



**Northern Ireland  
Assembly**

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**ASSEMBLY AND EXECUTIVE  
REVIEW COMMITTEE**

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**OFFICIAL REPORT  
(Hansard)**

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**Review of Sections 16A to 16C of the  
Northern Ireland Act 1998**

24 November 2010

**NORTHERN IRELAND ASSEMBLY**

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REVIEW COMMITTEE**

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Review of Sections 16A to 16C of the Northern Ireland Act 1998

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23 November 2010

**Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Jonathan Bell  
Mr Fred Cobain  
Mr Paul Givan  
Mr Simon Hamilton  
Mr Raymond McCartney  
Mr Conall McDevitt  
Mr John O'Dowd  
Mr Declan O'Loan

**Also present:**

Mr Alan McFarland

**The Chairperson (Mr Spratt):**

I welcome Jonathan McMillen to the Committee. Jonathan will take us through some further legal advice to clarify section 29B(1)(b) of the Northern Ireland Act 1998, as inserted by the Northern Ireland (St Andrews Agreement) Act 2006, particularly the relevance of the date of 1 February 2011 and the obligation that the Secretary of State is under to abide by our recommendations, assuming that they are approved by the House. Jonathan will also advise us on the scope that the Committee has to recommend amendments to sections 16A to 16C of the 1998 Act. Jonathan, it is over to you.

**Mr Jonathan McMillen (Northern Ireland Assembly Legal Services):**

Thank you. I was asked to have a look at the functions of the Committee under section 29B of the Northern Ireland Act 1998, one of which is to consider the operation of what the Act terms “executive selection amendments”, which are effectively to do with the appointment of the First Minister and the deputy First Minister after *[Inaudible.]* period *[Inaudible.]* they are to be appointed.

The original provisions in the Bill *[Inaudible.]* the Northern Ireland (St Andrews Agreement) Act 2006. Power is conferred on the Committee to recommend to the Secretary of State that those amendments cease to have effect and that he should, therefore, go back to the previous position in respect of the appointment of the First Minister and the deputy First Minister. If, before the date of 1 February 2011, the Committee makes a recommendation that the 2006 Act amendments would cease to have effect, and that recommendation is then passed by the Assembly with cross-community support, the Secretary of State is obliged to give effect to those recommendations. That does not limit what the Committee can consider *[Inaudible.]* as regards the Executive selection provisions. It could make alternative recommendations, but they would not have the same effect as the recommendation that the *[Inaudible.]*.

I was asked four distinct questions, and I said that I would respond to those. As I said, there is a distinction between amendments proposed by the Committee, which will be legally binding, and any other amendments that may be proposed, which will have a persuasive political effect but will not necessarily have any legal effect. The Committee’s report will be required before 1 February 2011 for legal effect, and, subsequently, it could continue to have political effect. I do not propose to go into the advice in any more detail, but I am happy to answer any questions.

**The Chairperson:**

Committee members have had the advice in their packs for a number of days now. Thank you, Jonathan, for providing that advice and for covering the points that you were asked to cover. No members have questions on the legal advice, so you have had a free run. Thank you, Jonathan.

Given that members could make a number of proposals on sections 16A to 16C, it might be

worthwhile to review the two broad options that are open to the Committee. The first option is that the Committee make a recommendation by vote resulting in a simple majority or consensus that the Act be amended as though the Executive selection amendments had not been made. If made by 1 February 2011 and approved with cross-community support in the House, the Secretary of State is obliged to make an Order amending the Act to provide that the Executive selection amendments cease to have effect.

The second option is that the Committee make a recommendation by vote resulting in a simple majority or consensus to amend some aspects of sections 16A to 16C; for example, some of the Executive selection amendments but not others. The Secretary of State is not obliged to make an Order to give effect to those.

There is a possible third option, which I will throw into the mix. We could report that, after reviewing the operation of sections 16A to 16C, we have been unable to reach a consensus view on the broad way forward. The Committee might recommend that it would keep the operation of sections 16A to 16C under review in the new mandate, particularly in the light of the possible reduction in the number of MLAs from the 2015 election onwards, while acknowledging that the Secretary of State is not obliged to make an Order to give effect to recommendations relating to sections 16A to 16C that emerge after 1 February 2011.

All three possible options have been discussed, so there is a sense of déjà vu as, for the fourth meeting, we discuss the same issues. We could probably sing it without looking at the notes, if we could get a tune to it. That is where we are at, but we do need to make a decision. The Committee Clerk has provided information on the timescale. Provided that we met each week between now and getting the information to the Assembly, we would have four meetings. It will not be a lengthy report; in fact, it will be short. The Committee Clerk may want to comment on some of those issues, but are members happy to have a discussion first? We can discuss how the wagon might roll after that. It is in the hands of members to decide whether we need another week to make a decision. I am looking for inspiration.

**Mr Bell:**

What a difference a week makes.

**The Chairperson:**

Will we not reach consensus on the issue? I am trying to be as —

**Mr Bell:**

Are you reading between the lines? *[Laughter.]*

**The Chairperson:**

It has been pretty easy to read between the lines the past two or three weeks.

**The Committee Clerk:**

Regardless of what is agreed or regardless of whether the Committee makes a proposal today that succeeds after a vote, it still has to go through the House, particularly if the Executive selection amendments are amended in their entirety to the wording of the original section 16 of the 1998 Act. Therefore, members should view any decisions that are made today in the context that the next stage is a vote in the House and that anything that is decided here may not succeed in the Chamber, because it will require cross-community support.

**The Chairperson:**

Silence is wonderful.

**Mr O'Dowd:**

I have an apology from Alex Maskey, and Raymond McCartney should be joining us later. Anyone who experienced the policing and justice debate in the Committee will realise that, although it was frustrating at times, the Committee sometimes seems to be doing nothing. Even leaving something for a time is more useful than making definitive statements and nailing our colours to the mast. Therefore, I suggest that we leave it for another week and see where we go from there. It is better to go forward with an agreed report than with a report on which there is no agreement.

**Mr McFarland:**

Is John saying, against my expectations, that Sinn Féin has some wriggle room for negotiation on the issue? At our previous meeting, I got the sense that Sinn Féin was fairly adamant about its views on the matter and that, therefore, there would probably not be negotiation. Is he now saying that negotiations may open up next week or the week after?

**Mr O'Dowd:**

I am hoping that others will have wriggle room. *[Laughter.]*

**The Chairperson:**

I do not know whether that answers your question or not, Alan. Do members have any other comments? Is there consensus that we come back?

**Mr Bell:**

In a week or a fortnight, Chairperson?

**The Committee Clerk:**

If the Committee is intent on reaching a decision, it should do so as soon as possible, given that time will be required to write a small and limited report and send it to the Business Committee. The report will then be published. We are still working to quite a tight timescale. Members' packs will be the same as those for next week. Therefore, if we come back next week, I suggest that members bring that pack back.

**The Chairperson:**

I will keep my speaking notes for next week as well. *[Laughter.]*

**Mr Bell:**

If North Korea keeps attacking the island, none of us may be back next week. *[Laughter.]*

**The Chairperson:**

The bottom line is that we need to come back next week rather than in a fortnight, given that we have to be fair to the Committee Clerk and his staff and give them time to put the report together.

No matter how small a report it is, it requires a certain amount of time to put all the bits and pieces together and to publish. A lot of work goes on behind the scenes. Therefore, out of fairness to the Committee staff, I ask members to talk seriously about the matter before next week.