



**Northern Ireland
Assembly**

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

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

14 December 2010

NORTHERN IRELAND ASSEMBLY

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

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

14 December 2010

Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
Mr Alex Maskey (Deputy Chairperson)
Mr Jonathan Bell
Mr Fred Cobain
Mr Tom Elliott
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Declan O'Loan
Mr Pat Sheehan

The Chairperson (Mr Spratt):

The Committee will remember that, at last week's meeting, the Committee agreed to write to the Secretary of State to notify him that the Committee had reached a decision by a majority vote to remove section 16C from the Northern Ireland Act 1998. On reflection, it has become evident that such a recommendation would make sections 16A and 16B inoperable. In such circumstances, it is necessary for the Committee to rescind that decision and consider what proposal, if any, should be made in its place.

The Committee Clerk was not here last week, so another Committee Clerk stood in for him. One of the Clerk Assistants was there as well. I took the advice from my left. It did not become

apparent until afterwards that there was a problem, and I was notified that this was the only course of action that we could take.

Are members clear on the issues?

Members indicated assent.

The Chairperson:

An appropriate way forward is to ask the Committee member who proposed the motion to propose another motion to rescind the decision of last week and then to consider whether he wishes to refine the proposal put forward last week.

Mr Hamilton:

Chairperson, you have already admitted that you went to the wrong Committee room this morning. Carrying on in that spirit of admitting errors, I will admit to a once-off, never-to-be-repeated error.

The Chairperson:

Confession is always good for the soul.

Mr Hamilton:

So they tell me. I propose therefore that last week's proposal, proposed by me, be rescinded.

Question put, That the Committee rescind its decision made at its meeting of 7 December to write to the Secretary of State for the removal of section 16C from the Northern Ireland Act 1998.

Mr Elliott:

Sorry, Chairperson, I am not objecting to that, but I do have a query. I know that you said that the removal of section 16C would make sections 16A and 16B inoperable. What difference would that make? If section 16C were removed and the other two sections became inoperable, surely it would automatically be the case that they would be removed or rescinded.

The Committee Clerk:

It would make them inoperable, and it would then be up to the Secretary of State to review that and decide what to do in those circumstances. At the Committee's meeting of 30 November, there was some discussion that indicated that the issues were a little bit more specific than all of section 16C and that they may have focused on one aspect of section 16C. Section 16C supplies the nuts and bolts for sections 16A and 16B to work; for example, it provides a definition of a nominating officer. Therefore, it seemed that to propose the removal of section 16C was to take a blanket approach to something that is much more specific. That was judged on what Mr Hamilton had said at that meeting.

I spoke informally to Assembly Legal Services about it and was advised that such an action would make sections 16A and 16B inoperable and that the Committee might want to consider a more refined proposal rather than removing the whole of section 16C. It would be like taking a hammer to crack a nut, so a more refined proposal may achieve a more specific objective.

The Chairperson:

If members have no other questions, we will proceed to the Question.

Question, That the Committee rescind its decision made at its meeting of 7 December to write to the Secretary of State for the removal of section 16C from the Northern Ireland Act 1998, *put and agreed to*.

The Chairperson:

OK. That has been agreed. Are there any other proposals?

Mr Hamilton:

I propose that the Committee agree to write to the Secretary of State to request the removal of section 16C(6) from the Northern Ireland Act 1998.

Question put, That the Committee agree to write to the Secretary of State for the removal of section 16C(6) from the Northern Ireland Act 1998.

Mr Elliott:

What is in section 16C(6)?

Mr A Maskey:

Can I ask that —

The Chairperson:

Give me a second, Alex, and I will bring you in. Declan also wants to speak, and I will allow you both to do so after Tom's question has been answered.

The Committee Clerk:

Section 16C(6) of the Northern Ireland Act 1998 states:

“If at any time the party which is the largest political party of the largest political designation is not the largest political party—

(a) any nomination to be made at that time under section 16A(4) or 16B(4) shall instead be made by the nominating officer of the largest political party; and

(b) any nomination to be made at that time under section 16A(5) or 16B(5) shall instead be made by the nominating officer of the largest political party of the largest political designation.”

Section 16C(6) is the part of the 1998 Act that applies when the largest political party does not represent the largest political designation but gets to nominate the First Minister. The largest political party that represents the largest political designation then gets to nominate the deputy First Minister.

The Chairperson:

Is that OK, Tom?

Mr Elliott:

Yes, Chairman.

Mr O'Loan:

Can we get advice that the proposal would be competent?

The Committee Clerk:

Yes. I sought legal advice, and the proposal would be competent. However, I must remind Committee members that the legal advice that was given at a previous meeting was that the Secretary of State is not obliged to make that change. He is obliged to make a change only if the Committee recommended the removal of the Executive selection amendments. That would mean removing all of sections 16A to 16C and would most likely instigate a return to section 16 of the original Northern Ireland Act 1998.

When the Committee's report is produced and laid before the House, it is likely that a simple majority vote will be required. However, if a valid petition of concern is tabled, the motion will obviously require cross-community support.

Mr A Maskey:

The parameters for the Secretary of State as written are more narrow than that, or broader — it depends on how we look at it. Whatever the Committee decides, it would then need to seek consensus in the Assembly before the Secretary of State would be obliged to consider *[Inaudible.]*.

The Committee Clerk:

The Act explicitly states that cross-community support will be required if the Committee recommends the removal of sections 16A to 16C. The legal advice that we obtained at an earlier meeting indicated that a simple majority vote would be required in the House, but if a valid petition of concern were tabled, the motion would require cross-community support. However, we can seek further clarification if the Committee so wishes.

Question put, That the Committee agree to write to the Secretary of State for the removal of section 16C(6) from the Northern Ireland Act 1998.

The Committee divided: Ayes 6; Noes 3.

AYES

Mr Bell, Mr Cobain, Mr Elliott, Mr Givan, Mr Hamilton. Mr Spratt.

NOES

Mr McCartney, Mr A Maskey, Mr Sheehan.

Question accordingly agreed to.

The Chairperson:

Declan O'Loan abstained from the vote.

A draft letter to the Secretary of State has been prepared. It is now being tabled by Committee staff. Perhaps we can reach agreement on the letter today. Is today the day that we need to do that?

The Committee Clerk:

If the Committee had wanted to recommend the removal of the Executive selection amendments, it would have been under pressure, because it would have had to report by 1 February and then have a debate in the House. It is not under that pressure now because it is not making that recommendation, but if we get the letter off to the Secretary of State, it may be that there will be a response by the time that the Committee resumes in the new year. That response can then be incorporated into the report.

The Chairperson:

Members, the letter is in front of you. Do you have any issues with it?

Mr A Maskey:

We have opposed the motion. To reflect the accuracy of the letter, and so that we can endorse it *[Inaudible.]*.

The Committee Clerk:

If the Committee wants to include the outcome of the vote by party and name, that can be done.

The Chairperson:

Thank you, Chairman.

The Chairperson:

Shall we include in the letter how the voting went and agree on the letter?

Members indicated assent.

The Chairperson:

If there is no other business, I wish everyone a happy Christmas and a peaceful and prosperous new year. We will see you on 11 January.