



Northern Ireland
Assembly

Committee for the Office of the First Minister and deputy First Minister

**Report on the Legislative Consent Motion:
Northern Ireland (Stormont Agreement and
Implementation Plan) Bill**

Together with the Minutes of Proceedings Relating to the Report

Ordered by the Committee for the Office of the First Minister and deputy First Minister
to be printed 2 March 2016

NIA 320/11-16

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REMIT AND POWERS

The Committee for the Office of the First Minister and deputy First Minister (the Committee) is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Office of the First Minister and deputy First Minister and has a role in the initiation of legislation.

The Committee has power to:

- Consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on matters brought to the Committee by the First Minister and deputy First Minister.

MEMBERSHIP

The membership of the Committee is as follows:

Chairperson	Mr Mike Nesbitt (Chairperson) ^{1,2}
Deputy Chairperson	Mr Chris Lyttle (Deputy Chairperson)
	Mr Andy Allen ^{3,10,11,12,16,17,18,20}
	Mr Alex Attwood ¹⁴
	Miss Megan Fearon ⁵
	Mr Paul Frew ^{8,21}
	Mr Chris Hazzard ^{6,19}
	Mr Gordon Lyons ^{4,9,13,22}
	Mr Alex Maskey
	Mr David McIlveen ¹⁵
	Mr Stephen Moutray ⁷

1 With effect from 26 September 2011 Mr Mike Nesbitt replaced Ms Sandra Overend

2 With effect from 17 April 2012 Mr Mike Nesbitt replaced Mr Tom Elliott as Chairperson

3 With effect from 23 April 2012 Mr Danny Kinahan was appointed to the committee

4 With effect from 21 May 2012 Mr Tom Buchanan replaced Mr Jimmy Spratt

5 With effect from 10 September 2012 Ms Megan Fearon replaced Mr Francie Molloy

6 With effect from 10 September 2012 Ms Bronwyn McGahan replaced Ms Caitriona Ruane

7 With effect from 01 October 2012 Mr Stephen Moutray replaced Mr William Humphrey

8 With effect from 01 October 2012 Mrs Brenda Hale replaced Mr Trevor Clarke

- 9 With effect from 01 October 2012 Mr Paul Givan replaced Mr Tom Buchanan
- 10 With effect from 15 October 2012 Mr John McCallister replaced Mr Danny Kinahan
- 11 With effect from 25 February 2013 Mr Robin Swann replaced Mr John McCallister
- 12 With effect from 11 March 2013 Mr Leslie Cree replaced Mr Robin Swann
- 13 With effect from 15 April 2013 Mr Jimmy Spratt replaced Mr Paul Givan
- 14 With effect from 07 October 2013 Mr Alex Attwood replaced Mr Colum Eastwood
- 15 With effect from 06 October 2014 Mr David McIlveen replaced Mr George Robinson
- 16 With effect from 06 October 2014 Mr Roy Beggs replaced Mr Leslie Cree
- 17 With effect from 13 October 2014 Mr Michael Copeland replaced Mr Roy Beggs
- 18 With effect from 31 August 2015 Mr Michael Copeland resigned as a Member
- 19 With effect from 14 September 2015 Mr Chris Hazzard replaced Ms Bronwyn McGahan
- 20 With effect from 28 September 2015, Mr Andy Allen was appointed to the Committee
- 21 With effect from 5 October 2015, Mr Paul Frew replaced Mrs Brenda Hale
- 22 With effect from 5 October 2015, Mr Gordon Lyons was appointed to the Committee

BACKGROUND TO THE BILL

1. The Northern Ireland (Stormont Agreement and Implementation Plan) Bill (the Bill) was introduced to the House of Commons and given its First Reading on Wednesday 10 February 2016 by the Rt. Hon Theresa Villiers MP, Secretary of State for Northern Ireland. The Bill had its Second Reading on Monday 22 February 2016.¹
2. The Bill gives effect to a number of commitments contained in “A Fresh Start: The Stormont Agreement and Implementation Plan”², which contains a number of aspects that require UK legislation. The majority of the provisions of the Bill deal with excepted or reserved matters. The Assembly’s consent is required, however, in respect of two provisions. While the Bill extends to England, Wales and Scotland, in practice all of the measures will primarily only be applicable in Northern Ireland.

PURPOSE OF THE LEGISLATIVE CONSENT MOTION

3. The Legislative Consent Motion (LCM) relates to the following provisions in the Bill:
 - i. The power for the First Minister and deputy First Minister, acting jointly, to nominate two members of the Independent Reporting Commission in clause 1(4);
 - ii. The establishment of new measures relating to the financial responsibility of the Assembly in clause 9.

Full text of the Memorandum is available at Appendix 1.

4. In respect of the provisions in clause 1(4), the Memorandum states that:

“The provisions relating to the Independent Reporting Commission generally deal principally with excepted matters and therefore would not be within the legislative competence of the Assembly”³.

5. The provisions contained in clause 9 meet the specific commitment at paragraph 4.2 of section “D” of the Fresh Start Agreement which states that:

“The UK Government will legislate, with Assembly consent, to ensure that the Assembly cannot consider spending plans which exceed the Block Grant allocated by the Treasury or the NIE’s borrowing limits, where planned spending relies on those funding sources.”⁴

¹ <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160222/debtext/160222-0002.htm#16022230000001>

² <http://www.northernireland.gov.uk/a-fresh-start-stormont-agreement.pdf>

³ Appendix 1

⁴ <http://www.northernireland.gov.uk/a-fresh-start-stormont-agreement.pdf>

COMMITTEE CONSIDERATION

6. The Legislative Consent Memorandum was laid in the Business Office on 12 February and referred to the Committee for consideration. Given its relevance to the Department for Finance and Personnel (DFP) and the Department of Justice (DoJ), officials from those Departments joined an official from the Office of the First Minister and deputy First Minister (OFMDFM) to brief the Committee on 17 February.⁵
7. Members sought clarification on a number of issues with regard to the legislation including:
 - Why Westminster legislation was being used to implement provisions which could be legislated for through Assembly legislation;
 - The additional power conferred upon the First Minister and deputy First Minister as per the provision contained in clause 1 (4) and how that relates to the Department of Justice;
 - The reasons for the requirement of the provisions contained in clause 9 and whether similar provisions are legislated for in Scotland and Wales; and
 - The consequences of the consent not being granted by the Assembly.
8. In relation to clause 1 (4), the officials advised that the provision is part of a wider set of provisions relating to an excepted matter. Rather than dealing with this provision separately, UK legislation is being utilised as a measure of efficiency and practicality. The official from DoJ confirmed that DoJ had no objections to the First Minister and deputy First Minister, acting jointly, nominating two members of the Independent Reporting Commission. However, the Committee heard that DoJ expects there to be a consultation with the Minister of Justice on this matter.
9. In terms of clause 9 the Committee heard that the LCM gives effect to the Fresh Start Agreement commitment as outlined in the Memorandum. The DFP official advised that the provision will not change the application of financial practice because Northern Ireland is already required to live within the Treasury control totals. It will, however, formalise the process as agreed in a Fresh Start. Members also heard that there is a similar clause in the Wales Act and that, whilst there is not a similar clause in the Scotland Act, every devolved Administration is required to live within their spending controls as set out by the Treasury.
10. Finally, the Committee heard that the LCM not being passed by the Assembly would be a matter for the Secretary of State to consider.
11. Following the briefing the Committee agreed to write to the Committee for Justice and to the Committee for Finance and Personnel to seek their views on the LCM.
12. In its response, the Committee for Justice advised that it had sought the views of DoJ on the provisions relevant to that Department and copied the DoJ response to the

⁵ Appendix 3

Committee.⁶ This stated that the Minister of Justice accepts that the provision contained in clause 1(4) of the Bill is consistent with the Fresh Start Agreement and that he would expect to be consulted by the First Minister and deputy First Minister on nominations, reiterating the view of the DoJ official in evidence to the Committee.

13. The Committee for Finance and Personnel also sought the views of DFP on the provisions relevant to that Department. The response copied to the Committee advises that, as well as formalising existing processes, it is hoped that transparency will be improved in respect of funding sources, spending controls and assumptions underpinning the budget position.⁷

COMMITTEE DECISION

14. The Committee recognises that, should the provisions in the Bill not be extended to Northern Ireland, agreed aspects of the Fresh Start Agreement may not be implemented at this stage. The Committee also accepts that the inclusion of the provisions in UK legislation is a practical approach. The Committee therefore agreed at its meeting on 2 March 2016 to support the Legislative Consent Motion to extend certain provisions of the Northern Ireland (Stormont Agreement and Implementation Plan) Bill to Northern Ireland.

⁶ Appendix 4

⁷ Appendix 4

LEGISLATIVE CONSENT MEMORANDUM

NORTHERN IRELAND (STORMONT AGREEMENT AND IMPLEMENTATION PLAN) BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the First Minister and deputy First Minister, is:

“That this Assembly agrees that the Westminster Parliament should consider the provisions of the Northern Ireland (Stormont Agreement and Implementation Plan) Bill, as introduced in the House of Commons on 10 February 2016, dealing with the power in clause 1(4) of the First Minister and deputy First Minister, acting jointly, to nominate two members of the Independent Reporting Commission; and the establishment of new measures relating to the financial responsibility of the Assembly contained in clause 9.”

Background

2. This memorandum has been laid before the Assembly by the First Minister and deputy First Minister under Standing Order 42A(2). The Northern Ireland (Stormont Agreement and Implementation) Bill was introduced in the House of Commons on 10 February 2016. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2015-16/northernirelandstormontagreementandimplementationplan.html>

Summary of the Bill and its policy objectives

3. The Bill gives effect to a number of commitments contained in “A Fresh Start: The Stormont Agreement and Implementation Plan”. The Fresh Start Agreement, which was reached on 17 November 2015, contains a number of aspects which require UK legislation including those elements that are contained within this Bill. The Northern Ireland (Welfare Reform) Act 2015 gave effect to the commitments in the Agreement on the

implementation of welfare reform following the Assembly's agreement to a Legislative Consent Motion on that element on 18 November 2015.

Provisions which deal with a Devolution Matter

4. The bulk of the provisions in the Bill deal with matters which are excepted or reserved to the Westminster Parliament; those which deal with a devolution matter under the terms of the Standing Order are:
 - a. The power for the First Minister and deputy First Minister, acting jointly, to nominate two members of the Independent Reporting Commission in clause 1(4) (this entails a change to the executive functions of these ministers); and
 - b. The establishment of new measures relating to the financial responsibility of the Assembly in clause 9 (these deal with transferred matters and entail a change to the executive functions of the Minister of Finance and Personnel).
5. While the Bill also extends to England, Wales and Scotland, in practice all of the measures will primarily only be applicable in Northern Ireland.

Reasons for making the Provisions

6. These provisions are been made to give effect to the relevant commitments contained in the Fresh Start Agreement.

Reasons for utilizing the Bill rather than an Act of the Assembly

7. The provisions relating to the Independent Reporting Commission generally deal principally with excepted matters and therefore would not be within the legislative competence of the Assembly. The provisions relating to financial responsibility meet the specific commitment at paragraph 4.2 of section "D" of the Fresh Start Agreement that "The UK Government will legislate, with Assembly consent, to ensure that the Assembly cannot consider spending plans which exceed the Block Grant allocated by the Treasury or the NIE's borrowing limits, where planned spending relies on those funding sources."

Consultation

8. The Bill gives effect to a number of commitments contained in the Fresh Start Agreement. This agreement was reached on 17 November 2015 after 10 weeks of cross party talks between the UK Government, the five largest parties in the Assembly and the Government of Ireland on matters for which they have responsibility.

Human Rights and Equality

9. No human rights or equality issues arise in relation to the provisions for which consent is sought.

Financial Implications

10. The UK Government and Irish Government will establish and sponsor the Independent Reporting Commission. The UK Government has agreed in the Fresh Start Agreement to provide funding of up to £3m over four years to establish and fund the Commission. It is not anticipated that any direct expenditure will fall to the Executive. There will be indirect expenditure in the time required to provide information to the Commission members. The provisions relating to financial responsibility, while amending the procedures surrounding the Assembly's consideration of spending plans, do not have any financial implications in that they neither increase nor decrease the resources available to the Executive.

Summary of Regulatory Impact

11. The provisions have no impact on business, charities or the community or voluntary sectors.

Engagement to date with Assembly Committees

12. There has been no engagement to date with Assembly Committees on the Bill.

Conclusion

13. The view of the First Minister and deputy First Minister is that in the interests of fulfilling the relevant commitments arising from the Fresh Start Agreement, the Assembly should agree with the Westminster Parliament considering those elements of the Northern Ireland (Stormont Agreement and Implementation Plan) Bill which deal with a devolution matter.

**The Office of the First Minister and deputy First Minister
12 February 2016**



**Northern Ireland
Assembly**

**COMMITTEE FOR THE OFFICE OF THE FIRST MINISTER AND DEPUTY
FIRST MINISTER
MINUTES OF PROCEEDINGS
WEDNESDAY 17 FEBRUARY 2016
ROOM 30, PARLIAMENT BUILDINGS**

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Andy Allen
Mr Alex Attwood
Ms Megan Fearon
Mr Paul Frew
Mr Chris Hazzard
Mr Gordon Lyons
Mr Alex Maskey
Mr David McIlveen

Apologies: None

In Attendance: Mrs Kathy O'Hanlon (Assembly Clerk)
Mr Christopher McNickle (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mr Bill Kinnear (Clerical Officer)

The meeting began in public session at 2.03 pm.

7. Legislative Consent Motion – Northern Ireland (Stormont Agreement and Implementation Plan) Bill

Departmental officials joined the meeting at 2:13 pm.

Neil Jackson, OFMDFM; Joanne McBurney, Department of Finance and Personnel and Simon Rogers, Department of Justice, briefed the Committee on the Legislative Consent Motion (LCM) on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill. A question and answer session followed.

The session was recorded by Hansard.

Mr Chris Lyttle MLA joined the meeting at 2.20 pm.

Departmental officials left the meeting at 2:36 pm.

Agreed: The Committee agreed to seek the views of the Committee for Finance and Personnel and the Committee for Justice on the LCM.

Mr Paul Frew MLA joined the meeting at 2.43 pm.

The Chairperson adjourned the meeting at 4.36 pm.

Committee for the Office of the First Minister and deputy First Minister

[Extract]

**COMMITTEE FOR THE OFFICE OF THE FIRST MINISTER AND DEPUTY
FIRST MINISTER
MINUTES OF PROCEEDINGS
WEDNESDAY 2 MARCH 2016
ROOM 30, PARLIAMENT BUILDINGS**

Present: Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Andy Allen
Mr Alex Attwood
Ms Megan Fearon
Mr Chris Hazzard
Mr Gordon Lyons

Apologies: Mr Alex Maskey
Mr David McIlveen

In Attendance: Mrs Kathy O’Hanlon (Assembly Clerk)
Mr Christopher McNickle (Assistant Assembly Clerk)
Mr Stephen Magee (Clerical Supervisor)
Mr Bill Kinnear (Clerical Officer)

The meeting began in public session at 2.13 pm.

7. Legislative Consent Motion: Northern Ireland (Stormont Agreement and Implementation Plan) Bill.

The Committee considered its position on the Legislative Consent Motion on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill.

Mr Attwood and the Chairperson indicated their respective party's intention to table amendments to the Bill at Westminster, and that their support for the Committee's position on the Legislative Consent Motion is without prejudice.

Agreed: The Committee agreed to support the Legislative Consent Motion on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill.

Agreed: The Committee agreed its Report on the Legislative Consent Motion on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill.

Agreed: The Committee agreed the list of appendices to the Report on the Legislative Consent Motion on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill.

Mr Chris Lyttle, MLA joined the meeting at 2:53 pm.

Mr Andy Allen MLA joined the meeting at 3:41 pm.

The Chairperson adjourned the meeting at 4:34 pm.

Committee for the Office of the First Minister and deputy First Minister

[Extract]



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Northern Ireland (Stormont Agreement and
Implementation Plan) Bill:
Legislative Consent Motion

17 February 2016

NORTHERN IRELAND ASSEMBLY

Committee for the Office of the First Minister and deputy First Minister

Northern Ireland (Stormont Agreement and Implementation Plan) Bill:
Legislative Consent Motion

17 February 2016

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Andy Allen
Mr Alex Attwood
Ms Megan Fearon
Mr Chris Hazzard
Mr Gordon Lyons
Mr Alex Maskey
Mr David McIlveen

Witnesses:

Ms Joanne McBurney	Department of Finance and Personnel
Mr Simon Rogers	Department of Justice
Mr Neill Jackson	Office of the First Minister and deputy First Minister

The Chairperson (Mr Nesbitt): We welcome Joanne McBurney from the Department of Finance and Personnel and Simon Rogers from the Department of Justice. They are joined by Neill Jackson, representing the Office of the First Minister and deputy First Minister.

Neill, I will ask you to make opening remarks, but, first of all, can you address the timeline? Was it not possible to get this to us any earlier for scrutiny?

Mr Neill Jackson (Office of the First Minister and deputy First Minister): The Bill was just introduced in the House of Commons on 10 February, which was last Wednesday, and the Secretary of State formally requested that the First Minister and deputy First Minister bring forward a legislative consent motion (LCM) shortly after. It was tabled as soon as we practically could.

The Chairperson (Mr Nesbitt): OK.

Mr Jackson: Chair, you have probably covered the main background and the introductions. As you say, the majority of the provisions of the Northern Ireland (Stormont Agreement and Implementation Plan) Bill deal with excepted or reserved matters. The Secretary of State, however, has requested an LCM in respect of two provisions. The first is the power for the First Minister and deputy First Minister acting jointly to nominate two Members to the proposed Independent Reporting Commission (IRC). The reporting commission will be established by the UK and Irish Governments under treaty and will

have the overarching objective of promoting progress towards ending paramilitary activity connected with Northern Ireland. Clause 1 enables the First Minister and deputy First Minister to nominate two of the four commissioners jointly, and the other two will be nominated — one each — by the UK Government and the Government of Ireland.

The second set of provisions requiring an LCM relates to the establishment of new measures relating to the financial responsibility of the Assembly. Those are in clause 9. They will introduce more transparency into the budgetary process by requiring the Minister of Finance and Personnel to lay a statement before the Assembly at least 14 days in advance of laying a draft Budget. The statement will specify the amount of UK funding for the financial year as notified by the Secretary of State. A further statement must be laid alongside the draft Budget showing that the amount of UK funding required by the draft Budget will not exceed the amount available as set out in the first statement. Where the amount of UK funding is revised, the Minister must lay a further statement within four months of such notification showing the revisions to the expenditure proposals where changes are required as a result of the notification. Those proposals, again, must not exceed the revised amount of UK funding available. Those are the elements of the Bill that require an LCM.

I am content to take any questions you may have on the proposal for approval.

The Chairperson (Mr Nesbitt): The House of Commons Library paper makes it clear that the explanatory notes do not explain why we are doing this through Westminster legislation and not through the Chamber here. Can you explain why that is?

Mr Jackson: My understanding is that the proposal is that these are part of reserved provisions. Are you speaking specifically about these matters?

The Chairperson (Mr Nesbitt): Yes; these two clauses. Why are we not legislating on those two specifics here? Why are we doing it by a legislative consent mechanism?

Mr Jackson: The nominations to the commission are part of a wider set of provisions relating to an excepted matter; therefore, for efficiency and practicality, it makes more sense that they be part of those measures, rather than being dealt with separately. That is my suggestion.

The Chairperson (Mr Nesbitt): What would happen in the event that the Assembly said, "We will not support the LCM"?

Mr Jackson: That would be a question, I think, for the Secretary of State to consider at that stage. As you know, the Westminster Government reserve the right to legislate on any matter relating to Northern Ireland, although they do not normally do so without the consent of the Assembly on a devolved matter. Therefore, that question would have to be considered by the Secretary of State at that time.

The Chairperson (Mr Nesbitt): The other part is on the financial responsibilities. Why has that been necessary? We have not needed it since 1998, have we?

Ms Joanne McBurney (Department of Finance and Personnel): No, we have not needed it since 1998. It was agreed as part of 'A Fresh Start: The Stormont Agreement and Implementation Plan' that this legislation would be brought into place. Because it is in that agreement, we are legislating at this time. It does not actually ask us to do anything that we would not normally do because it is about living within our Treasury control totals.

The Chairperson (Mr Nesbitt): Why is it necessary to enshrine it in legislation?

Ms McBurney: As I said, it was part of the Stormont Agreement that it would be enshrined in legislation.

The Chairperson (Mr Nesbitt): I would not expect you to accept the language, but what we have now is the Minister of Finance having to send his homework to be marked by the Chancellor of the Exchequer.

Ms McBurney: There is no difference, as we already have to live within the Treasury control totals. This will just formalise the process for that. It will require the Minister to lay a statement in the

Assembly setting out what those control totals are. Usually, control totals are announced as part of the Budget process, so this will simply bring it forward by 14 days.

The Chairperson (Mr Nesbitt): I suggest that anybody looking at this will think that it proves that the finances of Stormont became broken with what happened over the last year or two — I do not think that is any secret — and London felt it necessary to step in. To some extent, it surrenders devolved power back to central government.

Ms McBurney: I would not say it surrenders devolved power because it is our Minister who makes the statement and lays the Budget. He simply has to explain how that comes within the spending control totals set by the Treasury. That would happen as part of the normal Budget process in any event because all the devolved Administrations are required to live within their spending controls. It simply formalises a process that is already in place.

The Chairperson (Mr Nesbitt): I still do not understand why that is necessary now when it could have been done in 1998 or 2007.

Ms McBurney: I am afraid I cannot really comment on that. It probably just was not —

The Chairperson (Mr Nesbitt): Simon, is the Department of Justice content with that part of the Bill?

Mr Simon Rogers (Department of Justice): The bit we are interested in concerns the commission, rather than the Budget. From our perspective, however, we are content that it is doing what the agreement set out to achieve.

The Chairperson (Mr Nesbitt): Neill, does this have any impact on the operation or functionality of OFMDFM and the Ministers?

Mr Jackson: It obviously confers an additional power on the Minister in relation to nomination. I suspect that some of the work of OFMDFM, the Department of Justice and possibly other Departments will come under the scrutiny of the commission in due course in its assessment of their role in combating paramilitarism.

Mr Maskey: Chair, I support the LCM, obviously. As you well know, it is part of a wider agreement, and it is very unfortunate and regrettable that you have introduced a kind of a headline-grabbing attempt by talking about surrendering power. Nothing whatever is being surrendered in this, as you well know. You were part of the negotiations. You may not have played as full a part as you should, but that is another day's discussion. You know the politics —

The Chairperson (Mr Nesbitt): I did not sign up to the Fresh Start Agreement.

Mr Maskey: You know that the finances were broken, and you know that the politics were broken. You were part of that, so I do not think you should introduce a political argument into this. Deal with the issue; deal with the LCM.

The Chairperson (Mr Nesbitt): I think my questions are entirely valid, and I will stand over them.

Mr Maskey: Fair enough. I do not accept that.

The Chairperson (Mr Nesbitt): That is fine; that is politics. Is there anybody else with a question?

Mr Attwood: I do not expect much of an answer to some of my questions — that is no reflection on you as officials — because, while some people might get anxious about it, Fresh Start was a political document that was produced by two parties and given to other parties less than an hour before an Executive meeting was convened to endorse it. You will understand why I will keep my distance from it, but some questions legitimately arise about this legislation. As I said, I am not expecting many answers, for reasons that, I think, will be self-evident.

Joanne, what is the policy intention behind putting into law what is essentially a Budget cap that borrows from the Treasury's introduction of the benefit cap? If nothing has materially changed, why has London insisted to FM and dFM that they must put that into law and that we must consent to it?

Ms McBurney: My understanding is that this will simply formalise the arrangements that were happening anyway. We are given spending controls by the Treasury and are expected to live within them. This simply formalises that and places those controls in a legislative framework, thereby insisting that the Finance Minister announces them in the Assembly. As I said, they would have been announced at any rate, but it formalises those controls, allows more transparency and ensures that the Assembly is aware of them in advance of a Budget being laid.

Mr Attwood: I hear what you say, and I acknowledge it, but I do not think that that is the policy intention. I wonder whether the policy intention is less about the Budget that comes across every year and more about the welfare cap. My question is this: does this new procedure put into law a welfare cap, as well as a Budget cap?

Ms McBurney: No, that is not my understanding. The welfare budget is funded from the annually managed expenditure (AME) budget and is not subject to set spending controls. The annually managed budget is revised on the basis of forecasts, usually twice a year.

Mr Attwood: That is not what Tommy O'Reilly told parties in the negotiations at Stormont House. He said that there was a welfare cap in Northern Ireland.

Ms McBurney: I am sorry, this is not my area of responsibility, but my understanding is that the welfare cap applies at a UK level. Of course, Northern Ireland expenditure on welfare feeds into that cap and would be scrutinised. However, the AME budget is not part of the controls notified to us by the Secretary of State; that is primarily our departmental expenditure limit (DEL) controls.

Mr Attwood: There is a tension between what DSD and DFP consider to be the situation with the welfare cap. As people in this room will recall, Mr O'Reilly told parties that there was a welfare cap. Whether it is notional and whether it is honoured is a different matter, but you did tell us that. I believe that there is one, and you would think there would have to be, given that, until a notorious moment before Christmas, we had responsibility for welfare, at least in previous years if not this one. Are you giving us reassurance that, whatever the policy intention behind this — there must be some answer to it — it does not apply to the welfare cap?

Ms McBurney: That is certainly my understanding. It was not mentioned in the negotiations when we were developing the legislation, and my understanding is that the annually managed expenditure budget will continue to be managed in the way it currently is. When our Minister lays a Budget, he does not touch on AME.

Mr Attwood: Thank you. I do not have the Bill with me, but I think that clause 6 has a reference to the Programme for Government being agreed within 14 days of an Assembly election. A paragraph in 'A Fresh Start' — again, I do not have it with me, but I think it is paragraph 61; I stand to be corrected on that — has reference to parties, before a Programme of Government is concluded, having to decide whether they will enter into government. The clause in the Bill just deals with the Programme for Government being agreed within 14 days, but there is a separate matter that is in 'A Fresh Start' but not in the legislation. My question is this: as far as you are aware, is the reference in 'A Fresh Start', which refers to —

The Chairperson (Mr Nesbitt): Alex, I am sorry to interrupt, but I believe you are outside the terms of the LCM here.

Mr Attwood: Are we not getting a general briefing on this?

The Chairperson (Mr Nesbitt): I think that asking whether this is outside the 14 days is not —

Mr Maskey: It is nothing to do with it.

Mr Attwood: It is certainly in the Bill

Mr Maskey: Neither was the last issue on the welfare and the LCM, by the way, but that is another day's discussion. I will not waste any more time on it today.

Mr Attwood: I accept the judgment of the Chair, but I do think it is in the Bill, so it would be useful to hear an answer to that question. If there is not going to be an answer to it, I will ask Simon about the proposal to FM and dFM to nominate people to the international reporting commission. Given the work that has been undertaken, is the Department of Justice satisfied that the nominations will come from FM and dFM, given that elements, if not a lot, of the work of the IRC, will touch on the Justice Ministry?

Mr Simon Rogers: Yes, we are content with that. In the normal scheme of events, we would certainly expect there to be and I suspect that there will be consultation with our Minister. We have no difficulty with the format.

Mr Attwood: Is that the view of the Minister?

Mr Simon Rogers: Yes.

Mr Attwood: My concern about the IRG and how it will be nominated in part is that people will end up being gatekeepers, as opposed to drilling down where they need to drill down. That would not serve the ambition of having an international reporting commission. Could I also just flag it up that, when it comes to the work of the IRG, once again, we have seen written across the legislation in two parts that the IRG cannot do anything —

Mr Maskey: Sorry, what has the IRG got to do with this discussion?

Mr Attwood: The international reporting commission.

Mr Maskey: It is the IRC.

Mr Attwood: The IRC — the international reporting commission. Written across the legislation, I think in two parts, is a reference to national security and that the IRC cannot do anything that is in conflict with national security, whatever that might mean. There are four other subsections in that clause that I do not have as much difficulty with. In fact, I accept a lot of them, but not that subsection. The IRC, before it even starts its work, is being told by the British Government, mindful that the British Government can issue regulations about how it conducts its affairs, which could open up a whole lot of other issues, that it is working within the strictures laid down by the British Government about what they mean by that. That is a matter of comment. That is why I suggested that you may not be in a position to deal with that.

Could I just ask a wider question? If this briefing is about the LCM and it touches on two other matters —

The Chairperson (Mr Nesbitt): Just two matters within the Bill, yes.

Mr Attwood: Will we get a general briefing on all the other clauses that affect the life of the Assembly? It affects the ministerial code and the obligations of Members generally.

The Chairperson (Mr Nesbitt): They are reserved or excepted matters, so I assume that that is a matter for colleagues at Westminster.

Mr Attwood: Is the code for Members excepted?

Mr Jackson: The Pledge of Office is an excepted matter.

Mr Attwood: For Ministers?

Mr Jackson: Yes.

Mr Attwood: And for Members? The Bill touches on the obligations for Members as well.

Mr Simon Rogers: The advice that we have taken collectively on that is that the only two elements that fall within the competence of the Assembly are the two before us today.

Mr D McIlveen: I will try to be quick. I suspect we are possibly at risk of overcomplicating things slightly on the Bill. My interpretation of it is that it is purely just to tidy up something that, over time, has become a bit too relaxed. No matter how noble and Robin Hood-like some Members might care to be, particularly Ministers, they have to live within spending limits. I guess that, prior to the legislation, it was a given that everybody would sign up to it voluntarily, and now it is effectively being enshrined in legislation. Is that it in a nutshell?

Ms McBurney: Yes, that is it in a nutshell.

Mr D McIlveen: OK. Thank you. That is all I need to know, Chair.

The Chairperson (Mr Nesbitt): Joanne, if you do not mind, I have two points of information, clarification and fact. Part of clause 9 says that if, during a financial year, the Secretary of State tells us that they are actually adjusting the moneys, which could go up as well as down, there is a period of four months for the Minister of Finance and Personnel to lay before the Assembly a statement specifying how he or she will react to that. Is that four-month period new?

Ms McBurney: Setting out the requirement to do it is new, but what we do will not change. We have in-year monitoring rounds, and it is a four-month period because that fits in with the in-year monitoring cycle, whereby we take account of any changes to our control totals and bring a statement to the Assembly to specify those changes.

The Chairperson (Mr Nesbitt): I thought there were only three monitoring rounds per annum?

Ms McBurney: The timing of the changes to the control totals are likely to be around the Chancellor's March Budget and the autumn statement, so it is within that four-month period between those two major times. Obviously, if there is a major event between those times, we may have to bring an additional statement outwith the normal monitoring round process, but it is nothing that we would not normally do if there were significant changes to our control totals.

The Chairperson (Mr Nesbitt): I think your main message is, "This is what we have been doing. It is simply enshrining it in legislation". On that basis, can I ask this: is there similar legislative provision for the Scottish Parliament and the Welsh Assembly?

Ms McBurney: There is a similar clause in the Wales Act, but it is not identical. It requires their Secretary of State to make a statement on control totals. As far as I am aware, there is not one in the Scotland Act, but every devolved Administration is required to live within their spending controls as set out by the Treasury.

The Chairperson (Mr Nesbitt): Are members content?

Members indicated assent.

The Chairperson (Mr Nesbitt): Joanne, Simon and Neill, thank you very much indeed.



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Northern Ireland (Stormont Agreement and
Implementation Plan) Bill:
Legislative Consent Motion

2 March 2016

NORTHERN IRELAND ASSEMBLY

Committee for the Office of the First Minister and deputy First Minister

Northern Ireland (Stormont Agreement and Implementation Plan) Bill: Legislative Consent Motion

2 March 2016

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Alex Attwood
Ms Megan Fearon
Mr Chris Hazzard
Mr Gordon Lyons

The Chairperson (Mr Nesbitt): We have to consider a draft report on the forthcoming legislative consent motion (LCM) on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill. As an opening position, I ask you to turn to page 67 of your main pack, where you will find paragraphs 1 to 12, which are a factual account of our consideration of the LCM and its proposals to date. Do members have any comments on paragraphs 1 to 12? OK.

Paragraph 13 relates to the Committee for Finance and Personnel's consideration of the LCM. It previously agreed to seek an urgent response from the Department of Finance and Personnel on the provisions that relevant to its remit. However, a response from DFP was not received in time to be considered at its meeting last week, and, in view of the time constraints, the Finance and Personnel Committee agreed that the response from DFP would be forwarded once received. It has been, and it is in our tabled pack at page 10. We have a draft paragraph 13 outlining DFP's views for insertion in the report. That is in the tabled pack at page 14. Do members have any comments on paragraph 13? I will give you a moment to further consider.

In the absence of comments, we will move on. Members, if you turn to page 73 of the main pack, you will see that there is a choice: the inclusion of either paragraph 14 or paragraph 15, dependent, of course, on whether the Committee agrees to support the LCM. Is everybody content so far?

Mr Attwood: I have a number of comments to make about the whole thing. I do not intend to oppose or resist the LCM, but the SDLP plans to table amendments in the London processes on the Bill to enhance it, seek clarity in it and generally make it a more rigorous approach. Whatever judgement I or the party make here on the LCM is without prejudice to the fact that we are making proposals in London.

The Chairperson (Mr Nesbitt): In fairness, the same would apply to the Ulster Unionist Party, which is certainly giving it active consideration.

Mr Attwood: There is a remarkable lack of insight or explanation of what is happening with the Budget processes. Every year, we will have the requirement to table a report from London about what the

allocation is for the year and how that allocation cannot be breached, yet we are not clear whether that means that there will be an enhanced Budget process here. The Minister of Finance was no clearer on that in the debate on the Final Stage of the Budget Bill last week.

There are proposals in respect of an enhanced ministerial code and enhanced responsibilities for MLAs as a result of 'A Fresh Start'. Whether people live up to those words is a matter to be judged in real time and in the real world, but those words do not extend to councillors. The councillors have an oath of non-violence, but they do not have further commitments under the new words in 'A Fresh Start' in relation to a commitment to the rule of law.

Ultimately, the processes around the LCM have been very limited. There has been a very short time frame. The Finance and Personnel Committee is commenting without getting information from DFP. The process is utterly inadequate in terms of the obligations that will fall to Ministers, MLAs, the Executive and so on.

I will not resist this going forward, because there are elements that are good and some that are very good, but it is all subject to those comments and what we may do in Westminster.

The Chairperson (Mr Nesbitt): OK, members. It is now on the record that at least two parties on this Committee are looking to their Westminster team to potentially table amendments at Westminster. That is without prejudice to what the Committee might decide about the LCM. Are there any other comments?

Mr Attwood: Has the LCM been endorsed by the Executive yet?

The Chairperson (Mr Nesbitt): I do not think that it would have got to the Executive. It may have.

Mr Attwood: Is it in Monday or Tuesday's business?

The Chairperson (Mr Nesbitt): For next week? Do we know?

The Committee Clerk: I think that it might be on for 15 March.

The Chairperson (Mr Nesbitt): We know that 'A Fresh Start' itself was endorsed by two of the four parties of the Executive.

The Committee Clerk: My understanding is that LCMs would generally not be laid unless they have been cleared by the Executive. The memorandum has already been laid, which is why, under Standing Orders, the Committee has to bring forward the report within 15 days. Those 15 days will be up on Friday.

Mr Attwood: OK. I understand.

The Chairperson (Mr Nesbitt): It is a formal Question, members. Does the Committee for the Office of the First Minister and deputy First Minister support the legislative consent motion on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill?

Members indicated assent.

The Chairperson (Mr Nesbitt): We all agree. Thank you very much. On that basis, are members content with the wording of paragraph 14 and content that paragraph 15 will consequently be deleted?

Members indicated assent.

The Chairperson (Mr Nesbitt): Are members content to approve the draft report, remembering that paragraphs 1 to 12 are basically the factual history of our considerations, paragraph 13 is the paragraph from the Committee for Finance and Personnel that we were looking at and paragraph 14 is what we have just agreed, with paragraph 15 dropped?

Members indicated assent.

The Chairperson (Mr Nesbitt): Lastly, members, at page 73 of the main pack is a list of the appendices to the report, and I must ask this formally: are you content to approve the appendices to the report?

Members indicated assent.



**Northern Ireland
Assembly**

Committee for Finance and Personnel

Room 435
Parliament Buildings
Tel: 028 9052 1843

From: Shane McAteer, Clerk to the Committee


Date : 1 March 2016

**To: Kathy O'Hanlon, Clerk to the Committee for the Office of
the First and Deputy First Minister (COFMDFM)**

**Legislative Consent Motion (LCM): Northern Ireland (Stormont
Agreement and Implementation Plan) Bill**

1. At its meeting on 24 February 2016, the Committee for Finance and Personnel considered correspondence on the above LCM.
2. As you will be aware, the Committee previously agreed to seek an urgent response from the Department of Finance and Personnel (DFP) in relation to the provisions relevant to its remit. However, a response from DFP was not received in time to be considered at last week's meeting.
3. In view of the time constraints imposed by the LCM process, the Committee agreed that the response from DFP would be forwarded to the COFMDFM once received. A response was received today and is enclosed for your information.

SHANE MCATEER

 21843

Assembly Section

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

Our Ref CFP/518/11-16

01 March 2016

Dear Shane,

Draft Legislative Consent Motion: Northern Ireland (Stormont Agreement and Implementation) Bill

The Committee has asked for details of the implications for DFP from applicable legislative provisions covered in the Legislative Consent Motion (LCM) relating to the Northern Ireland (Stormont Agreement and Implementation) Bill.

The majority of the provisions in the Bill deal with matters that are excepted or reserved to the Westminster Parliament. Those which deal with devolved matters, and therefore are subject to a LCM, are:

- a. The power for the First Minister and deputy First Minister, acting jointly, to nominate two members of the Independent Reporting Commission in clause 1(4) (this entails a change to the executive functions of these ministers); and
- b. The establishment of new measures relating to the financial responsibility of the Assembly in clause 9 (these deal with

transferred matters and entail a change to the executive functions of the Minister of Finance and Personnel).

Of these, it is the provision relating to the financial responsibility of the Assembly in clause 9 that will impact on DFP.

In summary, these provisions require the Minister of Finance and Personnel to lay a statement in the Assembly at least 14 days before laying a draft budget, specifying the UK funding for the year as notified by the Secretary of State. At the time of laying the draft Budget the Minister must also lay a statement showing that the amount of UK funding required by the Budget does not exceed the funding specified by the Secretary of State.

Should the Secretary of State subsequently notify a change in the amount of UK funding the Minister for Finance and Personnel must subsequently lay a statement in the Assembly, within 4 months, showing the revisions to Executive's expenditure proposals required as a consequence of the UK funding change.

Although the requirement to lay a statement in the Assembly specifying the UK funding for the year is new, the concept of having to adhere to spending controls is not. The Northern Ireland Executive's Resource and Capital DEL allocations and borrowing limits are confirmed by HM Treasury following the UK Spending Review. These control totals are subsequently adjusted for comparable changes in GB programmes often as a result of announcements in the Chancellor's March Budget or Autumn Statement. In common with the other devolved administrations and Whitehall departments, the Northern Ireland Executive is required to live within the spending controls set by HM Treasury.

Under current practice, these control totals will be provided to the Assembly as part of the Budget process for the year(s) in question. Any subsequent changes will be included in the Ministerial statement on the relevant In-year Monitoring round or, if more appropriate, future Budget exercises. Therefore, this legislation simply formalises the process that already exists and will

hopefully provide additional transparency to the Assembly by ensuring that the Executive's spending controls are clearly understood.

Similarly, the requirement to lay a statement at the time of the draft Budget to show that it does not exceed the Executive's spending controls is new. However, as the Budget presented to the Assembly will always be reconcilable to the HM Treasury control totals this again largely represents the formalisation of existing practice. It is hoped that this will improve transparency by ensuring the Assembly is fully aware of the funding sources and any assumptions underpinning the Budget position it is considering.

If a significant revision to spending controls set by the UK Government arises during the year it would be normal practice to address this through the In-year Monitoring process. If a multi-year Budget has been agreed and significant changes occur to the spending controls for the later years the Executive may decide to hold an ad hoc budget exercise to adjust departmental budgets accordingly. Therefore the requirement to lay a statement specifying the revisions to expenditure plans which are required as a result of a change in spending controls does not present a difficulty. Indeed, the four month period in which the statement must be laid should allow any changes arising as a result of the Chancellor's March Budget or Autumn Statement to be handled in line with the normal In-year Monitoring timetable.

Overall, while the provisions in clause 9 require the Minister for Finance and Personnel to lay specific statements in the Assembly this reflects information that is already available, albeit in a different format. Therefore DFP does not envisage these provisions causing any difficulty.

Yours sincerely,

A handwritten signature in black ink that reads "Gearóid Cassidy". The signature is written in a cursive, slightly slanted style.

GEARÓID CASSIDY
Departmental Assembly Liaison Officer



**Northern Ireland
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**From: Karen Jardine
Senior Assistant Clerk to the Committee for Justice**

Date: 26 February 2016

To: Kathy O'Hanlon - Clerk to the Committee for OFMDFM

Subject: Legislative Consent Memorandum – Northern Ireland (Stormont Agreement and Implementation Plan) Bill

At its meeting on 18 February the Committee for Justice considered correspondence from the Committee for OFMDFM requesting views on provisions within a Legislative Consent Memorandum on the Northern Ireland (Stormont Agreement and Implementation Plan) Bill which have relevance to the Department of Justice.

At that meeting the Committee agreed to request the views/comments of the Department of Justice on any relevant justice related issues to assist its consideration of the LCM.

The Committee considered the Department's response at its meeting on 25 February and agreed to forward it to the Committee for OFMDFM for information. The correspondence is attached.

**Karen Jardine
Senior Assistant Clerk to the Committee for Justice**

Enc.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

Justice

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Our ref: SUB/245/2016

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

23 February 2016

Dear Christine,

**LEGISLATIVE CONSENT MEMORANDUM – NORTHERN IRELAND
(STORMONT AGREEMENT AND IMPLEMENTATION) BILL**

Thank you for your letter of 18 February concerning the above LCM.

The Department of Justice was consulted on the draft Bill and the content of the Legislative Consent Motion before it was circulated to the OFMDFM Committee.

The aspect of the LCM relevant to the Department of Justice is that concerning the Independent Reporting Commission. The LCM is required because of the requirement placed on the First Minister and deputy First Minister to nominate two persons, acting jointly, for appointment to the Commission.

The Minister has accepted this as being consistent with the Fresh Start Agreement, although he would expect to be consulted by the First Minister and deputy First Minister on names.

I hope this is helpful.

**TIM LOGAN
DALO**



**NORTHERN IRELAND
ASSEMBLY
COMMITTEE FOR JUSTICE**

Tim Logan
DALO
Department of Justice
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

18 February 2016

Dear Tim

Legislative Consent Memorandum – Northern Ireland (Stormont Agreement and Implementation) Bill

At its meeting on 18 February 2016 the Committee for Justice considered correspondence from the Committee for the Office of the First Minister and deputy First Minister on a Legislative Consent Memorandum in relation to the Northern Ireland (Stormont Agreement and Implementation Plan) Bill.

The Committee for OFMDFM has advised that one of the provisions within the Bill specifically clause 1(4) which is the power for the First Minister and deputy First Minister, acting jointly, to nominate two members of the Independent Reporting Commission may be of interest to the Committee for Justice and has requested its views.

The Committee agreed to request views/comments from the Department of Justice on the provisions within the Legislative Consent Memorandum to assist its consideration of the matter.

I would appreciate the information by 10am on 25 February 2016 to enable the Committee to respond within the timescale set by the OFMDFM Committee. A copy of the Bill and Explanatory Note is attached for your convenience.

Yours sincerely

**Christine Darrah
Clerk to the Committee for Justice**

The information contained in this document is available online at:

www.niassembly.gov.uk

This document can be made available in a range of alternative formats including large print, Braille etc. For more information please contact:

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ISBN 978-1-78619-229-5

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