surrounding the commissioner's powers to do that. There is no ambiguity in the Scottish or Welsh legislation or in the powers of the Parliamentary Commissioner for Standards, so the Committee is keen that there should be no ambiguity in this Bill.

Mr Givan:

I appreciate that clarification. However, if a person is no longer a Member of the House and is found to have breached some rule, what sanctions are available to punish that person? What is the point in having an investigation if sanctions cannot be applied because the person is no longer a Member?

Mr Gill:

It is correct that the sanctions that the Assembly can apply to a Member who has breached the code of conduct apply only if that person continues to be a Member. However, the Committee on Standards and Privileges has looked elsewhere at examples whereby Members breached codes of conduct and investigations were carried out even though those Members had become former Members. Those investigations provide an opportunity for the public and the body to establish the facts of exactly what happened, which has its own value. There is also an argument that internal procedures allow breaches to take place, and that, by establishing the full facts of what occurred, a body can learn from the mistakes that were made and make necessary improvements.

Mr Givan:

If the amendment passed, would it still be up to the Committee on Standards and Privileges to instruct an investigation to take place?

Mr Gill:

Yes; that is absolutely correct. The Committee on Standards and Privileges will issue a direction to the commissioner that sets out the admissibility criteria for investigating complaints or accepting complaints to be investigated. One of those criteria could be, for example, that a complaint needs to be about a current Member. The Committee on Standards and Privileges has not yet decided on the admissibility criteria. However, the amendment allows the Committee to include former Members if it decides that it wants to do that, and it ensures that the commissioner

would be able to investigate those Members.

Mr Dallat:

I presume that the reference to “document” includes electronic mail as well as hard copy?

Mr Gill:

In which context?

Mr Dallat:

Clause 31(1)(c) and 31(1)(d) refer to concealing or destroying documents. Documents that are electronically stored can be deleted.

Mr Gill:

Yes, that includes electronic documents. It concerns the information contained in a document. Clause 28(4)(b) provides clarification:

“‘document’ means anything in which information is recorded in any form”.

Mr Dallat:

That is grand.

The Chairperson:

I have two quick questions for clarification. First, if a breach were minor, I do not understand why you would want to investigate a former Member who is no longer here, particularly given that no sanction would be available. Secondly, if it were a major breach, I assume that that would be a criminal matter for the police to investigate. However, it may be a waste of time to investigate former members for what could be minor breaches. Therefore, what is the purpose?

Mr Gill:

It is unlikely that former Members would be investigated for very minor breaches in any event.

The Chairperson:

No. The amendment allows the power for that to happen. You cannot insert that amendment and

then say that certain breaches will not be investigated. If someone complains to the commissioner about a breach, the Committee is not going to set out criteria that would allow the commissioner to decide which breaches of the regulations he will investigate. If a breach is reported, the commissioner must investigate it.

Mr Gill:

The commissioner could reach the view that a complaint related to an allegation that was trivial or vexatious. In those circumstances, if the commissioner reached that view and reported that to the Committee, there would be no requirement for an investigation. That applies to current and former Members. I just want to emphasise that the Committee has not yet decided whether to enable the commissioner to carry out investigations of former Members.

The Chairperson:

That amendment allows for the power to do that.

Mr Gill:

That is one effect.

The Chairperson:

If we agree to put it in, we agree to the ability of the Committee on Standards and Privileges to instruct the commissioner. Why else would you put it in?

Mr Gill:

The reason for the amendment is to remove ambiguities so that if the Committee on Standards and Privileges decides in future that it wants to do that, it can. However, at this stage, the Committee has not yet decided whether or not it wants to do that, and the amendment does not commit it to do that.

The Chairperson:

You are giving the Committee the power to do it, if it so decides. That is the same thing. Once it is in legislation and enacted, it is there for the Committee to use. It does not make any difference that the Committee may never need to use it. The very fact that it is there, rather than whether or

not it is ever going to be used, is the issue for us. The answer to whether it is there is yes. Therefore, the fact that it may never be used is not the point.

Mr Gill:

One of the effects of the proposed amendment is to give the Committee the power to do that, if it decides to do so in the future. It thinks that that is important, because it has seen examples in other places where investigations into the conduct of former Members have been carried out and published. It is not always the case that sanctions can be applied to former Members. However, there are often broader more important lessons to be learned for the organisation in question.

Mr Dallat:

I do think that there are any circumstances in which we would bring back Craigavon or Carson. A former Member could be someone who resigned today because there is an investigation. That person would be a former Member, and, if there were nothing in legislation, there could not be an inquiry.

The Chairperson:

It could also be someone who left 14 years ago. That is the point.

Mr Gill:

In theory, it could. However, the admissibility criteria for the current code of conduct state that a complaint should be made within 12 months of its being able to have been made.

The Chairperson:

Irrespective of those caveats, once the amendment is agreed, the Committee on Standards and Privileges can make instructions.

Mr Gill:

Yes; it would have the power to determine what the admissibility criteria should be.

The Chairperson:

Is the Committee content with the proposed amendments?

Members indicated assent.

The Chairperson:

We move to the issue of the wide-ranging definition of “family member” in schedule 3. We discussed that during our informal clause-by-clause scrutiny last week. Schedule 3 deals with disqualification from being appointed or serving as the commissioner. The Northern Ireland Human Rights Commission raised concerns that the Bill goes too far in barring people based on relationships that extend beyond the outer reaches of the family. Members have a copy of that submission.

Mr Gill:

When looking at the category of persons who should be disqualified, the Committee thought that it was of crucial importance that the commissioner be not only independent and impartial, but seen and understood to be independent and impartial. The Committee felt that it could be argued that, if the commissioner were a family member of an Assembly Member, he or she may not command widespread confidence of having that independence or impartiality.

The Committee recognised that the arguments on the breadth of the categories of persons who are disqualified are finely balanced. There is a discussion to be had on how widely the definition of a family member should go, and the Committee understands that, when the Bill was agreed, provision was made for schedule 3 to be amended by subordinate legislation, exactly for the sorts of reasons that we are looking at now. Others may have different views on that, and the Committee did not consult on this provision. If responses come back from the consultation that raise concerns on that, the Committee on Standards and Privileges will be happy to look at them.

The Chairperson:

It is right to be as open and transparent as possible in dealing with the issue, but a number of Committee Members felt that the definition was a bit restrictive. It gets down to great nieces whether of “full or half blood”. Do you think that anyone will be available to fill the post?

Mr Gill:

The Committee felt that there was an important principle concerning family members, but a pragmatic approach could be taken to how that is implemented in the legislation.

The Chairperson:

We have a suggested amendment to remove the reference to “great grandparent or great grandchild” and remove the reference to:

“great uncle, great aunt, great nephew or great niece (whether of the full or half blood)”.

I am not sure what that last part means. Under our suggested amendment, “family member” means parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, spouse or any person related to a spouse, civil partner or any person related to a civil partner, cohabitant or any person related to a cohabitant.

Ms S Ramsey:

The Human Rights Commission, in its letter to the Committee, does not go as far as providing a form of words. Can we ask it to do that to ensure that the amendment is compatible with human rights legislation?

The Chairperson:

It is a matter of making a decision, because we could discuss the definition for ever. Clearly, those family members are quite closely linked to the individual. For clarification and probity, it should include a parent, child, grandparent and grandchild. I do not think that anybody would be happy with someone as close as that, or a brother, sister, uncle, aunt, nephew or niece of a Member being able to be the commissioner. It is the next line down; we have to have a definition. The amendment strikes a balance. The definition should also include spouse, civil partner and cohabitant. That is as close as someone can get. Can we come back to this issue on Wednesday?

The Committee Clerk:

We are not meeting again until January. We can agree an amendment.

The Chairperson:

Do you want to see that?

Ms S Ramsey:

Yes.

Mr Givan:

Is there is a definition of “family member” elsewhere in legislation?

The Committee Clerk:

Yes. Exactly the same definition is used for the financial review panel. The idea is for us to make the definition narrower for both the panel and the commissioner.

Mr Givan:

Does someone need to propose that amendment? I am happy to do that at whatever stage.

Ms Tara Caul (Northern Ireland Assembly):

If it extends to the part of the Bill that deals with the panel, it is a similar definition. Will the Committee make a similar recommendation in respect of the panel?

The Chairperson:

Yes. The definition would have to be the same for the panel and the Commissioner. We feel that the current definition is too wide. We are trying to ensure that everything is open and transparent, which are famous words, but the definition is a bit ludicrous. It is far too wide. The amendment meets the criteria, but it is fairer.

Ms S Ramsey:

The letter that we received from Monica McWilliams states that the concerns that she raised are no different from what were already raised in:

“written and oral evidence to the Assembly Committee on Standards and Privileges inquiry”.

Mr Gill:

When the Committee carried out its consultation on the Assembly Commissioner for Standards, it did not consult on the specific categories of disqualification that may apply. When the Northern Ireland Human Rights Commission gave evidence to the Committee, it mentioned that there needed to be a justification for any category of disqualification that was agreed. I think that the Committee on Standards and Privileges is content that there is justification for the category of “family member”. It was provided with a definition of “family member” that is used elsewhere in legislation. That is why the Committee accepted it. However, I think that the Committee is open to reviewing whether that definition of “family member” is appropriate in this case, if that is what this Committee suggests.

Ms S Ramsey:

Where is it used elsewhere?

Mr Gill:

It is used elsewhere in this Bill; in respect of the panel, for example. I understand that there are other examples of legislation in which family members are defined. Those definitions were probably used to inform this legislation.

Ms S Ramsey:

Are you referring to Assembly legislation?

Ms Caul:

A fairly recent example is the Caravans Bill, which contains a very similar definition.

Ms S Ramsey:

So there is precedent for the definition.

The Chairperson:

We can have a look at the amendment. Paul can take it away and come back on 17 January.

Mr Gill:

There will be no difficulty in taking the Ad Hoc Committee's comments to the Committee on Standards and Privileges and agreeing an appropriate amendment.

The Chairperson:

We will give you a copy of our amendment, and you can come back on 17 January.

Mr Gill:

We will go to the Committee on Standards and Privileges and the Assembly Commission.

Ms S Ramsey:

Perhaps Tara could also provide us with examples of where that definition is already in place.

Ms Caul:

Yes.

The Chairperson:

The Committee's suggestion is that Paul looks at our amendment and comes back to us on 17 January. Are members agreed?

Members indicated assent.

The Chairperson:

We move to formal clause-by-clause scrutiny. We will go through each of the clauses, 1 to 39, and schedules 2, 4, 5 and 6. We will seek the Committee's final decision on each. Paul will stay and help us through it.

Mr Gill:

I am happy to.

The Chairperson:

I am glad to say that there is a lot of reading for me in this.

Clause 1 (Establishment and membership of the Panel)

The Chairperson:

The National Assembly for Wales Remuneration Board considered that having five members allowed the board to draw on experience from a variety of backgrounds. The Commission considered that the proposed model of three is the most cost-effective and will allow it to draw on experience from a variety of backgrounds.

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

Clause 1 agreed to.

Clauses 2 and 3 agreed to.

Clause 4 (Appointments to the Panel)

The Chairperson:

Some Committee members sought assurances that best practice, as developed by the Commissioner for Public Appointments, will be followed. The Commission has advised that there will be a fair and open appointments process consistent with the principles of best practice, as published by the Commissioner for Public Appointments.

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

Clause 4 agreed to.

Clause 5 agreed to.

Clause 6 (Termination of membership of the Panel)

The Chairperson:

The National Assembly for Wales Remuneration Board considered that the Committee needs to review what form of safeguard against arbitrary dismissals is most likely to work best in practice. The Commission is satisfied that the grounds for dismissal are transparent and named in the Bill. It advises that arbitrary dismissal is guarded against by high levels of visibility and judicial review.

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

Clause 6 agreed to.

Clause 7 (Code of conduct for Panel members)

The Chairperson:

The National Assembly for Wales Remuneration Board argued that the Bill does not provide any detail on how it will ensure that panel members will work with a code of conduct. The Commission is satisfied that the wording of clause 7 makes it clear that the intention is that members will work within the code of conduct, and that wording is modelled on the Parliamentary Standards Act 2009.

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

Clause 7 agreed to.

Clause 8 (Administration and finance)

The Chairperson:

Some submissions commented that, as the panel will not have its own officials, arrangements will need to be monitored to ensure the independence of the advice given. The National Assembly for Wales Remuneration Board also wished that the Ad Hoc Committee should be satisfied that the panel will have sufficient resources. The Commission recognised the importance of establishing arrangements that ensure the independence of the panel and its proper use of resources.

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

Clause 8 agreed to.

Clauses 9 and 10 agreed to.

Clause 11 (Exercise of functions)

The Chairperson:

The National Assembly for Wales Remuneration Board asked whether allowing more than one determination a year only in exceptional circumstances would reduce the flexibility of the panel to make further determinations in the light of circumstances or experience. The Assembly Commission is satisfied that the clause makes appropriate provision and strikes the correct balance. I remind you that the Assembly Commission wishes to amend clause 11(6), page 4, line 37 by leaving out “this Act” and inserting “this Part”. Members previously indicated that they were content with that amendment.

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

Clause 11, subject to the amendment proposed by the Assembly Commission, agreed to.

Clause 12 agreed to.

Clause 13 (Contents of determinations: pensions, gratuities and allowances)

The Chairperson:

No issues were raised under clause 13. The Assembly Commission wishes to amend clause 13(2)(a), page 6, line 14 to leave out “such”. Members previously indicated that they were content with that amendment.

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

Clause 13, subject to the amendment proposed by the Assembly Commission, agreed to.

Clause 14 (Availability of determinations)

The Chairperson:

The Committee sought clarification that the determinations of the panel would be binding. The Commission confirmed that it does not have the power to amend or reject any determination and, pursuant to clause 14, all determinations will be published in full. The Commission cannot amend them prior to publication.

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

Clause 14 agreed to.

Clauses 15 and 16 agreed to.

Clause 17 (Functions of the Commissioner)

The Chairperson:

The Scottish Parliamentary Standards Commissioner queried whether the commissioner should be under a duty to report on all complaints, particularly those which, after initial investigation, are found to be irrelevant or inadmissible. The Committee on Standards and Privileges advised that, where it is agreed that no investigation should be carried out, there will be no requirement for any sort of report to be published on the details of the complaint. The Committee on Standards and Privileges wishes to make two amendments to the clause. First, at 17(1)(b), page 7, line 10, insert “at a relevant time”. Secondly, at 17(2)(a), page 7, line 18, leave out:

“the conduct of a Member of the Assembly has, at a relevant time, failed to comply with the Code of Conduct”,
and insert:

“a breach of the Code of Conduct has occurred”.

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

Clause 17, subject to the amendments proposed by the Committee on Standards and Privileges, agreed to.

Clause 18 agreed to.

Clause 19 (Appointment of the Commissioner)

The Chairperson:

Confirmation was sought that best practice developed by the Commissioner for Public Appointments would be followed. The Scottish Parliamentary Standards Commissioner queried whether the five-year term was too short, and whether a provision for re-appointment should be included. The Committee on Standards and Privileges recognised that the Commissioner for Public Appointments has developed best practice, and agreed that any appointment should be made in line with best-practice principles. The Commissioner for Public Appointments should, therefore, be consulted on the proposals.

It should be noted that clause 19(4)(a) places a duty on the Assembly to ensure that the Commissioner for Standards is appointed by fair and open competition. It was the Commissioner for Public Appointments who recommended a one-off term of appointment of five years. The Committee on Standards and Privileges said that a Commissioner for Standards who may later require Members to support a reappointment could be perceived to be compromised.

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

Clause 19 agreed to.

Clause 20 (Disqualification from being appointed or serving as the Commissioner)

The Chairperson:

Some members expressed concern that the list of qualifications was too broad, particularly the definition of “family member”. However, the definition is in schedule 3, rather than in this clause, so issues raised about the definition of those disqualified will be discussed when we reach schedule 3.

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

Clause 20 agreed to.

Clause 21 agreed to.

Clause 22 (Further provision about the Commissioner)

The Chairperson:

The Scottish Parliamentary Standards Commissioner felt that the Commissioner for Standards should be able to appoint staff and obtain office accommodation as he or she sees fit, subject to Assembly Commission approval. The Committee on Standards and Privileges advised that although the Assembly Commission has a duty to provide administrative and other support, the Commissioner for Standards can secure the provision of such goods and services as are required to exercise his or her functions, as set out in schedule 4. However, he or she cannot directly employ persons, as there would be legal and financial implications.

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

Clause 22 agreed to.

Clause 23 agreed to.

Clause 24 (Directions to the Commissioner)

The Chairperson:

Some members sought a provision that directions to the Commissioner would include directions on naming a complainant who prompted the Commissioner to undertake any investigation. The Committee on Standards and Privileges confirmed that clause 24 does provide the Assembly with the power to issue such directions.

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

Clause 24 agreed to.

Clause 25 (Investigations by the Commissioner)

The Chairperson:

As with clause 17, the Scottish Parliamentary Standards Commissioner queried whether the commissioner should be under a duty to report all complaints. The Committee on Standards and Privileges advised that where it is agreed that no investigation should be carried out, there is no requirement for any sort of report to be published on the details of the complaint.

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

Clause 25 agreed to.

Clause 26 agreed to.

Clause 27 (Reports)

The Chairperson:

As with clause 24, some members sought that directions to the commissioner would include directions on naming in a report any complainant who prompted the commissioner to undertake any investigation. The Committee on Standards and Privileges confirmed that clause 24 does provide the Assembly with the power to issue such directions regarding reports.

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

Clause 27 agreed to.

Clauses 28 to 30 agreed to.

Clause 31 (Offences)

The Chairperson:

No issues were raised about clause 31. The Committee on Standards and Privileges wishes to amend the clause: at clause 31(2), page 12, line 8, leave out “or make an affirmation”.

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

Clause 31, subject to the amendment proposed by the Committee on Standards and Privileges, agreed to.

Clause 32 agreed to.

Clause 33 (Restriction on disclosure of information)

The Chairperson:

The Scottish Parliamentary Standards Commissioner asked whether, if asked whether a complaint has been received about a particular member, the commissioner should have the authority to acknowledge that that is the case. The Committee on Standards and Privileges have advised that the Assembly could, if it felt it appropriate, give the commissioner authority to do so in a direction under clause 24.

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

Clause 33 agreed to.

Clause 34 (Transitional provisions)

The Chairperson:

There were no issues raised under clause 34. However, the Committee on Standards and Privileges wishes to make two amendments to this clause. The first is at subsection (2), page 13, line 10: after “any” insert “complaint or”. The second is at subsection (3), page 13, line 16: after “a” insert “complaint or”.

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

Clause 34, subject to the amendments proposed by the Committee on Standards and Privileges, agreed to.

Clauses 35 to 39 agreed to.

The Chairperson:

That is us finished. We will deal with the schedules in January. Thank you.