



Northern Ireland  
Assembly

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**COMMITTEE FOR  
REGIONAL DEVELOPMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Ministerial Briefing on the Proposal to  
Bring Forward Legislation on Water  
Issues by the Accelerated Passage  
Mechanism**

16 February 2011

**NORTHERN IRELAND ASSEMBLY**

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**Ministerial Briefing on the Proposal to Bring Forward  
Legislation on Water Issues by the Accelerated Passage  
Mechanism**

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

Mr Fred Cobain (Chairperson)  
Miss Michelle McIlveen (Deputy Chairperson)  
Mr Billy Armstrong  
Mr Cathal Boylan  
Ms Anna Lo  
Mr Fra McCann  
Mr Ian McCrea  
Mr Conall McDevitt

**Witnesses:**

Mr Conor Murphy MP, MLA ) Minister for Regional Development  
  
Mr John Mills ) Department for Regional Development  
Mr Stuart Wightman )

**The Chairperson (Mr Cobain):**

Good morning, Minister.

**The Minister for Regional Development (Mr Murphy):**

Good morning. Thank you for having me along. In compliance with Standing Order 42, and previous undertakings to the Committee, and to the Chairperson in particular, I want to explain the need for accelerated passage for the draft Bill that I sent to the Committee.

In a statement to the Assembly on 13 September 2010 and to the Committee on 10 November 2010, I outlined legislative proposals to clarify existing water governance arrangements in the short term. I also announced that I intend to submit long-term proposals on future governance arrangements, and that work is ongoing.

At the Executive meeting of 13 January, agreement was reached to my policy proposals to amend governance arrangements for water during the initial period and to enable the establishment of a reservoir safety regime; and that a Bill be drafted to be brought to the Executive.

To recap: the proposals were to clarify the governance arrangements between the Department and Northern Ireland Water by enabling public expenditure controls to take precedence over other requirements; to require the Utility Regulator to carry out investigations; to require amendments of the terms and conditions of the NIW's operating license; and to replace the reference of the disputed price control determinations to the Competition Commission with a decision from the DRD.

I also propose bringing forward amendments that would enable DARD to regulate reservoir safety, however, in the light of the current legislative workload with 20 live Bills at various stages in the Assembly, I have agreed that the reservoir safety proposals will be dealt with separately in the future, and I have instructed officials to continue to take that work forward with DARD.

I now bring the draft Bill forward for the Committee's consideration, which will give effect to temporary proposals to stabilise existing water governance arrangements. Members will have already had an opportunity to discuss and investigate issues around the memorandum of understanding, and various other matters relating to amendments made to the governance letter to try to reflect the primacy of public expenditure controls over company law under which the NIW operates.

I am happy to take any questions on aspects of the Bill, or if members want to continue the discussions, officials are here who can go into more detail. I have undertaken to go back to the Executive on 24 February about the issue, and it would be helpful if we had the Committee's view on accelerated passage at that stage. However, the Committee will have to take its own view and operate in its own time frame, but that is when I will be going back to the Executive on

this matter.

**The Chairperson:**

I have a number of quick questions. Obviously, there will not be any public consultation on the issue.

**The Minister for Regional Development:**

No.

**The Chairperson:**

Have you spoken to the Consumer Council about any of it?

**The Minister for Regional Development:**

Stakeholders have been briefed through the normal governance arrangements. The regulator received a briefing separately. I met the chairperson of the Utility Regulator in December and asked for its view. I presume that the Consumer Council will be dealt with through the normal stakeholder arrangements.

**Mr John Mills (Department for Regional Development):**

The Consumer Council withdrew from those arrangements. There have been no separate meetings with the Consumer Council about the Bill.

**The Chairperson:**

So, you have not spoken to the Consumer Council about the issue.

**Mr Mills:**

No, I have not.

**The Chairperson:**

Clause 3 enables the Department to direct the regulator to carry out investigations. It also allows the Department to set out matters that the regulator must consider before exercising any of its powers. Does that mean that the regulator will not be free to carry out any investigation that it wants to undertake?

**The Minister for Regional Development:**

The regulator has a role in carrying out investigations, and has done so. The investigation into the most recent incident was agreed by the Department, the Executive and the regulator. I do not think that the intention behind the clause is to restrict the regulator in carrying out any investigations. The intention is to ensure that the regulator can carry out investigations into the NIW, and he does that under the direction of the Department. The intention is certainly not to restrict the regulator. The regulator has his own authority to carry out investigations.

**The Chairperson:**

The Bill states that the regulator must comply with any direction given by the Department. What does that mean?

**Mr Mills:**

It means that, if the Minister, for example, wants an investigation into the freeze/thaw, he may direct the regulator to do so. It would not stop the regulator initiating such an investigation on its own behalf.

**The Minister for Regional Development:**

The intent is not to say that if the regulator wants to carry out an investigation into the NIW it should not do so.

**The Chairperson:**

So, the regulator would still be free to carry out any investigation that he or she may open and this will not inhibit that in any way.

**Mr Mills:**

That is correct.

**The Chairperson:**

I want to ask you about the Competition Commission. I take the point that Northern Ireland Water is being fully funded —

**The Minister for Regional Development:**

Not fully: there are private customers.

**The Chairperson:**

OK, aside from the non-domestic customers.

**The Minister for Regional Development:**

Yes.

**The Chairperson:**

At the end of the day, it is not two companies. The commission will not be the arbitrator between the company and the regulator in any dispute, because Northern Ireland Water is not a private company in that sense. Do you think that it is wise to remove the Competition Commission from this?

**The Minister for Regional Development:**

Ultimately, the Executive are the authority that decide what funds NI Water receives. The involvement of the Competition Commission was as envisaged under the arrangements that set up the NIW to be a self-financing regulated company. If the regulator and the company disputed what was required in respect of the carrying out its functions, the Competition Commission was the arbitrator. It is a costly exercise to take that route. What we are saying is that that does not reflect the position of the NIW now, which is the intention of the temporary legislation. Given that the Executive have ultimate authority and democratic accountability for the funding they decide to provide to the NIW, the Executive, through the DRD, should have the ultimate powers in respect of dispute resolution between the NIW and the regulator.

**The Chairperson:**

I have two questions that follow on from that. It is envisaged that the Executive will take up the slack on the assistance that Northern Ireland Water will need over the next four years and that there will not be any price input from domestic customers.

**The Minister for Regional Development:**

That is what is projected in the draft Budget.

**The Chairperson:**

That is what is envisaged. Where does that leave us financially? Where does it leave the

apparent agreement with the Treasury on VAT? Have we settled that issue yet?

**The Minister for Regional Development:**

No. Members know that the DRD does not deal directly with the Treasury; it does so through the Department of Finance and Personnel. We have always been told that VAT is an issue, and so is asset depreciation. However, the attitude of the Treasury has never been tested.

As part of the longer-term proposals, the Executive will need to settle on a longer-term future for the NIW and, in doing so, test the implications of that longer-term future. It will be tested by the DFP talking to the Treasury. There may well be cost implications for the Executive in relation to that, but those decisions have to be taken. We have to decide on the type of organisation that is fit for purpose under our devolved arrangements and under the accountability and scrutiny that we expect to be able to apply to such an organisation. If there is cost attached to that, then it will be part of our considerations.

**The Chairperson:**

I have one final question. The Executive will determine how much money will be spent; as far as water is concerned, the Executive will make that determination. The issue about the regulator does not come into it. You have decided that, irrespective of what the regulator says, this sum is what we are going to spend. Who is the champion for the consumer in those circumstances?

**The Minister for Regional Development:**

We have been told what is available to us. The regulator has determined what it thinks is required over the next four years in agreement with the NIW. We put that to the Department of Finance and Personnel, and were allocated an amount of money that falls short. As members know, through discussions with officials, we have moved our budgets around to try to accommodate, as best as possible, the amount that the regulator determined, and which the company and Department agreed with. The money falls short in year 3 and, depending who is Minister at that stage, the Department will be deploying the regulator's arguments and will be trying to secure any additional funding it can for the NIW. The Department will also have to seek agreement with the regulator, the NIW, and other stakeholders who have an interest, on how the money will be spent, if other moneys are not available. Those are part of the anomaly that we are dealing with: what people determine is required, and what the Executive have to spend.

**The Chairperson:**

I was worried about the opposite, Minister. I was worried that the regulator will be looking for efficiencies. It is highly unlikely that the regulator will increase prices. What it will be looking for is efficiencies all the way through.

**The Minister for Regional Development:**

The regulator has looked for efficiencies and made a determination based on what it thinks is achievable. It has presented figures with which the company and the Department agree. However, the Budget allocation falls short of that. We have managed to supplement that Budget allocation in most years, but in year 3 it still falls substantially short.

**Mr McDevitt:**

Good morning, Minister. Do you agree that the predominance of the public expenditure financial controls is already established in the memorandum of understanding?

**The Minister for Regional Development:**

It goes some way towards doing that. The letter of governance also goes some way towards it. However, there are other areas that require temporary legislation to reflect that. Bear in mind the proposition, with which, I think, the Executive now agree, which is that we need to look at the longer-term future of the NIW as an organisation, how it relates to the Executive and the Department and what type of organisation is best-placed to suit this type of devolved institution for the delivery of that service.

The legislation that created the NIW is very substantial. To alter that will take a substantial period of time. In the interim, which may be for a year or two until the decisions the Executive take are given legislative effect, it is necessary to establish the predominance of public finance accountability in the NIW.

**Mr McDevitt:**

Dr Grieve told the Committee 20 minutes ago that it is established, clearly and unequivocally, in the memorandum of understanding.

**The Minister for Regional Development:**

I am sure that the memorandum of understanding, as drawn up, is very clear in what it intends to



do. However, whether that gives us enough legislative control to ensure that that is the case is not clear. The NIW operates under the legislative framework of company law at present. If we want to change that requirement, then we need to change the legislative framework also. I do not doubt that the memorandum of understanding and the letter of governance make very clear the Department's requirements and give that predominance to which the officials have referred. However, when it comes to a legislative challenge as to which has ultimate authority, that requires a legislative change. That is why we have decided to put forward temporary amending legislation to give effect to that.

**Mr McDevitt:**

You do not need to bring forward legislation to establish the predominance of public expenditure financial controls. You have already established that in a binding agreement signed by your Department and by the regulator. You are saying that you need legislation for something that is already in place.

**The Minister for Regional Development:**

As I understand, from your questioning of the officials, you established that it did not have legislative authority and that it was agreed under statute.

**Mr McDevitt:**

That was a separate question, Minister. I am asking about the predominance of public expenditure financial controls. Is the predominance of public expenditure financial controls established in the memorandum of understanding? Yes or no.

**The Minister for Regional Development:**

It is established, yes, but whether —

**Mr McDevitt:**

OK.

**The Minister for Regional Development:**

Sorry; can I finish?

**Mr McDevitt:**

Of course.

**The Minister for Regional Development:**

But the question is whether that gives it a sufficient legislative framework to do what, in our view, it needs to do. We need to introduce temporary amending legislation to give effect to that. NIW is required under company law to do certain things. We have amended some of those things, such as the letter of governance and the memorandum of understanding, to ensure that we increase the predominance of public financial accountability arrangements in relation to it. However, we believe that it requires temporary amending legislation to give effect to that. If the Committee and the Assembly decide that that is not the case, we will have gone some way to establishing the predominance of those relationships. However, in my view and in the view of the Department, we require amending legislation for that.

**Mr McDevitt:**

On a separate point about the Competition Commission, the question of arbitration and price control is a role that, by law, is required to be carried out in a quasi-judicial way. Do you agree?

**The Minister for Regional Development:**

If that is the case, fair enough. However, my point is that that was set up under an arrangement that envisaged NIW being a self-financing company, regulated by the regulator at a substantial distance from government, but we do not have those arrangements. Therefore, regardless of how the Competition Commission is set up, if we were to end up in an arbitration process between the regulator and NIW, it would take place in legislative unreality, because that is not how NIW functions and it is not how it has functioned since it was set up.

The Executive have the ultimate democratic authority in this part of the world to decide how much money NIW gets. Therefore, in my view, it would be nonsensical to pay some outside agency to decide that. In the case of the PC10 process, it cost in the region of £4 million to get somebody to decide something under a set of arrangements that do not actually pertain.

**Mr McDevitt:**

I could understand the rationale for what you are saying if we had a Bill in front of us that set out

provisions for dismantling the go-co arrangement and introducing an entirely new structure, but that is not what the Bill says. The Bill says that we want to tinker with the existing arrangements.

**The Minister for Regional Development:**

Do you understand the time frames that we are dealing with?

**Mr McDevitt:**

We will come to the time frames in a minute. Within the existing arrangements, do you agree that taking on powers that, by law, need to be exercised quasi-judicially could put you and the Executive at risk of litigation? It could leave you very vulnerable to being sued for taking on powers that you are unable to exercise because you are the sole shareholder, you are by far the principal funder, and you have all sorts of other direct powers over the organisation. Therefore, I entirely respect the right for us all to have a debate about the long-term future, but making that change now potentially puts you in a situation in which you are going to subject and expose your Department, yourself as Minister and the Executive to being on the wrong side of a legal challenge.

**The Minister for Regional Development:**

Ultimately, it is the Executive. You have to decide whether you want to accept that the ultimate democratic authority and the people who decide how public money is spent here are the Executive. They have been elected by the people to do that. That is the ultimate position here.

**Mr McDevitt:**

Well —

**The Minister for Regional Development:**

Can I just finish the point that I am trying to make?

If you are saying that we should hand over that decision-making process to another organisation that was envisaged under a completely different set of arrangements that do not pertain now, I am saying no, we need to change that.

At the end of the PC10 process, we were heading down the Competition Commission route, but that would not have reflected the fact that, ultimately, the Executive decide how much money

NI Water gets. We could go through the Competition Commission process and it could come to a view, but, at the end of the day, the Executive might not have the money to sustain that view or they might decide, as they have the political authority to do, that they want NI Water to do certain other things, and provide further funding for that. That reflects a lot of other arrangements here.

I suppose that the political question in all that is whether you want to administrate the architecture of direct rule in a more full-time fashion, or do you want to give effect to the authority that the locally elected Executive and Assembly have over public sector arrangements? What I am saying clearly is that, in the longer term, the entire go-co structure needs to change, and I intend to bring papers to the Executive that will inform the incoming Executive and allow them to take decisions and begin the legislative process quickly. However, that cannot happen during this mandate, so either you decide to leave things as they are and allow all the other arrangements that do not reflect the current reality to pertain, or you make temporary changes to allow the Executive to establish their authority over arrangements and carry forward until such times as new legislative arrangements pertain.

**Mr McDevitt:**

Can I ask, Chairperson, specifically, what advice —

**The Chairperson:**

You can, but we were late in calling the Minister, and he is under time constraints, so we need —

**The Minister for Regional Development:**

I am quite content to answer questions.

**Mr McDevitt:**

Just one last question. What advice did you take to ensure that the taking on of powers as envisaged in the draft Bill — the Competition Commission powers, effectively — would not put you in a conflict of interest, leaving you, the Department and the Executive subject to legal challenge?

**The Minister for Regional Development:**

I will let John Mills specify the situation. We require a range of legal advice on any legislation that we decide to draft. There is a recipe for the Executive to take decisions. The Executive and

Ministers are challenged all the time and there are judicial reviews. Fortunately, over the past number of years, such challenges have been less frequent. Nevertheless, there is always potential for a judicial review of any decision that we take. However, I go back to the political question —

**Mr McDevitt:**

No, but that is not the point. Unfortunately, this is a draft Bill. Therefore, it is a legal question.

**The Minister for Regional Development:**

No, it is not a legal question. What I am saying is that either the Executive decide to establish the authority of the devolved Administration —

**Mr McDevitt:**

But you have not taken advice. Have you spoken to the Attorney General?

**The Minister for Regional Development:**

Excuse me —

**Mr McDevitt:**

Have you spoken to the Attorney General?

**The Chairperson:**

Let us have questions followed by answers.

**The Minister for Regional Development:**

Chairperson, I am trying to answer questions, but I am just getting badgered continually.

**The Chairperson:**

Let us hear the Minister's answer.

**The Minister for Regional Development:**

I am giving you the political context, and I have offered to have an official give you the legal advice. The political context is that, if you want to sit here and administer the architecture of direct rule government, it is your prerogative; you can vote against this and any other legislation that gives the Executive powers. However, I happen to think that there are contradictions not just

in relation to NIW but in relation to the health trusts, the Housing Executive and other organisations. Last week, we had a discussion in the Executive in which we set the criteria for reviewing arm's-length bodies, and we agreed that those arrangements, which are direct rule arrangements, need to change. If you want to resist that change, that is your political prerogative. However, I intend to bring about whatever change I can in the here and now, and I intend to put propositions to do so to the Executive. In bringing forward draft legislation, of course we sought legal advice, and John Mills will give you details of the advice that we got.

**Mr Mills:**

The instructions for the Bill were scrutinised by the Departmental Solicitor's Office. The Bill was drafted by the Office of the Legislative Counsel, and the Attorney General has cleared the Bill.

**Mr McDevitt:**

The Attorney General has cleared the Bill?

**Mr Mills:**

Yes.

**Mr McDevitt:**

The Attorney General has no issues or questions about it?

**Mr Mills:**

The Attorney General was content to clear the Bill.

**The Minister for Regional Development:**

I presume that you are satisfied.

**The Chairperson:**

Minister, on a general point, you suggested that, if we do not support this, we are in favour of direct rule arrangements. The Committee is concerned about the consultation process. As you said, we are involved in a democratic process, so the many people who would be affected by the Bill are entitled to be consulted. Personally, I am always wary of legislation that goes through by accelerated passage. My concern is purely for that reason; it is not an issue of whether I want

direct rule Ministers and the associated architecture in place.

**The Minister for Regional Development:**

I fully understand that, and, as I said, the reason why I am here, obviously under requirement, is to explain why I am asking the Committee for accelerated passage. Mr McDevitt's contention is that we do not need the legislation at all.

**Mr McDevitt:**

No, I have not made up my mind, Minister.

**The Chairperson:**

Hold on.

**Mr McDevitt:**

Please do not put words in my mouth. I have not made up my mind.

**The Minister for Regional Development:**

I am glad to hear that.

**Ms Lo:**

Thank you for coming, Minister. I am concerned that we would be going backwards if we brought in the Bill. I understand the difficulties of the hybrid nature of NIW and that that is causing a lot of conflict between the Department and the board. The Chairperson mentioned the £50 million in VAT, which is a huge amount of money to come out of the block grant. I am also concerned about whether the Department would be able to raise the £2 billion to £3 billion needed to upgrade the whole system should that responsibility be given back to it. What capacity does it have to invest and spend public money in that structure?

I support what Conall is saying. If the Bill were passed, you would become the policymaker, the funder, the overseer and the adjudicator, so there would be a conflict of interest. How would we divorce ourselves from that? You are going to make the independent regulator subject to day-to-day political control, but you are not going to instruct him to monitor Northern Ireland Water. We have lots of questions, and we want to hear a lot of answers from you before we make up our mind.

**The Minister for Regional Development:**

The first set of issues deals with the longer-term future of NIW. People have bandied about claims that there will be £50 million VAT and asset depreciation costs, but no one has actually tested that with the Treasury. I am not going to get into discussing the longer term situation because I know that that is for another time. The Executive, with their eyes wide open, will need to decide on a range of options for NIW and fully inform themselves of those options. They could accept that they are content for us to sit in this no-man's-land and operate the hybrid arrangement that was set up under direct rule to serve a certain purpose — the Executive's view, which has been very clearly expressed through a number of decisions, is not to go in that direction — or they could decide to change it. However, if they decide to do that, they will have to analyse and accept the consequences of it.

What was the second question about?

**Mr Mills:**

It was about investment.

**The Minister for Regional Development:**

You said that we are the final arbitrator, but that is the reality. Under the draft Budget, the Executive allocated me a certain amount of funds for NIW. However, I had to look for further funds in my Department because the allocated funds were and are not sufficient. I had to look at other areas in my Department and decide where to take funds from in order to allocate those to NIW. That has meant that other areas have suffered. So, the reality is that I am the final arbitrator. I could have decided to put that money into roads projects or public transport. However, I happen to believe that there is a requirement for funds to go into water services. That is the situation. We are not taking on powers that do not already exist. I also am the final arbitrator in the Department for roads projects. Budgets are then approved by the Executive and the Assembly. That is the reality of how decisions are taken in the here and now.

The regulator is also functioning under a set of arrangements that do not pertain. Until such time as we are on a longer-term footing, which will be based on full evidence and on decisions being taken with a full understanding of the implications of those decisions, there is a need to amend the relationship between the regulator and Department to reflect current realities.



**Miss McIlveen:**

My main concerns have been covered at this stage. Excuse me, I am loaded with the cold and am very tired after a late night.

I am not conscious of there being a national emergency or a breach of parity. I cannot comprehend why we have to rush this, other than the fact that there is an election coming up and, perhaps, because it is a legacy issue. You have stated that your Executive colleagues are aware that changes need to be made, and you said that you will put a report forward at the end of your term in office. Given the Chairperson's comments about the importance of consultation and the fact that even the explanatory memorandum says that the range of options is constrained by the time available to enact the legislative change, would it not be wiser to allow a new Assembly and new Executive to bring forward legislative change that may reach further and address the real concerns that exist?

**The Minister for Regional Development:**

Ultimately, I want a new Executive and a new Assembly to bring forward wide-ranging change to NIW as an organisation and put it on a footing so that people who are elected here are satisfied with its relationship with the Executive and scrutiny Committees such as this one. However, that will take some time.

We are hit day and daily with the contradictions of the operation of NIW, which is treated as an NDBP for public accountancy and public expenditure purposes and treated as a go-co for other reasons. There is an ongoing clash over that. The issue with the return of money under those accountancies as part of this monitoring round is the latest complexity and contradiction in that regard. That is an issue that the Department and NIW face on a regular basis, and, in my view, we should take some action. We can take action; it is possible to do this, and it is possible to get accelerated passage. I realise and understand that that is not the way that the Committee likes to do business. That is why I am explaining my view on the need for it. It is possible to do this, and it will put us on a better footing in the interim period.

NIW was set up under a substantial piece of legislation, and some time will be required to change that. As members will know, even with a good wind behind it, with a full consultation process it could take two years. However, in the meantime, we are continuously hit with those

contradictory issues. As I say, the latest one, relating to accountancy arrangements, caused money to be transferred back to the Department of Finance and Personnel, and the Finance Minister thought that that could have been done sooner. However, because of some of the complexities involved, NIW and the Department had to take the full amount of time to do that. That is all a product of the hybrid relationship, and there are measures in the here and now that would help the Department, NIW, the scrutiny Committee and the Executive to have a better handle on the way things are going forward and to have more confidence in that until such times as we can get longer-term arrangements in place.

**Miss McIlveen:**

Surely the hybrid model will still be in place but there will be quite complex governance arrangements anyway. The Bill will not necessarily change that, will it?

**The Minister for Regional Development:**

Where any of those arrangements come into conflict with each other, it will give primacy to public expenditure controls.

**Miss McIlveen:**

How will the governance arrangements differ from those of a departmental agency?

**The Minister for Regional Development:**

For accountancy purposes, it is treated as an NDPB and has been since, I think, 2009. I have been pointing out since then that we need to change the arrangements. At the start, the Executive were focused simply on how water and sewerage services would be funded, and we took decisions on that. However, the taking of those decisions opened up another set of issues, regarding the type of organisation that we had and its direction of travel. If the Executive had decided not to go down that route, which they clearly have, that needed to change.

One change was that NIW began to be treated as an NDPB for accountancy purposes, because that reflected the fact that it was still majority funded through the public purse. So, there are requirements to bring changes because, on occasions, that does bring it into conflict with the company law under which it is set up. Changing that will help us, because complexities and contradictions have been thrown up on a regular basis, and it will help us to deal with some of those and allow an incoming Executive to take a longer-term decision, which will take some time

to put in place.

**Mr Boylan:**

I am not surprised at some of the comments being made. The meeting has been deflected from what you came here to propose. I have been trying to read through the questions that you have been asked, Minister, on the key issues and the need for it. I know that you have tried to explain those. The Chairperson is well aware that, if this were a football match, Mr McDevitt would be a second-half substitute on this Committee. If he does not realise what has been going over the past four years in how this go-co model has been operating —

**Mr McDevitt:**

I was watching from the stands.

**Mr Boylan:**

The model needs to be looked at.

What are the key proposals in the Bill? What is the need for it? My party colleague and I will support your request for accelerated passage; we have seen it being approved by other Committees. I want to find out the key issues involved and the need for the legislation.

**The Minister for Regional Development:**

As I have outlined, the key issues are to clarify the governance arrangements, enable the public expenditure controls to take precedence over other requirements, require the Utility Regulator to carry out investigations, require amendments to the terms and conditions of NIW's operating licence and replace the dispute mechanism from the Competition Commission to the Department.

I recognise that Committees prefer not to deal with accelerated passage. They need good reason to go down that route, but I think that there is good reason in this instance. There is also an opportunity to do something in the remainder of this mandate to put NIW on a better footing in its relationship with the Department and clarify what is predominant in its accountancy and accountability arrangements. The reality is that it continues to be funded largely through the public purse, so we need arrangements in law to reflect that.

There is an opportunity to do this, and I think that it is worth doing. The Committee must

decide for itself whether it would support accelerated passage, but we have an opportunity to do that in the remainder of this mandate. That would put us on a better footing going forward, over what will probably be a lengthier process to change the arrangements around the go-co.

**Mr Boylan:**

Following on from that, Minister; we heard that money has been handed back or surrendered for one reason or another. Has the Department looked at the consequences of not introducing this legislation? As I said, there have been a lot of complaints, and there has not been great public confidence for the past four years because of that.

**The Minister for Regional Development:**

Some of the money that was returned was capital project money. Some projects did not go ahead because of land acquisition issues or planning reasons. Other capital spenders suffered the same issue over the freeze period in December: staff could not go out to do work so money could not be spent. Some of it was returned because tenders were cheaper than had been envisaged. Due to the economic downturn, keener prices were being offered, so money that we had envisaged spending on a contract was not fully required.

Some money was returned because of accountancy arrangements. I am not sure whether John or Stuart could give details of that; it is a fairly complex issue, but it was due to the fact that the NDPB arrangements came in, and that required NIW to look again at some of its accountancy arrangements. That was a complex issue that took some time to sort through, which meant that there was a late return of that money to the Department of Finance. I understand that that frustrated the Department of Finance, because it would like earlier returns so it can reallocate funds better, but I think that it has been able to allocate most of the money that was returned. Therefore, our surrender of funds was partly to do with accountancy arrangements under the NDPB structures.

**Mr F McCann:**

Minister, I am sure that you sit there content in the knowledge that all Conall's questions are concerned for your well-being and aimed at protecting you against any future lawsuits. I am sure that you will leave the meeting happy that Conall has addressed all those issues.

**The Minister for Regional Development:**

I do not have any money to surrender, so I am safe enough. *[Laughter.]*

**Mr F McCann:**

I understand that people normally argue against the use of accelerated passage, but in my time in the Assembly, I think that every Minister has used it at some stage. The fact that we are five weeks away from the end of the mandate adds to the importance of using accelerated passage.

One thing that amazes me is that you and your Department have come under criticism because you have not been able to bring in some of the measures to be brought in through the Bill, but when you try to bring them in, you are criticised because you seem to be rushing it forward. What are the consequences of not being able to get accelerated passage for the Bill?

**The Minister for Regional Development:**

It is up to the Committee to take a view on that. I stand to be corrected by the Chairperson or the Committee Clerk, but I believe that this is the first time that the Department has asked for accelerated passage in the four years of this mandate. I accept that it is not the way that the Assembly prefers to do business, but there is an opportunity to make the arrangements before the end of this mandate, which will serve the incoming Assembly well and allow it to get to grips with the issues that it needs to get to grips with, given the length of time that that will take.

The conflicts that the Bill is trying to deal with will continue to exist if we do not act now. They will continue to exist until such times as there is a longer-term legislative change to the go-co arrangements. That may well take up to two years, depending on consultation and the drafting and passing of legislation, which, you will know, can be a lengthy process. The existing arrangements, which regularly cause conflicts to arise, will continue to exist.

**Mr McDevitt:**

I want to come back to the specific point about the return of moneys and the accountancy rules. I believe that the Committee received a briefing on the international financial reporting standards (IFRS) rules a couple of weeks ago, if memory serves me. Where in the Bill does it specifically state that we would be able to avoid having to return moneys? Where does the Bill change the rules?

**The Minister for Regional Development:**

I will kick that over to John Mills, who will deal with the drafting of the Bill. I am a bit like the Deputy Chairperson; the past two days have frazzled all our brains.

**Mr McDevitt:**

I was there too.

**Miss McIlveen:**

You frazzled our brains.

**Mr McDevitt:**

I do not want to frazzle Mr Mills's brain. This is an important question. Where does the Bill deal with the fact that you had to return moneys because of the IFRS rules?

**Mr Mills:**

The Bill does not address that issue. It is far too detailed a matter to appear in primary legislation.

**Mr McDevitt:**

That is OK. It is important that, when we are talking about the issues that trigger the requirement for urgent legislation, we are honest and up front about it. The issue of the return of the moneys is not addressed in the Bill. It could be in the future, if you fundamentally changed the governance structure. Does that mean that if we have the same situation in the next monitoring round, even if this Bill were passed, you would still have to return moneys under the IFRS rules?

**Mr Mills:**

No primary legislation that I am aware of would deal with such a detailed matter.

**Mr McDevitt:**

That is an important point, Mr Mills, is it not?

**Mr Mills:**

It is, but it is a question of structure. The things that we were talking about earlier, such as the MOU, are working-level documents. The legislation is at the top level of the framework, so these

things have to be regarded as being in some sort of hierarchy. Issues such as IFRS conversion would not be set out in a Bill.

**The Minister for Regional Development:**

The Bill creates a legislative context for all other things to happen. You have to understand that, if the legislative context is not there, the overarching framework is not there to allow things to happen. Although the legislation may not address the very specific issues that you raised, it deals with the conflicts around what takes precedence. From that, the memoranda of understanding and the governance letters and other issues flow from it, which will put arrangements on a better footing.

**Mr McDevitt:**

May I ask for some clarity? I was not sure whether Miss McIlveen got a very clear answer. Apart from the imminent dissolution of this mandate, what specific, urgent, pressing or time-bound matter requires the Bill to be granted accelerated passage?

**The Minister for Regional Development:**

If accelerated passage is not granted, the Bill will be kicked into the new mandate.

**Mr McDevitt:**

I understand that, but apart from the end of the mandate, which is a political question, what specific matter requires the Bill to have accelerated passage?

**The Minister for Regional Development:**

The end of the mandate requires us to ask for accelerated passage. As I said, I have never asked for accelerated passage for a Bill, because we have managed to bring legislation forward in good time. The issues that have arisen, particularly over the past two years, have continued to arise, and, in my view, there is an opportunity to deal with them. I am putting that proposition to the Committee, which can take its own view. I am glad that you have an open mind on the issues and I am sure that you will take your view in due course.

**Mr Boylan:**

That is fair. Obviously, Mr McDevitt wants to continue the mess that has been going on for the past two years in NIW. It is about time that he —

**The Chairperson:**

Are you taking over the chairmanship of this Committee?

**Mr Boylan:**

I will say it through the Chair.

**The Chairperson:**

He is the Chairperson of one Committee. That is quite sufficient, without him wanting to chair every Committee.

**Mr F McCann:**

It might not be a bad idea to get a record of the Ministers who have brought forward Bills through accelerated passage. It might surprise Conall if he looked at the figures?

**The Chairperson:**

We are trying to discuss the Bill. Let us reflect, and keep focused on what we are here to do. Minister, you said that there are a number of contradictions that the Bill will resolve. Will you run through a couple of them with us and illuminate us with regard to them and any of the issues that are not addressed in your governance letter or the memoranda of understanding? What are those contradictions?

**Mr Mills:**

Sorry, what?

**The Chairperson:**

The Bill is being presented as straightening out a number of contradictions. That is what we are being told. There is a memorandum of understanding and a governance letter dealing with issues. What issues are not already addressed by those two pieces of information?

**Mr Mills:**

As I said, those are working-level documents to try to make the hybrid system work. The Bill is trying to address the legal lack of clarity between the way the system is working, or trying to work, and the high-level legal framework which is simply at odds with that.



**The Chairperson:**

Will you give us a couple of instances of that?

**Mr Mills:**

Some have already been mentioned. One contradiction lies in the fact that we have a price control process that sets a three-year envelope for funding, yet public expenditure demands that that is dealt with on an annual basis. A second contradiction is that the price control process is set on the basis of the prices customers should pay, but the Executive have chosen to subsidise households to 100%. A third contradiction is that Northern Ireland Water is subject to company law, which says that the chief executive has to be accountable to an internal Board and that his primary function is to act in the interests of the company, yet the same person is also identified as the accounting officer under the public expenditure rules and his primary accountability lies to the chief accounting officer of the DRD. There are two sets of rules.

**The Chairperson:**

Are any of those issues addressed in the memorandum of understanding or the governance letter?

**Mr Mills:**

There are workarounds and attempts to work together, and a lot of work has gone into trying to make the arrangements work. Ultimately, if a Minister asks me, as a civil servant, whether he can do something, and I say that maybe he can if he can agree it, that is just not the right position.

**The Minister for Regional Development:**

The question is that when the conflicts that Mr Mills has identified come to a head, which set of rules takes primacy? That is what the Bill is attempting to resolve. This is a hybrid model, and it will continue to be so. The Bill is trying to give primacy to public expenditure as opposed to company law.

**The Chairperson:**

We have no record of that being a conflict of interests. Everyone is willing to adhere to the memorandum of understanding and the governance letter. We have never had any difficulty on those issues: have we?

**The Minister for Regional Development:**

There was a conflict over procurement and what information came from the board to the Department and to whom the chief executive of the board was accountable — was it the board and the company, or was it the Department? That was one glaring example. The Committee will know from previous times that there were issues about information sharing and about what the board decided was in its interests. This is not unique to the NIW. Members know that this has been the experience on a regular basis with other Committees that have attempted to scrutinise the work of arm's length bodies.

**The Chairperson:**

Is there anything else? Are people happy enough? Thank you very much.