House of Commons
Northern Ireland Affairs Committee

Draft Northern Ireland (Miscellaneous Provisions) Bill

Second Report of Session 2012–13

Report, together with formal minutes, oral and written evidence

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Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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Summary

In the fifteen years since the Belfast (Good Friday) Agreement was signed, tremendous progress has been made in Northern Ireland; the Northern Ireland Assembly and Executive are now responsible for many matters previously the responsibility of the UK Parliament and HM Government. The draft Northern Ireland (Miscellaneous Provisions) Bill represents the Government’s continued commitment to strengthen the effectiveness of the devolved institutions. The Government’s stated intention is not to reopen the 1998 Agreement, or the terms of the devolution settlement, but rather to introduce a limited number of reforms.

For the first time, the pre-legislative scrutiny process has been applied to a Northern Ireland Bill; we hope that this sets a welcome precedent, as we consider such a procedure improves the quality of any legislation. We were asked to undertake that scrutiny and, in our Report, we consider the clauses of the draft Bill in detail, as well as other matters noted by the Government as still under consideration for inclusion in the substantive Bill.

Transparency

Full transparency of political donations and loans should be the norm, and only be derogated from in exceptional circumstances. We have not had sufficient evidence to justify the current position and therefore recommend that from October 2014 all donations over £7,500 in Northern Ireland should be made public as in Great Britain. We also recommend that the Secretary of State should seek appropriate security advice before modifying the current confidentiality arrangements.

The Government should use new powers during the period between introduction of the Bill and October 2014 to publish anonymised data, collected by the Electoral Commission, which will provide a fuller account of political funding in NI and assist in the scrutiny of the Secretary of State’s decision to increase transparency.

We recommend that the Secretary of State includes in the Bill provisions to close the current loophole by which overseas donations can be made via the Republic of Ireland to parties operating in Northern Ireland.

Dual mandates

We support the prohibition of dual mandates, but such a prohibition must be applied consistently across the United Kingdom and end dual mandates in all of the devolved legislatures with respect to both Houses of Parliament, both Houses of the Oireachtas and the European and Commonwealth Parliaments.

The Justice Minister

The Justice portfolio remains particularly sensitive, and the retention of a cross-community vote on the appointment of the Justice Minister is therefore advisable. We welcome the provisions within the draft Bill which provide the Justice Minister with security of tenure.
We are concerned, however, by the absence of a mechanism which would secure the appointment of the Justice Minister in situations where political agreement between parties cannot be reached. The Government should devise a mechanism which would enable the Justice Minister, and the rest of the Executive, to be appointed.

**Public authorities**

The Government must provide an assurance that the power of partial designation for equality duties on public authorities is not used to alter the duties of public authorities already fully designated and the Government should outline the limited purposes for which this power will be exercised, and consider what, if any safeguards, should accompany it.

**Matters still under consideration**

Membership of the NI Assembly is too large, particularly when compared to both devolved legislatures in Scotland and in Wales. The Government should continue to seek a consensus with the political parties to bring about a reduction in Assembly size.

A challenge for the Assembly is to make governance more effective. The Assembly itself is considering how procedural changes might enhance its effectiveness. Any substantial change towards the formation of an “official opposition” must be guided by the fundamental principles in the Belfast (Good Friday) Agreement.

There is a lack of detail provided in the Government’s proposal to devolve responsibility for arms-length bodies; the Government should consult fully on this matter before relevant provisions are included in the substantive Bill.

The Government should ensure that any proposal that affects responsibility for the NI Human Rights Commission must be compliant with the Paris Principles. If the Government does seek to devolve responsibility, it must be to the Northern Ireland Assembly, rather than the Executive, and any change should not affect the NIHRC’s ability to scrutinise non-devolved matters.
1 Introduction

Background to the inquiry

1. The draft Northern Ireland (Miscellaneous Provisions) Bill was published on 11 February 2013¹ and is the first draft Bill relating to Northern Ireland that has been subject to pre-legislative scrutiny. We welcome the Government’s decision to follow the pre-legislative scrutiny process, as it offers the opportunity to improve the quality of the Bill before it is introduced in the House.²

2. The draft Bill had its origins in consultations published by the Northern Ireland Office (NIO), on *Measures to Improve the Operation of the Northern Ireland Assembly*³ and on *Donations and Loans to the Northern Ireland Political Parties*.⁴ The Government states that the draft Bill does not seek to reopen the terms of the Belfast (Good Friday) Agreement of 1998, its successors or the devolved settlement, but rather introduce a limited number of reforms. We note that the Government is clear that any significant change to the present arrangements would require widespread consensus among the Northern Ireland political parties and must be compliant with the principles of inclusivity and power-sharing.

3. We were asked to scrutinise the draft Bill and to report to the House by 25 March 2013. Despite this short timetable, we were able to hear oral evidence from 15 sets of witnesses at Parliament Buildings, Stormont and at Westminster.⁵ We are grateful to all those who gave oral evidence and who submitted written evidence, to the Speaker of the Northern Ireland Assembly, Mr William Hay MLA, for agreeing to us holding our evidence sessions at Stormont, and for the Assembly staff who facilitated our meetings there.

4. This Report can be divided broadly into two sections: first, we analyse the draft Bill clause by clause; second, we discuss those matters identified by the Government as still under consideration for inclusion in the Bill.

Information provided by the Government

5. Alongside the draft Bill, the Government published a paper which outlined issues which it is still considering including in the substantive Bill, and also provided a detailed memorandum analysing the human rights issues potentially engaged by the draft Bill and setting out its reasoning.

6. We are also grateful to the Government for making the relevant members of the Bill team available to meet committee staff, to answer questions about the draft Bill and to provide further information, particularly in clarifying the effect of certain clauses which amend existing legislation. This helped us focus our inquiry on the most significant issues raised by the draft Bill.

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¹ *Draft Northern Ireland (Miscellaneous Provisions) Bill*, Cm 8563, 11 February 2013 (hereafter referred to as “Cm 8563”)
² NIO Press Release, ‘*Villiers published draft Northern Ireland Bill,*’ 11 February 2013
³ 14 August 2012
⁴ 24 August 2010
⁵ See p.50 for a list of those who gave public evidence
2 The clauses in the draft Bill

Political donations and loans

Background

7. Since 2001, political parties in Great Britain have been required to report donations and loans over £7,500 received by the central party, as well as all donations over £1,500 received by an accounting unit of the party, to the Electoral Commission. The Political Parties, Elections and Referendums Act 2000 tasked the Electoral Commission with assessing whether donations were from permissible persons or organisations and allowed it to publish information about the sources and values of these donations. Initially, the rules on donations did not apply to parties in Northern Ireland, because it was not considered safe to publish such information, given the security situation.

8. It was always envisaged that Northern Ireland would be brought into line with the rest of the UK as soon as the security situation permitted. Consequently, political parties in Northern Ireland were made subject to the same reporting standards as parties in Great Britain in 2007 and similar requirements for loans were introduced in 2008. The prohibition on publication, known as the “prescribed period”, was initially granted for just two years. However, it has been extended three times and remains in place until 30 September 2014.

9. The Electoral Commission told us that the prescribed period had been extended as a result of concerns over the security situation in Northern Ireland and to maintain the anonymity of those who have made donations since 1 November 2009. The Electoral Commission would be obliged to release retrospectively the details of donations and loans made since 1 November 2009 as soon as the prescribed period ends. Many respondents to the NIO’s 2010 consultation on Donations and loans to Northern Ireland Politics Parties, including most political parties and the Electoral Commission, argued that retrospective disclosure of this information would be contrary to the expectations of donors at the time they donated and, for that reason, might undermine confidence in the regulatory regime. Following its 2010 consultation, the Government committed to increasing transparency whilst, at the same time, ensuring that the anonymity of donations made during the prescribed period would be maintained.

Prospective changes made by the draft Bill


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6 Ev 110
7 Control of Donations and Regulations of Loans etc. (Extension of the Prescribed Period) (Northern Ireland) Order.
8 Ev 110
9 NIO 2010 consultation on Donations and loans to Northern Ireland Politics Parties, para 13, also see DNI 13, para 2.3
10 Cm 8563, Clause 1(3)
The draft Bill provides the Secretary of State with order-making powers to modify the political donations and loans regime during the prescribed period and afterwards. For example, the Electoral Commission could be required to publish a list of donations and loans made to parties since 1 November 2007 which excluded the names and addresses of donors. Significantly, the Secretary of State is granted power only to increase transparency; there is no equivalent power to reduce the level of transparency from its current level. A reduction in transparency could only be achieved through a repeal of the provisions introduced by the draft Bill. The draft Bill also provides retrospective anonymity for donors who made, or make, donations between 1 November 2007 and 30 September 2014, unless the Electoral Commission has “reasonable grounds” for believing that the donor has given consent for their identity to become public. It is important that the rules on donor anonymity are consistent with the expectations of those who made donations or loans at that time.

11. We recommend that Clause 1(3) be amended so as to provide that the Electoral Commission can disclose donor identity only where there is express consent from the donor, for donations made before October 2014. As drafted, the Electoral Commission needs only show reasonable grounds to believe that there was consent before breaching confidentiality. This does not correspond with the legitimate expectation of those donors who donated on the basis that their donation would be confidential.

12. The draft Bill, therefore, falls short of permitting a move to full transparency of political donations and loans on the same terms as Great Britain, but provides the Secretary of State with a degree of flexibility and discretion to introduce more transparent arrangements in Northern Ireland, as and when, the security situation permits.

**Broad-based support for the principle of transparency**

13. Without exception, all witnesses were united in supporting the principle of subjecting donations and loans made to political parties in Northern Ireland to the same transparency standards that pertain in Great Britain. Sir Christopher Kelly, Chairman of the Committee on Standards and Public Life, emphasised that transparency is “one of the seven principles of public life”. Most witnesses argued that greater transparency in relation to political donations would be desirable because it would allow the public to better understand and scrutinise how political parties are funded and, potentially, end any suspicions that donors were able to exert undue influence over political decision-making. The Electoral Commission told us that it had been “calling for transparency since 2005 so that voters in Northern Ireland can access information on how political parties are funded”.

14. Peter Horne, Director of Party and Election Finance at the Electoral Commission, also advised us that voters in Northern Ireland had consistently indicated that they “wish to understand more about how political parties are funded and how they spent their
money”. The Electoral Commission’s most recent survey, conducted in December 2012, found that 62 percent of respondents were of the opinion that information about who donates to political parties should be publicly available. Seven percent said that this information should remain confidential and 31 percent stated that they had no firm view one way or the other.

**Transparency in practice: conflicting evidence on security to donors**

15. While all witnesses supported transparency in principle, we heard very different views on the most appropriate timetable for transparency and witnesses provided conflicting accounts of the security risk faced by donors.

16. Some witnesses argued that the draft Bill did not go far enough and that political parties in Northern Ireland should be immediately required to publish donor information on the same terms as Great Britain. These witnesses expressed concern that the draft Bill would “establish a lack of donor transparency as the norm in Northern Ireland rather than as an exception”.

17. David Ford MLA, leader of the Alliance Party and NI Justice Minister, also told us that his party already voluntarily published information about its donors on its website and had:

> Taken the view that Northern Ireland should operate on exactly the same basis as England, Wales and Scotland and we believe that the time for holding off has long passed.

18. The Green Party and Friends of the Earth argued that the confidentiality arrangements in Northern Ireland were unwarranted. They made comparisons between the threat of violence in Northern Ireland and the threat of international terrorism in the rest of the UK to argue that donors in Northern Ireland did not face a distinct threat. The Alliance Party argued that donor risk in Northern Ireland should not be treated as a special case and suggested that anybody who was concerned about democracy should stand up to intimidation. Sinn Féin noted that an element of risk remained but that the security threat to donors must not be exaggerated. In its written evidence, the Electoral Commission told us that:

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16 Q450
17 Ev 110
18 Qq39, 103, 154, 340
19 Ev 91
20 Q154
21 Q40
22 Ev 95
23 Qq161, 156
24 Q345
Given the clear benefits of moving to full transparency as soon as possible, we think the prescribed period should end in September 2014... unless there is clear evidence that the security situation makes this untenable.\textsuperscript{25}

19. Other witnesses however, for example, the Democratic Unionist Party, David McClarty MLA (Independent), the Social Democratic and Labour Party, UKIP and the Ulster Unionist Party, urged that the Secretary of State should exercise caution in making modifications to the current confidentiality arrangements surrounding political loans and donations in Northern Ireland. They argued that the security situation in Northern Ireland presented a barrier to implementing the same transparency regime as Great Britain because donors remained at risk of violence and intimidation as a result of an ongoing terrorist threat in Northern Ireland.\textsuperscript{26}

20. Dr Alasdair McDonnell MP MLA, leader of the Social Democratic and Labour Party (SDLP), encapsulated this concern when he told us that:

\begin{quote}
Our difficulty is that we feel that we were particularly vulnerable in the past, in that some of our donors felt vulnerable and threatened... Sometimes, the threat is not even direct, but people are put under pressure and told, “You gave the SDLP £1,000 this week; we think that we are entitled to £2,000 this week”. The threat is at that level. In a situation in which there are still a handful of people moving about with guns, that threat is there.\textsuperscript{27}
\end{quote}

21. In addition to the potential threat of violence and intimidation that individual donors may face, we also heard evidence specifically pertaining to commercial donors. Mike Nesbitt MLA, leader of the UUP, expressed concern that commercial donors in Northern Ireland may face recriminations in the form of a boycott of their businesses or violence.\textsuperscript{28} His party colleague, Tom Elliott MLA, told us that “a number of businesses” were being boycotted because of their affiliation to particular political parties. He stated that two of the UUP’s commercial donors had recently contacted the party asking it not to send further correspondence to the company’s business premises in case the employee responsible for opening the post made public the fact that the company had donated to UUP.\textsuperscript{29}

22. Peter Robinson MLA, the Leader of the DUP and First Minister of Northern Ireland, shared the UUP’s concerns, noting that:

\begin{quote}
In the past, businesses and businesses were attacked because of their association either with security forces or with one section of the community. You cannot be cavalier about these issues because they are real. Even if it did not happen, there would certainly be the perception among those who might be willing to donate that it could.\textsuperscript{30}
\end{quote}

\textsuperscript{25} Ev 110
\textsuperscript{26} Q121, 279
\textsuperscript{27} Q313
\textsuperscript{28} Q210
\textsuperscript{29} Q216
\textsuperscript{30} Q279
23. Mr Robinson, Mr Nesbitt and Mr Elliott all argued that security and commercial risk to donors were intrinsically intertwined and, once the security risk disappeared, then a move to transparency for all political donations above the stipulated thresholds would be vital.31

24. Other witnesses, however, found this evidence unconvincing: Stewart Dickson MLA, of the Alliance Party, advised us that risk to businesspeople in Northern Ireland was no different from businesses or individuals who made large donations in the rest of the United Kingdom. He told us that:

   I am not sure that threat is any more real than it is to any businessperson or any other who wants to make a substantial donation to a political party anywhere in the United Kingdom. I do not think that Northern Ireland should be carved out as a special case any longer.32

25. The point was also made that people who stand as candidates for election to Parliament, the Assembly or councils take what they see as an acceptable risk in doing so, as do people who endorse their candidature by signing their nomination papers, displaying posters or by otherwise supporting those candidates. Some witnesses asked why these risks were acceptable whereas risks associated with donating money to political parties were not.

26. Contrary to the evidence we heard from DUP and UUP representatives, Sir Christopher Kelly suggested that concerns about business boycotts and threats of violence made to businesses ought to be separated out and treated as different concerns. He suggested that the concerns we heard about donations and loans from the commercial sector stemmed from a fear that:

   if it became apparent who was donating then either there would be intimidation or a boycott in a way that would have the effect of damaging the finances of Northern Ireland political parties.33

27. Sir Christopher stressed that the argument that publishing donor information in Northern Ireland would have a detrimental effect on the finances of political parties in Northern Ireland does not “self-evidently trump” public interest arguments for transparency of political donations.34

28. It should be noted against this, however, that none of the parties we spoke to believed that they often received donations of more than £7,500 so not much might change anyway. It is, however, the principle of transparency with which we are concerned.

29. Full transparency of donations and loans should be regarded as the norm and in principle, therefore, we would like to see political donations and loans in Northern Ireland subjected to the same regime that operates in Great Britain as soon as possible. Given the apparent insignificant level of donations over the £7,500 threshold, and the overall improvement in the security situation, we are not convinced that there is

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31 Q284
32 Q161
33 Q406
34 Q406
sufficient evidence to justify continuing the current position and we therefore recommend that from October 2014 all donations over £7,500 in Northern Ireland should be made public as in Great Britain.

Assessment of Risk to Donors

30. At present, Clause 1(2) of the draft Bill stipulates that before increasing transparency, the Secretary of State must consult with the Electoral Commission. The Electoral Commission told us that “the question around the security risk... is not one for the Electoral Commission to decide”. The draft Bill provides no formal role for other bodies to advise the Secretary of State in the assessment of security risk faced by donors.

31. The Green Party suggested that a formal role should be afforded to a third party, such as the Chief Constable of the Police Service of Northern Ireland (PSNI), in the assessment of the general risk level to political donors. Few of our witnesses gave unqualified support for the Green Party’s suggested amendment. However, there was support from the UUP, SDLP and Sinn Féin for exploring whether it would be useful to place a statutory duty upon the Secretary of State to consult with the Chief Constable prior to increasing the transparency of political donations. Sir Christopher Kelly also noted that it would be both “logical” and “reasonable” for the PSNI to be consulted.

32. Friends of the Earth stated it would not object to including a statutory duty in the substantive Bill, but argued that it may not be necessary because it expected that the Chief Constable would be consulted “as a matter course”. The Alliance Party also noted the Secretary of State already “has access to information around security matters that the rest of us do not”. When questioned on this subject, the Secretary of State said that the views of the Chief Constable would be important when making an assessment of risk but argued that it was not necessary to insert a statutory duty to consult within the substantive Bill because it was “common sense” that the PSNI would be consulted prior to making any modifications to the confidentiality arrangements.

33. The Secretary of State’s decision whether or not to increase the transparency of political donations hinges on the general risk level donors are believed to be exposed. It is important that this assessment should be robust and reflect the realities of the security situation in Northern Ireland.

34. We recommend that the substantive Bill places a statutory duty on the Secretary of State to consult with the appropriate security authorities on the general level of risk to

35 Q451
36 Risk to donors should be interpreted as risk to donors in general. There was no support for the Chief Constable making assessments on a case by case, donor by donor, basis.
37 Qq213, 329, 350
38 Q171
39 Q521
40 We asked the PSNI if the Secretary of State should consult the Chief Constable prior to amending the transparency arrangements for political donations. The response, received on 15 March 2013, was that “Having consulted with the ACC [Crime Operations] this matter properly sits with the Security Service.
political donors before modifying the current confidentiality arrangements in implementing the recommendation made in paragraph 29 above.

**Donations and loans made during the prescribed period**

35. The draft Bill permanently protects the identities of those who made donations or loans to political parties during the prescribed period. It also contains an order-making power which would enable the Electoral Commission to publish some information about donations and loans made to parties since 2007 so long as that information did not risk exposing the identity of the donor. Witnesses told us that they expected to see information published including, but not limited to, the total volume of donations; the number of donations and loans made which were over £7,500; the proportion of donations and loans made from outside the UK; and the proportion of donations and loans which are made by businesses.

36. The Electoral Commission told us that this provision “has the potential to provide the public with some information about previous donations and loans but will not address their concerns about transparency”. Similar concerns were also expressed by the Green Party and the Friends of the Earth. In order to provide the electorate with access to as much information as possible, the Electoral Commission suggested that:

> The new order-making power be used to permit us [the Electoral Commission] to publish anonymised details of all individual donations and loans that have been reported since 2007. We should also be able to indicate where multiple donations have been made by a single anonymous donor.

37. We welcome the publication of data about political donations and loans so long as the identities of those who made donations and loans during the prescribed period remain protected. We recommend that the NIO use the new order-making power created by the draft Bill to allow the Electoral Commission to publish anonymised details of all individual donations and loans that have been reported since 2007. The Electoral Commission should also be able to indicate where multiple donations have been made by a single anonymous donor.

**Donations from individuals and bodies resident outside the United Kingdom**

38. The issue of donations from individual and bodies resident in the Republic of Ireland was raised during our enquiry. Under the Political Parties, Elections and Referendums Act 2000 (PPERA) political parties registered in Great Britain are only permitted to accept donations and loans from UK resident individuals and bodies. PPERA does allow, however, parties registered in Northern Ireland to accept donations and loans from Irish citizens and bodies resident in the Republic of Ireland.

39. The issue was raised by Peter Robinson MLA who told us:

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41 Ev 91, Ev 95
42 Ev 110
We have some misgivings about donations from outside the United Kingdom. We believe that that separates us from other jurisdictions in the UK, and that was not a decision that we would have endorsed.43

40. He went on to say:

I think that, if they want a level playing field for Northern Ireland, that would be the right and sensible course to take.44

41. However, Dr Alasdair McDonnell MP MLA commented:

The difficulty is ... that we do not see the Republic of Ireland as foreign. Indeed, in the past, the SDLP has found much of its funding from people of goodwill in Dublin who wanted sanity and stability here.45

42. These views were echoed by Sinn Féin. Raymond McCartney MLA told us:

We do not see that in the international context. Obviously, as an Irish republican party, we see Ireland as a single entity. We lay great store on the fact that there is an Irish diaspora, and people are very supportive of Sinn Féin internationally. So, we do not see that there should be any prohibition on people contributing to the party as long as it is done openly and transparently.46

43. The PPERA rules in Great Britain only allow donations from individuals on a UK electoral register but permit donations from Irish citizens with no residence requirement. Political parties registered in Northern Ireland can therefore accept donations from a far broader range of individuals and bodies than can parties registered in Great Britain. Given that political parties registered in Northern Ireland are able to accept donations from parties registered in the Republic of Ireland this opens up the position to being dependent on the rules, and the enforcement thereof, of the Republic of Ireland. The current Irish rules may, in fact, mean that Irish individuals and companies could provide funding to Northern Ireland registered parties that would not be permissible to Republic of Ireland registered parties.

44. While we understand the concerns raised about the potential influence of non-UK residents on elections in Northern Ireland, we do not consider that it would be appropriate to ban donations from individuals and bodies resident in the Republic of Ireland. However, we are concerned about overseas donations being made to political parties operating in Northern Ireland via the Republic of Ireland. We recommend that the Secretary of State includes provisions in the substantive Bill that will close this loophole.
Dual Mandates

45. Clauses 3 and 4 of the draft Bill relate to the disqualification of MPs from membership of the Northern Ireland Assembly, bringing into effect the Government’s commitment to end dual mandates (commonly referred to in NI as “double-jobbing”). Clause 3 would prevent MPs from sitting simultaneously as Members of the Northern Ireland Assembly (MLAs) by adding a new disqualification to section 1 of the Northern Ireland Assembly Disqualification Act 1975.

46. Clause 3(2) provides for a limited exception: in order to ensure that potential candidates can run for both legislatures, and then decide which position to pursue, a person may stand for election to both and then, if successful, decide upon which membership to take up.

The rationale for change

47. The Government’s desire to end dual mandates derives from the fact that double-jobbing had been the “source of some criticism, particularly in the wake of the expenses scandal”. This was a commitment in the Conservative and Unionist 2010 Manifesto for Northern Ireland.

48. In its 2009 review of MPs’ expenses and allowances, the Committee on Standards in Public Life (CSPL) concluded that the practice of holding dual mandates in the House of Commons and devolved legislatures should be brought to an end as soon as possible:

The Committee’s view is that the practice of holding dual mandates in both the House of Commons and the devolved legislatures should be brought to an end as soon as possible. Ideally that would happen by the time of the scheduled elections to the three devolved legislatures in May 2011, or failing that by 2015 at the very latest.

The impact of double-jobbing

49. We asked the Clerk/Director General of the Northern Ireland Assembly, Mr Trevor Reaney, to explain the impact of double-jobbing on the daily business of the Assembly. Mr Reaney noted that the reduction in double-jobbing since 2009 has had a positive effect on the Assembly in terms of attendance and participation:

The number of MLAs who have dual mandates has been reducing on a voluntary basis. As I said earlier, the main impact, as I see it, is on the amount of time that MLAs have for their duties in the Chamber, on Committees and, I am sure, for constituency work. With respect to effectiveness, the greater availability of Members’ time is a significant issue.
Maintaining relations with Westminster

50. The abolition of dual mandates highlights the importance of maintaining good working links between the Northern Ireland Assembly and Westminster, and we had some concern that the end of dual mandates might end useful informal relationships cultivated between Assembly and Westminster politicians. This is of particular relevance in Northern Ireland as none of the three main parties in Great Britain currently have any MPs elected from Northern Ireland.

51. When pressed as to how the Assembly secretariat could support ongoing work with Westminster after the end dual mandates, Mr Reaney highlighted the considerable liaison and training provided to MLAs in respect of the European institutions:

Our main focus in recent times has been on the European Parliament and other EU institutions. We have invested considerable time and effort, have put in additional staff and resources and have created various forums in which our Members can become familiar with the European context and the work of the European Parliament. I take the point in relation to the UK Parliament. It is not an area into which we have put the same resource or investment in recent times. As you said, if, in future, we have no dual mandates, I think that we need to look as creatively at those connections and invest in them. However, the pattern of dual mandates is not consistent across all political parties. That matter also needs to be addressed for those parties that do not have an MP.51

52. If then, dual mandates do end, we would expect a similar operation, whereby the Assembly can support MLAs in understanding the Westminster dimension, maintaining links and ensuring that Northern Ireland is not neglected as a consequence of devolution.

53. There are, of course, already several ways that MLAs and MPs can maintain a working relationship. This Committee undertakes visits within NI several times a year and often holds meetings with, for example, the First and deputy First Ministers and the Justice Minister. In the course of this inquiry we took public evidence from all the parties represented in the Assembly, as well as an independent MLA and, on several occasions, we have invited Ministers to give evidence to us at Westminster. We also support the initiative of the NI Assembly and Business Trust (NIABT), which undertakes a series of meetings every year whereby MLAs and members of the NI business community are able to meet MPs and Members of the House of Lords. The Chair and other members of the Committee have addressed the NIABT to explain how the Committee conducts its inquiries and how it is striving to achieve the best possible deal for NI.

54. In addition, of course, Northern Ireland elects eighteen Members to the House of Commons, who have the opportunity of taking part in activities in Parliament, although the five Sinn Féin MPs do not take their seats. Furthermore, those Members of the House of Lords who are from, or have an interest in, Northern Ireland ensure that Northern Ireland’s voice is also heard in that House.
55. A wider forum is the British Irish Parliamentary Assembly, which is invaluable for members of both Houses of the UK Parliament, members of both Houses of the Oireachtas (the Parliament of the Republic of Ireland) and of the legislatures of Northern Ireland, Scotland, Wales, the Isle of Man, Jersey and of Guernsey to meet and discuss issues of mutual interest and concern.

56. Mr Jim Allister, Leader of the TUV, rejected the argument that there should be any exception to the general ban on dual mandates, and argued that it was the responsibility of Northern Ireland MPs to represent its interests, and maintain links with Westminster:

> If Northern Ireland has its 17 MPs or whatever, they are the tangible manifestation of that political constitutional link. It is their job to look the Chancellor in the eye on Budget day and fight Northern Ireland’s corner. They will not fight it if, for half of the week, they have to be over here. It is as simple as that.52

57. Similarly, Mr David McNarry MLA of UKIP, recognised that while in the short-term the Assembly had lost some contributions from prominent politicians who had ended their dual mandate, the Assembly needed to be free from double-jobbing so as to cultivate a new generation of representatives in order for devolved politics to be sustainable:

> All in all, this is a devolved Assembly. It needs to concentrate on that, with no distractions. This is where Northern Ireland business is going to be done.53

58. Being an MP or an MLA is a full-time commitment, requiring focus and diligence. However, we believe that a varied legislature is a vibrant one, and Parliamentarians should not be prevented from outside employment. The quality of debate is increased when MPs bring a different expertise to the chamber. But that is different from the responsibilities of sitting in separate legislatures, and we welcome the Government’s decision to end double-jobbing.

**The position of the House of Lords**

59. The draft Bill will end dual mandates for MPs who sit as MLAs, but not for those who sit in the House of Lords. The political parties in Northern Ireland had mixed views on whether or not we should similarly disqualify Members of the House of Lords.

60. The Alliance Party argued that Members of the House of Lords should be disqualified in the same way as MPs, despite the fact that they were appointed and, as yet, not elected. This view was shared by Mr Jim Allister MLA.54 David Ford MLA told us that:

> Given that it is the other part of the legislature at Westminster, it would be logical to end the dual mandate there too. I accept that Lords, with no constituency and so on, are in a different position. However, I think that to be a Member of the two legislatures is the point of principle.55

52 Q115
53 Q133
54 Q110
55 Q176
61. Dr Alasdair McDonnell MLA, echoed that the principle should be applied consistently, but cautioned that the issue required further thought:

   I think that there should certainly be consistency across the House of Commons and the House of Lords. Although the Lords does not have an electorate or a mandate and is slightly different, nevertheless, I do believe that the issue requires some further scrutiny.56

62. Mike Nesbitt MLA, however, distinguished the position of a ‘working Peer’ from less active members of the House of Lords:

   In our initial response... we said that we would not welcome MLAs being active members of the House of Lords...It is my understanding...that most Lords are very inactive with regard to their participation at the Palace of Westminster...If you were an MLA and a peer, we would not expect you to miss plenary sessions on Mondays and Tuesdays in this House because you were going to the Palace of Westminster...It is that the work does not interfere with what we would consider to be their primary duty as a Member of the Legislative Assembly of Northern Ireland.57

63. A third view on the position of the House of Lords was expressed by Mr Peter Robinson MLA. His party took the view that the House of Lords can be distinguished from the House of Commons on the basis that its members were appointed, and that their role was significantly different from that of an MP. When asked if the Government had taken the correct approach in the draft Bill, his response was that:

   I think that they [the Government] have got it right because you can distinguish between an appointed and an elected position in this context. With respect to our colleagues in the House of Lords, I do not think that their job is as burdensome as that of a Member of Parliament.58

64. The Secretary of State clarified her reasoning for distinguishing between the House of Commons and the House of Lords on the question of dual mandates:

   The House of Lords continues to be a different sort of Chamber. Its members, on the whole, are not paid salaries in the same way those of the House of Commons are. It has always been a Chamber that drew on people who had a job outside of their role in the House of Lords... if the nature of the House of Lords were to change in the future, in particular if they were to adopt more flexibility in terms of leaves of absence and retirement, then maybe they would want to include in that looking at the dual mandate question again.59

65. We do not accept the view that the distinctions between the House of Lords and the House of Commons justify the difference in terms of disqualification from the Northern Ireland Assembly. If we accept the premise that MLAs cannot serve in another legislature

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56 Q333
57 Qq229–232
58 Q294
59 Qq535–536
without compromising their effectiveness, then it follows logically that they should not sit in the House of Lords at the same time.

66. We take the view that the abolition of dual mandates should be applied consistently across both Houses of Parliament, and recommend that the Government include a provision in the substantive Bill to this effect. The role of an MLA is a full-time role, just as is the role of an MP. Notwithstanding the distinctions in roles and appointment of members of the House of Lords, we do not consider that the Assembly is best served by members who have other responsibilities in other legislatures.

**The position of the Irish Oireachtas**

67. Section 1 of the Northern Ireland Assembly Disqualification Act 1975, as amended by the Disqualifications Act 2000, permits both a sitting MP and a sitting member of the Oireachtas to stand for election to the Northern Ireland Assembly. This applies to both the Dáil and the Seanad. It was enacted so as to equalise the position with regards to MPs and TDs as, until then, a person could serve as an MLA and MP, but not as an MLA and TD.

68. It was tentatively suggested that there may be a statutory bar in Irish law, as opposed to British law, which would prohibit an Irish politician sitting in both the Dáil and the Assembly at the same time but after further examination we have concluded that this is not the case. Neither Irish nor British law prevents a TD (or a Senator) from sitting simultaneously as an MLA in the Northern Ireland Assembly. The draft Bill does not address this point. We also note that the existing law permits members from Commonwealth legislatures to sit in the Assembly.\(^{60}\)

69. We therefore asked the political parties in Northern Ireland whether a similar disqualification should apply to TDs and Senators in the same way as the draft Bill would provide for MPs. All those from which we heard from indicated that they were content for a disqualification to apply with respect to dual mandates for the Oireachtas and the Assembly.

70. Sinn Féin, in its written evidence, accepted that the principle of ending dual mandates should extend to those sitting in the Oireachtas:

> Over the last year Sinn Fein has moved unilaterally, in line with standing party policy, to address this issue. None of our five MPs are MLAs. Last June four of our MPs resigned their Assembly seats and were replaced by co-option. At the end of last year Martin McGuinness resigned his Westminster seat, choosing to concentrate on his role as an MLA and deputy First Minister rather than continue as MP...Following the logic of our position on this would mean that we would support an ending of the potential for double-jobbing between the Assembly and the Oireachtas.\(^ {61}\)

71. This position was echoed by Mr Peter Robinson, who in oral evidence indicated that, “if it is an issue, the loophole should be closed because that would be totally

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\(^{60}\) Section 1(e) Northern Ireland Assembly Disqualification Act 1975

\(^{61}\) Ev 101
inappropriate."62 Similar sentiments were expressed by the leaders of four of the other main parties, Mr Steven Agnew, Green Party;63 Mr Mike Nesbitt, UUP;64 Dr Alasdair McDonnell, SDL;65 and Mr David Ford, Alliance.66

72. When challenged, the Secretary of State responded that the Government had not identified it as a priority, because there were no current instances of a TD/MLA or Senator/MLA dual mandate:

I do not see the need for that change, although of course I will look carefully at all the NIAC proposals in relation to the Bill. The reality is that we promised in our mandate to put an end to dual mandates with the House of Commons. We are seeking to make good on that manifesto. It has been a matter of public concern in Northern Ireland, while the potential or possibility of dual mandates with the Dáil has not been. We are focusing on the promises we made at the General Election and also on the area where there has been a problem in Northern Ireland.67

73. We understand that the Secretary of State’s priority is to end dual mandates between the Assembly and Westminster, but the resulting inconsistency with the Oireachtas is completely unacceptable.

74. Whilst we recognise that this is not currently a manifest problem, there is still the potential for an individual to hold dual mandates in both the Oireachtas and the Assembly. We put it to the Secretary of State that this approach was inconsistent with the general principle of ending double-jobbing. The Secretary of State stated in response that:

The reality in this Bill is that we are seeking to address concerns that have been expressed through the consultation over the last few years. There was clearly a concern that dual mandates between this Parliament and the Assembly caused concern; that is one of the reasons why all the political parties have reached the conclusion that they should probably be brought more or less to an end. I know that is not unanimous, but there is a recognition that dual mandates are not appropriate for the House of Commons. That concern has not manifested itself in relation to the Dáil up until now. As I say, I am happy to continue to keep this matter open.68

75. We consider that it would be illogical, and potentially inflammatory, to establish a position whereby a member of the UK Parliament was excluded from being an MLA but a member of any other legislature was not. We recommend that a provision be inserted into the substantive Bill, which would amend section 1(e) of the Northern Ireland Assembly Disqualification Act 1975, as amended by the Disqualifications Act 2000, so as to disqualify a member of the Oireachtas, from sitting simultaneously in the Northern Ireland Assembly. Evidence we have received from all political parties in

62 Q292
63 Q67
64 Q235
65 Q336
66 Q182
67 Q523
68 Q528
Northern Ireland suggests that such a disqualification would have broad political support.

76. We also recommend that the substantive Bill contains a provision to disqualify members of Commonwealth legislatures from sitting in the Assembly. If we disqualify MPs and TDs, on the basis that dual mandates are not effective, then that principle should be extended to Commonwealth legislatures as well.

**The position of the European Parliament**

77. Having considered ending dual mandates for MPs, Lords, TDs and Senators, we also sought views on whether or not MEPs should be disqualified from sitting in the Assembly. We note that there is already in place a rule which disqualifies a member of a national legislature from sitting in the European Parliament.

78. Several of our witnesses supported a ban on membership of the Assembly for those already sitting as MEPs. That view was supported by Mr Mike Nesbitt, UUP; Mr David McClarty, Independent; Mr Raymond McCartney, Sinn Féin; Mr Peter Robinson, DUP and Dr Alasdair McDonnell, SDLP.

79. We asked the Secretary of State for her position on MEPs and dual mandates:

> At the moment dual mandates are not permitted between the European Parliament and the House of Lords or the House of Commons. My understanding is that they are permitted between the Assembly and the European Parliament. Again, it would be a matter for the European authorities to consider whether they want to make a change on that score. We are, as I say, pressing forward with the commitment we made on double jobbing in our manifesto. As far as I understand, we did not include in our manifesto a reference to potential dual mandates between the European Parliament and the Assembly.

80. Whilst we appreciate that disqualification from the European Parliament is a matter for the European authorities, we believe that a prohibition on dual mandates should extend to MEPs in the Assembly. The Government should legislate to provide that individuals are ineligible for Assembly membership if already MEPs. Such legislation would not interfere with the workings of the European Parliament, but would be within the powers of the UK Parliament to decide which individuals are eligible for membership of the Northern Ireland Assembly.

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70 Q232
71 Q263
72 Q361
73 Q301
74 Q336
75 Q537
The position of Scotland and Wales

81. On publication of the draft Bill, it appeared that the Government’s policy on dual mandates was to legislate in respect of Northern Ireland only. That position was put forward on the basis that there were no Scottish or Welsh MPs double-jobbing: “historically, double jobbing has been a greater problem in Northern Ireland than it has been in Scotland and Wales.” The Government had indicated in its ECHR memorandum that it was legislating for Northern Ireland as not all political parties had voluntarily ended that practice. As of March 2013, there remained three Northern Ireland MPs who also sit in the Assembly. One Member of the House of Lords also sits in the Assembly.

82. However, since the publication of the draft Bill there has been a significant development in respect of the National Assembly for Wales. On 12 March 2013, the Secretary of State for Wales set out in a Written Ministerial Statement, proposals which would prohibit members of the National Assembly (AMs) from simultaneously sitting as Members of the House of Commons, the Government’s argument being that one person cannot adequately serve two sets of constituents. As would be the case in NI, this prohibition would not apply to Members of the House of Lords.

83. We welcome the Government’s decision to extend the prohibition on MLAs sitting as Members of the House of Commons to AMs. The role of representative in a devolved legislature is a full-time commitment. Any policy to end dual mandates should be applied consistently across the United Kingdom.

84. We recommend that the Government brings forward measures to prohibit double-jobbing between the Scottish Parliament and Westminster. Maintaining the alternative position would no longer be tenable, as dual mandates would be prohibited in respect of both Northern Ireland and Wales. Logic and even-handedness dictate that such a prohibition must be applied to Scotland as well.

The Justice Minister

85. Clause 5 of the draft Bill addresses two issues with respect to the office of Justice Minister. First, it ensures that the appointment of the Justice Minister is factored into the D’Hondt allocation process in terms of the number of Ministries a party may hold, although it will remain outside that process in terms of the way the Minister is appointed. Secondly, it ensures that Justice Minister enjoys the same security of tenure as other Ministers in the Northern Ireland Executive. Clause 6 outlines the procedure to be followed should the Justice Minister position become vacant.

86. Under current law, the First Minister and deputy First Minister are nominated by the two largest parties in the Assembly in each of the two community designations (i.e. one
from the largest unionist party, and one from the largest nationalist party). The remaining ministries, for example Education, Finance and Personnel, Social Development etc, are then chosen through D'Hondt. This enables the formation of a power-sharing Executive, wherein executive power is broadly proportionate to the number of the seats parties hold in the Assembly i.e. the party with the most seats has first selection of the ministries making up the Executive.

87. At present, the Justice Minister is appointed after all other Ministers in the Northern Ireland Assembly, following nomination by one or more MLAs and a cross-community vote. This creates an anomaly in that the party from which the Justice Minister is appointed (currently the Alliance Party) accrues an “additional” ministerial post on top of its D’Hondt allocation. For example, the Alliance Party in Northern Ireland currently has eight seats in the Assembly. However, they have two ministries in the form of the Department of Justice, and the Department of Employment and Learning. In contrast, the SDLP and UUP, the second largest nationalist and unionist parties respectively, hold only one ministry each, despite having more seats than the Alliance Party. The SDLP currently has 14 seats in the Assembly, whilst the UUP have 13. Clause 5 of the draft Bill would bring the Justice Ministry into the D’Hondt calculation.

88. The draft Bill proposes that the Justice Minister be appointed following nomination by one or more MLAs, and then approved by resolution of the Assembly or on a cross-community basis. A further nomination can be made only if the initial nomination did not take effect, or if the nominated person does not take up office in the period outlined in the Assembly’s Standing Orders.

89. The draft Bill also makes provision so that the Justice Minister would enjoy the same security of tenure as other Ministers in the Northern Ireland Executive. Currently, the incumbent Justice Minister can be removed if a motion is passed to that effect either by the First and the deputy First Minister acting together, or by 30 or more Assembly members, followed by a cross-community vote. Following discussions among political parties in Belfast in 2012, the First Minister and deputy First Minister asked the then Secretary of State for Northern Ireland, Rt Hon. Owen Patterson MP, to bring forward provisions to give the Justice Minister the same security of tenure as other ministers; this he agreed to do and the draft Bill fulfils that commitment.

**Broad support for the proposals**

90. Many of our witnesses were highly critical of the current procedure, noting in particular the injustice of a party attaining a disproportionate number of ministries to its electoral performance. Most of the political parties we heard from wanted the Justice Minister to be incorporated into the D’Hondt allocation mechanism on the same basis of other ministries but noted that, as the Justice portfolio continued to be sensitive and

81 The D’Hondt method was developed by Belgian lawyer and mathematician, Victor D’Hondt, in 1878. Employing D’Hondt in Northern Ireland was a stipulation of the Belfast/Good Friday Agreement. It was felt to be a suitable election mechanism for use in a divided and aimed to ensure cross-community representation.

82 The procedure is set out in Standing Order 44A of the NI Assembly.


84 Qq115, 138, 148, 244, 301, 388, 369
contentious in ways that other ministries were not, special measures for the appointment of the Justice Minister continued to be appropriate, at least in the short term. The vast majority of witnesses broadly supported the proposed changes contained within Clauses 5 and 6, agreeing that they represented a sensible way forward and an improvement on the current mechanisms.

91. David Ford MLA, the incumbent Justice Minister and leader of the Alliance Party, also told us that, although the proposed changes would most likely result in Alliance losing a ministry in the Executive, the proposed mechanisms were appropriate. He stated:

Frankly, that is the only reasonable way to take account of the Justice Minister being elected differently outside the D’Hondt formula and to ensure that whichever party holds the Justice Ministry does not have an extra seat. So, we believe that what the Government are proposing is the only fair and reasonable way in which it should be carried out, although it would on the face of it at this stage reduce the number of Alliance Ministers.

Incorporating the Justice portfolio in “full” D’Hondt?

92. Some of our witnesses, including the UUP and the SDLP, argued that the substantive Bill should go further and facilitate the normalisation of the Justice Ministry into the D’Hondt calculation used for all other ministerial positions. For example, the SDLP told us that:

We believe that the Justice Ministry should be part of the normal D’Hondt process for appointing Ministers. We have difficulty understanding why it is not. Yes; all sorts of reasons are advanced, but we believe that the Justice Ministry should be in the pot and if somebody wants to take it first or second, let them. Certainly, the proposal is an improvement on the present system, which was totally fabricated, is unhelpful and, to some extent, weakens the moral authority of the Justice Minister. I would like to see the Justice Minister appointed regardless of what party he comes from. That would be the way to work it. The proposal here improves slightly on the arrangement previously used.

93. We asked the Secretary of State why the draft Bill stopped short of fully incorporating the Justice Minister into the D’Hondt calculation. She argued that, because the Justice portfolio was particularly sensitive, a cross-community vote continued to be appropriate:

The post remains very sensitive, so I believe there is still a case for a cross-community vote. Given the huge effort that went into building the confidence needed to enable the devolution of policing and justice powers to go ahead, I think we have not moved on sufficiently to move to a system where this is one post among others that gets allocated according to the D’Hondt system. I think a

85 Qq267, 301, 370
86 Qq39, 148, 241, 266, 301, 388, 369
87 Q148
88 Qq241, 388
89 Q388
cross-community vote continues to be a sensible way to deal with this. If there is further normalisation in the future, and the sensitivities and the tensions around the portfolio lessen over time, then we can come back and look at that.

If we were to move to a straight D’Hondt system, that would be perceived as destabilising the devolution settlement of policing and justice. I have not seen a broad-based push for that. Most people seem to think that the changes in relation to the Justice Minister’s security of tenure are fairly sensible and necessary. I have not had representations telling me that we should do something different and move to a simple D’Hondt process.90

94. We welcome the proposals which allow the Justice Minister to enjoy the same security of tenure as other ministerial posts. We accept that, at present, the Justice portfolio is sensitive in ways other ministerial portfolios are not and so we agree that the retention of a cross-community vote in appointing the Justice Minister is appropriate for the meantime. We welcome the decision to appoint the Justice Minister immediately after the First Minister and deputy First Minister, thus remedying the current anomaly where the party holding the Justice Ministry is afforded an “additional” ministerial post disproportionate to its electoral performance.

**Scope for a “plan B”**

95. At present the draft Bill is silent as to how a Justice Minister might be appointed in the event that no political agreement can be found between the parties following an Assembly election. By contrast, the Northern Ireland Act 1998 provides a mechanism to address a failure of the political parties to agree the appointment of the First and deputy First Minister.91

96. We asked David Ford MLA whether he thought an analogous mechanism would be appropriate in cases where the appointment of a Justice Minister could not be agreed. He told us that he could “certainly see the benefit of looking at it” but was reluctant to “prejudge what that [mechanism] might be” without considering the matter in greater detail.92 Trevor Reaney, Clerk to the Assembly/Director General, also advised us it would be sensible to include a “Plan B” in the substantive Bill. He told us:

I think that the legislation needs to provide for a plan B if plan A does not work. I would not like to comment on what that might be. I think that the non-appointment of a Justice Minister would have more impact on the wider operation of the political institutions and the Executive side of business than it would on the Assembly, but a plan B is always useful to have.93

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90 Q543
91 Northern Ireland Act 1998 Section 16A(3) and section 16B(3) both set out time limits for the First minister and deputy First Minister to be elected. Whereas Northern Ireland Act 1998 Section 32(3) provides that if these either of these time periods elapse, then the Secretary of State shall propose a fresh Assembly election date.
92 Q153
93 Q32
97. By contrast, David McNarry MLA, UKIP, told us that he did not think it necessary for the Bill to contain a fallback position.\textsuperscript{94}

98. Following the successful election of the First Minister and deputy First Minister, it is vital that the Executive be appointed. We would not wish to see the formation of the Executive jeopardised by failure to appoint a Justice Minister. We recommend that the substantive Bill include a mechanism to provide for the appointment of the Justice Minister in the absence of political agreement between parties following an Assembly election.

**Electoral Registration and Administration**

99. The arrangements for electoral administration and registration in Northern Ireland are different from elsewhere in the United Kingdom. The system is administered centrally by the Chief Electoral Officer (CEO) for Northern Ireland, an independent statutory officer holder appointed by the Secretary of State. The CEO is both the electoral registration officer for all 18 constituencies in Northern Ireland and returning officer for all elections and referendums in that jurisdiction. The CEO is assisted by the Electoral Office for Northern Ireland (EONI).

100. Electoral registration in Northern Ireland has undergone fundamental change over the last ten years. Since 2002, Northern Ireland has used a system of individual electoral registration, which means that anyone wanting to register must provide their name, address, date of birth and national insurance number on an individually signed form. Until 2006, electors were required to provide this information each year in order to remain registered to vote in Northern Ireland.\textsuperscript{95} In 2006, the requirement for individuals to provide personal information each year was replaced with a system of continuous registration, meaning that names of electors remain on the register until the CEO is notified about a change of address or circumstance.\textsuperscript{96}

101. Clauses 7 to 10 would give effect to commitments the previous Government made following its 2009 public consultation *Improving Electoral Registration Procedures in Northern Ireland*.\textsuperscript{97} The provisions would also implement recommendations made by the Electoral Commission in its October 2011 report on elections in Northern Ireland, and by the Chief Electoral Officer for Northern Ireland. The proposed clauses cover four main areas:

- Clause 7 removes the requirement to have been resident in Northern Ireland for three months before being entitled to register to vote;

- Clause 8 permits people from Northern Ireland, who qualify to vote under the current franchise and who wish to vote in a UK election whilst living abroad, to declare themselves as either a British or an Irish Citizen. This would bring the

\begin{footnotes}
\footnote{94}{Q141}
\footnote{95}{The Electoral Commission, *Continuous electoral registration in Northern Ireland*, November 2012, p 1}
\footnote{96}{ibid}
\footnote{97}{Cm 8563, para 10}
\end{footnotes}
regime into line with Clause 8 of the Belfast (Good Friday) Agreement 1998, which recognises that all people in Northern Ireland may identify themselves as British, Irish or both as they may chose;

• Clause 9 would remove the existing bar on those who apply to be registered during the late registration period in Northern Ireland from also applying for an absent vote; and

• Clause 10 creates a new offence for providing false information in relation to an electoral ID card application. We had some concerns that Clause 10 may inadvertently penalise persons suffering from serious illnesses or learning difficulties in instances where their signature appears different from their usual signature. Clarification is required on the face of the substantive Bill to ensure that honest voters are not inadvertently penalised by this clause.

102. The Electoral Commission welcomed the provisions included in the draft Bill to improve electoral registration. Graham Shields, the Chief Electoral Officer, told us that he was "satisfied with the clauses on electoral registration contained in the [draft] Bill". He did, however, suggest inserting an additional clause into the substantive Bill which would support the Northern Ireland Statistical Research Agency (NISRA), which is assisting the EONI, in its preparations for the canvass of electors due to take place in autumn 2013. The CEO supported an additional clause which had the effect of allowing:

The use of electoral registration information by the Registrar General and the staff of the Northern Ireland Statistical Research Agency (NISRA) for the purposes of statistical and analytical work connected to the census.

103. We welcome the provisions in the draft Bill to improve electoral registration in Northern Ireland and support of measures which would assist the Chief Electoral Officer in building an accurate and complete electoral register. We recommend that the Government consult with key stakeholders to assess whether it would be feasible and desirable to insert an additional Clause in the substantive Bill which would allow the Registrar General and the staff of the Northern Ireland Statistical Research Agency (NISRA) to make use of electoral registration information for the purposes of statistical and analytical work connected to the census.

104. The Government have stated that, where possible, it intends to incorporate recommendations made by the Electoral Commission in its November 2012 report on the accuracy and completeness of the electoral register in Northern Ireland into the substantive Bill. In that report, the Electoral Commission highlighted the significant challenge the CEO faces in improving the accuracy and completeness of the electoral register:

It is clear that there has been a significant and worrying decline in both the accuracy and completeness of Northern Ireland’s electoral register. Our register shows that the register in use on 1 April 2012 was 78% accurate: one in five entries related to people

98 Ev 114
99 ibid
who were no longer resident at that address. The register was 71% complete; an estimated 400 000 people were not registered at their correct address.  

105. The Electoral Commission told us that it is has made a number of recommendations to the CEO and the NIO, some of which included legislative change. In its written submission, the Electoral Commission welcomed the fact that these recommendations are currently being addressed through secondary legislation in the form of the Representation of the People (Northern Ireland) (Amendment) Regulations 2013. The Electoral Commission also advised us that some of its other recommendations are now being addressed by the CEO in for example, commissioning a piece of work which addressed the efficiency of its data-matching and how these processes can be improved.

106. At present, the CEO is required to report to the Secretary of State and comment on how he has met his registration objectives. The Electoral Commission told us that the CEO was the only electoral registration and returning officer in the UK whose performance against these standards was not reported to electors. Both its 2011 and its 2012 report recommended that the Electoral Administration Act 2006 be amended to extend the performance standards to the CEO. The Electoral Commission made clear to us that the extension of performance standards to the CEO would not replace but complement the currently accountability mechanism in place between the Secretary of State for Northern Ireland and the CEO.

107. Since October 2012, the CEO has been piloting a set of draft performance standards which have been agreed with the Electoral Commission; this trial is due to end at the end of March 2013. The Electoral Commission has argued that the development of a statutory performance framework for Northern Ireland would bring the CEO closer to other electoral registration officers and returning officers in the rest of the UK and facilitate the sharing of best practice. The Electoral Commission argues that this measure would also allow the CEO to benchmark and compare his registration and electoral activities against his counterparts in the rest of the UK. For these reasons, the Electoral Commission suggested to us that the opportunity should be taken to extend performance standards to the Chief Electoral Officer for Northern Ireland.

108. By contrast, the Chief Electoral Officer stated that he had reservations about extending the performance standards to Northern Ireland. He told us:

I have no objection to participating in the performance standards regime; indeed I concur with the view that the oversight framework should be the same in Northern Ireland as it is elsewhere in the United Kingdom. However, I do not believe it would be appropriate for the formal adoption of performance standards to be included in the Bill whilst the Chief Electoral Officer also remains accountable to the Secretary of State for his performance. I would suggest that this matter is re-visited once the

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100 The Electoral Commission, Continuous electoral registration in Northern Ireland November 2012, p 1
101 Ev 110
102 Graham Shields, CEO, 23 Feb 2013, Oral Evidence to the Committee for the Office of the First Minister and deputy First Minister
103 Ev 110
performance standards have been firmly embedded and have been proven to add value to the electoral registration process.\textsuperscript{104}

109. In principle, we would like to see the Chief Electoral Officer in Northern Ireland subjected to the same performance standards as apply in the rest of the UK. We recommend that the Government considers the outcome of the current performance standards pilot, which is due to end in March 2013, and, if appropriate, insert a new clause in the substantive Bill to extend the performance standards to the Chief Electoral Officer in Northern Ireland.

**Equality duties**

110. Clause 11 relates to equality duties. Section 75 of the Northern Ireland Act 1998 imposes a statutory duty on public authorities to promote both equality of opportunity and good relations. Section 75(3) sets out the public authorities caught by this duty and gives the Secretary of State a power to designate by order a body or person as a ‘public authority’ for the purposes of the statutory duty to promote equality of opportunity.

111. The current arrangement permits the Secretary of State to make only a ‘full’ designation in respect of public authorities: a full designation applies to all functions of that body. Clause 11 enables the Secretary of State to designate public bodies as bound by the duty, in respect of only certain aspects of their functions.

112. The Committee on the Administration of Justice (‘CAJ’), an independent human rights organization with cross-community membership in Northern Ireland and further afield, was concerned that this new power to partially designate might be used to relax the obligations of a public authority which might otherwise be subject to a full designation:

> CAJ appreciates this measure may affect a relatively small number of bodies that require s75 designation, and has the potential to bring functions of bodies currently excluded from the duty within its scope. Nevertheless we would want to guard against a future situation where new bodies requiring Secretary of State designation are routinely part designated.\textsuperscript{105}

113. We recommend that the substantive Bill confirms that Clause 11 will not be used to partially designate a public authority which is already subject to a full designation in Northern Ireland. We also recommend that the Government outline the limited purposes for which this power will be exercised and consider what, if any, safeguards should accompany it, so as to ensure that public authorities which may usefully be fully designated continue to be so.

**Regulation of Biometric Data**

114. Clause 13 of the draft Bill relates to the regulation of biometric data\textsuperscript{106} and amends the Protection of Freedoms Act 2012. Schedule 1, Part 7 of the Protection of Freedoms Act

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\textsuperscript{104} Ev 114

\textsuperscript{105} Ev 108

\textsuperscript{106} Biometric data includes, for example, DNA samples and profiles, footprints and footwear impressions.
2012 governs the applicability of the Act to Northern Ireland. Currently, the Secretary of State has the power to bring forward an order which would regulate the retention, use and destruction of biometric data for excepted and reserved matter (such as terrorism or national security), if the Northern Ireland Assembly were to legislate on the use of biometric data in respect of a devolved matter. The Secretary of State also has the power to make an order in respect of a devolved matter, where the matter is ancillary to an excepted or reserved matter. Presently, Schedule 1 is drafted so as to refer only to 2011 and 2012.

115. Clause 13 would amend Schedule 1 so as to enable the Secretary of State to make an order if the Act of the Assembly is made in 2013 and 2014. This is because the Northern Ireland Assembly has not yet introduced the relevant legislation in either 2011 or 2012. Clause 11 would update the Protection of Freedoms Act 2012 to ensure the Secretary of State can make an Order to correspond to excepted and reserved matters, as and when the Assembly legislates on devolved matters.

116. We received written evidence from the PSNI noting that whilst this was a technical amendment, biometric data remained important for protecting the public:

“Clause 13 is a technical amendment to the Protection of Freedoms Act 2012 that reflects the position that the Criminal Justice Bill currently before the Assembly has been delayed beyond the time period initially envisaged in the Protection of Freedoms Act 2012. The relevant provisions in the Protection of Freedoms Act 2012 serve to bring the biometric retention framework into line with the rest of the United Kingdom as regards certain reserved matters. Whilst this is ultimately a matter of political judgement it is incumbent upon me to highlight that this is a very important provision that enhances the protection offered by the biometric retention framework to the community in Northern Ireland.”

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117. Clause 13 of the draft Bill is a sensible way to ensure that the Secretary of State can bring into force an Order for non-devolved matters, to correspond with any Northern Ireland Assembly legislation on the regulation of biometric data in respect of devolved matters, if and when the Assembly chooses to legislate. We expect that the decision to legislate in the Assembly will no doubt be subject to scrutiny in terms of human rights, privacy and adequate safeguards, and that process of scrutiny should be undertaken carefully.
3 Matters still under consideration

118. In addition to the draft clauses, the Government has stated that the substantive Bill may contain additional provisions, if the Government obtains a consensus from the Northern Ireland political parties. These additional matters include:

- Size, length and term of the Northern Ireland Assembly
- Government and Opposition
- Devolution of responsibility for Arms-Length Bodies

Assembly size, length of term and future election dates

Size of the Assembly

119. The current size of the Assembly is determined by provisions contained within Strand One of the Belfast (Good Friday) Agreement, which provides that “a 108 member Assembly will be elected by PR-STV from existing Westminster constituencies”. Section 33 of the Northern Ireland Act 1998 stipulates that Assembly constituencies are coterminous with Westminster constituencies and that each constituency shall return six members. Consequently, legislation would have to be introduced in Westminster in order to bring about changes to the size of the Assembly.

120. Had the number of Westminster UK constituencies been reduced from 650 to 600, as was anticipated when the Parliamentary Voting System and Constituencies Act 2011 was introduced, then the number of Parliamentary constituencies in Northern Ireland would have been reduced from 18 to 16 before the next UK Parliamentary Election as long as the Assembly and Westminster boundaries remained coterminous. As a result, and as a direct consequence of section 33 of the Northern Ireland Act 1998, the number of MLAs would have been reduced from 108 to 96.

121. The size of the Northern Ireland Assembly was identified by the Secretary of State as a “measure still under consideration for potential inclusion in the Bill”. She told us that:

A number of political parties...indicated they were content to see the Assembly reduced in size, but we are yet to have a joint position from the Executive. In light of that, we felt unable to put it in the draft Bill, but there is still time for it to go in the substantive version of the Bill if consensus can be built. I would be interested to hear what NIAC concludes is the best option. There seems to be quite a considerable degree of public support for a slightly smaller Assembly, given the comparison, for example, with the Welsh Assembly, the Scottish Parliament or indeed the London Assembly.\footnote{Q551}

122. The Assembly Executive and Review Committee (AERC) published a Review of the Number of Members of the Northern Ireland Legislative Assembly and on the Reduction in
The Number of Northern Ireland Departments in June 2012.\textsuperscript{109} During its inquiry, the AERC took evidence on the following five key issues:

1. Whether the statutory link between Westminster and Northern Ireland constituencies should be removed and the implications of removing or retaining this link;

2. The implications of the forthcoming reduction (on the implementation of the Parliamentary Voting System and Constituencies Act 2011) and any further reduction in the number of MLAs;

3. The reduced number of MLAs required to ensure that the effectiveness of the Assembly in delivering its key functions is maintained and consistent with the safeguards on inclusivity;

4. Proposals to mitigate the impact of reducing the number of MLAs on the effectiveness of the Assembly in delivering its key functions, including in particular, proposals to ensure a robust and effective committee system; and

5. The reduction in the number of Northern Ireland departments and associated reallocation of functions which will ensure the effectiveness of the Executive functions are maintained.\textsuperscript{110}

123. Respondents to the AERC inquiry expressed a wide range of divergent views on the size of the Assembly. Some respondents suggested that as few as 55 MLAs would be sufficient to ensure that the Assembly functioned effectively whereas others suggested 64, 90, 90, 96 and no reduction to the current size of the Assembly. Some respondents, including Sinn Féin, told AERC that a reduction of MLAs could impact on the inclusivity and representativeness of the Assembly therefore they could not, in principle, agree to a reduction of MLAs.\textsuperscript{111}

124. Many of the respondents to the AERC review commented on the differences between the number of electors per member in Northern Ireland compared to the Scottish and Welsh legislatures and, as a result, some of these respondents suggested that the number of MLAs could be reduced.
<table>
<thead>
<tr>
<th>Country</th>
<th>Population (millions)¹¹²</th>
<th>Size of Electorate¹¹³</th>
<th>Size of Legislature</th>
<th>Electors per Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Ireland</td>
<td>1.8</td>
<td>1,230,200</td>
<td>108 MLAs</td>
<td>11,390</td>
</tr>
<tr>
<td>Wales</td>
<td>3.1</td>
<td>2,301,100</td>
<td>60 Assembly Members</td>
<td>38,352</td>
</tr>
<tr>
<td>Scotland</td>
<td>5.3</td>
<td>3,985,300</td>
<td>129 Members of the Scottish Parliament</td>
<td>30,894</td>
</tr>
</tbody>
</table>

125. AERC could not reach consensus on the size of the Assembly. Instead, its report sets out the positions of the political parties represented on the Committee as well as the views of other stakeholders who responded to the review.¹¹⁴ AERC’s report also sets out a “summary set of possible options” which, it argues, “may prove to be a useful tool to aid the establishment of the substantive position for the size of the Northern Ireland Assembly.”¹¹⁵

126. We heard evidence on the size of the Assembly from Trevor Reaney, Clerk to the Assembly/Director General, the DUP and Sinn Féin. Trevor Reaney urged that political agreement be reached on the issues as quickly as possible and noted that the longer uncertainty prevailed on these issues, the more difficult it would be to plan for the future.¹¹⁶

127. Peter Robinson noted that there was not yet a consensus position between the Northern Ireland parties and told us that his party:

> believe that the appropriate size for the Assembly is between 70 and 80 Members. We believe that we should reduce the number of Departments to at least eight or nine. I think that there is a move in that direction... Given the size of Northern Ireland and the size of the Assembly, it is totally inappropriate to have 108 Members. It should be reduced, and it seems to me that between 70 and 80 Members would be a good start. I suspect that a number of voices will say that it should be between 90 and 100.”¹¹⁷

128. Peter Robinson told us that discussions on size of the Assembly, among other issues, were continuing in the Assembly and that the DUP, having shared its proposals on these matters with Sinn Féin, was awaiting a response.¹¹⁸ Raymond McCartney confirmed that discussion on these issues was underway.¹¹⁹ Sinn Féin believed that discussions about the size of the Assembly should be taken together with discussions about the number of departments and alternative models for Government and Opposition. He noted that all discussion should be guided by principles of representativeness and inclusivity.¹²⁰

¹¹³ ONS Electoral Statistics for UK – 2012, 28 Feb 2013
¹¹⁴ AERC 2012 Review of the Number of Members of the Northern Ireland Legislative Assembly and on the Reduction in the Number of Northern Ireland Departments paras 41 - 119
¹¹⁵ ibid120-137
¹¹⁶ Q34
¹¹⁷ Q310
¹¹⁸ Q277
¹¹⁹ Q339
¹²⁰ Q376
129. Compared with the Scottish Parliament and with the National Assembly for Wales, the size of the Northern Ireland Assembly is disproportionately high, and there is clearly scope to reduce the number of MLAs. We understand that formula for the number of MLAs is determined in part by the number of Departments in the Northern Ireland Executive and we look forward to the AERC’s findings. Any decision on this matter should be taken only with broad support from political parties in Northern Ireland and so we urge the Government to continue to engage with the parties and take appropriate steps to facilitate the emergence of a consensus position on the optimum size of the Assembly.

**Length of Assembly terms and future election dates**

130. The draft Bill identifies the length of assembly terms and future election dates as issues which remain under consideration for inclusion in the substantive Bill. The NIO’s 2012 consultation on *Measures to Improve the Operation of the Northern Ireland Assembly* sought views on whether the life of the current Assembly should be extended by one year, from 2015 to 2016, to avoid Westminster and Assembly elections coinciding in 2015. The consultation also asked whether the Assembly should move to a fixed 5-year term on a permanent basis.

**Length of current Assembly term**

131. The Command Paper accompanying the draft Bill notes that “any move to extend the current term could only be made if there was a clearly demonstrable public benefit and a very large measure of agreement in Northern Ireland”.\(^{121}\) However, “only a small number of consultation responses addressed the issues” and, while the “option remains open in principle”, the Government noted that “a compelling case for the extension of the Assembly term has yet to be made”. In its 2013 summary of consultation responses, NIO revealed that:

> Responses from individual correspondents were, in the main, against extending the current term. There were 27 responses to this question: 23 of which were against the proposal. There appears to be a good deal of frustration with the perceived inertia of the Assembly and the opinion frequently voiced was that extending the term would only add to this.\(^{122}\)

132. We did not explore this issue in great detail during our inquiry, in part due to the compressed timetable for pre-legislative scrutiny. However, Peter Robinson briefly touched on this subject and told us that:

> Three of the political parties that represent a significant majority in the Assembly have said that... the Assembly election should be in 2016.\(^{123}\)

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\(^{121}\) Cm 8563, Para 18

\(^{122}\) NIO Summary of Responses to Consultation on measures to improve the operation of the Northern Ireland Assembly, February 2013, para 13

\(^{123}\) Q307
Nevertheless, we did not hear any compelling evidence to support this proposition. We note that extensions to mandates for the Scottish Parliament and the Welsh Assembly had been agreed prior to the last election and the commencement of the current term so that the electorate were aware that they were returning politicians for a five year term, rather than for the usual four years. We are concerned that extending the current term to 2016 would be contrary to the expectations of the electorate at the last Assembly election in 2011 and recommend, therefore, that the current Assembly term should end, as planned, in 2015.

**Moving to five year fixed terms on a permanent basis**

134. The Government’s 2012 consultation also sought views on whether the Northern Ireland should move to five year fixed terms on a permanent basis. Paragraph 19 of the Command Paper reveals that “the consultation responses were relatively ambivalent on the issue of moving to five year fixed terms in the future”. We heard little evidence on this topic, although Peter Robinson advised us that as well as favouring an extension of the current Assembly term, “three of the parties that represent a significant majority in the Assembly” also support a move to five year fixed terms after the next Assembly election.

135. The NIO 2013 summary of responses on this issue stated that devolved legislatures in Wales and Scotland have already moved to five year fixed terms on a permanent basis but this is not the case. As Northern Ireland Assembly Research and Briefing Paper *Length of Assembly Mandate* (2011) states, sections 4 and 5 of the Fixed Term Parliament Act 2011, which refer to the extension of the mandate in Scotland and Wales respectively, “makes clear that the extension of the current mandate is a ‘one-off’ and is not permanent”.

136. Section 4 of the Fixed Term Parliaments Act 2011 relates to the situation in Scotland and provides for the next poll to be held 5 May 2016. However, the same Act also states that this move is temporary and, after the 2016 poll, section 2(2) of the Scotland Act 1998 will set out future election dates accordingly. This would mean that “subsequent ordinary general elections shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held”. In other words, Scotland would return to four year terms. The same situation applies to Wales and is set out in Section 5 of the Fixed Parliament Act 2011.

137. However, the Secretary of State for Wales made a Written Ministerial Statement on 12 March, and announced that:

> the Government will move the Assembly from four to five-year fixed terms. The term of the current Assembly is, exceptionally, five years, but the Assembly is set to

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124 Northern Ireland Assembly Research and information Service Briefing Note *Length of Assembly mandate*, NIAR 748-11, November 2011, p 3

125 Q307

126 NIO *Summary of Responses to Consultation on measures to improve the operation of the Northern Ireland Assembly*, February 2013 para 12

127 Northern Ireland Assembly Research and information Service Briefing Note *Length of Assembly mandate*, NIAR 748-11, November 2011, p 3
revert to four-year terms after the next Assembly elections in 2016. A permanent move to five-year terms would make a coincidence between parliamentary and Assembly elections in 2020 (and every 20 years thereafter) less likely.\footnote{128}

138. In its written submission, the Electoral Commission argued that in making any decision on moving the Northern Ireland Assembly to five year fixed terms on a permanent basis, the Government should undertake a UK wide comprehensive research study to evaluate the impact this move would have on all those who are involved in the electoral process.

139. \textbf{We have not heard convincing arguments that a move to five year fixed terms on a permanent basis would be of benefit to the people of Northern Ireland. We recommend that, before making a decision on whether to permanently move to a five year fixed term, the Government should evaluate the impact this move would have on all those who are involved in the electoral process.} After this study, we recommend that the Government reconsider whether a permanent move to five year fixed terms would be appropriate for the devolved legislatures in Northern Ireland and Scotland, as well as in Wales.

\textit{Concurrent Elections}

140. One of the core reasons why an extension of the current Assembly term and five year fixed terms are being considered is that such moves would avoid Westminster Parliamentary and Northern Ireland Assembly Elections being held on the same day in the future. In this context, the draft Bill notes that:

consideration of whether we should seek to avoid further clashes between Parliamentary and Assembly elections seems prudent. While no draft Clauses are yet available for scrutiny, options remain open to make provision to avoid future concurrence of elections while still moving to fixed terms for the Assembly.\footnote{129}

141. There are practical two issues in considering whether it is desirable to seek to avoid concurrent Parliamentary and Assembly elections. First, whether the Chief Electoral Officer of Northern Ireland has sufficient capacity to deliver concurrent elections; and, secondly, what impact holding more than one election on the same day tends to have on the messages electors receive.

142. The Northern Ireland Assembly elections, local elections and the Alternative Vote (AV) referendum were held on 5 May 2011. In his September 2012 report, the CEO provided insight into his experiences of overseeing a combination of polls in NI in May 2011. This was the first time that three polls have been held in Northern Ireland. The CEO and his staff faced considerable criticism from sections of the media and politicians over delays in the completion of the verification process; delays in the announcement of the first stage STV results; and the length of time taken to complete the AV referendum count.\footnote{130}

\footnote{128 Official Report, 12 March 2013, col. 9WS, \textit{op cit}}\footnote{129 Cm8563, para19}\footnote{130 Report of the Chief Electoral Officer for Northern Ireland 2011-2012 HM548, para 4.1, also see Clarke of the Belfast Telegraph \textit{War of Words Breaks Out As Voting Shambles Revealed} 28 November 2012}
The CEO argued that “much of the criticism was unfair and unreasonable”;\textsuperscript{131} but he also noted that:

> It is nevertheless clear, with the benefit of hindsight, some things could have been done better and lessons can be learned. This is particularly relevant because of the real possibility of further combined elections in the future.\textsuperscript{132}

143. The Electoral Commission told us that the 2011 triple election was “characterised by poor planning and communications at the count”\textsuperscript{133} and that, since then, the CEO had undertaken a review of elections and counts. Subsequently, he has taken forward a number of changes for future elections including, for example, that the names of future elections are written clearly on the ballot paper; this is being addressed through secondary legislation.\textsuperscript{134} The CEO informed us that he is:

> now satisfied that the issues that arose during the 2011 polls have been, or will be, satisfactorily addressed before the next major election.

144. However, he also argued that it would “not be prudent to ever again hold three or more polls simultaneously”. He told us that his:

> Principal concern relates to the impact on the voter and the likelihood for confusion resulting in spoiled ballots... [he also has] concerns about the operational and logistical demands associated with managing and staffing the counts.\textsuperscript{135}

145. The CEO told us that holding two polls in 2015 would be challenging but he had implemented a number of changes, including the number of count venues, in his preparations. The Electoral Commission noted that public opinion appears to favour holding the UK Parliamentary and Assembly election on the same day in 2015: 44% stated that they favoured holding the two polls concurrently, whereas 24% said they were against holding these elections on the same day and 30% did not mind either way.\textsuperscript{136}

146. The Electoral Commission advised us that overall:

> The key thing that is those elections, if they are combined, have good planning and the combined legislation is in place six months in advance of any election taking place. That allows the Chief Electoral Officer to plan in a very systematic way.\textsuperscript{137}

147. In its written submission, the Electoral Commission argued that “it is imperative that there is agreement by November 2013” about the dates on which the next Assembly

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\textsuperscript{131} Ibid, para 4.3
\textsuperscript{132} Ibid
\textsuperscript{133} Ev 110
\textsuperscript{134} Q465, Ev 114
\textsuperscript{135} Ev 114
\textsuperscript{136} Ev 110
\textsuperscript{137} Q465
election (and local council elections) to ensure that they are properly planned and managed.\textsuperscript{138}

148. We welcome the changes the Chief Electoral Officer is making to help improve planning for future elections. We urge the Government to assist the Chief Electoral Officer in his planning by providing him with notice of future election dates by November 2013 and ensuring that any legislation for combined polls is in place six months in advance of an election taking place.

149. When discussing the issue of concurrent elections, the Secretary of State noted that it is important to consider whether they may cause a degree of voter confusion:

> It is important to look carefully at this issue about whether having elections on the same day causes a degree of confusion, and also the issue about whether a General Election would overshadow the Assembly elections in a way that would not be helpful to Northern Ireland politics.\textsuperscript{139}

150. In its written submission, the Electoral Commission stated that, following the 2007 Scottish Parliamentary elections and during the passage of the Fixed Term Parliaments Act 2011, it advised the Government that there was “a need for research to be conducted on the implications of combining elections”.\textsuperscript{140} To date this research has not been undertaken. The Electoral Commission argued that it was still necessary to provide a “robust evidence base to inform the decisions about the timings of electoral events”.\textsuperscript{141} It suggested that a research project should involve the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales and should:

> Consider the impact of the timings of electoral events on voters, electoral administrators, political parties, candidates and the media and also take account of the possible impact of moving the date of scheduled elections from May to another time during the year.\textsuperscript{142}

151. We believe it is important that the different issues associated with a Westminster general election and a Northern Ireland Assembly election be effectively communicated so that electors can make informed decisions. It is not presently clear what impact holding concurrent elections has on voter understanding and the effective communication of different electoral issues. \textbf{Therefore, we recommend that the Government commission a comprehensive UK wide research study which explores the impacts of combining elections. This would then provide an evidence base for informing future decisions about combined polls.}

\textsuperscript{138}\textsuperscript{ Ev 110}  
\textsuperscript{139}\textsuperscript{ Q556}  
\textsuperscript{140}\textsuperscript{ Ev 110}  
\textsuperscript{141}\textsuperscript{ ibid}  
\textsuperscript{142}\textsuperscript{ ibid}
Government and Opposition

152. The Government highlights in the Command Paper accompanying the draft Bill that “there are obvious flaws in a system where there is no opposition, in the traditionally understood sense, to enhance, challenge, provide a spur to innovation and offer an alternative government.”143 The Government does stress, however, changing arrangements would require the agreement of the parties represented in the Assembly. Furthermore, any proposal must be consistent with the principles of inclusivity and of power-sharing as set out in the Belfast (Good Friday) Agreement. There is not yet sufficient consensus to agree any change at this stage.

153. Mr Trevor Reaney, Clerk/Director General of the Assembly, told us that the Assembly and Executive Review Committee (‘AERC’) is currently exploring the issue of effective opposition and procedural change:

The matter of “Government and Opposition” is under review by the Assembly and Executive Review Committee. You will be aware of that Committee’s previous work looking at and reporting on the size of the Assembly and the reduction in the number of Departments. The Committee has just launched a call for evidence on provisions for an opposition and the use of D’Hondt and community designation. That Committee is looking specifically at those issues, and I am sure that the provisions for an opposition in particular will be of interest to the Committee as its work progresses.144

154. Mr Reaney indicated that because the Assembly has powers to amend procedural arrangements and can itself reform certain aspects of the Assembly’s operation with a view to enhancing the robustness of opposition:

[The AERC Review is] looking at our Committees’ structure, role and purpose, how they go about their business, and their processes and systems. The Committee system has been viewed as probably the engine house of the Assembly — the most significant element for the scrutiny and challenge of Departments and Ministers. Looking at enhancing and strengthening that is perhaps one of the most significant elements coming out of the work being done by the Assembly and Executive Review Committee, and the recommendation that the Committee made is being taken forward.145

155. We heard a spectrum of views as to whether there is any effective opposition within the Assembly. For example, Mr Jim Allister MLA and leader of the TUV argued that a mandatory power-sharing coalition proved undemocratic in practice:

...There is no right to have an opposition. That is so fundamental that it should be an outrage to the House of Commons that such a situation pertains in a part of the

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143 Cm 8563, p 9, para 21
144 Q35
145 Q35
156. Mr Peter Robinson MLA, however, expressed a contrary view and cautioned against dismissing the scrutinising and monitoring functions of the Assembly:

It would be wrong for you to go away with the idea that we do not have an opposition, because we have a very strong and well-informed one. The difficulty is that they are within the Executive because the two smaller parties have tended to act as if they were an opposition. So we have Ministers in opposition as part of our system. That is unhealthy, leads to the leaking of confidential Executive documents to the press for party political advantage and does not have the open aspect of opposition that is healthy, which you would recognise from Westminster.147

157. Sinn Fein, in its written evidence, was keen to stress that these matters were already subject to AERC’s review, and that any party was free to take up an oppositional role in the Assembly by declining to take the Executive places to which they were entitled via D’Hondt allocation.148 Sinn Féin emphasised that any arrangement must have at its core the principles of inclusive government and power-sharing:149

Parties in the Assembly have the right to leave the Executive and to form an opposition, although it may not be formal in that particular sense. Overall, whatever we do and whatever reforms are made to the size or nature of the Assembly, we will always be guided by the need not to undermine the principles that brought about the Good Friday Agreement.150

158. We note that AERC is currently reviewing the issue of procedural changes in the Assembly, which touch on the question of opposition. We look forward to considering those findings in detail. We note that there appears to be some appetite for a shift towards an “official” opposition within the Assembly. Such an opposition would have to be fully funded and resourced, and we encourage the Government to assist the parties in devising a way forward. Any alternative arrangements should be guided by the fundamental principles in the Belfast (Good Friday) Agreement.

Devolution of responsibility for Arms-Length Bodies

159. Currently, some functions relating to the Civil Service Commissioners for Northern Ireland, the Northern Ireland Human Rights Commission and the District Electoral Areas Commissioner are not devolved but are exercised by the Secretary of State.

160. In the Command Paper published alongside the draft Bill, the Government indicated that it might consider devolving some functions by agreement to the Northern Ireland Assembly and Executive at some future date. As one of the organisations potentially
affected by this proposal, we sought evidence from the Northern Ireland Human Rights Commission (‘NIHRC’).

161. The Government has yet to consult on these matters. The proposed devolution of responsibility for arms-length bodies included in the NIO’s consultation on the Assembly\textsuperscript{151}. Professor Michael O’Flaherty, Chief Commissioner at the NIHRC, stated that given the unique nature of the NIHRC, any future proposal should be subject to public consultation:

> The origins of this commission lie in the Belfast (Good Friday) Agreement, which itself was put to the people and endorsed by a referendum. Given the exceptional origin of our commission, we propose that you consider recommending to the Secretary of State that any further discussion of the possible devolution of the functioning of the commission be subject to a public consultation.\textsuperscript{152}

162. Professor O’Flaherty reiterated the importance of this issue, and highlighting the NIHRC’s concern that this issue may not be adequately scrutinised without consultation:

> It is important that this dimension — the possible devolution — does not get lost in the morass of all the other important matters in the Bill. It is too important, too significant for the rights architecture of Northern Ireland, to slip through, in a sense, unnoticed.\textsuperscript{153}

163. We also received written evidence from both the Irish Human Rights Commission\textsuperscript{154} and the Committee on the Administration of Justice\textsuperscript{155} to this effect. Both groups echoed the NIHRC’s concern that any change must be adequately consulted upon, as the NIHRC is a fundamental aspect of the human rights architecture of Northern Ireland. Furthermore, both organisations strongly argued that any proposal should not affect the independence or accountability, or curtail the effectiveness of the NIHRC.

164. The NIHRC is an internationally recognised human rights institution and complies with the Paris Principles. The Paris Principles, adopted by the UN General Assembly in 1993, establish the minimum standards required for the independence and effective functioning of national human rights institutions. They detail the role that national human rights institutions are expected to perform i.e. the monitoring and implementing of human rights standards. The Paris Principles also provide that these functions ought to be undertaken in such a way that the institution maintains independence from government.

165. The NIHRC is accredited with ‘A’ status by the International Coordinating Committee on national human rights institutions. As the NIHRC explains in its written submission,

\textsuperscript{151} NIO consultation \textit{Measures to improve the operation of the Northern Ireland Assembly, 2012}  
\textsuperscript{152} Q192  
\textsuperscript{153} Q204  
\textsuperscript{154} Ev 107  
\textsuperscript{155} Ev 108
This is the highest level of recognition by the United Nations. The Commission is one of the United Kingdom’s three national human rights institutions, all of which have ‘A’ status. This accreditation has been granted following an assessment of the Commission against the Paris Principles. As a result…the Commission is entitled to full participation rights in the proceedings of the UN Human Rights Council.156

166. Professor O’Flaherty told us in evidence that whilst the Commission took no position on whether or not it was correct to devolve responsibility to the Northern Ireland institutions, the Commission was concerned that any proposal ensured the independence of the NIHRC:

The current arrangements in the legislation guarantee our independence, which is an essential dimension of our compliance with the UN principles. As you advise the Secretary of State, we ask that you emphasise the importance that whatever arrangements may be put in place guarantee the independent functioning of the Human Rights Commission.157

167. We note that the Government has not yet consulted on the proposed devolution of responsibilities for arms-length bodies. The NIHRC is just one body potentially affected by this proposal. It is a unique institution, with its origins in the Belfast (Good Friday) Agreement. We recommend that the Government consult on the devolution of responsibility for arms-length bodies before making any changes to arrangements relating to the NIHRC. We therefore request that the Government consult widely on this issue before bringing forth draft provisions for inclusion in the substantive Bill.

168. We recognise the importance of the NIHRC’s independence and accountability. We note that it has full participation rights at the UN Human Rights Council. The Government must ensure that any proposal that affects responsibility for NIHRC must not put at risk its accreditation and compliance with the Paris Principles.

169. In order to maintain the independence of the NIHRC, Professor O’Flaherty emphasised that responsibilities should be devolved to the Northern Ireland Assembly, as opposed to the Executive:

If provision were put in the Bill whereby devolution may be anticipated, we would like to propose that the nature of the devolution be explicitly indicated as one whereby the commission would be accountable not to a Ministry or Department of government in the Executive but directly to the Assembly. That is the model that operates, apparently successfully, in Scotland, where the Scottish Human Rights Commission is answerable not to the Scottish Executive in the first instance but to the Scottish Parliament. In making that point, we observe that recent good international practice focuses on the need for a close nexus between the parliamentary body, in our case the Assembly, and the national human rights commission. The Belgrade principles158, drawn up by experts from many European

156 Ev 107
157 Q192
158 The Belgrade Principles were agreed at independent expert level in February 2012 and are awaiting approval by the General Assembly of the UN and set out the international standards for the relationship between national human rights institutions and parliaments.
countries, including the United Kingdom, and adopted in 2012, set out that emerging good practice.

170. We advise this approach in the event that the Government does decide to devolve responsibility for arms-length bodies: we recommend that those responsibilities be devolved to the Northern Ireland Assembly. This would be consistent with good international practice, as set out in the Belgrade Principles. We further recommend that, if responsibility for the NIHRC is devolved to the NI Assembly, that the NIHRC should still be able to retain responsibility for the scrutiny of non-devolved matters such as national security and terrorism. The NIHRC provides valuable scrutiny of policy and protects human rights, and no proposal should inhibit its effectiveness.
4 Treatment of the Bill in the House

171. When she appeared before us on 7 March 2013, we asked the Secretary of State whether she envisaged the substantive Bill being referred to the Northern Ireland Grand Committee or whether its Second Reading would be debated on the Floor of the House. Her response was that she “was envisaging an ordinary Second Reading, but we have not made final decisions on exactly the way in which it will proceed through the House.”

Since the Bill in its current form is “a legislative proposal or other specified matter relating exclusively to Northern Ireland,” the Northern Ireland Grand Committee would be an appropriate forum for the Bill’s Second Reading.

172. However, the substantive Bill is likely to deal with constitutional matters, such as whether members of the House of Lords should continue to be allowed to sit as MLAs and whether TDs should be allowed to stand as MLAs. We therefore agree with the Secretary of State’s implication that the Bill’s Second Reading debate should be taken on the Floor of the House, and we so recommend.

173. We also asked the Secretary of State whether the Bill, following its Second Reading, would be committed to a Public Bill Committee (PBC) or to a Committee of the whole House. Her reply was that the Government “have not made a final decision, but I was assuming it would be a Committee in ordinary way.” Whilst committing the Bill to a PBC would have the advantage that that Committee would be able to take evidence, perhaps from organisations or individuals that we did not have time to take evidence from ourselves, we consider that the Bill has important constitutional aspects, such as excluding certain categories of persons from membership of the Assembly, which should properly be dealt with only by the House itself. We therefore recommend that its committee stage should not be undertaken in a Public Bill Committee but, following Second Reading, the Bill should be committed to a Committee of the whole House.

159 Q561
160 Standing Order No. 114
161 Q561
Conclusions and recommendations

Political donations and loans

1. We recommend that Clause 1(3) be amended so as to provide that the Electoral Commission can disclose donor identity only where there is express consent from the donor, for donations made before October 2014. As drafted, the Electoral Commission needs only show reasonable grounds to believe that there was consent before breaching confidentiality. This does not correspond with the legitimate expectation of those donors who donated on the basis that their donation would be confidential. (Paragraph 11)

2. Full transparency of donations and loans should be regarded as the norm and in principle, therefore, we would like to see political donations and loans in Northern Ireland subjected to the same regime that operates in Great Britain as soon as possible. Given the apparent insignificant level of donations over the £7,500 threshold, and the overall improvement in the security situation, we are not convinced that there is sufficient evidence to justify continuing the current position and we therefore recommend that from October 2014 all donations over £7,500 in Northern Ireland should be made public as in Great Britain. (Paragraph 29)

3. We recommend that the substantive Bill places a statutory duty on the Secretary of State to consult with the appropriate security authorities on the general level of risk to political donors before modifying the current confidentiality arrangements in implementing the recommendation made in paragraph 29 above. (Paragraph 34)

4. We recommend that the NIO use the new order-making power created by the draft Bill to allow the Electoral Commission to publish anonymised details of all individual donations and loans that have been reported since 2007. The Electoral Commission should also be able to indicate where multiple donations have been made by a single anonymous donor. (Paragraph 37)

5. While we understand the concerns raised about the potential influence of non-UK residents on elections in Northern Ireland, we do not consider that it would be appropriate to ban donations from individuals and bodies resident in the Republic of Ireland. However, we are concerned about overseas donations being made to political parties operating in Northern Ireland via the Republic of Ireland. We recommend that the Secretary of State includes provisions in the substantive Bill that will close this loophole. (Paragraph 44)

Dual Mandates

6. Being an MP or an MLA is a full-time commitment, requiring focus and diligence. However, we believe that a varied legislature is a vibrant one, and Parliamentarians should not be prevented from outside employment. The quality of debate is increased when MPs bring a different expertise to the chamber. But that is different from the responsibilities of sitting in separate legislatures, and we welcome the Government’s decision to end double-jobbing. (Paragraph 58)
7. We take the view that the abolition of dual mandates should be applied consistently across both Houses of Parliament, and recommend that the Government include a provision in the substantive Bill to this effect. The role of an MLA is a full-time role, just as is the role of an MP. Notwithstanding the distinctions in roles and appointment of members of the House of Lords, we do not consider that the Assembly is best served by members who have other responsibilities in other legislatures. (Paragraph 66)

8. We consider that it would be illogical and potentially inflammatory, to establish a position whereby a member of the UK Parliament was excluded from being an MLA but a member of any other legislature was not. We recommend that a provision be inserted into the substantive Bill, which would amend section 1(e) of the Northern Ireland Assembly Disqualification Act 1975, as amended by the Disqualifications Act 2000, so as to disqualify a member of the Oireachtas, from sitting simultaneously in the Northern Ireland Assembly. Evidence we have received from all political parties in Northern Ireland suggests that such a disqualification would have broad political support. (Paragraph 75)

9. We recommend that the substantive Bill contains a provision to disqualify members of Commonwealth legislatures from sitting in the Assembly. If we disqualify MPs and TDs, on the basis that dual mandates are not effective, then that principle should be extended to Commonwealth legislatures as well. (Paragraph 76)

10. Whilst we appreciate that disqualification from the European Parliament is a matter for the European authorities, we believe that a prohibition on dual mandates should extend to MEPs in the Assembly. The Government should legislate to provide that individuals are ineligible for Assembly membership if already MEPs. Such legislation would not interfere with the workings of the European Parliament, but would be within the powers of the UK Parliament to decide which individuals are eligible for membership of the Northern Ireland Assembly. (Paragraph 80)

11. We recommend that the Government brings forward measures to prohibit double-jobbing between the Scottish Parliament and Westminster. Maintaining the alternative position would no longer be tenable, as dual mandates would be prohibited in respect of both Northern Ireland and Wales. Logic and even-handedness dictate that such a prohibition must be applied to Scotland as well. (Paragraph 84)

The Justice Minister

12. We welcome the proposals which allow the Justice Minister to enjoy the same security of tenure as other ministerial posts. We accept that, at present, the Justice portfolio is sensitive in ways other ministerial portfolios are not and so we agree that the retention of a cross-community vote in appointing the Justice Minister is appropriate for the meantime. We welcome the decision to appoint the Justice Minister immediately after the First Minister and deputy First Minister, thus remedying the current anomaly where the party holding the Justice Ministry is afforded an "additional" ministerial post disproportionate to its electoral performance. (Paragraph 94)
13. Following the successful election of the First Minister and deputy First Minister, it is vital that the Executive be appointed. We would not wish to see the formation of the Executive jeopardised by failure to appoint a Justice Minister. We recommend that the substantive Bill include a mechanism to provide for the appointment of the Justice Minister in the absence of political agreement between parties following an Assembly election. (Paragraph 98)

**Electoral Registration and Administration**

14. We had some concerns that Clause 10 may inadvertently penalise persons suffering from serious illnesses or learning difficulties in instances where their signature appears different from their usual signature. Clarification is required on the face of the substantive Bill to ensure that honest voters are not inadvertently penalised by this clause. (Paragraph 101)

15. We welcome the provisions in the draft Bill to improve electoral registration in Northern Ireland and support of measures which would assist the Chief Electoral Officer in building an accurate and complete electoral register. We recommend that the Government consult with key stakeholders to assess whether it would be feasible and desirable to insert an additional Clause in the substantive Bill which would allow the Registrar General and the staff of the Northern Ireland Statistical Research Agency (NISRA) to make use of electoral registration information for the purposes of statistical and analytical work connected to the census. (Paragraph 103)

16. In principle, we would like to see the Chief Electoral Officer in Northern Ireland subjected to the same performance standards as apply in the rest of the UK. We recommend that the Government considers the outcome of the current performance standards pilot, which is due to end in March 2013, and, if appropriate, insert a new clause in the substantive Bill to extend the performance standards to the Chief Electoral Officer in Northern Ireland. (Paragraph 109)

**Equality duties**

17. We recommend that the substantive Bill confirms that Clause 11 will not be used to partially designate a public authority which is already subject to a full designation in Northern Ireland. We also recommend that the Government outline the limited purposes for which this power will be exercised and consider what, if any, safeguards should accompany it, so as to ensure that public authorities which may usefully be fully designated continue to be so. (Paragraph 113)

**Regulation of Biometric Data**

18. Clause 13 of the draft Bill is a sensible way to ensure that the Secretary of State can bring into force an Order for non-devolved matters, to correspond with any Northern Ireland Assembly legislation on the regulation of biometric data in respect of devolved matters, if and when the Assembly chooses to legislate. We expect that the decision to legislate in the Assembly will no doubt be subject to scrutiny in terms of human rights, privacy and adequate safeguards, and that process of scrutiny should be undertaken carefully. (Paragraph 117)
Assembly size, length of term and future election dates

19. Compared with the Scottish Parliament and with the National Assembly for Wales, the size of the Northern Ireland Assembly is disproportionately high, and there is clearly scope to reduce the number of MLAs. We understand that formula for the number of MLAs is determined in part by the number of Departments in the Northern Ireland Executive and we look forward to the Assembly Executive and Review Committee’s (AERC) findings. Any decision on this matter should be taken only with broad support from political parties in Northern Ireland and so we urge the Government to continue to engage with the parties and take appropriate steps to facilitate the emergence of a consensus position on the optimum size of the Assembly. (Paragraph 129)

20. We are concerned that extending the current term to 2016 would be contrary to the expectations of the electorate at the last Assembly election in 2011 and recommend, therefore, that the current Assembly term should end, as planned, in 2015. (Paragraph 133)

21. We have not heard convincing arguments that a move to five year fixed terms on a permanent basis would be of benefit to the people of Northern Ireland. We recommend that, before making a decision on whether to permanently move to a five year fixed term, the Government should evaluate the impact this move would have on all those who are involved in the electoral process. After this study, we recommend that the Government reconsider whether a permanent move to five year fixed terms would be appropriate for the devolved legislatures in Northern Ireland and Scotland, as well as in Wales. (Paragraph 139)

22. We welcome the changes the Chief Electoral Officer is making to help improve planning for future elections. We urge the Government to assist the Chief Electoral Officer in his planning by providing him with notice of future election dates by November 2013 and ensuring that any legislation for combined polls is in place six months in advance of an election taking place. (Paragraph 148)

23. We recommend that the Government commission a comprehensive UK wide research study which explores the impacts of combining elections. This would then provide an evidence base for informing future decisions about combined polls. (Paragraph 151)

Government and Opposition

24. We note that AERC is currently reviewing the issue of procedural changes in the Assembly, which touch on the question of opposition. We look forward to considering those findings in detail. We note that there appears to be some appetite for a shift towards an “official” opposition within the Assembly. Such an opposition would have to be fully funded and resourced, and we encourage the Government to assist the parties in devising a way forward. Any alternative arrangements should be guided by the fundamental principles in the Belfast (Good Friday) Agreement. (Paragraph 158)
Devolution of responsibility for Arms-Length Bodies

25. We note that the Government has not yet consulted on the proposed devolution of responsibilities for arms-length bodies. The NI Human Rights Commission is just one body potentially affected by this proposal. It is a unique institution, with its origins in the Belfast (Good Friday) Agreement. We recommend that the Government consult on the devolution of responsibility for arms-length bodies before making any changes to arrangements relating to the NIHRC. We therefore request that the Government consult widely on this issue before bringing forth draft provisions for inclusion in the substantive Bill. (Paragraph 167)

26. We recognise the importance of the NIHRC’s independence and accountability. We note that it has full participation rights at the UN Human Rights Council. The Government must ensure that any proposal that affects responsibility for NIHRC must not put at risk its accreditation and compliance with the Paris Principles. (Paragraph 168)

27. We advise the following approach in the event that the Government does decide to devolve responsibility for arms-length bodies: we recommend that those responsibilities be devolved to the Northern Ireland Assembly. This would be consistent with good international practice, as set out in the Belgrade Principles. We further recommend that, if responsibility for the NIHRC is devolved to the NI Assembly, that the NIHRC should still be able to retain responsibility for the scrutiny of non-devolved matters such as national security and terrorism. The NIHRC provides valuable scrutiny of policy and protects human rights, and no proposal should inhibit its effectiveness. (Paragraph 170)

Treatment of the Bill in the House

28. We agree with the Secretary of State’s implication that the Bill’s Second Reading debate should be taken on the Floor of the House, and we so recommend. (Paragraph 172)

29. We recommend that the Bill’s committee stage should not be undertaken in a Public Bill Committee but, following Second Reading, the Bill should be committed to a Committee of the whole House. (Paragraph 173)
Formal Minutes

Wednesday 20 March 2013

Members present:

Mr Laurence Robertson, in the Chair
Mr Joe Benton
Oliver Colvile
Naomi Long
Lady Hermon
Kate Hoey
Nigel Mills
Ian Paisley
David Simpson

Draft Report (Draft Northern Ireland (Miscellaneous Provisions) Bill), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 173 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, along with written evidence reported and ordered to be published on 25 February and 6 March.

[Adjourned till Wednesday 17 April at 2.15 pm.]
Witnesses

Monday 25 February 2013

Trevor Reaney, Clerk/Director General, Northern Ireland Assembly
Steven Agnew MLA, Leader, and Ross Brown, Research Assistant, Green Party in Northern Ireland
Jim Allister MLA, Leader, TUV
David McNarry MLA, Stormont Party Leader, and Councillor Henry Reilly, UKIP
David Ford MLA, Leader, and Stewart Dickson MLA, Chief Whip, Alliance Party
Professor Michael O’Flaherty, Chief Commissioner, Virginia McVeia, Director, and David Russell, Deputy Director, Northern Ireland Human Rights Commission

Tuesday 26 February 2013

Mike Nesbitt MLA, Leader, and Tom Elliott MLA, UUP
David McClarty MLA
Rt Hon Peter Robinson MLA, Leader, and Richard Bullick, Special Adviser, DUP
Dr Alasdair McDonnell MP MLA, Leader, and Conall McDevitt MLA, SDLP
Raymond McCartney MLA and Sean Oliver, Special Adviser, Sinn Féin

Wednesday 6 March 2013

Sir Christopher Kelly, Chairman, Committee on Standards in Public Life
Seamus Magee, Head of the Electoral Commission in Northern Ireland, Anna Carragher, Northern Ireland Commissioner, and Peter Horne, Director of Party and Election Finance, Electoral Commission
Niall Bakewell, Northern Ireland Activism Coordinator, and Declan Allison, Northern Ireland Campaigner, Friends of the Earth

Thursday 7 March 2013

Rt Hon Theresa Villiers MP, Secretary of State for Northern Ireland
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Oral evidence

Taken before the Northern Ireland Affairs Committee
on Monday 25 February 2013

Members present:
Mr Laurence Robertson (Chair)
Mr David Anderson
Oliver Colvile
Mr Stephen Hepburn
Lady Hermon
Kate Hoey
Dr Alasdair McDonnell
Ian Paisley
David Simpson

Examination of Witness

Witness: Trevor Reaney, Northern Ireland Assembly, gave evidence.

Q1 Chair: Welcome Mr Reaney and can I ask you to introduce yourself and explain your role.
Trevor Reaney: Thank you Chair. As the first witness of the day may I welcome you to Parliament Buildings and wish you well for your series of evidence sessions over the next two days.

My role is as Clerk to the Assembly and Director General. As Clerk I am the chief procedural adviser to the Assembly, its Speaker and Committees and as Director General I am in effect the Chief Executive Officer of the Assembly Commission and the Secretariat, which supports the Assembly. So that introduces me. Chair.1
Chair: Thank you very much. I would like to run through the Bill, if we may, perhaps starting with the donations and loans changes that are proposed, obviously with a view to increasing transparency and, perhaps, bringing Northern Ireland into line with the rest of the United Kingdom. Do you view that as beneficial to politics in Northern Ireland?
Trevor Reaney: I need to be very careful not to stray into the territory of my political masters. Specifically on the issues of donations, openness and transparency, the Northern Ireland Assembly, as with other institutions, has been moving to be more open and transparent. We publish Assembly expenses and the salaries of Members, as well as a detailed register of interests and a code of conduct, and we work through those. Transparency in the widest sense is of benefit to the political institutions and the public perception of them. I would hesitate to comment specifically on political donations.
Chair: Thank you. Are there any other questions on this section on donations and loans?

Q2 Mr Anderson: In the response from the Electoral Commission, we were told that there was a possibility that, because various parties are exposed to different threats, if the Bill goes through, it would be possible to have different levels of transparency and reporting. Do you think that that is a possibility?

Trevor Reaney: I think that any of those issues are possibilities but I have to say again that I would be careful not to stray into territory that, perhaps, the political leaders would be better commenting on.
Q3 Chair: Would that be workable, though?
Trevor Reaney: In my experience, almost any of these things are workable. If considerable thought is put into planning them and setting the arrangements, any political agreement can be made to work.

Q4 Kate Hoey: You probably know the answer to this, but it would be good to hear whether you feel the same. Why do you think some political parties are so against this when Friends of the Earth is so much in favour, absolutely bombarding us with well-articulated letters?
Trevor Reaney: In all these things, there are differing political views and perceptions. Every political party and every lobby group or organisation has its own perspective. My perspective is that anything that encourages the openness and transparency of the political system can do nothing but good to enhance public credibility and confidence.
Chair: Apparently, mobile phones are interfering with the sound system. Turn them off, please.

Q5 Kate Hoey: Obviously, you cannot get involved in any of the party political issues. The reason that is put forward by most people is the security issue. If Northern Ireland is supposedly back to being a normal country, which we keep being told it is, why should donations not be open and transparent like the rest of the United Kingdom?
Trevor Reaney: You make an interesting comparison with the rest of the United Kingdom. Generally speaking, we are on a journey moving forward to normality. The Assembly, as an institution, is developing and improving from the baseline of the Good Friday Agreement and all the political agreements that have gone with it. Around these issues, my interest is in ensuring that we improve the effectiveness of the Assembly and its operations in a way that improves how Northern Ireland is governed. These are other issues that are tangential to that core purpose, which is the one that I focus on in my role here as the Clerk/Director General of the Assembly.

1 Mr Reaney submitted a statement to the Committee which has been printed as written evidence (Ev 117)
Q6 Kate Hoey: So, really, you think that it would be good for transparency and openness, but that is as far as you wish to go.

Trevor Reaney: That is as far as I wish to comment publicly.

Q7 Lady Hermon: I am sorry to have come in a few moments after you started. It is very nice to have you as our first witness this afternoon. As a matter of curiosity, has a donor to a political party ever written to you to say that they would be fearful for their safety if their donation were made public? Has that evidence ever been given to you?

Trevor Reaney: That has never crossed my desk in my five years here at the Assembly. However, it is probably not the sort of thing that would cross my desk; that might be for others. Certainly, however, nothing has come to my attention.

Lady Hermon: It is always best to ask. Thank you.

Q8 Ian Paisley: Trevor, it is good to see you. You bring experience to your current post from your former role as chief executive of the Policing Board for Northern Ireland. Combining that with your experience in your current role here, you will be aware that there are concerns of a security nature that would need to be overcome to get to greater transparency. Is that fair?

Trevor Reaney: Indeed. Security in Northern Ireland remains an issue. That is patently obvious to all. It is for others to assess the extent of that and the degree of progress that can be made. It certainly remains an issue in our society.

Q9 Ian Paisley: I do not want to put words into your mouth. Essentially, you have indicated that you believe that, where there is political will, there is a political way. Do you think that, in that, there are the components to make a halfway-house arrangement, or do you think that that would just create more problems? Should it be simply the case that you do or do not publish, or is there a halfway-house arrangement?

Trevor Reaney: Generally, in any political development, and moving forward, there are steps along the way. This may be an issue where a step can be taken. However, I say again that that is for others to make a judgement on; I would rather not comment on that.

Q10 Chair: We will move to the dual mandate proposals. Obviously, the Bill is about Northern Ireland. There is a legal possibility of dual mandates between Scotland and the UK Parliament, and Wales and the UK Parliament. Is it fair to single out Northern Ireland?

Trevor Reaney: In general terms, it is difficult to see why the three devolved institutions should be handled differently.

Lady Hermon: That is interesting.

Trevor Reaney: I have quite close relationships with my colleagues in Scotland and Wales. Each institution is at a different stage of its evolution and development. In parliamentary terms, we are all still relatively young organisations. That has to be taken into account. On principle, I see no need to differentiate between the three devolved institutions.

Q11 Lady Hermon: If you had your choice, would you choose not to legislate to prohibit dual mandates?

Trevor Reaney: Under the draft Northern Ireland (Miscellaneous Provisions) Bill, as you well know, the only people who would be disqualified would be MLAs who have a mandate in the House of Commons, but not in the House of Lords for some unknown reason. Would you rather there were no legislation for Northern Ireland, Scotland or Wales, or would you rather they had identical legislation?

Trevor Reaney: I think the question is about the differentiation between the three. As I said, on principle, I see no reason for that. The judgement as to whether there needs to be legislation is for others to make. I would not like to comment on that issue.

Q12 Lady Hermon: If you disapprove of the differentiation between Scotland, Wales and Northern Ireland—and you have strongly disapproved of it in your evidence already—which way would you like the Secretary of State to go? Is it helpful for us as a Committee to sit here and discuss it with people who will be engaged at the front line with these changes. You must have a preference; if you do not like it, what would you like to see?

Trevor Reaney: Well, I did not say that I did not like it. I said that there should be consistency, and, in my view, I saw no reason why there should not be consistency. If you were to ask me about the impact on the Assembly of the voluntary change away from dual mandates, I would say that it has had a positive effect on the amount of time that our elected representatives have for Assembly business. When it comes to prioritising that, however, it is for the political parties to make their judgements as to how best to allocate their Members and their Members’ time.

Q13 Chair: It is not necessarily the political parties. I think it is coming from the UK Government, is it not? I do not mean to be pedantic, but given that it is coming from the UK Government, it seems to me a little strange that we do not have one Bill that covers the whole of the United Kingdom. Do you agree?

Trevor Reaney: I would rather reserve comment on that, Chair.

Chair: I think you probably do.

Q14 David Simpson: Trevor, it is good to see you again. I am sure that coming here is a daunting experience compared with your time at Craigavon Borough Council. I welcome you here to give evidence. What real impact does double-jobbing have on the working of the Assembly? If it were to stop, through this Bill, or whatever means, would it make the Assembly more effective or efficient, taking into consideration that very few Members are double-jobbing?

Trevor Reaney: As I said, the number of MLAs who have dual mandates has been reducing on a voluntary basis. As I said earlier, the main impact, as I see it, is on the amount of time that MLAs have for their duties
in the Chamber, on Committees and, I am sure, for constituency work. With respect to effectiveness, the greater availability of Members’ time is a significant issue. However, numbers is not the only issue that influences the effectiveness of the institution. For example, we are working on a significant professional development programme for Members called Politics Plus. We are using that to see whether there is an opportunity to increase the effectiveness of our Members and the delivery of service in the Chamber and the Committees of the House.

Q15 Mr Hepburn: As you understand it, what are the reasons for, or the motives behind, singling out Northern Ireland for ending dual mandates?

Trevor Reaney: Again, that is perhaps not for me to answer, except to say that this is a Northern Ireland Bill and I imagine that, in those terms, we would not expect it to deal with other locations such as Scotland, Wales, etc. It is focused on Northern Ireland. It might be better to ask the Secretary of State about the motivation.

Chair: We probably will.

Q16 Oliver Colvile: Do you think that there is a risk that not allowing people to sit here and at the Westminster Parliament could lead to less coordination in the decision-making process and less information transfer? How do we make sure that your Members here are well informed on what is going on in the wider United Kingdom?

Trevor Reaney: We invest significantly in our Research and Information Service to support our Members with information on wider issues in the United Kingdom and, indeed, Europe and internationally. We have made a very significant investment in professional staff who support our Members on flows of information. We place a significant priority on and invest significant resources in keeping them briefed and aware of issues beyond Northern Ireland.

Q17 Oliver Colvile: I quite understand that research is a very important part of it. However, you also get quite a large amount of information by seeing people and talking to them. Do you not think that that sort of informal, gossip kind of approach is helpful?

Trevor Reaney: Perhaps we would describe it as networking.

Lady Hermon: That is better than gossip.

David Simpson: Not bonding.

Trevor Reaney: We are certainly keen that our Members—as they have as part of various programmes recently—go to Westminster and meet MPs and the respective Committees of the legislatures and share in that capacity, rather than in the capacity of holding a dual mandate. Supporting our Members in doing their job is a significant part of my work of ensuring that they are able to be as effective as they can possibly be.

Q18 Ian Paisley: On disqualification, if enacted, the new Bill would exclude the following from being a Member of the Assembly: a Member of the House of Commons; a member of the judiciary; a member of the Civil Service; a member of the armed forces; or a member of the Police Service. Interestingly, it also excludes “a member of a legislature of any country or territory outside the Commonwealth (other than Ireland)”. That indicates that you could be a TD and a Member of this House, but you could not be a Member of this House and a Member of our sovereign Parliament. Should that anomaly be addressed?

Trevor Reaney: That, again, is a political question. The principles of time and availability remain the ones that I would articulate. I would rather not comment on the political nuances around that question.

Chair: Does that not still apply? Sorry, Ian.

Q19 Ian Paisley: Yes, but, technically, you would have a situation where you are legislating and managing the diminishing of representation in this place from Westminster, for whatever reason, but actually allowing—there is a permissive clause in this—a TD from what is, in law, a foreign country that is not even in the Commonwealth to sit in this country. Surely that is wrong and would have to be addressed.

Trevor Reaney: Again, that would be a political issue that I would rather not comment on.

Q20 Ian Paisley: It is more than political, Trevor. I am not trying to push you into making a political statement. It is a technical matter. That would cause problems in how you would, for example, facilitate such an arrangement.

Trevor Reaney: I think that it would bring challenges in how that would be facilitated and the conflicts to which it may give rise, but I would rather discuss those things at a later date. They are, perhaps, for political parties to deal with.

Q21 Kate Hoey: You talked about time—that is the part that you can talk about. There may not be any, but I presume that some MLAs spend quite a lot of their time doing other jobs as lawyers, etc. Certainly, there are people in the House of Commons who still spend mornings in the courts. How do you feel about that? It is not addressed in the Bill, but it seems funny that we are going to stop one kind of double-jobbing but allow other people to work and take a public salary.

Trevor Reaney: The broader issue of elected Members involvement in work outside the political arena, whether it is in the private sector or voluntary work, or whatever, is that it takes Members’ time away from the core business for which they have been elected. In that context, I wish to see us maximising the availability of Members’ time and ensuring that, when Members are available, we maximise the use of that time.

We have just embarked on a review of our Committee system, which is largely being driven by the future prospect of having fewer MLAs and, through a reduction in the number of Departments, fewer Statutory Committees. However, the volume of work in scrutiny and legislation will not reduce. Therefore, the question for us is how effectively we can manage
Q22 Kate Hoey: So they may not have as much time to do their other, for example, law work.
Trevor Reaney: They may not.

Q23 Kate Hoey: I have one final point. We are talking about legislating on dual mandates but, surely, the public and the voters can make the ultimate decision by choosing not to vote for the person who is doing another job.
Trevor Reaney: They can, and that is a judgement the electorate can make each time there is an election.

Q24 Lady Hermon: I want to come back to the initial point you made on this topic, which was on your primary focus. I perfectly understand why your focus is on improving the efficiency of the Assembly, of which I am a great supporter, and Members' time, so that there is greater availability. Coming back to the Bill before us, bearing in mind that you want this to be a more effective institution and that you want Members to be more available, is there any justification for the distinction in the Bill between ending the dual mandate for those who sit in the House of Commons, but not for those who sit in the House of Lords? One could continue. I am not singling out any particular individual. However, on the principles of the Bill, and bearing in mind the things you are looking at to improve in the Assembly, is there any justification for not including a disqualification from the House of Lords?
Trevor Reaney: In the terms that you have described it, no.

Q25 Lady Hermon: Thank you; we are agreed on that. However, I am sure that we would like to hear from the Member who leads a party and works very diligently in this House and in the House of Commons. It goes back to the point about making connections, post devolution. That point has to be addressed. Post devolution, links between the devolved Assembly here and Westminster must be maintained. That is one of the issues that, without—
Chair: He is going to be questioned on that tomorrow.

Q26 Dr McDonnell: Dr Alasdair McDonnell: Yes. It is a question of whether I will offer an opinion or be asked questions. Trevor, my question is how do we maintain the essential connectivity? We can have all sorts of formal connectivity between Departments here and in London, but how do you see us maintaining broad connectivity with the House of Commons without some overlapping membership?
I happen to be caught in the headlights, if you like. I am in two minds about dual mandates: I see a case for and against it. I feel that, if we remove all our people, linkages will break and we will become isolated to some extent. I also see a case that Lady Hermon very eloquently articulated at our meeting last week for the likes of the Minister of Finance being able to make his or her case on the Floor of the House of Commons, should he or she be an MP. It is not just on the Floor of the House of Commons, because, in my opinion, 80% to 85% of the business in the House of Commons is done in the corridors, the Committee Rooms and places like that. The formal stuff is only for the television. How could that issue be managed?
Trevor Reaney: Our main focus in recent times has been on the European Parliament and other EU institutions. We have invested considerable time and effort, have put in additional staff and resources and have created various forums in which our Members can become familiar with the European context and the work of the European Parliament. I take the point in relation to the UK Parliament. It is not an area into which we have put the same resource or investment in recent times. As you said, if, in future, we have no dual mandates, I think that we need to look as creatively at those connections and invest in them. However, the pattern of dual mandates is not consistent across all political parties. That matter also needs to be addressed for those parties that do not have an MP.

Q27 Lady Hermon: Have I understood you correctly, Mr Reaney? Was a deliberate decision made to build up and invest in the relationship with and to create a better understanding of the European Parliament? How has Westminster fallen so far behind? Was that a deliberate decision, was it accidental or was it something that has happened along the way?
Trevor Reaney: There are probably two dimensions to that. One is that the degree of contact between officials and Members of the Assembly and the UK institutions has been more frequent and more extensive than it would have been with Europe. Therefore, there was a bigger gap, if I can put it in those terms, in the European context. It is also a matter of fact that, a few years ago, we had a dozen or so MLAs who were also MPs, and that was a significant connection. Quite rightly, as Dr McDonnell said, that number is reducing, and that may be something at which we need to look more proactively to see how we might address the issue. However, we have not specifically targeted that area.

Q28 Chair: I think that we had better move on to the Justice Minister proposals. Are there any questions on that?
I invite you to make comments. Do you see them as being a big improvement, or are there problems?
Trevor Reaney: From the point of view of the Assembly Administration, the key thing around the Justice Minister post is facilitating the nomination and appointment of the Justice Minister. It is fair to say that, no matter what the political or legislative arrangements are, we will effectively, as a professional staff, deliver whatever is appropriate. The nature of the terms of that appointment are very much one for political agreement. We will facilitate, and have facilitated, the appointment of Ministers at any
time, under whatever arrangements the politicians and legislation determine.

**Q29 David Simpson:** If there is no political agreement on it, how can the post be legislated for? What can happen in that situation?

**Trevor Reaney:** I suppose that I would take a simplistic view. Legislation can accommodate any set of circumstances or provide a framework for every set of circumstances.

**Q30 David Simpson:** Civil servants' spin can really come into play.

**Trevor Reaney:** I cannot prejudge or oversee the political decisions of a political agreement around such an issue. Once the administrative arrangements are put in place, or have to be put in place, we will do that as effectively as we can.

**Q31 Lady Hermon:** One area that we wondered about, along with a number of others, concerns omissions from the Bill.

**Chair:** Can I check that we are finished with the Justice Minister?

**Lady Hermon:** This is about the Justice Minister.

**Chair:** I am sorry.

**Lady Hermon:** I am putting the two things together. It is about what is not in the Bill and what we think should be in the Bill, and that is some sort of safety net. If, on the new basis of appointing the Justice Minister, one cannot be agreed on, what should happen? It, for example, after an Assembly election, the First Minister and the deputy First Minister cannot be agreed on, I think that I am right in saying that there is a period of grace of seven days, and then there is the awful possibility of another election. Am I correct?

**Trevor Reaney:** Yes.

**Q32 Lady Hermon:** There is no equivalent if the Assembly fails to agree on a Justice Minister under the new arrangements. In taking evidence, we wondered whether, given that it is such a sensitive post and could be a very controversial one, there should be written into the Bill a similar safety net, such as the system for other elections. It does focus people's minds wonderfully.

**Trevor Reaney:** I think that the legislation needs to provide for a plan B if plan A does not work. I would not like to comment on what that might be. I think that the non-appointment of a Justice Minister would have more impact on the wider operation of the political institutions and the Executive side of business than it would on the Assembly, but a plan B is always useful to have.

**Q33 Lady Hermon:** Yes. Sorry, I was not actually inviting you to agree with me that we should call another election. I do not think that that would be popular with the electorate, so I would not like to be misunderstood. However, a plan B would be good, so we should have a plan B in the Bill. That is really what you would recommend?

**Trevor Reaney:** Yes. I suggest that it would be a sensible thing to have.

**Lady Hermon:** Thank you.

**Q34 Chair:** Are there any other issues that you would like to cover that are not in the Bill and that you think are under serious consideration?

**Trevor Reaney:** I looked at the Bill's provisions and also at the "Measures still under consideration for potential inclusion in the Bill" in the document. It is the measures still under consideration where most of my interest lies: the size of the Assembly; the length of the Assembly term, and so on. I would urge political agreement on those matters as quickly as possible. Indeed, the Assembly Speaker has been—[Inaudible.]—the length of the Assembly's mandate. The longer that uncertainty on those issues continues, the more difficult it is to plan for the future. The more notice that we have of change, so much the better for doing that.

The matter of "Government and Opposition" is under review by the Assembly and Executive Review Committee. You will be aware of that Committee's previous work looking at and reporting on the size of the Assembly and the reduction in the number of Departments. The Committee has just launched a call for evidence on provisions for an opposition and the use of d'Hondt and community designation. That Committee is looking specifically at those issues, and I am sure that the provisions for an opposition in particular will be of interest to this Committee as its work progresses.

As the work of the Assembly continues, minor technical issues from a procedural point of view may come forward, but I do not think that those are appropriate for this Bill or at this time. They may be for a little further down the road.

**Q35 Ian Paisley:** It would be helpful if you spelled out the formation of the Assembly and Executive Review Committee; for example, who chairs it and who is on it. Furthermore, from an operational point of view, how is the Assembly able to effect the changes and positions? Apart from the Assembly and Executive Review Committee, what have you been able to do up until this point to effect the changes and positions that you want to see in the Bill?

**Trevor Reaney:** Will Chair, very happily provide the details of the membership composition and remit of the Assembly and Executive Review Committee for your records, and, indeed, the reports that that Committee has produced.

Picking up on the second point that Mr Paisley raised, I will say that one of the significant things coming out of all that work is the Committee review. That is looking at our Committees' structure, role and purpose, how they go about their business, and their processes and systems. The Committee system has been viewed as probably the engine house of the Assembly—the most significant element for the scrutiny and challenge of Departments and Ministers. Looking at enhancing and strengthening that is perhaps one of the most significant elements coming out of the work being done by the Assembly and Executive Review Committee, and the recommendation that that Committee made is being taken forward.
Q36 Ian Paisley: To get to this point, what role, if any, did your team or the Assembly play in helping to form the Bill?

Trevor Reaney: In forming the Bill?

Ian Paisley: Yes.

Trevor Reaney: We had no direct impact in—

Q37 Ian Paisley: Yes, but how did you inform it? The Bill did not just come out of the air. What specific role did this place play in informing Northern Ireland Office Ministers on how to draft the Bill, if at all?

Trevor Reaney: Probably other than the Assembly and Executive Review Committee and its reports, which undoubtedly the Secretary of State and the NIO considered, the representations and discussions with party leaders influenced that. The Administration of the Assembly had no direct input into the Bill. Our work has been in support of the Assembly and Executive Review Committee, through providing research and advice, and then there was the work that it did in producing its report.

Q38 David Anderson: I wish to go back to the issue of the Justice Minister. The proposal is, effectively, to elect the Justice Minister in the same way in which you do for every other Minister. If it is not possible to find a Justice Minister, is that any more or less important than being able to find, for example, a Health Minister?

Trevor Reaney: Ministries should, in principle, all have the same status and importance. The history of Northern Ireland would perhaps make the justice portfolio the most sensitive and contentious, perhaps requiring into even the foreseeable future some special attention that would not apply to mainstream Ministries such as health or education.

Chair: Thank you. We will have to draw matters to a close there. It has been very useful. Thank you very much.

Trevor Reaney: Thank you. Hopefully that has been of some assistance.

Chair: Very much so. Thank you.

Examination of Witnesses

Witnesses: Steven Agnew MLA and Ross Brown, Green Party, gave evidence.

Q39 Chair: Thank you very much for joining us, Mr Agnew. We will crack straight on, if we may. I invite you to introduce yourself and your colleagues briefly and give us your overall impressions on the Bill in, and I mean in just one or two minutes. We will then go into more detailed questions.

Steven Agnew: No problem, and thank you for the opportunity to present. I am the leader of the Green Party and an MLA for North Down. Ross Brown is my researcher at the Assembly. He wrote the Green Party's submission to the consultation. I will make a few brief opening remarks. It is crucial for us that the Bill address the issue of transparency in political donations. With the exception perhaps of the by-election, which is soon, we believe that we cannot go into another election in Northern Ireland without full transparency. In its absence, we believe that voters are going into elections without the full information, and therefore they cannot make an informed decision. It is our view that the security argument has been used for too long as a smokescreen. We publish the names and addresses of candidates' agents and sponsors, and we believe that it is now time that political donors are also brought into full transparency.

We are widely supportive of the move to put an end to double-jobbing and to bring the role of Justice Minister more into line with other Ministries. On further Assembly reforms, we believe that making any major reforms to the Good Friday Agreement, which was seen as the people's agreement, should be done only with the people's agreement. We believe that there needs to be wider public engagement on that issue.

Chair: Thank you very much. We will start with questions on transparency in political donations and loans.
threat because they want to donate to a political party and support the political process?

Steven Agnew: I do not think it right at all that anyone should place democracy under threat, instances of which we have obviously seen in Northern Ireland of late, and it would not be unheard of in other parts of the UK, but people should do so knowing the clear circumstances and having made a considered decision. However, people choose whether to donate to political parties, just as it is a choice whether to stand for election or to be an election agent. As I said, I do not see any reason that political donors should be made a separate class from those others.

Ian Paisley: Thank you.

Q43 Mr Hepburn: If you think that the risk issue is minimal, what motives lie behind political parties wanting to keep the information secret?

Steven Agnew: I am not in a position to assess the security situation. I think that the Chief Constable rather than politicians should be referred to on that issue. I think that the motivation is that it suits political parties. I will not mention specific parties, but there are certainly perceived relationships between politicians and lobbyists. It would do those parties the world of good to be able to put to bed those suspicions. If political donations were open, I could ask whether a certain party is linked to a certain developer. The truth is that I do not know. The only way that we can put that type of speculation to bed is by having full transparency. In some cases, it suits parties to say that they represent their electorate, yet their large donors have considerable influence on politics. The influence of finance muddies the water of politics in a proper democracy. If we had transparency, people could see who was funding the parties and make an informed judgement as to whether they believe that there has been undue influence of money in politics.

Q44 Lady Hermon: It is very nice to see you here, Steven. He is a constituent of mine, although he has been a very nice opposition candidate on occasions as well. I ask for clarification of something that you said. You made it quite clear that you are not an expert on security and the threat that there may be to donors. However, in a throwaway line, I think that you said that you should refer to the Chief Constable in those circumstances. How precisely do you expect that to work? Would a donor write to the Chief Constable to say, “I am thinking about giving that lovely independent North Down MP so much money. She is not a party, but would I be at risk by doing so?” How do you expect that to work?

Steven Agnew: My point was about whether we should have transparency. To be clear, I was not talking about each individual donor. In the present situation, it has been the political parties that have argued that we need a level of secrecy, not the Chief Constable or security personnel. I am not aware of the Chief Constable ever saying that that is a requirement, although I stand to be corrected on that. It is not about each individual case.

GB is under the threat of international terrorism, yet we still have transparency. At no point have I heard any political party lobbying to have greater secrecy of donations in GB. As I said, we cannot, on the one hand, say that Northern Ireland is moving on and is moving towards more normalised politics but, on the other hand, say that there is a special category here that transparency does not apply to. My concern is over where money, big business and other lobbying interests interface with politics. That is the one area in which we have not normalised politics in Northern Ireland. It is an anomaly that I cannot reconcile.

Q45 Lady Hermon: Therefore, it is not that the Chief Constable would be notified of each individual donor?

Steven Agnew: No. Perhaps the Committee, in its deliberations, should seek the likes of the Chief Constable's opinion. I am sure that you have engaged with the NIO as well. I do not think that it is for political parties to make an assessment of the security situation.

Q46 David Simpson: Steven, you cannot possibly compare the international terrorism threat on the mainland to the guerrilla warfare that we have had here for 40 years. You cannot compare them. It is a smaller community. Everybody knows everybody. There are a lot of sensitivities. You could have worked with people for years in this country—you well know this—and the very people whom you worked alongside could have tried to shoot you. There is a difference. You cannot really compare the two.

Steven Agnew: I do make the comparison. You know more MPs than I do, but MPs have voted on some very controversial and emotive issues in the House of Commons, and there have been instances of intimidation. The intimidation is the same. My point is that Northern Ireland is not a special case in that regard.

Q47 Oliver Colvile: Would you say that the Green Party is the least controversial, and, therefore, you have the least amount of baggage? It is all very nice and easy for you to take that line, but there are others parties around the table, such as the DUP, Sinn Féin and others, that have drawn lines in the sand and so are potentially much more at risk.

Steven Agnew: I accept the point. It is a fair one to make. However, I would point to the Alliance Party, whose members, some of whom are colleagues from my constituency, have come under attack. The Alliance Party believes in full transparency and, like us, publishes its donations above a certain level online. Given that it has been the most recent target of threats and intimidation yet still believes in the principle—to the best of my knowledge the party has not changed its position on that—that helps make the argument that we in politics accept the risks. I went into politics post-conflict and did not expect to have to watch what I say for fear of intimidation. Those circumstances have arisen again, but I have made a choice as a politician, and I and the people who sign my nomination papers, my election agent and the people who canvass for my party all operate
in that context. I do not understand the differentiation for financial donors.

Q48 Oliver Colville: Given that you are keen, as I understand it, to be very transparent in everything that you do, why do you not publish your entire membership list as well?
Steven Agnew: I do not believe that there is undue financial influence there. Our membership is represented, for example—

Q49 Oliver Colville: Why not get rid of the £500 limit? Why not bring it right down?
Steven Agnew: I would not be completely opposed to that. There is an administrative issue involved. To do so would be burdensome, and I remain to be convinced that that burden would warrant the transparency. What is the issue of being a member of a political party as opposed to the financial influence, which has a stronger argument for transparency? It is not something that I have considered in great detail, but I am open-minded about it.

As you pointed out, I am keen not only to be transparent but to be seen to be so. However, I am not sure that there is a compelling argument to do what you suggest.

Q50 Oliver Colville: You might have a think about it.
Steven Agnew: I will certainly consider it.

Q51 Kate Hoey: All politicians in Northern Ireland have taken great risks at various times. I cannot understand why the risk to a donor is greater than that to the politician, the agent or the supporters who canvass. Can you tell me why you think that is the case or why people say that it is more dangerous?

Do you think that the planning process in Northern Ireland would be considered by people, in the nicest possible way, to be more “honest” if we did not have political donations?

Steven Agnew: That is a key point. Discussions on planning are when I most often get asked whether a political party is in bed with a developer or whoever it might be—

Kate Hoey: So to speak.

Steven Agnew: So to speak. I hear that a lot, particularly now when we are devolving planning to a local level, whereby councillors will not just give their opinion on planning applications but will make decisions on them. Those two things need to happen concurrently. I do not think that we should have devolved planning without greater transparency.

The current system has a level of political independence, but the suspicion remains that politicians still have an undue influence. Whether that is correct, I could not say, but that suspicion persists, and the only way to get rid of it is to have transparency.

I take your point: I do not understand the difference. You asked why a difference is being made between donors and other participants in the political process. I have no evidence on this because my party is transparent on the issue, but my suspicion is that it suits the political parties to hide the identity of those who give them money, and, indeed, it suits the donors to have those relationships in private and not in public. I can only speculate, because without transparency I do not know any more than the average voter.

Q52 Chair: OK, thank you. What are your views on the proposed changes to dual mandates?

Steven Agnew: We support the ending of dual mandates. We see the roles of MP and MLA as full-time jobs. The point was made about the differentiation for party leaders, but we are not compelled at this point to see such a differentiation. In our submission, we cited the example of the European Parliament, David Cameron does not feel the need to be in the European Parliament as well as at Westminster, nor would he be allowed to be, under the current rules. The case of Alex Salmond is different. He could stand as an MP, but made the decision to be solely in the Scottish Parliament. We very much believe in full-time commitments, particularly in Northern Ireland, where we have Ministers double-jobbing. That is unjustifiable, and we support the proposals in the Bill.

Q53 Oliver Colville: You are a campaigning organisation and have a strong message to sell, which is that you would like the country and the world to be much more environmentally friendly. Surely, though, having that great crusade in front of you is one reason why you want to make sure that you have an opportunity to co-ordinate that message across the United Kingdom as much as possible.

Steven Agnew: Absolutely. I would hope that parties have the internal structures whereby their MPs can talk to their MLAs.

Q54 Oliver Colville: Do to you talk to the Green Party MP, Caroline Lucas, quite regularly? Do you have an afternoon chat?

Steven Agnew: We are certainly in touch. We are different, in that we have individual executives. We are separate parties that share a common ethos and, equally, are both members of the European Green Party. We are not a single party, but we certainly communicate. We have a Green Islands Network, which brings together each of the parties of these islands. In that sense, we are slightly different from a single party that has MPs and MLAs, although we try to co-ordinate as much as possible and sing from the same hymn sheet, so to speak.

Q55 David Simpson: I have heard various interviews that you have given, Steven, and you espouse equality. Why do you believe that there is not equality with Scotland and Wales? Why is Northern Ireland being picked out in relation to double-jobbing and double mandates? Why does this not apply to Scotland and Wales?

Steven Agnew: My understanding is that Scotland and Wales ended dual mandates voluntarily.

Q56 David Simpson: No, it has not been legislated for.
Steven Agnew: I accept that it is not in legislation because it was not required. Northern Ireland parties
have said that they will end dual mandates at different times, but, to date, have failed to do so. That is why we believe that, if the House of Commons believes that dual mandates are a bad thing, it should legislate against them. I would have no problem with Wales and Scotland being brought into this legislation because it may not always be the case that they do not double-job. As it stands, however, Northern Ireland is a special case because it is the only region of the UK that has individuals double-jobbing as MPs and Assembly Members.

Q57 Lady Hermon: Steven, may I ask you to reflect on what you just said? You are accepting, are you not, that there will be discrimination within the United Kingdom if the Bill ends up on the statute book? If, for example, and this is most unlikely to happen, I were to run in the next Assembly election and the next Westminster election—

Steven Agnew: Please do not. [Laughter.]

Lady Hermon:—and win both seats—

David Simpson: That would scare you.

Lady Hermon: It would. If that happened, I would be made to choose between the two. However, the same would not apply to the Scottish Parliament or the Welsh Assembly. On a human rights, non-discrimination argument, surely the Bill has to be changed to remove the statutory ban or extend it. It cannot be in between. There cannot be a case of a little discrimination is all right for Northern Ireland. Do you agree with that?

Steven Agnew: I accept the point. My preference would be for the legislation to extend to Scotland and Wales rather than removing the Northern Ireland element. As I said, Scottish MSPs and Welsh AMs voluntarily do not double-job, but that might, I accept, not always be the case. So the way forward is to ensure that it is. I hope that, given that they made that choice voluntarily, they would support the legislation.

Q58 Lady Hermon: So before the Secretary of State for Northern Ireland can sign off that the Bill is compatible with her obligations, the Government's obligations or the European Convention on Human Rights, she needs to take some serious advice on that—otherwise, it would be discriminatory.

Steven Agnew: I accept that.

Q59 Lady Hermon: May I lead you further down that path? Agreement on the Bill, as you know because you referred to it, would end the dual mandate of Assembly Members and Members of the House of Commons. Under this Bill, however, you could still hold a dual mandate by being in the Assembly and the House of Lords. Surely, that, too, should be changed before the legislation gets on to the statute book.

Steven Agnew: We have had some conversations about that in the party.

Lady Hermon: You hesitated over that.

Steven Agnew: I know. Apologies.

Q60 Lady Hermon: Why do you hesitate over the dual mandate for Members of the House of Lords and the Assembly?

Steven Agnew: Probably, if I am completely honest—

Lady Hermon: Please be honest. We expect it.

Steven Agnew:—the House of Lords is more of a mystery to me than the House of Commons.

Q61 Chair: It is very simple. You do not have to be elected to the House of Lords; you are just appointed.

Steven Agnew: We were very clear in our submission, at least I hope so, that it could be argued that Lords who hold other offices are not in full-time positions. Equally, and being consistent, we believe that there should not be double-jobbing between councils and the Northern Ireland Assembly. In some respects, Lords are more analogous to councillors, not in their role but in how they are salaried or, indeed, not salaried. That is my point.

Q62 Lady Hermon: So the straight answer to my question is, Steven?

Steven Agnew: The straight answer is that it needs consideration.

Chair: That is straight enough for now, I think. We will move on.

Lady Hermon: We are completely bamboozled by that reply.

Q63 David Anderson: Steven, in your experience, has the fact that Ministers or Members of this place are double-jobbing by working in Westminster created problems for you in doing business? Has, for example, a Minister not been there when you needed him for certain things, or is the schedule OK?

Steven Agnew: My most direct experience of that is on Committee. One MP on a Committee has been consistently absent. I do not want to name names. If you look at voting records etc, you will see that there is some evidence to suggest, probably on the House of Commons side, a poor turnout by some of our double-jobbing MPs.

Q64 Ian Paisley: We have focused a lot on the particular case of dual mandates. What about just another job? You said, when you came in, that being an MLA was a full-time job. Are you suggesting, then, that there should be a hard-and-fast rule that all part-time college lecturers, consultants, publicans, barristers, and so on—any professions that one could fit around being an MLA—should not be allowed either?

Steven Agnew: That is my preference. I think that, when people take on full-time political office, they should devote their time to it. There is also, in some of the instances that you raised, potential for conflict of interest. I would be wary of MPs being both lobbyists and legislators. I believe that people should commit to public office when they put their names forward to the electorate.

Q65 Ian Paisley: What is the salary for this full-time job as an Assembly Member?

Steven Agnew: The current salary is about £43,000.

Q66 Ian Paisley: Then, if you are the Chairperson or Deputy Chairperson of a Committee, there is an additional—
Steven Agnew: I think, off the top of my head, that it is about £11,000.

Q67 Ian Paisley: Clause 3 deals with disqualification. I do not know whether you heard my question to the previous witness. The clause is very specific and states that anyone who is a member of the House of Commons, the judiciary, the armed forces, the Civil Service or the police force cannot be a Member of this House. It does not rule out someone also becoming a TD in the Republic of Ireland. If there is an anomaly there, should that clause be changed?

Steven Agnew: I think that membership of other legislatures should be included.

Q68 Chair: Thank you. It is getting quite close to finishing time. Perhaps we can turn to the Justice Minister issue. Have you any comments about the proposed changes there?

Steven Agnew: I suppose that, similar to our comments on political funding, we believe that we should be moving towards normalised politics in Northern Ireland and treating the Justice Minister as a normal Minister, so to speak. We believe that that would be positive, and we support the move in the Bill towards greater normality in the selection of the Justice Minister.

Chair: Are there any questions on that?

Q69 Lady Hermon: I want to come back to a point that you made in your initial submission. You referred to the Belfast Agreement, which was signed on Good Friday. You did not use those words, but I think that you referred to the Good Friday Agreement and whether changes would be made to it to create an opposition. You said that there would have to be “wider public” engagement if we were to do that. Translate that for me.

Steven Agnew: I will give you an example of how that could happen. I am involved in the Irish Constitutional Convention, to which all parties in the Assembly and Dáil have been invited to consider issues about the Irish constitution. The Irish Government have set out the areas for consideration, and a forum comprising one third political representatives and two thirds citizen members are discussing those issues. All the discussions are public apart from a few minor meetings about how we set the thing up.

Given the evidence of disengagement in the political process, whether that is the current protests or lower voter turnout, and the fact that it is almost 15 years since the signing of the Good Friday Agreement, we need to look at how we bring people back into the decision-making about what was, effectively, their agreement.

From a personal point of view, I turned 18 in the year of the referendum. That was my first vote and the first time that we discussed politics around the table in my household. We had a proper debate, and we did not all vote the same way.

Lady Hermon: It was a lively debate.

Steven Agnew: Absolutely. We were told that it was the people’s agreement, and it was endorsed by 72% of those who voted. Politicians have debated its pros and cons, and the St Andrews Agreement was an example of the agreement either being changed in a major way without people’s consent, or not being changed in a major—

Q70 Lady Hermon: Do you think that there has to be a referendum?

Steven Agnew: I think that a referendum alone would be a bit crude, but bringing in that civic conversation—

Q71 Lady Hermon: What is a civic conversation?

Steven Agnew:—for want of a better phrase.

Q72 Lady Hermon: I do not know what that means. That is my difficulty.

Steven Agnew: Time restrictions mean that I cannot go into the full details. However, the Irish Constitutional Convention looked at global models of how that could be done, and this is the one that it chose. An alternative model would be to exclude politicians altogether and have 100 citizens engaging in discussions and making recommendations to politicians.

Different models could be used, and I do not think that I have enough time today to go into the details. However, this is one example of how it could be done, with the end result that any agreed recommendations would then be put to a referendum. That would allow dialogue about what questions would be put to the convention and even, to an extent, what questions should be put in a referendum. A simple yes or no referendum on whether people accept all of this may be a bit crude, but having that engagement and interface between politicians and citizens could be a good way to get greater engagement and interest in politics.

I have spoken to the citizen members of the Irish Constitutional Convention. They speak very positively about the experience and are benefiting from it. I have to say that they are also contributing tremendously to the discussion. There were fears that, despite the convention being made up of one third politicians and two thirds citizens, the politicians would overwhelm the citizens, but that has not been my experience. Some very strong-minded citizens with clear views have come to the discussion, and their voices are being heard.

Q73 Lady Hermon: Would this civic discussion focus solely on changes to the Belfast Agreement?

Steven Agnew: In that respect, we equate the Good Friday Agreement to the closest thing that we have to a constitution.

Q74 Lady Hermon: You are the one equating the two.

Steven Agnew: Yes.

Chair: We are virtually out of time, so just one very quick further question.

Q75 Oliver Colville: I want to talk to your colleague for a second. I am aware that he has sat here the whole time and listened to everything. Do you agree with what your boss has said?
Ross Brown: Absolutely.

Q76 Oliver Colville: Do you want to get elected to the Assembly as well?
Ross Brown: Perhaps one day. I am the candidate for Europe.
Chair: That is an appropriate note to end on.

Q77 Lady Hermon: Chair. I just want to ask Ross a question as he is responsible for the part of the submission on political donations and contributions. Why does the Green Party not accept commercial donations? Is there something wrong with commercial donations?
Ross Brown: It means adding to the mix the interests of corporations. They are profit driven, and corporate law requires their directors to take actions that maximise profit. Corporations do not give money unless they think that they will get something in return.

Q78 Lady Hermon: Actually, quite a number of companies have a social conscience.
Ross Brown: Yes, they have a social conscience in so far as they expect that, through having that social conscience, they will get something in return. If they did not, their directors would be breaking the law.
Chair: We will have to wind it up there. That was a very interesting session. Thank you very much.

Examination of Witness

Witness: Jim Allister MLA, Traditional Unionist Voice, gave evidence.

Q79 Chair: We will crack straight on. Mr Allister, thank you very much for joining us today. I think that you know what we are talking about.
Jim Allister: Yes, indeed.

Q80 Chair: We have only half an hour. Will you give us a very brief opening statement and outline your general ideas about the Bill? We will then get into detailed questions.
Jim Allister: Yes. I am obliged. I am sure that others have welcomed you back to Northern Ireland. If they have not, I do. It is good to see the Committee here today.
I could comment on a variety of issues in the Bill, but the great burden of what I want to say relates to what is not in the Bill and my disappointment about that. That holds in particular to the absence of the opportunity that existed to democratise these institutions in Stormont. As things stand, this Stormont is a blot on the democratic landscape. I say that because the most elementary of matters—the existence of an opposition—is prohibited by law and practice. Standing Orders make no provision whatsoever for an opposition.
I was in a school last week, and I asked a group of schoolchildren to name three matters that denote a functioning democracy. They said the right to vote, the right to change your government and the right to have an opposition. We are prohibited from having two of those in these institutions. We have a mandatory coalition, whereby any party that maintains a handful of Assembly seats is in government, as of right, and the electorate have no right to vote a party out of government. They can tinker with the pecking order, but they cannot decide to change their government. Secondly, there is no right to have an opposition. That is so fundamental that it should be an outrage to the House of Commons that such a situation pertains in a part of the United Kingdom and that a legislative assembly is being denied basic elements that are touchstones of democracy.

Q81 Lady Hermon: Would you mind if I interrupted you very briefly?
Jim Allister: Sure.
Lady Hermon: Earlier this afternoon, we heard evidence that described the Committees in the Assembly very favourably. In fact, they were described as: "the engine house of the Assembly".
Jim Allister: The Committees—
Lady Hermon: Can you just refer—
Chair: Perhaps if you—
Lady Hermon: Sorry—
Chair: Order. I asked for a very brief opening statement. Maybe we could get to the end of that and then put questions.
Jim Allister: I can stop there and deal with the question, if that would be more suitable. I am conscious that time is of the essence.
Chair: OK.
Jim Allister: Some people call them scrutiny Committees. If I recall correctly, the Belfast Agreement anticipated that there would be scrutiny Committees, but the 1998 Act did not provide them with any challenge function. The terminology used is something like the Committees should support the Minister in the performance of functions. So the Committees do not have an overt challenge function and are peopled by MLAs who, in the main, belong to the Government parties.

Q82 Lady Hermon: Do they not compensate for an opposition?
Jim Allister: No, they do not because, by and large, they do not demonstrate any inclination towards opposition. When a Minister is under pressure in a scrutiny Committee, he can guarantee that his political allies will rally to his aid. We have 11 scrutiny Committees, with 11 members on each. In all but three or four of those Committees, all 11 members are MLAs from the Government parties. On some, only a single member is from outside that ambit.
Even in the function of the House, there is scant regard for the right to dissent. I sit on the Procedures Committee. Last year, I suggested that, as a very small
token, it could permit the formation of a technical
group in the Assembly of independents so that it could
take have representation on the Business Committee, for
example. Technical groups exist in the European
Parliament, the Republic of Ireland's Parliament and
various places. That was suppressed by the two big
parties—the DUP and Sinn Féin—which were not
prepared to have it. So you have a situation in which
the business of the House is decided by a Business
Committee on which only Executive party MLAs sit,
and there is a cosy carve-up of the business between
parties. There is a rota of what motions will be taken.
Nobody outside any of those main parties ever gets a
definition taken or ever gets on the Adjournment debate
list because the only circumstance in which they can
do so is as if one of the other parties gives up one of
its slots.

Q83 Lady Hermon: So are you ever able to secure
an Adjournment debate?

Jim Allister: No. I have asked for Adjournment
debates on a number of issues, but they have never
been chosen, and they will not be chosen by the Business
Committee because it looks after its own in
allocating the slots. The same goes for motions.

The Secretary of State, in the background to this Bill,
said that she would like to hear thoughts about how
we could move towards a consensus to change. There
are two things about that. Of course, she gives a veto
to parties in the Assembly that are recalcitrant about
change, and Sinn Féin is more than eager and anxious
to exercise that veto. Secondly, if there was any idea
that this will be fixed or attended to by self-
application, the current experience of the Business
Committee and the lack of toleration of even a
technical group demonstrates that there will never be
any salvation applied by the Assembly itself to these
processes. The harsh reality is this: if you say to
politicians across the world that you can guarantee
them a system in which they will never be out of
government because they will hold all the cards and
have all the control, politicians will be pretty slow to
change it. That is why it is folly to say to the
Assembly, "When you are ready to change it, we will
do it." The Government need to lead on this.

Q84 Kate Hoey: Mr Allister, I would like to thank
you for the work that you have done to support young
people in Northern Ireland being able to choose who
they wish to compete for in sport.

No sensible person could say that Northern Ireland
has a normal system of democracy, but we all know
why that happened. What exactly would you have
liked the Bill to include on opposition that we, even at
this late stage, might be able to do something about?

Chair: I remind members that we need to switch
mobile phones off. I think that somebody might have
one on, and it is affecting the sound system.

Jim Allister: To answer that question, I have to give a
quick overview of my vision of how Northern Ireland
should be governed. My view is that, as long as we
cling to mandatory coalition, we will never have a
properly functioning democracy, nor will we ever
evolve towards what people call normal politics. By
the guaranteeing of the mutual vetoes of two large
bloks, you guarantee the need never to move on
anything, which is what we have seen since
devolution came about. My view is quite simple: we
should have an election in Northern Ireland that all
parties contest. No party is big enough to form a
government on its own, so there is bound to be a
coalition. I am not opposed at all to that being a cross-
community coalition. You can legislate for that
through a statutory requirement that it must be a cross-
community government, or you can say that its
Programme for Government must receive a weighted
majority, such as 60%. You have the election; those
who are elected are elected; and they then negotiate—
you folk are all familiar with negotiation—to
determine who can agree what to do about health, the
economy and education. Those who can agree,
however they might be, form the Government; those
who cannot agree, whoever they might be, form the
Opposition. It is then a proper, functioning
Opposition, with Opposition days, proper Question
Times and proper facilities, as you have and are more
than familiar with. Then you might begin to evolve
towards normal politics. However, if you embed
everything in the time warp that is the Belfast
Agreement, you will never move outside it.

Q85 Kate Hoey: If you are being absolutely honest
with the Committee, do you think that your suggestion
would have much support in Northern Ireland as a
whole and has any chance of happening within the
next five years?

Jim Allister: I have already made the point. If you
say to politicians in general, "We can devise a system
for you whereby you will never be anywhere but in
government", the incentive for politicians to embrace
anything that changes that is a disincentive—it does
not exist. If we wait for Stormont to reform itself, we
will wait for a very long time.

Q86 Kate Hoey: In your view, the Bill is a wasted
opportunity.

Jim Allister: I think that it is a wasted opportunity.
The Government should be leading and saying, "We
have had 15 years of the Belfast Agreement; it has not
produced a functioning government—only
dysfunctional government—or progress as we would
have liked. It is an insult to basic democratic
principles if you cannot have things such as an
opposition, and we are going to provide for one." Yes,
this was an opportunity.

Q87 Oliver Colville: Surely the key issue is that you
have proportional representation in Northern Ireland.
If you did not have that, there would be one party that
would clearly win, and there would be an opposition.
However, that would reopen a lot of the problems that
you have already been through. After all, even in
Germany, liberals have always been in government, in
some form or another, over the past 40 or 50 years,
and that is a product of having proportional
representation.

Jim Allister: I am not saying that we have to change
proportional representation as our electoral system—
not at all. My objection is that we apply this crazy
d'Hondt system to the formation of government, and,
therefore, you say to parties, "As of right, forever, you shall be in government. You can tinker with the size of your input, but as long as you hold a handful of MLAs, you will be in government." They do not have that in Germany. The Christian Democrats are in government because—

**Oliver Colville:** I agree with you that the d'Hondt system is a nightmare.

**Jim Allister:** Absolutely. We are living that nightmare. That has been the problem for 15 years.

**Chair:** If you do not mind, we will move on to what is in the Bill.

**Lady Hermon:** This issue is half in the Bill and half outside the Bill.

**Chair:** It is a useful link then.

**Q88 Lady Hermon:** At the early stages of taking evidence for the Bill, we were told that, at present, a party could take itself out of mandatory coalition. I think that that is absolutely correct, although I stand to be corrected by you. Although I am not necessarily looking at the SDLP and the Ulster Unionist Party together in the same breath, they are free, for example, to do so, and they do not need this Bill. Would you kindly explain to the Committee what would be the disadvantages of two parties, or one large party, taking itself out of mandatory coalition at present? What are the disadvantages for that, in opposition, at present?

**Jim Allister:** There is no facility in Standing Orders for opposition per se: end of story. There is no provision whatsoever, and there is no provision in the Northern Ireland Act 1998.

**Q89 Lady Hermon:** That means no secretarial, administrative—

**Jim Allister:** No rights of an opposition, no rights to business days, no rights to anything. Question Time would still be the same as the current cyclical system whereby each party is gone around and gets to ask questions even of its own Minister, and so on, in priority over someone who might technically be in opposition. So I believe that, in order to drive the process forward, not only could some party exit from the Executive but some party should exit. That would force the issue, and we would then be sitting in a very different situation. If you were coming to Northern Ireland and had two large parties outside the Executive saying that they did not have the facilities that they should have, the compunction to address it in the Bill would be much stronger than me, a single MLA, coming along and saying the same thing to you. So I think that they could and that they should.

**Lady Hermon:** That is very helpful. Thank you.

**Chair:** We have to move on.

**Q90 Ian Paisley:** Jim, in order to get to your vision—the land that you have described, the position of true democracy—how do you intend to win support for your proposals among people who are non-unionist? That is crucial. I ask because the very balance of Northern Ireland requires you to attract non-unionist as well as unionist support.

**Jim Allister:** I do not think that non-unionists are any less attached to democratic principles than unionists are. I advocate that those who can put together a coalition—whichever they are, and I stress the words "whichever they are"—form the Government if they can get the requisite support, which may be more than 50%. The people are then empowered because they, at a future election, can change their government. The great insult to the people of Northern Ireland today is that they can never change their government. They are hidebound into this. They will never be able to change it, and it will not change itself. So I think—

**Q91 Ian Paisley:** You have put those views at a number of elections—

**Jim Allister:** Yes.

**Ian Paisley:**—and you have not won a great deal of support across the Province.

**Jim Allister:** Yes.

**Ian Paisley:** Essentially, to get it, do you not have to win support in your own community, which, obviously, you have to work at, and non-unionist support? How do you achieve non-unionist support when, at election after election so far, the views that you have articulated over a number of years have not gained traction in the nationalist community?

**Jim Allister:** I meet many people in various parties who cannot find arguments to disagree with what I am saying on the issue. That is why it requires something like the sovereign Parliament at Westminster to say, "OK; you have had your 15 years of transition under the Belfast Agreement. We are now going to regularise politics in Northern Ireland, and this is how we are going to do it." It will take initiative and courage, which brings me back to my point that this will never be brought about by parties with the vested interest of flourishing under the present arrangements. That is because, by and large, no party exists for anything other than to be in government.

**Q92 Ian Paisley:** Apart from making that case today while we examine the components of this potential legislation, have you had meetings with the Secretary of State and her Bill team to suggest amendments and to put them in writing? Have you detailed to the Secretary of State what are the components of this potential legislation, and how the Secretary of State how this legislation should change?

**Jim Allister:** That is interesting. The Secretary of State does not want to talk to me. In her first week in office, I wrote to congratulate her and welcome her to Northern Ireland. I also said that I looked forward to the opportunity of discussing with her issues such as opposition. About a month later, I got a letter thanking me and saying that her officials would be in touch to arrange a meeting. I am still waiting. It seems that the Secretary of State does not want to talk to anyone with views contrary to those in the Bill.

**Lady Hermon:** Have you yet to meet—

**Ian Paisley:** Just let me finish.

**Jim Allister:** I have yet to meet the Secretary of State.

**Q93 Ian Paisley:** If I may just continue: the Secretary of State has refused you a face-to-face meeting, but have you put specific proposals, new clauses or whatever to her Bill team on any of these issues—

**Jim Allister:** No, because if the Secretary of State does not think that it is worth her while to hear a view...
such as mine, why would I waste my time with her Bill team?

**Q94 Ian Paisley:** I am not a member of the Conservative Party, but I imagine that since the Secretary of State—

**Oliver Colvile:** You are always welcome to come across to us.

**Ian Paisley:** No, you are all right. The DUP works for me.

Since coming to office, she has had to deal with the flags issue—

**Jim Allister:** I would have liked to talk to her about that as well.

**Ian Paisley:**—and a number of other key issues that have clearly been in the Secretary of State’s in tray. In the couple of months that she has been Secretary of State, she may not have had time to meet you. However, have you made specific representations to her Bill team?

**Jim Allister:** No.

**Q95 Ian Paisley:** Why not?

**Jim Allister:** If the Secretary of State does not think that it is worth half an hour to listen to my views, what is the point in my talking to her Bill team, which is there to do her bidding?

**Q96 Ian Paisley:** I am a Member of Parliament. I try to change legislation by talking to the Bill team, by working with it and sometimes, perhaps, getting to chat to the Secretary of State.

**Jim Allister:** I hope that you have made those representations.

**Ian Paisley:** Of course I have, but the key emphasis—

**Jim Allister:** You are my MP. [Laughter.]

**Ian Paisley:** I am making those representations very well, too. This issue cuts across—

**Kate Hoey:** Is he good?

**Ian Paisley:**—how you actually do your job. As a full-time MLA, why are you not putting those issues in writing and making that case?

**Jim Allister:** When you write to the Secretary of State and ask for a meeting, and she effectively ignores you, what is one meant to do?

**Ian Paisley:** She may have you on a list of people to meet eventually.

**Q97 David Simpson:** With the greatest respect, Jim, you have a reputation of not allowing yourself to be ignored. I am not saying that that is good or bad, but surely with that reputation, you should be in there—

**Jim Allister:** So it is my fault.

**Q98 David Simpson:** No, it is not your fault. I am saying that you should be in there—

**Jim Allister:** I may carry responsibility for many things, but not for Ms Villiers and who she meets.

**Q99 David Simpson:** Surely the onus is on you to get in there and then ignore the Secretary of State but get into the building.

**Jim Allister:** Perhaps her eyes and ears have listened to today’s proceedings; perhaps her office will ring me this afternoon.

**Ian Paisley:** Can I make you an offer? [Interuption.]

**Chair:** Order. We have to move on.

**Q100 Ian Paisley:** May I just make a key point? Why do you not write to your MP to ask him to make those points to the Secretary of State?

**Jim Allister:** I will write to him and say that I am very disappointed that he has not already done so but would be much obliged if he did.

**Q101 Kate Hoey:** The Bill will go through the Westminster procedure and is subject to amendment. Perhaps you should outline what amendments you would like and let Members of the Westminster Parliament see them.

**Jim Allister:** Is that not the purpose of my talking to this Committee? Are you not going to report?

**Kate Hoey:** I am talking about the wording, clauses and so on.

**Oliver Colvile:** You need to go through the Bill, line by line and clause by clause, and suggest some alternative wording.

**Jim Allister:** Is that not the work of the Committee?

**Oliver Colvile:** No, we are not—

**Q102 Chair:** The purpose of this discussion is for you to tell us what you think about the Bill and for us to take that into consideration when we respond. I want to get your views on the other issues in the Bill, and I have one last question. I have some sympathy with what you say, Mr Allister, but do you understand the nervousness that there would be, let us say, for an English MP putting forward changes that could upset the apple cart here? We all know why it was designed in the way that it has been designed. There has been some success from that design, and I say that as someone who has sympathy with what you say. Do you understand the nervousness that I might have or which an English MP might have?

**Jim Allister:** If that nervousness is a nice way of saying that if we do not keep Sinn Féin happy and it might go back to doing what it used to do, that is a shocking indictment of the present political arrangements. Why should we be nervous about bringing the fundamentals of democracy to an institution within the United Kingdom? I do not see any basis for nervousness.

**Q103 Chair:** Let us move on to political donations and loans. What are your views on the changes?

**Jim Allister:** My view is that, long since, we should have had full transparency on political donations. I am disappointed that we are long-fingerling that again. I see no justification for that. We are supposed to be living in times of peace; that was the historic justification. We cannot go on living on the present excuses in the way in which we are doing.

Northern Ireland is a very small place so the impact of political patronage is inversely proportional. We have 14 Ministers here and more Departments than we need by far. Patronage among them all within a relatively small community means that the system of political donations is ripe for abuse.

I looked at the honours list a couple of years ago and saw the name of someone whom I knew to have been...
a political donor. I am not saying that that person did not deserve an honour, but the public are entitled to know that that person had been a political donor. It is unhealthy that we have this secrecy surrounding the issue. Parliament should rectify that forthwith.

Q104 Lady Hermon: I do not know who that individual is, but you obviously do. In fairness to the individual, do you have any evidence that that person would have felt under threat if his or her name became public?
Jim Allister: As a donor?
Lady Hermon: Yes, as a donor. We cannot easily set the issue aside. It is obvious that the reason that has been given for the anonymity of donations in Northern Ireland is the threat to donors. I have received no evidence of that personally, but I am interested in whether any of our witnesses have any such evidence. The individual whom you mentioned appeared on an honours list, and you knew that person to be a donor. Could that person's life or safety also have been under threat?
Jim Allister: Not to my knowledge, but I may not know all that there is to know about these issues. I will go back to my first point; if we live in a climate in which we have moved on, why have we not moved on when it comes to this issue? What is the vested interest that is tying this to the present arrangements?

Q105 Lady Hermon: You are absolutely convinced that it is a vested interest, which is not what we have been told. The Committee has been informed that it is the potential or real threat to donors. You do not believe that that is really the case?
Jim Allister: For some, that is a convenient camouflage to hide behind and for one party in particular, which gets not only that benefit but the benefit of foreign donations. That party is laughing all the way to whatever bank it puts its money in.

Q106 Lady Hermon: That party is?
Jim Allister: The party is Sinn Féin.

Q107 Chair: We are rapidly running out of time. What is your view on dual mandates and multiple mandates?
Jim Allister: I absolutely agree that double-jobbing should end. There should be no exception for party leaders or anyone else. That is on the simple premise that being an MP is a full-time job, I would have thought. It is paid as a full-time job and should be done as a full-time job. That is what the electorate expect and what they should get.

Q108 David Simpson: Do you think, Jim, that there is then an unfairness when it comes to Scotland and Wales?
Jim Allister: I notice that in Scotland and Wales, no one does it. You legislate to deal with a problem, and the problem seems to exist here.

Q109 David Simpson: However, there is nothing to stop someone in Scotland or Wales from doing that. Jim Allister: I was interested in Mr Paisley's point that there is nothing to stop a TD from doing it now. That loophole should, of course, be closed. Fundamentally, however, you make your choice or the people make it for you. You should then not have a situation whereby you are one day a week at Westminster and two days a week here or whatever. That is not playing fair with the electorate.

Q110 Lady Hermon: Should that also extend to the House of Lords? As you know, under the present Bill, the bar is on only the dual mandate between an Assembly Member and sitting in the House of Commons but, for some unusual reason that I certainly do not understand, not in the House of Lords.
Jim Allister: I think that the logic is the same apart from the fact that there is no electorate, as it were, to the peerage, but they still get an allowance.
Lady Hermon: Yes, they still get paid.
Jim Allister: The same principle applies, and it would also be relevant to do that here.

Q111 Ian Paisley: You were specific in what you said: being an MP is a full-time job.
Jim Allister: Yes.
Ian Paisley: An MLA is also paid for a full-time job. By implication, are you saying that it is not really a full-time job, and you should be able to do other things?
Jim Allister: No, I am not necessarily saying that. I am saying that, in practice, it is two days a week, a day for Committees and the rest of the time in your constituency. It does not have the same burden. I would have thought, as being an MP.

Q112 Ian Paisley: However, it is paid as a full-time job. It is above the average Northern Ireland salary.
Jim Allister: Yes, it pays £43,000, and I think that it is short of £48,000 a year. It is paid as a full-time job, and an MP is certainly paid as a full-time job, so I do not see the logic of how one could say that you can or should be allowed to do both, even on one salary pay.

Q113 Ian Paisley: What about other non-elected work as well as being an MLA?
Jim Allister: How do you legislate for that?
Ian Paisley: That is what I am asking you.
Jim Allister: That is very difficult.

Q114 Ian Paisley: If it is a full-time job, should there not be a rule that you do not have any other means of employment? You do this full-time job as an MLA, full stop.
Jim Allister: It would be very difficult to say to a farmer that he cannot be an MLA even though he employs someone to do all his farm work because he is a registered farmer drawing the single farm payment and so on. I do not think that you can say that. However, there is a distinction when two sets of public money are going to pay the one person for the same function.

Q115 Lady Hermon: If I described you as a unionist to your core, I do not think that you would be offended. You are a unionist to your core. Do you have any qualms at all post-devolution between what I
could best describe as a polite disengagement between Westminster and the Assembly? In my case, my argument has always been that the Finance Ministers in the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly should be able to have a dual mandate at Westminster so that on Budget day, when the allocation that will impact on Northern Ireland has been made, they can look the Chancellor in the eye. As a unionist, do you not have a concern that if there is no dual mandate for anybody, the links between Westminster and Northern Ireland will become a bit looser?

Jim Allister: No. I must say that I do not follow that at all. If Northern Ireland has its 17 MPs or whatever, they are the tangible manifestation of that political constitutional link. It is their job to look the Chancellor in the eye on Budget day and fight Northern Ireland’s corner. They will not fight it if, for half of the week, they have to be over here. It is as simple as that.

Chair: It has been a very interesting session. Thank you very much for your time, Mr Allister.

Jim Allister: Thank you.

Examination of Witnesses

Witnesses: David McNarry MLA and Cllr Henry Reilly, UK Independence Party, gave evidence.

Q117 Chair: We will kick straight on, Mr McNarry, thank you very much for joining us. Will you, very briefly, give us an opening statement and introduce yourselves? We will ask some questions from there.

David McNarry: Good afternoon. I am David McNarry MLA representing the UK Independence Party (UKIP). I am accompanied by my esteemed colleague Councillor Henry Reilly from the beautiful area of Newry and Mourne. We will dispense with an opening statement; we have already furnished you with a response to your questions.

Q118 Chair: We will start with the political donations changes. What are your views on the transparency arrangements?

David McNarry: Would you mind helping me? I am quite used to this Building and this Chamber from where you are sitting, but the acoustics are terrible. Could you speak up a bit?

Chair: Yes; sorry. What are your views on the transparency arrangements for political donations and loans that are being proposed in the Bill?

David McNarry: We are not yet ready for that. There should not be any moves to change what we have now. We are not yet ready for a number of things, including that.

Q119 David Anderson: Why are you not ready for it? What is the problem?

David McNarry: I am sure that you take a great deal of interest in Northern Ireland. The problem is terrorism.

Q120 David Anderson: To whom? Who is threatened by terrorism in terms of political donations?

David McNarry: I am, and I live here.

Q116 Chair: We are almost out of time. Do you have any extra comments that you would like to make about the changes to the Justice Minister’s position?

Jim Allister: Since I do not think that we have the right system for forming our government at all, it is neither here nor there to me as to how he is selected. Certainly, the present arrangements are ludicrous, and the consequence is that a party with eight MLAs ends up with two Executive posts and a party that had, I think, 15 MLAs ends up with one. That is certainly unsustainable, but you have my views on how the Government is formed.

Chair: Thank you very much for your time, Mr Allister.

Jim Allister: Thank you.

Q121 David Anderson: So, as a representative, you are threatened by it, but you still stand. Do you think that somebody who donates to your party would be threatened by terrorism?

David McNarry: We are all threatened by terrorism. You only have to look at the police bill that you incur when you have elections in Northern Ireland. We have a Chief Constable asking for 1,000 more policemen and policewomen. The reason for that is quite simple; we have a dissident threat that, unfortunately, interrupts democracy in our land. I know many people in a number of parties who subscribe in a small way and handsomely in another way who would not feel that their safety would be protected if they were named publicly as having given a donation. There are a number of things that you want to protect at the moment. We can move towards a situation in which that threat may not be there. At the moment, however, I see no provision for that. It is out of my hands.

Q122 David Anderson: The information that we have is that the majority of parties support moves towards transparency, similar to what we have in the rest of the United Kingdom.

David McNarry: That is certainly true, Mr Anderson. That may be fair for you to say.

David Anderson: That is what we have been told.

David McNarry: You asked me and my colleague to come here and present our credentials and our views. Our view is that we do not think that it is safe. I am quite prepared to go into any debating chamber with the people you have talked about who say that we are ready for it. I am quite prepared to hear that argument. To my mind, for where I live and for the people whom I represent, there is no case for what you are asking. However, as I said, that does not deter me from saying that it is something to look forward to.

Q123 Kate Hoey: All politicians face hassle and threats. Even in the Westminster Parliament, many
MPs have had problems. I was very much threatened over my position on hunting. That was obviously not anything like what has happened in Northern Ireland, but we carry on. You carry on and Northern Ireland politicians, from all sides, have been very brave. Why is a donor any different? I genuinely do not see that. If the person is interested enough to help a political party, surely they should be prepared to take the risk—if you want to put it like that—that politicians take?

David McNarry: I do not think that there is a case to be made for asking them to take the risk. If you want to make provision in legislation to change that, you make that case. I would make the opposite case. As it persists at the moment, I do not think that it is safe for people to be put in the public domain for donating to a party.

Q124 Kate Hoey: I understand that. Do you think that some people use that argument simply because they do not want the transparency? For example, in planning, people quite often perceive that the system has not been quite fair.

David McNarry: I can see that argument, and I would be quite sceptical about it. I think, perhaps, that the illustrations of some people having used their bucks to get planning permission are far greater in your part of the world than they are in my part of the United Kingdom. This is quite a small place, and most people know what is going on here. I would not like to think that there would be any illustrations of someone, who was a political donor for the right reasons, being caught up in a situation where it might be proved that the only reason they ever donated was to promote their planning application. It does happen; it has happened quite a lot in the past, but I do not see too much of it now.

Q125 Oliver Colville: Thank you very much for coming to see us. You are promoting a very interesting position. I can quite understand that the likes of Sinn Féin and, for that matter, the Ulster Unionist Party or the DUP would end up being targets, because they have taken specific views over a historical period. Why would anybody want to intimidate UKIP and UKIP donors? I do not think that I understand why that would be the case. Have you taken a specific position in Northern Ireland politics that you are keen to promote and that means that your views are offensive to some people?

David McNarry: I am going to ask Henry to give you some detail on that. However, I am a recent convert to UKIP. I was expelled from the Ulster Unionist Party for reasons that we need not go into. I did not defect. I hope that UKIP will bring a new nuance to Northern Ireland politics and that its policies will be the same in Northern Ireland as they are anywhere else in the United Kingdom. I am not asking for any specific things for UKIP on this issue. I am taking it in the round, and I am thinking of the general protection of people in Northern Ireland who wish to sponsor or donate to any political party. That is where I am coming from.

Oliver Colville: To put that into context has been incredibly helpful. Thank you very much.

Lady Hermon: David, it is very nice—

Henry Reilly: Could I just add to that?

Lady Hermon: Of course. We are taking evidence.

Henry Reilly: You asked why UKIP? I moved to UKIP and was elected as a UKIP councillor in Newry and Mourne. That council area contains south Armagh, which was bandit country. Unlike many of the other pro-union parties, we have Roman Catholic supporters. They would not want it to be known that they had contributed to us.

When David McNarry came to UKIP, the very belligerent republicans said that it was a very worrying development. They are more concerned about the integration into the United Kingdom—that type of political ethos—than they are with the parochial parties in Northern Ireland. UKIP would probably be a bigger target than the common or garden politician in Northern Ireland.

David McNarry: The people who had those worries have shared them with me, and I do not think that they retain those worries any longer. Perhaps that is the baggage that I took from the Ulster Unionist Party.

Lady Hermon: Sorry, I did not catch your name.

Henry Reilly: Henry Reilly. I am a councillor in Newry and Mourne.

Q126 Lady Hermon: Right. Mr Reilly, in evidence that we took earlier, another political representative suggested that there should be a process for donors who feel that they are under threat whereby the Chief Constable of the PSNI would make the decision about whether anonymity should be given. It was the first time that we had heard that suggestion. How does that—

Henry Reilly: Absolutely. We all aspire to a completely transparent and open system similar to the one in the rest of the United Kingdom. However, clearly, we are not yet ready for that. We still have areas, such as south Armagh in my council area, that are not typical of the United Kingdom. People who live there, even Catholic fishermen who despise the European Union and have seen their livelihood destroyed, and are very strong UKIP supporters in Northern Ireland would not, for social reasons, want to be transparent in their support for us. Although they will, perhaps, support us financially, will vote for us in the confidentiality of an election box, they would not want their general peers in the community to know that they support UKIP. It is important that we retain that anonymity at this time.

Q127 Lady Hermon: I draw you back to the question. We are at a stage where the Bill can be amended. Do you think that it should be amended so that, in order to move towards greater transparency, there is some sort of filter mechanism through the Chief Constable of the PSNI to assess whether a donor is genuinely under threat?

Henry Reilly: I could not agree to that. I have found there to be a lot of subjectivity in the police in the past. When people have received threats, some have received protection and others have not. When you get subjectivity from the Chief Constable, you cannot depend on that, whereas the present system protects everyone. UKIP’s policy is that we want to be the same as every other part of the United Kingdom, but,
in the current circumstances, we are not ready for that. It is an aspirational thing.

**David McNarry:** As someone who has been threatened more than once.

**Lady Hermon:** That is why we want to hear from you.

**David McNarry:**—I say that it is not something that I would want to place on anybody else's shoulders. All of you and all of us here take that on board when we go into public office and when we stand and our names go forward. I am not sure that I would want to place an onus of responsibility on a Chief Constable on that matter. What I would prefer to hear from him is that the climate in Northern Ireland is now suitable for people to voluntarily declare their donation or sponsorship if they wish. I reiterate that if the Chief Constable is telling the Northern Ireland Policing Board that he needs 1,000 more bodies, he has a very genuine reason for saying so. I would imagine that he has a lot more intelligence that he may share with you, but it is not the type of intelligence that he would want to share with too many people, other than to ensure that society is protected.

Q128 **Lady Hermon:** Forgive me as I may have got this completely wrong, but we are now having conflicting evidence. Henry suggested—forgive me for calling you Henry, Mr Reilly—that the poor old Chief Constable, who is not here to defend himself, was rather subjective in his decisions. The Chief Constable would say that he is entirely fair, and, as he is a constituent of mine, I have to defend him and I believe him to be entirely fair. However, David is saying the opposite; that, in fact, the Chief Constable is best placed because he has the intelligence, and you would like him to be in the position to say that it is fine.

**David McNarry:** No. I think that you have misunderstood me. I understand, appreciate and respect your thinking about any Chief Constable up to now, is something that I would share.

**Lady Hermon:** Thank you.

**David McNarry:** Let me be very clear. At this time, the Chief Constable is probably the only person in Northern Ireland who could give the all-clear with regard to the legitimate fears that people have about sponsorship. I think that the Chief Constable is unable to give that all-clear. I do not think that he is in a position to give it, otherwise he would not be asking for 1,000 more recruits for the Police Service.

Q129 **Lady Hermon:** Should there be a provision to that effect in the Bill? Should the Chief Constable have input to lifting the anonymity of donations?

**David McNarry:** With all due respect, you are nearly asking me, "How long is a piece of string?" I just do not know how long it will be before we are in a situation where that all-clear could be given. I would welcome it tomorrow.

Q130 **Mr Hepburn:** Why is the person who donates £500 to UKIP in danger, when the person who puts UKIP literature in their window during the time of an election is not?
All in all, this is a devolved Assembly. It needs to concentrate on that, with no distractions. This is where Northern Ireland business is going to be done.

Q134 Ian Paisley: You sound a bit like Henry VIII. I will not detain you long. As someone who voluntarily cleared out, as you put it, I think that it has been a very healthy move. However, I understand the point that you made.

Clause 3 and clause 4 of the proposed Bill specifically state that the following people are disqualified from membership of the Assembly: A Member of the House of Commons; a person with judicial office; a civil servant; a regular member of the armed forces; a police officer maintained by a police authority; and: a member of the legislature of any country or territory outside the Commonwealth (other than Ireland). There appears to be a huge gap: you could, technically, be a TD and a Member of this House, but you could not be a Member of our national Parliament and a Member of this House. If that is a loophole, should it be closed?

David McNarry: It is a loophole, and it should be closed.

Q135 David Simpson: I was certainly one of those who had a double mandate. The legislation applies only to Northern Ireland. What is your opinion of that as regards Scotland and Wales? Surely there is an inequality in that regard. Northern Ireland is being singled out. Even though Members of those institutions do not double job, they could do it.

David McNarry: I aspire for this place to, one day, host a parliament again. Therefore, I recognise the differences, particularly in Scotland. I also hope that Scotland stays in the United Kingdom.

Ian Paisley: Hear, hear.

David McNarry: It is an issue to be addressed. There should be parity across the regions. That would knit and bind the kingdom together in a better way, because the people would have something in common. Anyone can overlook those flaws. You now have the opportunity, hopefully, to repair them.

Q136 Lady Hermon: I come back to the fact that you are now a member of UKIP. You left the Ulster Unionist Party, or you were expelled—whatever the circumstances were, you are now in UKIP, which is a national party. I will repeat the question that I asked the previous witness, Jim Allister, about the situation post-devolution. I assume that you are still a unionist to your core.

David McNarry: Yes.

Q137 Lady Hermon: Thank you. Bearing in mind that I have never held a dual mandate, I am curious to see how strong the arguments objecting to dual mandates are now, when we have more and more areas of responsibility devolved to the Assembly, including policing and justice since 2010. As a UKIP member, do you not think that there is an argument to be made for binding closer links between Westminster and the Assembly by having MPs sitting in both Chambers?

David McNarry: I do not think that now, and I did not think it then. I do not want to go on to an even deeper argument that you may or may not be taking me into, which is about the necessity for MPs for Northern Ireland to be at Westminster and function, as you are, in a Committee such as this when we have a devolved Assembly here in its infancy.

Lady Hermon: Yes.

David McNarry: In co-ordinating what Northern Ireland MPs do at Westminster, and I wish that they all took their seats in Parliament, it is very important that there would be a binding—as you said—or a togetherness in their representing and reinforcing, in Parliament, the needs of this Assembly. The difficulty is—if I may deviate slightly—that that could happen sooner, in my opinion, if we dispose of a mandatory coalition system in the Assembly and move to having a voluntary coalition. We may then actually have a coalition of a sort that deals in policies that are agreed and put to the electorate. Therefore, I see that co-ordination with the needs of Northern Ireland being enhanced by not always being on a party political basis, even one that maintains abstentionism.

Lady Hermon: Thank you.

Q138 Chair: We are almost out of time. Will you quickly give us your views on the proposed changes to the appointment of the Justice Minister?

David McNarry: The appointment of a Justice Minister from the Alliance Party has been an absolute con. It is the type of situation in which a young Assembly would find itself. You know as well as I do that the only reason we have that Justice Minister is that neither of the two biggest parties—the DUP and Sinn Féin—could tolerate a Member from the other being appointed to that position. Therefore, the Alliance Party came along and fulfilled the role. The unfortunate extension of that is that the party has not only got one ministerial appointment by default, in my opinion, but they tag on another one. So we have the reprehensible situation of such a small party having two Ministers in an Executive, which is a complete and utter farce as far as I am concerned. The sooner that we dispose of that approach the better; which is not to say that we should dispose of a Justice Department.

Chair: Any questions on that?

Q139 Lady Hermon: I am sure that you are not criticising the present holder of the office. You do not mean—

David McNarry: I do not know how much leeway you will give me; but if you are going to put a fool in office you will get foolish policies.

Q140 Kate Hoey: So how would we do it? How would you like to see the Justice Minister's appointment made? Would you like to see the office treated as any other Minister’s?

David McNarry: Interestingly enough, we have today agreed the Final Stage of our Budget Bill. During the debate, I made the point that we are budgeting for the Employment and Learning Department, which the Alliance Party currently holds. We are budgeting for that, but some months ago we took a decision to take
it out and delete it. We still have not finalised that decision. That then, would narrow the numbers. If the Alliance Party is entitled, on merit, to hold the Justice Ministry, so be it. If, as the Assembly wishes, it loses the Employment and Learning Ministry, which was fudged today in the Budget, it will have a claim on only one ministerial position.

I repeat that it is quite a conundrum, in that the way in which we do things through d'Hondt, means that the first choice will result in Gerry Kelly’s being Minister of policing or Mitchel McLaughlin as Minister of Finance and Personnel. Those are big stakes for the Northern Ireland Assembly. I will go back to that word “protection” that I talked about. There needs to be some hard thinking about those decisions.

Q141 Lady Hermon: This Bill has no sort of safety net if, post these changes, the 108 Assembly Members—or whatever number it will be; let us assume that it will be 108—cannot agree on the Justice Minister. There is no fallback position to get the Assembly out of that difficulty should the Bill be amended to make sure that, in fact, there is something that focuses people’s minds.

David McNarry: I do not think that it is necessary for the Bill to have a fallback position. The fallback position is there, which is that parties should have guts to take decisions without doing behind-the-door deals with parties such as the Alliance Party just to accommodate and satisfy people who cannot take decisions. The decision is there to be made by the parties that have an entitlement to Executive positions. I would hope that this Assembly would be in a far better place on the day that it is able and comfortable with itself, to appoint a Justice Minister. It has not appointed a Justice Minister; it has appointed a patsy.

Q142 Dr McDonnell: Thank you for your very forthright evidence. You have been very forthright and open with us. However, I am facing a conundrum, and there is a degree of a contradiction. On the one hand, you are arguing that we should move away from d'Hondt, and the tone of what you are saying seems to suggest that you feel that we should be moving towards a party opposition. On the other hand, however, you are saying that if the Alliance Party were part of the system, under an agreed coalition, it might be entitled to two or three Ministries.

David McNarry: If you move from the mandatory situation that we have today, you move Northern Ireland politics into a new era and into a voluntary situation. I hope that the rest of the world could say that we have moved on, that we are more comfortable with ourselves, that we are more professional in our approaches and our attitudes as a people, and that we have a contribution to make. On that basis, we will make the move because we are able to form a coalition between opposites rather than being forced into it.

You will recall that, when I worked for David Trimble and when he was helping you and others to put this together, the mandatory coalition was not seen as something that was going to last—even for as long as it has now. I am certain that no one was expecting that it would last until 2020. I think that we have to move away from that and prove to ourselves that we can work together. That is how we should do it.

Q143 Dr McDonnell: Will you accept that, in those circumstances, even a small party that is strategically placed might very well have more than one Ministry?

David McNarry: Not in those circumstances, no. With my understanding and, some might say, limited experience of Northern Ireland politics and how we all think, I envisage that there would be a greater provision for people to go into a proper opposition and to defend the democracy in Northern Ireland from that position. My personal opinion is that I find it intolerable that politicians are prepared to pick up breadcrumbs for the sake of self and very little for this country. There is a need for them.

Henry Reilly: I think that they are assuming that the same pattern will exist and that UKIP will hold the balance of power after the next general election.

Q144 Chair: Is that here or in Westminster?

David McNarry: That is something to look forward to, obviously.

Q145 Dr McDonnell: Henry has got it in one. I want this on the record, because I want to make sure that, after the next Assembly election, when David McNarry has three or four seats, he is not entitled to any Ministries.

David McNarry: I will certainly be able to give you that answer when I speak at UKIP’s spring conference, where I will be promoting most of what I said here. I have not hidden anything from you.

Q146 Ian Paisley: Recently, the Executive split on, and ultimately withheld, legislative consent on a crucial matter of security, namely the National Crime Agency functioning in Northern Ireland. Should there be a mechanism or new clause in the Bill that provides that, if legislative consent is withheld on certain matters, which will need to be spelled out, it will be brought about anyway by the national Parliament? Otherwise, as I am sure you recognise, we would have major holes in that pieces of national legislation could be crippled in the way that they function in this part of the UK.

David McNarry: Ian, I absolutely agree with you. That was a poor and bad decision. Whenever UKIP talks about bringing people together and about the fishermen etc, I do not mind if people want to call me an Irish unionist, as long as they accept that I ply my trade in the United Kingdom. All that I can ask of others is that they recognise the United Kingdom as it is and that they do not persist in raising issues that drive wedges between people, particularly when they are misunderstood.

The flag issue in Belfast City Hall is a prime example of that. Even only a year ago, it was very difficult to see members of Sinn Féin and some other unionist parties share a lift together, because they just did not like each other. In the past 12 months, I recognised that relationships had become much better and much more comfortable. Now there is this damn flags issue and the efforts of the Alliance Party in that. Again, it
put a wedge between people who have to share this place of work, and it will take some time to repair that. So, Ian is right in what he says.

Chair: We are out of time. We have run slightly over, but thank you very much for coming to see us.

Examination of Witnesses

Witnesses: Stewart Dickson MLA and David Ford MLA, Alliance Party, gave evidence.

Q147 Chair: We will kick right on. Thank you very much for coming to see us, Minister. I do not think that you need any introduction. Maybe you could introduce your colleague, and we will then go into questions, if that is OK.

David Ford: I was not proposing to make any opening statement. I am here as leader of the Alliance Party, although I may pass the odd comment that sounds as though I am speaking as the Minister of Justice. My colleague Stewart Dickson, the party’s Assembly Chief Whip, is with me.

Q148 Chair: Thank you very much. We may as well go in at the deep end and start with the Minister of Justice position. What are your views on the proposed changes?

David Ford: The proposed changes directly follow an offer that the Alliance Party made a year or so ago about discussions with other parties. Other parties rejected them at the time, but the Government have very carefully picked up on them since. Frankly, that is the only reasonable way to take account of the Justice Minister being elected differently outside the d'Hondt formula and to ensure that whichever party holds the Justice Ministry does not have an extra seat. So, we believe that what the Government are proposing is the only fair and reasonable way in which it should be carried out, although it would on the face of it at this stage reduce the number of Alliance Ministers.

Q149 Lady Hermon: It is lovely to see the Justice Minister/leader of the Alliance Party and the chief executive of your party. You are a very good Justice Minister, if I may say so, and I have full confidence in you, even if others do not. [Laughter.]

David Ford: We liked it up to that point.

Q150 Lady Hermon: Yes. Can I just ask you this? I am concerned. I know that, in fact, there is a default position if the First Minister and deputy First Minister are not elected after an Assembly election. There is a period of time, after which, if the Assembly does not elect them, we move to another Assembly election. That tends to focus minds wonderfully. For the Justice Minister, there is no equivalent. There is no default position if, next time around, under this new Bill and these new arrangements, Assembly Members are unable to agree amongst themselves on the person who should fill that post. We have an opportunity to amend this Bill, so should it include some sort of equivalent default mechanism, albeit not necessarily an election? Have you given that idea any thought?

David Ford: I confess that that is not something that I have given any consideration to.

Q151 Lady Hermon: The Justice Department must have done.

David Ford: The Justice Department is generally too busy doing its work to speculate on what might happen in the future. I think that Lady Hermon has raised an interesting point. Certainly, if the expectation were that nothing could proceed around the appointment of other Ministers until after the election of the Justice Minister—

Q152 Lady Hermon: That is the mechanism under this Bill: the First Minister and deputy First Minister are elected, then the Justice Minister, and that is a halt until we have a Justice Minister before we run d'Hondt.

David Ford: Yes. I suppose that there is a degree of logic in having some sort of mechanism. I would have thought, however, that if the Assembly were capable of electing a First Minister and deputy First Minister, it would not necessarily want to trigger an election merely over a difficulty with the Justice Minister.

Q153 Lady Hermon: Yes. Again, I will repeat myself. I am not advocating another Assembly election. I do not think that the electorate would forgive us all so quickly for that. However, short of an election the Secretary of State's advisers should perhaps look at some form of default mechanism.

David Ford: I can certainly see the benefit of looking at it. At the moment, however, having been asked that on the spur of the moment, I do not want to prejudge what that might be.

Lady Hermon: That is fine. Thank you.

Q154 Chair: There must be other questions on the Justice Minister issue. If not, we will move on to the issue of transparency of donations and loans to political parties. Is it time to move on?

Stewart Dickson: Definitely.

David Ford: If my colleague says "definitely", then—

The answer is no, it is not time. We should have moved on some years ago. We have taken the view that Northern Ireland should operate on exactly the same basis as England, Wales and Scotland, and we believe that the time for holding off has long passed. The Alliance Party, as a matter of policy, has said that it will publish all donations that come into the public donations sphere in GB. We would if we had any in the last year. We have not had any that have fallen into that sphere, but we make the same returns and we make it clear that we would name people if they donated more than that relevant sum.

Q155 Oliver Colvile: Thank you very much to you both for coming. We have had a number of people before us today who raised real concern that they
could be subject to intimidation and their donors could also end up being subject to intimidation. It would be helpful to have your comments on where the other parties sit on this. The second question that I want to ask you is, given that you are quite willing to make sure that you publicly tell everyone what large moneys come to you, why are you not also willing to publicise the names of all the members of your party? Would that be a problem?

David Ford: I am not sure that every individual who chooses to join a political party should necessarily expect that that would become a public issue. Certainly, if someone joins and pays a basic £25 or £40 subscription, they are in a very different position to someone who donates several thousand pounds a year.

Q156 Oliver Colville: Why?

David Ford: I think that there is such a thing as a right to a private life, which does not necessarily get you there. You can hardly suggest that, by joining a party, you have somehow acquired a significant measure of influence of the kind that generates the same concern as donations.

Q157 Oliver Colville: You are suggesting that a donation delivers some influence. Is that right?

Stewart Dickson: I think that, in the public's view, size matters.

David Ford: You talk about people being subject to intimidation. Have you not been reading the newspapers since early December?

Oliver Colville: Yes, I have, most certainly.

David Ford: I think that we have shown that we are prepared to stand up to that level of intimidation, and we believe that anybody who is concerned about democracy should stand up to it.

Q158 Mr Hepburn: Let me just play devil's advocate. I think that donations should be published. Presumably, you have voters on, say, the Shankill Road or the Falls Road. It may be only one or two; it does not matter how many. Do you think that publication would deter them from making a donation of, say, £50 to your party? If you think that people would be put off giving donations of £50 or £100 or whatever, is that a key issue?

David Ford: No, but I did not think that we were proposing to talk about declaring donations of that sort of sum. The issue is surely of applying—

Q159 Mr Hepburn: Sorry, is it £500?

David Ford: As far as I know, we are not required to declare anything to the Electoral Commission of less than—

Q160 Mr Hepburn: If a businessman or whatever lived in a nationalist or loyalist area and gave a donation that was more than the specified sum, do you think that, if it were published, it would put them off giving that donation in future? If that is the case, do you think that that is right?

David Ford: It is a question of whether you are talking about the donations in the thousands of pounds range, which would then require somebody's name to be publicly declared, and whether that would put them off. Fundamentally, anybody who gives a donation of that sort is potentially being seen as acquiring a significant amount of influence. Therefore, it is appropriate that the public should be aware of it. We are not talking about the people who are giving their £25 or £40 subs; we are talking about people who are giving significant sums and who ought to be completely open and transparent.

Q161 David Anderson: I am completely on board. We had this debate today. If people want to engage in a democratic society, they should be prepared to stand up and say that. We heard from people today who said that there is a genuine threat from terrorists to people who do that. Do you accept that?

Stewart Dickson: I am not sure that that threat is any more real than it is to any businessperson or any other individual who wants to make a substantial donation to a political party anywhere in the United Kingdom. I do not think that Northern Ireland should be carved out as a special case any longer. We all face a whole range of pressures in our lives and in the things that we do, and I do not think that there should be particular protection around an individual political party. It is not any different to giving money in large sums to an NGO that deals with, say, a controversial area, such as something like pro- or anti-abortion, which people may feel that you should or should not support. People may have very strongly held views. We know that there are exceptionally strongly held views in that area. If those forms of donation should be made public, I do not see why they should not be made public in political life as well.

Q162 Ian Paisley: If the Chief Constable, however, were to give an opinion that a particular individual was about to donate a certain amount to a political party and that that would pose a specific and active threat to their life, would you change your position?

David Ford: I think that it would be very difficult to see how the Chief Constable could possibly be as specific as that. The reality is—

Q163 Ian Paisley: We have been discussing that today. The Chief Constable has given many opinions in the past. He has said that certain people were definitely not involved in terrorism and that others were. So, he could do it. Would you change your view if he were to make that a position and if it were to form part of the thought process in the development of this policy?

David Ford: You are in an extremely hypothetical area.

Q164 Ian Paisley: So, I will ask you from that hypothetical area whether you would change your position on that matter if the Chief Constable used his position to do that.

David Ford: You would then be into the same kind of area if the Chief Constable were to use his position to talk about other aspects of people's lives. There are those who face a significant risk because they wear police uniforms or prison officers' uniforms at the
moment. There are those who face a degree of risk because they work in the field of politics, but—

Q165 Ian Paisley: What if the Chief Constable gave a statement to you saying, "If this person donates to a party or if a group of individuals donate to a party, they are likely to come under threat"?

David Ford: Just as would apply to other threats if there were an assessment, the only people to whom that piece of information should be given are the individuals who are potentially under threat.

Q166 Ian Paisley: Yes, but if there were a mechanism to allow that information to be known to you as a leader of a party, would you change your position?

David Ford: I would be extremely reluctant to endorse anything that suggested that anybody other than the victim of a threat should be talked about by other people, even if they happened to be the leader of a party.

Q167 Ian Paisley: You are not addressing my point. There is a—

David Ford: No, I am addressing exactly the point.

Ian Paisley: No, you are not. If there is a specific threat to an individual, because they donate to a political party—

David Ford: The information is for them, and it is their choice what they do.

Q168 Ian Paisley: So, it should not be taken into consideration?

David Ford: It is their choice what they do.

Ian Paisley: But should it not be taken into consideration?

Q169 Chair: May I come in with a slightly different, but linked, point? As you are aware, this is enabling legislation. The Secretary of State may not enact it. So, she is not satisfied. She would not entirely agree with your analysis, would she? She is holding back, so she may or may not enact it in the future.

David Ford: I am not sure that this is the first legislation in relation to Northern Ireland that has not been just enabling legislation, Chair.

Q170 Chair: No; I am sure that it is not, but she obviously does not share your view.

David Ford: It would be for the Secretary of State to make her assessment, and the Secretary of State has access to information around security matters that the rest of us do not.

Q171 Chair: Do they get a lot of that information from you, presumably as a Minister?

David Ford: No, absolutely not. Secretaries of State get that information from the police and the security service. What she gets from the security service does not come anywhere near the Department of Justice.

Q172 Chair: Have you discussed that point with her in depth?

David Ford: I have not discussed this particular point with her.

Chair: Okay. Shall we move on to dual mandates? What is your position on that?

David Ford: We believe that dual mandates should end. Unfortunately, the Committee member who could prove that not only do we believe that as a point of principle but that we put it into practice within a relatively short time is not sitting here. Within, I believe a couple of months of Naomi's election to Westminster, we replaced her in the Assembly and in Belfast City Council. Given that dual mandates continue and are wrong, we believe that the only way to deal with them is through primary legislation. Unfortunately, we in Northern Ireland have not followed the example of our cousins in Scotland and Wales, therefore legislation is required.

Q173 Chair: Should it be so for Wales and Scotland while we are at it, though?

David Ford: I hesitate to give a view about Wales and Scotland, when MSPs and AMs have shown that they know what to do.

Q174 Lady Hermon: I will follow up on that point. I am not sure that it is, in fact, just as clear-cut as that. Under the proposed Bill, Northern Ireland MPs would be the only ones in the United Kingdom who would be prevented by legislation from holding dual mandates. This is very hypothetical, but were I to run in the next Assembly and Westminster elections and were I to succeed in both, I could see myself taking a case, based on a human rights' point, that I had been discriminated against. I could compare myself with MPs in Scotland and Wales, who can take up dual mandates quite legitimately, because there is, at present, no legislation banning them from doing so. Were the Bill to go forward in its present form, therefore, there would be a human rights and discriminatory point. So, it is not just as easy as saying, "Well that is up to Scotland or Wales". I have full confidence that you, as Justice Minister, will say in response to the Secretary of State that a human rights' issue has to be addressed in this.

David Ford: I am not sure that my remit as Justice Minister for Northern Ireland allows me to go into the depth that you are talking about for Scotland and Wales. I accept entirely your point about the differences in the natures of the three devolved legislatures on that basis and that, on the face of it, it is discriminatory. However, the fact is that it is only the law catching up with practice in the other two nations. Were the Committee to recommend that it apply across all three, I see no reason why it would not. I am just not sure that it is my position to tell you to do that.

Q175 Lady Hermon: Thank you. Am I right in thinking, however, that your preference would be that Northern Ireland stay in the same league as Scotland and Wales, in that no dual mandates should be held with Westminster in any of the regions, but that there should be legislation to prevent that from happening?

Are you saying that you would prefer legislation than to adopt a laissez-faire approach and let the parties here sort it out?
David Ford: "Laissez-faire", as you put it, has resulted in an end to dual mandates for Scotland and Wales but not for Northern Ireland.

Q176 Lady Hermon: Almost. Finally, under the draft Bill, the dual mandate would be terminated only for those who sit in the Assembly and in the House of Commons. It does not extend to the House of Lords; those words do not appear in the draft Bill. Would you like to see the Bill include the Lords? If, as a party, you so oppose dual mandates, would you like to see it applied to both Houses at Westminster?

David Ford: Yes. I am fairly sure that the evidence that Naomi submitted on this point also referred to the House of Lords. Given that it is the other part of the legislature at Westminster, it would be logical to end the dual mandate there too. I accept that Lords, with no constituency and so on, are in a different position. However, I think that to be a Member of the two legislatures is the point of principle.

Q177 Oliver Colvile: One of the great things about the House of Commons is that we run into one another and we talk to Ministers, and that produces quite a lot of information that can be fed back. How do we make sure that that sort of gossipy networking can continue rather than just relying upon civil servants or researchers for information?

David Ford: I would have assumed, with respect to Lady Sylvia, that MPs would generally keep in touch with their party colleagues in the Assembly.

Q178 Lady Hermon: Thank you for naming the MP for North Down. That is my point exactly: I am not, and never have been, an Assembly Member, and I do not sit with any party; I sit as an independent. MPs at Westminster have to be very mindful to ask Ministers at the Despatch Box whether they have engaged with their counterpart, the Northern Ireland Minister, to build up rapport. Sadly, on a number of occasions when one would have expected the responding Minister to answer that, yes, of course the responding Minister had liaised with the Justice Minister, for example, the answer has, worryingly, been no. There is an argument to be made that dual mandates are useful, although I will let the honourable Member for South Belfast speak for himself. Nevertheless, there is a case to be made. You are very lucky to have an honourable Member for East Belfast who is in the party and who can liaise with you. Others, however, are at a distinct disadvantage.

David Ford: I take your point, although your example of questioning Ministers about their liaison with Northern Ireland Ministers might tempt me, as a devolved Minister, to think that there are other Ministers with responsibilities at Westminster who do not necessarily liaise with relevant Departments. I am not just talking about the NIO matter.

Lady Hermon: Absolutely.

David Ford: I am not quite sure that that would necessarily be particularly well covered around the issue of dual mandates for MPs/MLAs.

Q179 Lady Hermon: I was not criticising. I think that the Justice Ministry at Westminster maintains very close links with the Department of Justice here. However, other Ministries are not nearly so good.

Q180 Oliver Colvile: I am curious as to how we ensure that there will be communication between the two that does not just depend on civil servants and researchers speaking to one another and that we ensure that there is positive interaction between politicians. A way of doing it may be to say that politicians from a political party in the Assembly talk to their counterparts in Westminster, although that could end up producing a rather stilted and odd interaction at second hand. Those are only personal views.

David Ford: The interesting thing is that although we have structures that bring Ministers together in different ways, we have only very limited structures for bringing together MPs, MSPs, AMs and MLAs. That is, perhaps, a slightly different issue. The nearest thing that we have to it is the British-Irish Parliamentary Assembly (BIPA), which has only a handful of members from the devolved bodies, and not many MPs or TDs either.

Q181 Lady Hermon: How often do you meet in that forum?

David Ford: I am not a member, although Mr Colvile can keep you right.

Oliver Colvile: You get a very good lunch. [Laughter.]

Q182 Ian Paisley: Clauses 3 and 4 of the proposed legislation are very specific: they disqualify a Member of the House of Commons, a member of the judiciary, a civil servant, a regular member of the armed forces, a member of a police force and, importantly, a Member of the legislature of a country or territory outside the Commonwealth other than Ireland. Should that loophole, where someone could be both a TD and an Assembly Member but not an Assembly Member and an MP, be closed?

David Ford: If you are looking at the issue of dealing with dual mandates, it would appear that dual mandates on that basis should be as unacceptable as dual mandates between Westminster and the devolved bodies.

Ian Paisley: Thank you.

Chair: OK. Are there any other issues—

Ian Paisley: Yes, I have a specific question on the other areas.

Chair: I will ask the Minister first and then take questions. Is there anything that is not in the Bill that you would like to see in it?

Q183 Ian Paisley: I have a specific question for you, David. Given the problems over the inability to achieve legislative consent for the National Crime Agency (NCA), ought a mechanism be introduced in legislation—perhaps this is the vehicle to do it—so that when such a stumbling block occurs legislative consent could be given even if the Assembly has not, effectively, consented?

David Ford: I should put on record my concern that, at the moment, it does not look as if we will have an appropriate arrangement for the NCA to operate in the
devolved sphere in Northern Ireland. Of course, as a result of the failure of the Assembly to move on a legislative consent motion, the NCA will operate without any checks or any relationship to the Policing Board and so on in the non-devolved sphere. There are major concerns with that.

That said, given how the structures were set up is it possible to do that without riding roughshod over the wishes of the Assembly? That is probably related to some significant things about voting mechanisms in the Assembly and so on, which I suspect are beyond the remit of the Bill. However, those are issues that we will need to look at as we move into the future.

Q184 Chair: Is there anything else that you would like to see in the Bill?  
David Ford: The two brief points on which I had suspected there might have been questions were the size of the Assembly and the Assembly term. For some time, we have pointed out that there is no need for an Assembly of more than 80 Members. In an ideal world, had the parliamentary boundaries been reduced, we would have had 16 five-seat constituencies or 12 constituencies based on the proposed new district councils, with Belfast being split in two. Those constituencies would not have been exactly the same size, but that could easily have been accommodated with the number of Members in each constituency. However, at the moment, there does not seem to be any movement in that area. There is a significant issue about the duration of the Assembly term; that is not in the Bill, but it is hinted at in the prelude. There would be a real difficulty should the Westminster and Assembly polling days coincide. There is every reason to keep the two dates separate so that people can concentrate on the issues at hand.

I am not suggesting that there is a huge difference in how people vote for the different levels of government. However, there is an issue about how people run campaigns and the policy points that should be put before the electorate depending on the particular issue. Therefore, we believe that the best solution would be to move the Assembly immediately to a five-year term. The ballot papers went into the right ballot box—showed that that did not happen. A one-year extension to get to a more measured basis is perfectly reasonable. I appreciate that Scotland and Wales were in a different position, because that was agreed before the last election. However, I do not think that that is a fundamental point of principle.

Q187 Lady Hermon: Can we talk a bit about money? Holding an election is hideously expensive. Surely there is an advantage to having the two together? In years gone past, I heard people say that there was a bigger turnout when we had a Westminster election at the same time as another election. Does it not improve turnout? Is it not more efficient for funding and in cost terms for political parties?  
David Ford: In the early years of this century, a parliamentary general election coincided with a local general election on a couple of occasions, which probably produced a bigger turnout than a local election. However, in the administration of government, the cost of holding separate elections for different bodies is fairly limited. Moreover, the experience of two years ago and what went wrong when running an Assembly election, a council election and a referendum on the same day, and the difficulties that that created—including employing extra staff in polling stations to try to ensure that papers went in the right ballot box—showed that costs are not, in any way, a defining argument.  
Stewart Dickson: Moreover, you would also be attempting to bring two different electoral methods together: PR 1, 2, 3—

Q188 Lady Hermon: I have great confidence in the voters.  
Stewart Dickson: There is absolutely no doubt that people in Northern Ireland are very good at it. However, I have observed in polling stations, and it is so disappointing to see ballot papers being excluded because people have made mistakes. That is unfortunate. For the purposes of absolute clarity and in relation to cost, the value is in having separate elections, with people clearly knowing how they are going to vote on those days.

Q189 Lady Hermon: Right. That takes me neatly to a point in the Bill that I do not think we have discussed this afternoon. If a candidate stands for both
houses—your worst scenario is that the Westminster and Assembly elections fall on the same day—and the person is elected to both, there is a period of, I think, eight days' grace. That person can choose to be an Assembly Member—that is fine—but if they do, they precipitate a by-election instantly. I know that people who live in North Down, particularly those who work for the BBC, would be thrilled to have another general election within eight days. You said that you are very keen on separate elections. However, would you be quite so keen to support a Bill that will precipitate a by-election eight days after a general election?

David Ford: If a local councillor stands for the Assembly, they will have said that they would give up their council seat if elected to the Assembly; if an MLA stands for Parliament, they will have said that they would give up their Assembly seat if elected. By moving to different days, you will make that decision much easier.

Lady Hermon: That is a very interesting explanation. Thank you.

David Ford: A very convincing one, too.

Chair: That was a very interesting session. We are out of time, but thank you very much for coming to see us.

David Ford: Thank you.

Examination of Witnesses

Witnesses: Professor Michael O’Flaherty and Virginia McVea, Northern Ireland Human Rights Commission, gave evidence. Dr David Russell was in attendance.

Q190 Chair: I welcome Professor Michael O’Flaherty and his team to the Committee for the last session of the day. I do not know whether you caught any of the earlier sessions; it has been a very interesting day. Perhaps you could introduce yourselves briefly and tell us about your organisation’s functions and powers.

Professor O’Flaherty: Thank you very much, Chairperson. I am the chief commissioner of the Northern Ireland Human Rights Commission. I am joined this afternoon by Ms Virginia McVey, the director of the commission, and by Dr David Russell, the deputy director.

We have prepared a note for members, in which we have laid out extensively the nature of our institution and its powers. We are a national human rights institution; a human rights commission established by Parliament on the basis of provision in the Belfast/Good Friday Agreement and by way of the Northern Ireland Act 1998. We have the usual panoply of functions that you would expect of a national human rights commission; you will find them outlined in the note at paragraphs 3 to 5, where we have included them in extenso. However, rather than plod through them, it will suffice to say that we have all the powers and functions that you would expect of a national human rights commission, including our advisory function to the state at the devolved and Westminster levels. We have an investigative function, a responsibility to promote human rights in Northern Ireland society and the capacity to engage at the judicial level when needs be.

Every aspect of the work of the commission is considered under the statutes to be excepted matters not subject to devolution. Our commission is a fully accredited human rights commission under the applicable United Nations rules, which are known as the Paris principles. We share what is known as "A status" with the Equality and Human Rights Commission in London and the commission in Scotland—the highest possible level of compliance with the United Nations standards for bodies such as ours.

There are several issues that we would like to raise with the Committee today, sir, but I am in your hands.

Q191 Chair: Thank you very much. How do you view the transfer of certain further functions?

Professor O’Flaherty: That is the sole basis for our being here this afternoon. We are here to engage with you only on the issue of the Secretary of State’s request that the Northern Ireland Affairs Committee examine the possible inclusion in the Bill of arrangements for the eventual devolution of the commission from its current excepted status to the Assembly and the Executive. That is the only matter on which we would like to engage with you today.

Q192 Lady Hermon: I hope not, chief commissioner, because I have some other questions.

Professor O’Flaherty: Well, we will see where we go, Chairperson, with whatever question is thrown at us.

Lady Hermon: Yes.

Professor O’Flaherty: However, that, in essence, is the reason we are here and why we asked for permission to speak to you. It is important to emphasise that the commission does not take a position, and does not feel that it has any business taking a position, on whether the government choose to devolve responsibilities to the Assembly and/or Executive from Westminster to Northern Ireland. That is not a matter for us. That is a proper decision of our political leaders, and we will accept whatever decision is taken.

However, we have concerns. The current arrangements in the legislation guarantee our independence, which is an essential dimension of our compliance with the UN principles. As you advise the Secretary of State, we ask that you emphasise the importance that whatever arrangements may be put in place guarantee the independent functioning of the Human Rights Commission. If the commission’s powers and functions were to be devolved, it is important to maintain some framework in the legislation whereby the commission will still have competence with regard to non-devolved matters; for example, borders, national security and
such matters. A present, the Human Rights Commission has the power and capacity to engage with those issues and raise its concerns with the Westminster Parliament. It is important that those be preserved in whatever arrangement may be made.

If provision were put in the Bill whereby devolution may be anticipated, we would like to propose that the nature of the devolution be explicitly indicated as one whereby the commission would be accountable not to a Ministry or Department of government in the Executive but directly to the Assembly. That is the model that operates, apparently successfully, in Scotland, where the Scottish Human Rights Commission is answerable not to the Scottish Executive in the first instance but to the Scottish Parliament.

In making that point, we observe that recent good international practice focuses on the need for a close nexus between the parliamentary body, in our case the Assembly, and the national human rights commission. The Belgrade principles, drawn up by experts from many European countries, including the United Kingdom, and adopted in 2012, set out that emerging good practice. They are in our submission.

Everything that the commission does is excepted, thereby indicating that Parliament, when the commission was being designed and established, recognised that keeping its excepted status was a matter of some importance. If that is to be done away with, it would be important that you consider how to recommend that adequate parliamentary scrutiny would be in place with regard to any transfer of any of the Secretary of State’s functions relating to the commission. Again, you will be the better judge of how an enhanced form of parliamentary scrutiny could be put in place for such initiatives, but we suggest the need in general terms.

Finally, the origins of this commission lie in the Belfast/Good Friday Agreement, which itself was put to the people and endorsed by a referendum. Given the exceptional origin of our commission, we propose that you consider recommending to the Secretary of State that any further discussion of the possible devolution of the functioning of the commission be subject to a public consultation.

Q193 David Anderson: Is there a national comparison of that happening elsewhere? As I understand it, the Scottish Human Rights Commission was set up by its Parliament as a direct result of their decisions and not because of the Westminster Parliament. Has what happened here happened anywhere else?

Professor O’Flaherty: It is a very interesting question. I cannot give you a scientific answer, but I will give you an impressionistic one: I do not think so. We are dealing with a unique set of circumstances.

Q194 David Anderson: I hear what you say about the Scottish example. This is the first time that I have really thought about the Scottish thing; it is working quite well. It would be naive to pretend that the history of human rights and the view of different political parties in Northern Ireland is probably a lot different from the majority of political parties in Scotland. Why would you possibly think that Scotland is a model when the history is probably different in Northern Ireland? Would you agree with that?

Professor O’Flaherty: The commission met to consider that matter a few days back. We reached the view that it simply is not our business to say whether the parties and the local systems are or are not in a position or capable of taking on the responsibilities. It is simply beyond our competence. Among the range of models, the Scottish one is probably the best that is currently available in the sense of the nexus being directly with the Parliament rather than mediated through a Department.

Q195 Lady Hermon: It is a delight to see you here this afternoon. This is just an observation, and you can correct me if I am wrong. I actually took a note as you were going along. I know it is in your submission, but it is always very nice to hear it explained. Maybe it was your tone, and maybe it was the content—and, as I say, correct me if I am wrong—but I have the impression that there is an anxiety or concern in the Northern Ireland Human Rights Commission. It was set up in the agreement, and has a very interesting remit under it. If your powers or functions are, either slowly or whatever, devolved, let us say, to the Northern Ireland Assembly—are you worried about that? You came across as if you were, but maybe it was just your tone. Your accent was lovely; I heard every word. Beautiful diction, but I just detected that you felt anxiety.

Professor O’Flaherty: Thank you. I am glad that I took those elocution lessons as a child. Any arrangements that might lead to the devolution of the commission are not just the matter of housekeeping and tidying up.

Lady Hermon: I agree.

Professor O’Flaherty: The commission was provided for in an international treaty agreement. It was subsequently reflected in legislation. Then, policymakers determined that every aspect of its establishment should be excepted. Therefore, any step towards possible devolution has to be taken with extraordinary seriousness. That is what I intended to convey with my tone.

Q196 Lady Hermon: Do you feel that the Secretary of State and the Northern Ireland Office have treated it with sufficient seriousness and concern? Have you engaged? Have you been invited?

Professor O’Flaherty: We have, on numerous occasions.

Lady Hermon: Good.

Professor O’Flaherty: The current Secretary of State and her predecessor are well aware of our views. They have given us no impression in our discussions that they particularly disagree with us that this is a very serious matter.

Q197 Lady Hermon: So, where did the impetus come from? When I read through the Bill, I was quite surprised to find that there was a proposal to devolve the powers to the Assembly. Where has that impetus come from?
Professor O’Flaherty: I cannot say, Lady Hermon, where the impetus comes from. All that I can tell you is that, since I came into post a year and a half ago, it has come up as a conversation topic intermittently. It has been around for some time. Anything beyond that would be pure speculation on my part. It is best to put that question to the Secretary of State.

Q198 Lady Hermon: It certainly was not generated from within the commission itself. You did not go along and say please.
Professor O’Flaherty: No. I assure you that we did not generate it.

Q199 Mr Hepburn: Do you have the support of all the political parties in Northern Ireland? If not, which are not 100% behind you, and what reservations do they have?
Professor O’Flaherty: If only there were an authoritative way to determine the answer to your question. I would love to be able to do so. All that I can tell you is that we have good relations with every political party. Forgive me for being a little bit anecdotal. We had a very important event—the most important event of our calendar—just two months back here in this Building, when we launched our annual statement. It was hosted by the Speaker. We had representatives present from every political party in Northern Ireland. That was an acknowledgement to us that there is a wide degree of acceptance of the commission and its work.

Q200 Oliver Colvile: Thank you very much for coming to talk to us. You made a very informative presentation. There has been a great deal of discussion in the Westminster Parliament and, perhaps, in England, Wales and Scotland about the whole business of the European Court of Human Rights. I do not know how it has affected things here. There is some very real concern about it and about some of the decisions that have been made. This may not be the appropriate place in which to answer my question, but I will ask it anyway. If you do not want to answer, that is fine. The big issue is whether there should be a bill of rights in England, and there is also some discussion as to whether there should be a separate one here in Northern Ireland. I think the British Government are of the view that actually one for the whole of the United Kingdom is the appropriate way of going about it, but I would be interested to hear your views about that.

Professor O’Flaherty: I welcome the opportunity, Mr Colvile. First, with regard to the European Court of Human Rights, I refer the Committee to Sir Nicholas Bratza, the very eloquent and recently retired former president of the court. He has done a marvellous job of defending his court, and I would simply endorse everything that Sir Nicholas said. The court is deeply malign, profoundly misrepresented and, although it has its faults, it is doing a decent enough job.

That is enough about the Court from me. With regard to the bill of rights issues, first, it is important for me to say that I am not aware that the Government have said that they want a single bill of rights approach for the whole of the United Kingdom. In every representation that has been made to me by the Government it has been made clear that they remain open to a distinct bill of rights for Northern Ireland, albeit that it was unclear where to go with that matter while the UK consultation process was under way. The Government should speak for themselves, but I am not aware that they have ever represented their view as you have just put it.

Q201 Oliver Colvile: In all fairness, I may have got that wrong, so do not take it as gospel.

Professor O’Flaherty: No. Of course. Finally with regard to a bill of rights for Northern Ireland, the Human Rights Commission was mandated to provide advice on such a bill and delivered that advice a number of years ago. Now, it is the responsibility of policymakers to work with that advice and implement the requirement of the Belfast/Good Friday Agreement that consideration be given for such a bill. Recently, I attended an event at which the First Minister and the deputy First Minister reconfirmed their commitment to delivering on a bill of rights for Northern Ireland, albeit agreeing, or rather indicating, that there were disagreements as to what its content might be. My understanding is that that is where we are. There is agreement on a bill, but there is political disagreement on the content of that bill. Our commission has delivered advice on what that content might look like, but now it is for the political leadership to complete the process. The commission remains committed to the promotion of such a bill of rights.

Q202 Oliver Colvile: You would like to see one, but you are not quite clear as to what it might contain.

Professor O’Flaherty: We are very clear on what should be contained within it, but ultimately, it is the Government that is going to decide, not us. We have given advice that is quite clear.

Oliver Colvile: There are other players in this, as Lady Hermon said, who may not necessarily end up agreeing with you.

Q203 David Anderson: The way I understand the proposals is that this is enabling legislation that would give the Secretary of State the power, sometime in the future, if he or she signs it, to move the commission from where it is now, probably to this place. You make a very good point in your submission about the fact that the commission was set up as part and parcel of the Good Friday Agreement and is subject to referendum. You ask that if that happens, it should be subject to public consultation. Can you expand on that?

Professor O’Flaherty: Forgive me if I have not fully understood the procedure, but the sense one has right now is that there will be no consultation beyond that which will take place in the framework of your work. You have been asked by the Secretary of State to advise on whether a provision for this matter will be included in the Bill, after which it will move rather quickly. We would ask that, as would be the case in any normal statutory initiative, the public be given a formal, structured opportunity to comment. I will ask
my colleagues to add to that in case I have misunderstood the sequencing.

Virginie McVea: No. Given that it was set up by what would be regarded as an international peace agreement, and it has become an A status institution, that would be considered as normal practice.

Q204 David Anderson: Can you advise me, specifically, on the consultation, what do you envisage that to be? Would it be a stand-alone discussion with the public on this particular matter, or would it be part and parcel? Because we do, and—tell me that I am wrong here, Chair, you will know better than me— we do pre-legislative scrutiny, but when the Bill actually goes to Parliament, there is then a Bill Committee that will come out and consult with people in the normal way. Are you saying that there should be something separate, specifically about this issue?

Professor O’Flaherty: Our view is that it is important, and again, you will be the judges of the best way to flag this. It is important that this dimension—the possible devolution—does not get lost in the morass of all the other important matters in the Bill. It is too important, too significant for the rights architecture of Northern Ireland, to slip through, in a sense, unnoticed.

Lady Hermon: Yes. As compared to ending dual mandates, changing voter registration or whatever, I am sorry to say that it has not been a headline-grabber to date, but I am sure that this session, this afternoon, will help.

Chair: Yes, indeed. We are very happy to speak to you about it today. Are there any further questions?

Q205 Lady Hermon: Yes. I have a number of questions. May I follow on from what was said by my colleague here, who, of course, is in the Conservative Party? I am not sure that Mr Colvile will share this view, because there are some members of his party who would be very keen indeed—I think I am right in saying, Oliver—that in fact the UK withdraws from the European Convention on Human Rights. I wonder if you could just explain, as the chief commissioner, that that is not technically possible in terms of Northern Ireland because, of course, the European Convention on Human Rights and the fact that Ministers here have to legislate under the Northern Ireland Act 1998—section 24m is it not?—to be compatible with the convention. So, while there is a lot of talk about withdrawing from Strasbourg and the European Convention on Human Rights, it is actually not doable.

Oliver Colvile: Unless we end up by changing the law.

Chair: Let us not get into too much of a debate. Please answer the question.

Professor O’Flaherty: I will be brief, then, perhaps. It will come as no surprise to any member of the Committee that this commission would be appalled if the United Kingdom were to withdraw from a treaty of which it is the primary author, which is one of the glories of the post-war reconstruction of Europe and which has achieved so much for the most vulnerable and marginalised since, notwithstanding the extent to which the treaty has been trivialised through distortions in the media and the exaggerated commentary on exceptional cases. Hard cases make bad law, as any lawyer will say. If all you ever write about are the hard cases in the popular media, you forget the core values that are at issue. Ultimately, the matter of whether the United Kingdom could withdraw from the convention is technically a matter of law, but it would require also withdrawing from the European Union, for instance. It would also require withdrawing from the Council of Europe.

Q206 Oliver Colvile: That is not true. It is a separate body altogether.

Professor O’Flaherty: The European Union is in negotiation to become a party to the convention. If the European Union becomes party to the convention, it would not be tenable for a member of the European Union to not consider itself a party. So the implications are dreadful. However, I honestly think that our political leaders are not countenancing such a doomsday scenario. What is more important is to recognise that the European Convention is part of the lifeblood of the values of this society. This society has exported to other European states much of its lifeblood through the vehicle of the convention, and we should get a restored sense of its crucial value for a healthy society, regardless of our politics.

Q207 Lady Hermon: Yes. May I just ask a supplementary question? I agree with what you have said in terms of the UK as a whole. However, specifically in terms of Northern Ireland, the Belfast Agreement, signed on Good Friday, was incorporated into our domestic law by the Northern Ireland Act 1998, and the convention is actually written in there. For Northern Ireland, it would be even more complicated. It would have deeply destabilising ramifications for Northern Ireland.

Can I just move on to a question which will take us back to the Bill? I suggest that those points were made to the wonderful Attorney General, who of course is a colleague of Mr Colvile’s. Oliver Colvile: Can I just say that, as far as I understand it, Conservative Party policy in the coalition is to reform some of the workings, such as speeding up decisions and implementations.

Lady Hermon: And not withdrawing.

Oliver Colvile: It would be incorrect to say that official policy is to withdraw.

Lady Hermon: I never referred to official policy; I only referred to some colleagues.

Oliver Colvile: What certain members may say is another matter. It is not official policy to withdraw from the EU, but a number of us would like to do that. I just want to make that clear.

Lady Hermon: Thank you.

Can I just come to one particular aspect of the Bill which does concern me? It concerns me because the Secretary of State for Northern Ireland is going to have to stump this thing as it goes through, that she is content that it is compatible with the European Convention on Human Rights. She must do that. I am concerned about the legislative ban being introduced for Northern Ireland only in terms of dual mandates between the House of Commons—and only the House
of Commons, not the House of Lords—and the Northern Ireland Assembly. There is no equivalent legislative ban or prohibition in Scotland or Wales. Therefore, I, as a potential candidate to fill both of those roles, would have wished in my wildest dreams to stand for both the Assembly and for Westminster simultaneously. How feasible, and how realistic, is it that I could sustain a challenge in the High Court and say that this is an infringement of my rights under article 14, combined with freedom of elections which is guaranteed by the convention? It says that somewhere. I would be tempted to do it, I have to say. What are my odds of winning? I think it is highly discriminatory.

Professor O’Flaherty: I will preface my response by saying that this is not something that the commission has considered, so, to the extent that I will respond, it is O’Flaherty giving you a tentative opinion.

Q208 Lady Hermon: Perhaps you would write to the Committee when you have discussed it. That is fine.

Professor O’Flaherty: Yes, we can of course. However, my tentative response would be that you would not succeed in the European Court.

Q209 Lady Hermon: I do not want to go to Strasbourg; I just want to go to Belfast High Court.

Professor O’Flaherty: To the extent that you were invoking the European Convention on Human Rights, there is what is called "the margin of appreciation". In other words, Strasbourg recognises a wide margin of space within which issues such as the disposition of parliaments and so forth are handled by the respective state parties. I think that the jurisprudence under the European Court would be very conservative in terms of engaging in an issue of this type. So I am not sure that you would succeed.

On the other hand, the UK is party to a number of other treaties, including the International Covenant on Civil and Political Rights, which contains a prohibition on unequal treatment under the law. It is on that basis that you might well have a case. You could not use it to win in your courtroom, because those rights are not justiciable; but, as a matter of the United Kingdom’s international obligations, there is certainly an issue to be explored. However, that is as much as I can say at the moment. We can look at it back in the office and send you a more considered response, if you find that helpful.

Lady Hermon: Helpful, yes; but disappointing also. [Laughter.]

Chair: Okay. A very interesting discussion. Unless there are any other points or there is anything else that you would like to say to us, thank you very much indeed for coming.
Tuesday 26 February 2013

Members present:
Mr Laurence Robertson (Chair)
Mr David Anderson
Oliver Colville
Mr Stephen Hepburn
Lady Hermon
Kate Hoey
Dr Alistair M CDonnell
Nigel Mills
Ian Paisley
David Simpson

Examination of Witnesses

Witnesses: Mr Tom Elliott MLA and Mr Mike Nesbitt MLA, Ulster Unionist party, gave evidence.

Q210 Chair: Good morning and welcome, Mr Nesbitt. I understand that Mr Tom Elliott is going to join you in a minute. He will be very welcome. I think you know what we are looking at. Would you like to give us a two-minute opening statement and tell us your feelings about the Bill: what is in it and what is not in it? Over to you.

Mr Nesbitt: Chair, thank you very much. Good morning, everybody. Thank you for your interest. You are very welcome to Parliament Buildings in Belfast. Chair, as you know, you wrote to me before the Bill was published, with eight questions, which I responded to. As an overarching comment on the draft Bill as it stands, I have to say that I am slightly disappointed in its scope, which I might characterise as lacking a little ambition. I believe that this is an opportunity to take a significant next step on the journey towards the normalisation of politics in Northern Ireland. Fifteen years ago, with the Belfast Agreement, we took an initial step, which I would characterise as a set of arrangements that were always intended to be transitional. We returned to the table at St Andrews and at Hillsborough, not necessarily in a way that Ulster Unionist Party felt was particularly positive or useful. Regardless, those events have come to pass.

We are now at a position where I think this Bill gives us an opportunity to take another big step forward. The single biggest opportunity would be the introduction of an official opposition in the Chamber. The other major issue for us is not in the Bill is the need to address the fact that Northern Ireland is the only area of the United Kingdom that does not have an armed forces advocate. Indeed, the Executive of the Northern Ireland Assembly failed even to report in the first round of annual reports to the Palace of Westminster. That is deeply disappointing. To achieve an armed forces advocate, I think you would probably need an amendment to section 75 of the Northern Ireland Act 1998, which, I believe, inadvertently discriminates against members of the armed forces and veterans. Those are probably the two biggest areas where we feel there is a potential to lose an opportunity, and I hope that we can address that together positively.

Chair: OK. Perhaps we could run through our normal order of topics and then come back to those issues. What is your party’s position on the issue of transparency of political donations and loans?

Mr Nesbitt: As a matter of principle, we would like to see full transparency. We believe that the conditions are not yet right, primarily on the basis of the continuing terrorist threat, which remains a major issue in Northern Ireland. Having engaged in some fundraising within the private sector over the past 11 months as party leader, the other issue is that I believe that some businesspeople feel that while it is desirable, it is not yet the point where to be seen to support one political party might be disadvantageous to a business, in a way that it would not be to support the Lib Dems, the Conservatives or Labour in Great Britain. For those two reasons, we do not think the time is right, but we would welcome a time when full transparency can be achieved.

Chair: We welcome Mr Elliott. It is good to see you.

Q211 David Simpson: Mike and Tom, it is good to see both of you. We had the Green Party representatives here yesterday, and some of their views in relation to openness and transparency were very interesting—I will put it that way. Steven Agnew aligned international terrorism on the mainland as akin to what happened in Northern Ireland for 40 years. If memory serves me right. Do you agree that the situation is entirely different? We had guerrilla warfare here.

You made a point about businesses. Donations are totally different in Northern Ireland. That can damage businesses in Northern Ireland. On the mainland, supporting the Tories or Labour or even the Liberal Democrats, for those who would think of doing so, comes with a certain amount of pride. People are saying that they support a party, but it does not happen in Northern Ireland in that way. There is still dissident terrorism. Although we all want to see openness, we are some way off that.

Mr Nesbitt: The analogy between what happened here and the impact of international terrorism on GB is not an analogy that I have ever made or would support, because I believe that there are significant differences. On the broader point, if you were a Member of Parliament in GB, you would be attractive to businesses. You might find yourself being asked to serve on a board of directors for your expertise, potential influence and all the rest, whereas, in Northern Ireland through the Troubles, elected representatives were people whom businesspeople actively shied away from. We have not made the transition to a position where they look at an elected representatives as we feel there is a potential to lose an opportunity, and I hope that we can address that together positively.

Chair: OK. Perhaps we could run through our normal order of topics and then come back to those issues. What is your party’s position on the issue of transparency of political donations and loans?
representative and say that that is a man or woman with a set of skills that might be beneficial to their business.

**Mr Elliott:** To add to David’s point, we still have a number of businesses that are being boycotted because of their affiliation, possibly to a political party or another organisation. In the past two weeks, we have witnessed another website being established to recommend boycotts of certain businesses. That is an important factor.

**Q212 Chair:** In what way do those businesses demonstrate their support for political parties? Are they very open in how they do that?

**Mr Elliott:** Yes, some are open in how they support not only political parties but other organisations. We have a number of cultural organisations in Northern Ireland that are not akin to those in other parts of the United Kingdom. If there is any open affiliation with those, there are calls for boycotts, from whatever tradition or community.

**Q213 Lady Hermon:** It is very nice to see both Tom and Mike here this morning. It is lovely to be able to grill you for a change. In the evidence that was given to us yesterday, a suggestion was made that the PSNI and the Chief Constable should be involved in assessing whether there is a threat to those who wish to donate to political parties. I know that you were very keen in principle for transparency, and, Mike, you added that the conditions are not yet right. At this stage, we can amend the Bill, so could we not perhaps incorporate into it provision for the Chief Constable of the PSNI to assess whether or not a donor is really at risk? There is a suggestion that it is a charade. The word “smokescreen” was used yesterday in evidence.

**Mr Nesbitt:** Lady Sylvia, I am trying to put forward a suggestion that that is a man or woman with a set of skills that might be beneficial to their business.

**Q214 Lady Hermon:** Can I press you a little bit?

**Mr Elliott:** I even had correspondence from some donors—two in particular—to ask that we do not send any further correspondence to their business because the secretary, or whoever may be opening the correspondence, may divulge the information. When we get a donation, we obviously send a thank you letter and some correspondence.

**Q215 Lady Hermon:** Likewise, do you have evidence that there are individual donors who say that they would be fearful for their life if it were to become public knowledge that they had donated money to the Ulster Unionist Party?

**Mr Nesbitt:** On the latter point, I do not. On the first point, absolutely. We have approached companies that said that they will donate but that we must guarantee that their name remains anonymous because they do business across the board.

**Q216 Lady Hermon:** And they feel that they would suffer, if—

**Mr Nesbitt:** If that came out, they feel that they could lose contracts.

**Mr Elliott:** I do not want names, because confidentiality currently does attach to donors. We want to move away from that, and we want greater transparency. I address this question to both of you, as the current leader and the former leader of the Ulster Unionist Party: have businesses actually said to you that businesses have stated that they will not give a donation and keep that confidential, it must be done with full confidentiality. We could then get some idea of how widespread it is. If it were one business out of thousands, obviously that would be bad enough. If it were 100 out of thousands, that would be much, much worse. Is there any way you could help us with that?

**Mr Elliott:** Without breaching confidentiality, I am not sure. I can tell you that it is certainly well over one. I can tell you that it is certainly well over one. However, whether it is five in 100, or 20 in 100, I am not sure.

**Q217 Lady Hermon:** Would you mind my asking whether that was in fairly recent times? It must be, since you were leader after Reg Empey.

**Mr Elliott:** Yes. That was within the past two and a half years.

**Lady Hermon:** Thank you. We had not heard that evidence before. That is really interesting.

**Q218 Mr Anderson:** We never heard any of this yesterday. I am not saying that what you are saying is not accurate, but is there anything that you could send to us? You mentioned a website. I wonder whether we could get details of that. Obviously, that would be done with full confidentiality. We could then get some idea of how widespread it is. If it were one business out of thousands, obviously that would be bad enough. If it were 100 out of thousands, that would be much, much worse. Is there any way you could help us with that?

**Mr Nesbitt:** Lady Sylvia, I am not sure. I can tell you that it is certainly well over one. However, whether it is five in 100, or 20 in 100, I am not sure.

**Mr Elliott:** I may be able to forward redacted correspondence that I received, and take the name of the business off it. I will take a look at that, and, if possible, forward it to the Committee. I will get the information about the website and forward that.

**Q220 Mr Hepburn:** You have made the assertion that businesses have stated that they will not give a political donation if it is publicised. I will turn the coin over and say this: if businesses can make political donations and keep that confidential, it must be advantageous to them. Why is it advantageous to them to keep political donations private?

**Mr Nesbitt:** I do not think that it is advantageous to them to keep it private in the sense that you are implying.
Mr Hepburn: You are saying that they want to keep donations secret and that, if it comes into the open, they are not going to give you owt. I do not understand that. There must be an advantage to a business to give you money and say nothing.

Mr Nesbitt: I think businesses, not just here or UK-wide but internationally, perceive an advantage in donating to political parties, because they believe in those parties, their policies, their principles and their values. That is a global phenomenon. Would you agree with that?

Q221 Mr Hepburn: I believe that people who have money should not have the privilege of running the show. They should have exactly the same rights as anybody else. You are saying that, because a businessman has money, he can determine whether his name gets revealed or not. Surely it should be open and above board.

Mr Nesbitt: Yes, it should be transparent. I would like the conditions to pertain where it is transparent. What I am hearing from you is an argument against political donations from businesses, full stop.

Q222 Mr Hepburn: No, you are not. I am saying that political donations—

Mr Nesbitt: That may not be what you are saying, but it is what I am hearing.

Mr Hepburn: I am saying that political donations are fine, provided that it is done openly and above board, and everybody knows about it. I do not understand why there needs to be a cloud of secrecy around it.

Mr Nesbitt: Because there are businesspeople who feel that, if it were revealed in the public domain, it would cost them business. Businesses exist to do business and make profit. Giving a political donation is not the core function of a business.

Q223 Chair: There are two issues. One is the security issue, which you have said is very different from GB, and I accept that. On the other side, the risk of losing business is surely the same in GB.

Mr Nesbitt: But is it?

Chair: Well, if you cannot make the case that it is different, why should it be different?

Mr Nesbitt: I am not necessarily trying to make the case that it is different. I am saying that this is what we are told: that businesses will donate to us, but not if it is made public.

Chair: I do not think that that is any different from GB, at least on that point. It is different on the security point; I accept that.

Q224 Kate Hoey: I see what you are saying about businesses in a small community. Say, for example, that a well-used business in a very mixed country town is known to be giving to the DUP. Would there be people in that community who would put it about that you should not shop there but should go to the shop that is giving to Sinn Féin? Is it as basic as that?

Mr Nesbitt: It is as basic as that.

Mr Hepburn: That happens in the UK. If I found out that my local shopkeeper was a Tory, or supporting them, I would not go near.

Kate Hoey: I got support from a very good restaurant, which you know, Mr Hepburn, and it did not stop anyone who was voting for a different candidate going to eat there.

Chair: We will have to move on in a minute.

Q225 David Simpson: Mike, I would like to cut to the chase, is it not the case that businesses and businesspeople in Northern Ireland have been physically attacked, attempts have been made on their life, and businesses have been burnt or bombed, or whatever, because of their perceived allegiance to certain organisations or parties?

Mr Nesbitt: Yes, and we have not yet moved on from that.

Q226 Nigel Mills: I think I get the security argument clearly. On the other point, it comes down to whether you value transparency more than wanting a well-funded political system to operate. I think you are saying that, if we publish donations, there may well be fewer of them, which may well mean that we could not have fully functioning parties in the way that we want. It is basically a choice between which you value more: transparency or funding. Is that the situation?

Mr Nesbitt: No. I see the second point as a by-product of the former point about security; they wrap up together.

Mr Elliott: We need to recognise the differences again. Stephen said that, if someone was donating to the Conservatives, he would not go into their shop; he would make his choice to go somewhere else.

Mr Hepburn: Unless it is a brewery. [Laughter.]

Mr Elliott: That may be the case for the local activists of a particular party, but, by and large, people in the rest of the United Kingdom are, quite often, floating voters, and they do not have the same total allegiance to one group, as would be the case in Northern Ireland. In Northern Ireland, probably 90% of the people are nationalist or unionist. If there is a perception that there is huge support from one business for one party, that has the potential of isolating up to 50% of that person's business. I think that is much more widespread here than in the rest of the UK.

Q227 Nigel Mills: I think that what you are saying is that, if, in an ideal world, there were no security threat, you would have no objection to publishing the donations, even if it meant that you would lose half your customers. The most extreme matter is security, which means that you think you need this protection.

Mr Elliott: Yes. I think we would get much closer to it, Nigel.

Q228 Chair: We are going to have to move on to dual mandates. What is your take on that? Do you agree with what the Bill is proposing?

Mr Nesbitt: Yes. We, as a political party, led that drive. I believe that we were the first to take steps to end dual mandates.

Chair: Slightly by default.

Lady Hermon: Yes, slightly.

Mr Elliott: Not necessarily, because, in the Assembly elections, we did not stand a number of candidates
who were local councillors, and vice versa. So we did take positive steps. I take your other point, but we certainly did take positive, proactive steps. We have a concern around the opportunity for a Member of the Assembly to be in the House of Lords.

Q229 Lady Hermon: Do you object to that? Do you think that the Bill should be amended to impose a prohibition on dual mandates in both the House of Commons and the House of Lords?

Mr Nesbitt: In our initial response to the Chairman, we said that we would not welcome MLAs being active members of the House of Lords.

Q230 Lady Hermon: You cannot be an inactive member of the House of Lords.

Mr Nesbitt: It is my understanding, Lady Sylvia, that most Lords are very inactive with regard to their participation at the Palace of Westminster. Present company excepted, of course.

Lady Hermon: I am not in the House of Lords, and I do not wish to be there.

Mr Nesbitt: If you were an MLA and a peer, we would not necessarily have to miss plenary sessions on Mondays and Tuesdays in this House because you were going to the Palace of Westminster.

Q231 Lady Hermon: May I follow through on the logic of that, because I have real difficulty with this? I have never held a dual mandate, so I am not defending my position on this, although the future, of course, is open. Someone who sits in the Assembly and in the House of Commons, and there are very few, has a democratic mandate. They have put themselves up for election and have a mandate to be in both places, but not necessarily at the same time. However, those who sit in the House of Lords have been simply given that privilege. Surely, the mandate is what should entitle someone to continue with a dual mandate, and what should be prohibited is the dual mandate in the House of Lords and the Assembly.

Mr Nesbitt: We take the entirely opposite view.

Q232 Lady Hermon: So it is on condition that the person is not a working peer.

Mr Nesbitt: It is that the work does not interfere with what we would consider to be their primary duty as a Member of the Legislative Assembly of Northern Ireland.

Q233 Nigel Mills: I would contend that, if you are an MLA, your membership of the House of Lords should be suspended until you cease to be an MLA. That would seem to be a sensible way around it. What about being a member of the European Parliament as well. Should that be barred, if you want to be an MLA?

Mr Nesbitt: Yes.

Q234 David Simpson: Mike, if the Bill goes through, it will be in legislation that double mandates will go. That will be legislated for in Northern Ireland. Is there an inequality when it comes to Scotland and Wales? We are all part of the United Kingdom. If it is legislated for here, even though the parties have agreed to phase it out by 2015, is there not an inequality?

Mr Nesbitt: I am more focused on what I would consider to be best practice than on questions of equality and inequality. I think best practice would be for Members to operate a single mandate on a full-time basis.

Q235 Kate Hoey: Do you agree that it is wrong that you can be a TD and a Member? It is in the Bill, but should it be taken out?

Mr Nesbitt: I think that having a single mandate is the way to go forward. As you say, you do not have a mandate to go to the Lords.

Q236 Oliver Colvile: Let me play devil’s advocate. One of the things that I am very concerned about is that, if people are not representatives in the Assembly and in Parliament, it will mean that the only way that information will get delivered will, generally, be through civil servants or researchers, and so on. Surely, one of the things that is very important for you, as an elected politician here in Northern Ireland, is that you have the opportunity to walk the corridors of power in Westminster and be able to have an opportunity to talk to Ministers, privately, behind closed doors, without necessarily having to be divorced from all of that.

Mr Nesbitt: I think it is possible to achieve that sort of contact and liaison.

Q237 Oliver Colvile: How do you do that?

Mr Nesbitt: You can have an office in London. Let us not forget that Sinn Féin does not take its seats on the green Benches.

Q238 Oliver Colvile: But they do operate; they come to have meetings.

Mr Nesbitt: Yes, at the taxpayers’ expense, which, I must say, is shameful.

Q239 Ian Paisley: I apologise for being late. Mike, clauses 3 and 4 set out very clearly who would be disqualified. A Member of the House of Commons, members of the judiciary, a member of the Civil Service, a member of Her Majesty’s regular armed forces, a member of a police force maintained by a police authority, and anyone from the legislature of any country or territory outside the Commonwealth, other than Ireland, would be disqualified. Do you agree that that should be amended to ensure that a TD cannot sit in both Houses?

Mr Nesbitt: As I have said, I believe in a single, full-time mandate.

Ian Paisley: Yes, but would you agree to an amendment?

Mr Nesbitt: Yes, that would be consistent.

Q240 Chair: We have just five minutes left, and there are a couple of issues that we want to cover. Are you happy with the proposed changes on the appointment of the Justice Minister?

Mr Elliott: Clearly, having a more stable position for the Justice Minister would be good practice. There are concerns around how that post is filled at the moment,
Q241 Kate Hoey: You said earlier that you thought that perhaps the Bill is not, to use slightly the wrong word, ambitious enough. Has your party decided to put forward recommendations on, for example, the fact that there is no opposition? We have heard some other evidence that would support changes. Are you likely to come up with something concrete on that?

Mr Nesbitt: The two broad areas are on opposition and the armed forces advocate, Kate.

The issue of dealing with the past, for example, is one on which we have engaged with the current Secretary of State and previous Secretaries of State. The answer tends to be that it is a devolved matter. I suggest that two issues arise from that. The first is that I see no indication that the Assembly parties will be able to achieve an agreement on dealing with the past without some sort of assistance. Indeed, during the whole process, going back 15 years, we have had the British and Irish Governments coming in, effectively as honest brokers. I am not sure that we will get anywhere without looking at something of that nature.

The other thing is that, although, on the face of it, it seems to make sense to have some sort of assistance. Indeed, during the whole process, going back 15 years, we have had the British and Irish Governments coming in, effectively as honest brokers. I am not sure that we will get anywhere without looking at something of that nature.

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Q242 Lady Hermon: Thank you for those additional comments. To go back to the Bill, have you concerns about the fact that, in the event of the First and deputy First Ministers being agreed after the next Assembly election, there is no default position in the Bill if the 108 Assembly Members cannot agree the Justice Minister? There is no saving provision as to what would happen then before we move on and run d'Hondt. Is there not a gap there? How do you suggest we fill that gap?

Mr Nesbitt: Traditionally, we fill those gaps by long days at Stormont Castle, or anywhere that ends in the word “castle”. Days and days of stasis—

Lady Hermon: Apart from writing in the Bill, “choose a castle, and go there”; make a sensible suggestion, Mike.

Mr Nesbitt: You have identified a gap. Absolutely.

Q243 Lady Hermon: Have you given some thought as to how we might fill that gap? I was particularly struck by the very forceful word that you used. You actually said that the way in which the Assembly chooses a Justice Minister has “corrupted” the Good Friday Agreement. That is a very powerful word. What exactly did you mean by that?

Mr Nesbitt: Well, it is outside d'Hondt. Every other Minister is chosen by d'Hondt.

Q244 Lady Hermon: Do you not think that a Justice Minister, given the history of Northern Ireland, is a particularly controversial and sensitive post? Would you just run d'Hondt? Would you just put it in with all the rest?

Mr Nesbitt: I am saying that it is a matter of fact that it has gone beyond d'Hondt, which was the agreement of 1998. Yes, it is a controversial post, but it also means that a party that has eight MLAs coming out of an election has ended up with two ministries, whereas a party that came out with 16 MLAs has one.

Lady Hermon: Yes, and this is a solution. This is a proposal.

Q245 Oliver Colville: Go back to the funding story. You may not wish to answer this question, in which case I quite understand, but do you have any idea as to which industries end up donating to political parties? For instance, is it the development industry that ends up putting money into political parties, or is it information technology? Do you have any view on that?

Mr Nesbitt: I think that it goes across all sectors.

Q246 Oliver Colville: Would you be willing to look at your own donations and give us an analysis at some stage, now not but further down the line?

Mr Nesbitt: Yes, we can do that.

Oliver Colville: That would be helpful. It would be interesting to see that.

Chair: We are out of time. It has been a very useful session. Thank you both very much indeed for coming. Can Committee members make sure that their phones are turned off? It is having an effect on the microphones.
Examination of Witness

Witness: Mr David McClarty MLA, Independent, gave evidence.

Chair: Good morning, Mr McClarty.
Mr McClarty: Good morning, Chairman. I welcome the Select Committee to the mainland. [Laughter.] We are delighted to have you here. Normally I am on the other side of the table. I now know how it feels for other people. It is not a particularly nice position to be in.

David Simpson: We are getting our own back.
Mr McClarty: Thanks very much, David.

David Simpson: Are you or have you ever been? [Laughter.]
Chair: Would you like to lead off with a very brief opening statement?

Mr McClarty: I welcome the Bill. If we are going to move on in Northern Ireland, the changes that the Bill proposes are necessary to normalise politics here. From that point of view, I very much welcome it.

Q247 Chair: Starting with the transparency of donations, are you quite happy that that should take place?

Mr McClarty: Of course. I want to see Northern Ireland normalised. In the rest of the United Kingdom, there is transparency around donations. I am well aware of the circumstances as to why donations have been secret in the past. However, I think that we have moved on. It is not ideal, but we are getting there. I very much welcome the fact that donations to political parties would be made public.

Q248 Kate Hoey: You talk a lot about moving on. I hear those words all the time in Northern Ireland. I wonder where we are going to be in 20 years. I understand that you feel transparency around donations is moving on, but surely moving on should be about some form of changing the system here so that there is proper democracy, with an opposition. You said that you welcome the Bill. Do you not feel that it could have been more ambitious?

Mr McClarty: Indeed. I would fully support a fully funded opposition in the Assembly. I think that democracy without an official opposition is not democracy at all. It is not a perfect democracy. The sooner that we have an opposition in the Northern Ireland Assembly, the better for all concerned.

Q249 Kate Hoey: Do you agree with some of the people whom we have heard from who have said that that could happen without legislation? You could have a system of bringing about an opposition—

Mr McClarty: It would be much, much better if it were agreed among the parties in the Northern Ireland Assembly. However, if that agreement cannot be reached and it is put in place by legislation, so be it.

Chair: We did start on transparency. I am happy to move on, but are there any more questions on transparency?

Q250 Oliver Colville: You talked about how you would welcome a fully funded— I think that was your expression— opposition. You are talking about having the equivalent to what we have in Parliament at Westminster. You are talking about Short money as well. You would be looking at some public funding being given to the opposition parties.

Mr McClarty: I would wish that we have parity with the rest of the United Kingdom. If that means a fully funded opposition, so be it.

Q251 Oliver Colville: I do not know whether that actually happens in Scotland, or, for that matter, in the Welsh Assembly. Perhaps that is something that we can look at as well. That is a very interesting concept.

Q252 Ian Paisley: David, you are very welcome. Do you think that the colour or the judgement on the donations issue could be viewed differently if, for example, you were a unionist donor living in a border county donating to a unionist party? Perhaps your feeling of insecurity, fear or threat could be slightly more intensified than that of a unionist donor in a more secure unionist part of the Province. The same goes for nationalists. Should that be taken into consideration?

Mr McClarty: I accept that there are issues around people's security. Those have been much greater in the past than they are at present, thankfully. I think that large donors— people who donate over £500— should be made public. The smaller donors have nothing to fear. Their donations do not have to be disclosed.

Ian Paisley: Of course, a donation could be split between a person and his or her partner so that it would fall underneath the £500 mark.

Mr McClarty: Is that how it is done at present?

Ian Paisley: I have no idea, but I am just saying that that could easily be done. Or £499 could be donated.

Mr McClarty: Yes, and therefore the person's name would not be disclosed. I would have no difficulty with that at all. Northern Ireland, as you well know, Ian, is a very small place. We have the reputation of everybody knowing everybody else. Perhaps everybody is even related to everybody else in some way or other. There could be a perception out there that those who make larger donations are perhaps given favours in return.

Q253 Ian Paisley: Do you think that that happens?

Mr McClarty: Whether it happens or not is immaterial. If the perception is out there among the public, we have to guard against that.

Ian Paisley: But in your experience as a member of a party, does it happen?

Mr McClarty: I am not a member of a party.

Ian Paisley: Formerly as a member of a party.

Mr McClarty: I am not aware of it having happened, but the perception is there. You well know that there have been rumours in the past about people knowing of people. That was made an issue of at the time. There was no substance to it, but, nevertheless, there was that perception out there, and we have to guard against that. The issue at Westminster about politicians' expenses and whatnot has led to much more transparency, and we have to guard against that perception equally in Northern Ireland, as you do in Westminster.
Mr McClarty: It still takes up time, but its Members are appointed rather than elected.

Q261 Ian Paisley: Are you for legislation disqualifying Scottish Members?
Mr McClarty: Yes, I am for that, Ian. We should all be treated equally.

Q262 Ian Paisley: I have asked the same question of every person who has come here: should that also extend to TDs?
Mr McClarty: Indeed, yes. I would support a clause in the Bill to exclude TDs from also being Members of this House.

Q263 Nigel Mills: And the European Parliament?
Mr McClarty: Indeed.

Q264 Oliver Colville: It is very important that there be transmission and communication of information, and, if you are elected to the House of Commons as well as being a Member of the Assembly, you then have an opportunity to be able to talk to Ministers in the tea room, the Lobbies or wherever. You would then find yourself becoming divorced from that and becoming dependent on the usual formal channels.

Mr McClarty: Political parties in the Northern Ireland Assembly also have representation in Westminster, except, of course, the Ulster Unionist Party currently. The elected Members in Westminster can carry out those conversations in the tea rooms if they so wish and communicate with their Members locally.

Q265 Kate Hoey: How do you think that Sinn Féin does that, given that it does not take its seats?
Mr McClarty: It does it extremely effectively by having meetings in London. Sinn Féin does not have any dual mandates left, so its elected MPs, although they do not take their seats, still spend considerable time in London, where they lobby Ministers.

Q266 Kate Hoey: Paid for by the public.
Mr McClarty: Unfortunately. I am opposed to people who do not take their seat in Westminster being paid by the public, but the Government have seen fit to allow that to happen.

Chair: How do you view the situation regarding the appointment of the Justice Minister?
Mr McClarty: There were particular circumstances in place that led to the election of the present Minister of Justice, and I accept that there were special circumstances. A DUP Minister would not have been acceptable to the majority in the House, and a Sinn Féin Member as Minister would certainly not have been acceptable of the majority in the House. Of course, that led to the election of the present Minister. I would like to see the position being normalised. There is no security of tenure, of course, in the present position. The previous presenter was in favour of the position laid out in the Good Friday Agreement or Belfast Agreement, where the First Minister and the deputy First Minister are elected together rather than separately.
Q267 Chair: When you say that you would like to see it normalised, do you mean that the position should be allocated under d'Hondt?
Mr McClarty: If it were done under d'Hondt, it could lead to difficulties, in that I do not think that, at the present time, a Sinn Féin Member would be acceptable as the Justice Minister. Until such times as that may happen, I think that the special circumstances have to pertain.
Chair: Are there any questions on the Justice Minister?
Mr Hepburn: If there are no questions on that, can I go back to the funding issue?
Chair: Yes, sure.

Q268 Mr Hepburn: It was quite interesting that you said that Northern Ireland is a small place where everyone knows each other's business. Therefore, is it generally known, through the grapevine, which businesses fund which political parties?
Mr McClarty: No, not at present. It is not something that people go into the pub and talk about. There are many issues that people go into pubs and clubs and talk about, but I do not think that that is one of them.

Q269 Kate Hoey: On the functioning of the Assembly, do you, as an independent Member, get access to Adjournment debates and everything that you wish? Are you treated in the way that, for example, our independent Members in Westminster are treated? The Speaker ensures that they get their say.
Mr McClarty: At Question Time, I get a fair allocation of questions. In debating, I do not, and therein lies the difficulty. Most debates here in the Chamber, unless they are on legislation, last for around an hour and a half. If a number of Members speak prior to me, I do not get the opportunity to speak. As I said, therein lies the difficulty. Other single Members and I have approached the parties on the Business Committee, which is made up of representatives of the five larger parties, and asked for extra time to be allocated so that at least one of us is guaranteed to have a say on a particular issue. That request has been flatly refused, unfortunately.

Q270 Oliver Colville: You can intervene, surely.
Mr McClarty: You can intervene, but those interventions, of course, are short and sharp.
Oliver Colville: You may be delighted to know that, during a recent debate on the railways, I was able to cut my speech down from eight minutes down to about 30 seconds, and it got the spotlight views on the BBC news.
Mr McClarty: I would not make that public; otherwise, your speeches will be cut to 30 seconds in future.

Q271 Kate Hoey: Presumably, you agree that the Assembly is far, far too big. It is absolutely ridiculous how few constituents you all represent.
Mr McClarty: Absolutely. Ideally, we should be looking at having four Members per constituency. Under the present 18 constituencies, there would be 72 Members rather than 108.

Q272 Kate Hoey: Would you have liked that to have been included in the Bill?
Mr McClarty: I would very much promote and support a reduction in the number of Members being in the Bill. I understand completely that it was done at the time for particular circumstances, but those circumstances—
Kate Hoey: We have moved on.
Mr McClarty: We have moved on, yes.

Q273 Chair: You touched on and partly answered the question about Government and opposition. How would you design that and bring it about?
Mr McClarty: Again, with discussion, preferably among the parties to put forward that notion and implement an official opposition. If that is not possible, it should be legislated for in this Bill, and I would like to see that happen.

Q274 Chair: How would you frame that legislation?
Mr McClarty: I would have the two largest parties perhaps forming the Government and the next two largest parties as the opposition, along with whoever else would like to be part of that opposition.

Q275 Ian Paisley: That would still be enforced coalition, though, both in the Government and the opposition.
Mr McClarty: Initially, that would be the situation. Like you, I would like us to move towards a voluntary coalition.

Q276 Ian Paisley: I have a question that falls more into the general area. As you know, the Executive and then the Assembly recently could not achieve the passing of a legislative consent motion on the National Crime Agency because of the rule that 50% of each community must vote in favour of something. Should a mechanism be introduced to the Bill that would allow the national Government to overrule the Assembly if we came to a stumbling block like that in the future, given the national importance of such decisions?
Mr McClarty: I am very much in favour of devolution. I think that issues devolved to Northern Ireland should be decided locally. If we learned anything in the past 30 or 40 years, it was that we would never resolve anything unless we sat around a table, talked the issue through and came to some sort of consensus. I believe that we are now sufficiently mature that we can do that very thing—sit around a table, thrash out the issues causing difficulty and find a solution to them.

Q277 Ian Paisley: What about a more cross-cutting issue that is not just about the devolved area but affects the entire kingdom, such as the lack of consent for the National Crime Agency? Do you not think that that goes slightly beyond the devolved remit?
Examination of Witnesses

Witnesses: Mr Richard Bullick and Rt Hon Peter Robinson MLA, Democratic Unionist Party, gave evidence.

Chair: I welcome the First Minister, who is here in his position as leader of the Democratic Unionist Party. It is good to see you again. You know what we are looking at today. Would you like to make a brief opening statement on the Bill, how you see it, what is in it and what is not in it?

Mr Robinson: Thank you very much, Mr Chairman. I join those who, I assume, welcomed you to Parliament Buildings and to Northern Ireland. I appreciate the opportunity to speak to the Committee on the Bill. In general terms, the party is reasonably relaxed about the Bill. If we had been left to draft it, we might have tweaked it in one or two places. The biggest issue for us is what is not in the Bill and that which could be in the Bill at a later stage.

We are strongly of the view that there need to be significant changes to our modus operandi in Parliament Buildings. We believe that there are a number of changes that could reasonably be made. We have shared our proposals with Sinn Féin and await a response. The proposals deal with such issues as the size of the Assembly’s membership, the number of Departments and the extent to which we can have a viable and strong opposition in Stormont. They also deal with other issues, which go to the heart of whether the Assembly should operate on the basis of the present designation system, and so forth. So there is a range of changes that, we believe, could reasonably be made. If, however, it is not possible to reach agreement on those, we will press the Secretary of State to introduce to the Bill a measure that would move excepted matters into the reserved category. That would mean that we would not have to wait until there was free time at Westminster for changes to be made, and they could be legislated for in the Assembly, with the permission of the Secretary of State. That would allow us to move towards making changes when agreement was reached. By and large, the Secretary of State makes changes in those areas only if there is agreement in the Assembly, so I do not think there is anything for Westminster to lose, but a lot to be gained for the parties here.

Outside of that, we think that the Secretary of State has taken a sensible course of action on donations and a range of issues changing the electoral arrangements. We have some misgivings about donations from outside the United Kingdom. We believe that that separates us from other jurisdictions in the UK, and that was a decision that we would have endorsed. I will probably respond better to some of the other issues through questions.

Q278 Chair: I will take the transparency of donations first. You are quite happy about what is proposed in the Bill. You think that it could go further, but you do not object to what is there.

Mr Robinson: I think that it is a sensible course for the Secretary of State to take. No matter what anybody says about whether there would be a danger or threat to those who donate, there is certainly a feeling among the community that, if they were to donate, it would single them out and put them under threat. At the very least, that would have an impact on the willingness of people to donate in those circumstances. I do not think that we have reached a stage at which one could rule out the possibility of people being targeted because they were associated with one political party.

Q279 David Simpson: So, Peter, you would disagree with Steven A gnew’s statement yesterday. He equated international terrorism in England to Northern Ireland’s guerrilla warfare for 40-odd years. There is a difference in Northern Ireland when it comes to companies or individuals putting their money where their mouth is and letting their name go forward. There is a serious threat, especially, perhaps, in border areas.

Mr Robinson: I think that there is a distinct threat. It is easy for parties that are unlikely to get anybody to donate to them to try to stop other parties getting donations. We have had an ongoing terrorist threat for many decades in Northern Ireland. Individuals have been pinpointed and, in the past, businesses and businesspeople were attacked because of their association either with the security forces or with one section of the community. You cannot be cavalier about these issues because they are real. Even if it did not happen, there would certainly be the perception among those who might be willing to donate that it could.

Q280 Oliver Colville: Thank you, First Minister, for coming to see us. You said that you had concerns that moneys could be received, or not received, from individuals outside the country. Will you elaborate on that?

Mr Robinson: First, that separates us from what happens elsewhere in the UK. Secondly, it gives a distinct advantage to one section of our community and, particularly, one political party, which operates on an all-island basis. If you cannot have a level playing field in electoral arrangements, outcomes tend to get distorted because finance can have an impact on outcomes.

Q281 Oliver Colville: As I understand it, political parties in GB cannot accept funding from individuals
from outside the country. There seems to be a bit of an odd position.

Kate Hoey: Would you like the Westminster Parliament to amend the Bill to exclude—

Mr Robinson: I think that, if they want a level playing field for Northern Ireland, that would be the right and sensible course to take.

Q282 Nigel Mills: Peter, presumably, this issue is solely one of security and safety, and you do not see any other reason for wanting to resist transparency.

Mr Robinson: First, political parties have to report donations above a certain level, as they do anywhere in the UK. So they are not hiding who they get donations from. If it is deemed by the Electoral Commission that any donations are inappropriate, the Bill provides for those to be publicised. Given the difficulties that surround this issue, that is a reasonable balance. Of course, it does leave it open, if we have improved circumstances, for a Secretary of State to bring us totally into line with the rest of the UK at a later stage.

Q283 Nigel Mills: I asked because the UUP’s view was that disclosure would put people off donating for commercial reasons. Its view was that businesses with customers across the community might lose half those customers if it were known that they were making donations. Do you see that as a powerful reason to resist transparency?

Mr Robinson: In a divided society such as Northern Ireland, that is much more relevant than it is elsewhere in the UK. If there is seen to be an alignment with a political party, it is usually seen as being an alignment with one tradition in Northern Ireland and, therefore, may have a commercial impact. So I think that the UUP is right to draw attention to that. It is one of those issues of which you do not know the impact until you try it.

Q284 Nigel Mills: Is your view that, if there were no security threat, we should have the same transparency in Northern Ireland as in the rest of the UK? So that, by itself, would not take you over the line. In the current situation, it is the security risk that makes the difference.

Mr Robinson: We very much support transparency, and we want to move towards it. It is only the security issue because I suspect that, if we deal with the security issue, the other issues may fade as well.

Q285 Mr Hepburn: So, on the one hand, there could be a perception among businesses that having their contributions revealed could place them under threat, and, on the other hand, we have heard from some witnesses about a public perception that concealed political donations can lead to favours from politicians to business. Which is the worst threat to democracy?

Mr Robinson: I do not think that there is a threat from favours in the kind of system that we have in Northern Ireland.

Mr Hepburn: That is only what we heard from some witnesses; it is not our opinion.

Mr Robinson: By and large, any significant decisions have to be taken by a cross-community vote in the Executive or the Assembly. Therefore, one political party would not be able to give favours of any significance. The rules and regulations in government today, including those on transparency, freedom of information and so on, mean that other mechanisms can be used to ensure that everything is done appropriately.

Q286 Mr Hepburn: No one has proved anything, and all of the witnesses have said that they do not believe that it happens. However, they believe that there is a perception among the public that undisclosed political donations lead to favours. Even though that might not be true, it is the general perception. Do you not think that that is an issue?

Mr Robinson: You hear about that perception, not only of the regional Administration here but of councils. Generally, if a decision does not go the way that someone likes, there has to have been some reason, other than the merits of the case, to explain why it did not go in that direction. There will always be that perception, but we have to legislate on the basis of realities rather than perceptions.

Q287 Mr Hepburn: The way of getting rid of that perception is by making political donations public. Is it not worth doing that to get rid of those perceptions, even though they are not right?

Mr Robinson: I do not think that is worth having someone killed or injured to remove a perception.

Q288 Nigel Mills: I am interested to know the scale of the issue. Peter. Do you have any idea of how many people donate more than £5,000 a year to your party? Is it dozens or one or two?

Mr Robinson: It is more likely to be one or two than dozens. However, if this is being publicly aired, we are open to wider donations. [Laughter.] By and large, you will find that that is the case with all of the political parties in Northern Ireland. Most of the donations will be small. In the past number of years combined, outside of an election year, donations to my political party have not been a significant part of its funding. In an election year, most of our funds are gathered from dinners, lunches and breakfasts. We eat for Ulster during an election. [Laughter.] Those are much smaller donations, such as £200-a-plate dinners.

Q289 Nigel Mills: What is the largest individual donation, roughly?

Mr Robinson: I do not have a clue. I cannot recall any donation over £3,000, but it is not an area of the party that I am accustomed to.

Q290 Oliver Colville: You will probably not be able to answer now, but would it be possible for you to tell me at some stage which industries or sectors of industry have ended up donating to the DUP?

Mr Robinson: I am not sure whether we have that data available. I suspect that most of the funding that we receive is from individuals within businesses rather than the business or company itself.
Q291 Chair: Shall we move on to dual mandates? I think that you stated that you were in favour of ending so-called double-jobbing, is that correct?
Mr Robinson: The party took a decision a long time ago to bring dual mandates to an end by 2015. At that stage, we saw an advantage in having a link between the Assembly and Westminster. It is difficult to see how that might be legislated for, but, in my view, there are some advantages in having that link with an individual. As for our reasoning, it is not simply a case of the workload of individuals carrying out both sets of duties. From a party point of view, it is about the ability to develop the party and have a greater number of people involved in active elected politics.

Q292 Ian Paisley: Peter, it is good to see you here. We have gone through clauses 3 and 4, which deal with who would be disqualified under the legislation. Of course, it includes Members of Parliament, people in judicial office, civil servants, regular armed forces members, police force members and, interestingly, the members of the legislature of any country or territory outside the Commonwealth other than Ireland. It seems to suggest that, technically, someone could be a TD and also run for this place and be a Member of the Legislative Assembly. If that is a loophole, should it be closed?
Mr Robinson: If it is a loophole, it should be closed. I am not sure whether it is a loophole because I recall that, in the previous Assembly, Seamus Mallon, I think, had to give up his place in the Senate to sit in the Assembly. Certainly, if it is an issue, the loophole should be closed because that would be totally inappropriate.

Q293 Ian Paisley: Was that the Senate's rule rather than this jurisdiction's rule?
Mr Robinson: I cannot say.

Q294 Ian Paisley: The other issue is that the Bill specifically mentions a Member of the House of Commons but not a Member of the House of Lords. Do you believe that the Government have it right here and that it should apply only to Members of the House of Commons?
Mr Robinson: Yes, I think that they have got it right because you can distinguish between an appointed and an elected position in this context. With respect to our colleagues in the House of Lords, I do not think that their job is as burdensome as that of a Member of Parliament.
Ian Paisley: I do not think that Lord Morrow is listening.
Mr Robinson: It is your father I was worried about.
[Laughter.]
Ian Paisley: He is definitely not listening.

Q295 Oliver Colville: You were, for a while, a Member of the House of Commons, an MLA and the First Minister of Northern Ireland. To what extent did you find it helpful to be able to speak to Ministers in the Lobby or generally speak to people and network in the tea rooms, and so on? Have you missed that as an opportunity for gaining intelligence and information about Westminster's attitude to the very important issues in Northern Ireland?
Mr Robinson: It was useful, and I might have missed the convenience of doing that. Of course, it is possible to pick up the phone and make arrangements, but it becomes much more formal in those circumstances.

Q296 Oliver Colville: So how can we make sure that we can continue that informal communication, which will most certainly disappear if we find ourselves taking away the double-jobbing approach?
Mr Robinson: We have had to use our own devices, of course, to do that. When significant meetings take place, we will often bring the Secretary of State or the Minister into our rooms before the meeting starts. We have communication in those circumstances but have to manufacture a mechanism to do it.

Oliver Colville: I suspect that that makes life much more difficult, rather than being able to do it informally.

Mr Robinson: It is being done only in the circumstances in which meetings have been set up as opposed to bumping into somebody in the corridors.

Q297 David Simpson: Peter, it has been suggested by two previous witnesses that there is some validity in people such as Finance Ministers double-jobbing, or holding a double mandate, to tie in with Budget day and so on. Is there any validity in that, or would it not be practical at all?

Mr Robinson: I suppose that, as a party leader, I would have liked to have had some flexibility. However, I am not sure that I would put it down to the early stage, we saw an advantage in having a link between Stormont and Westminster. That can change. However, at the early stages, I indicated that I believe that it would be useful to have a link between Stormont and Westminster. That does not necessarily have to be the Finance Minister, but arguments could certainly be made as to why it should be.

Chair: On the other hand, the 13 MPs who take their seats at Westminster are able put the point forward. They do not necessarily put party points forward, but they put the Northern Ireland point forward. They fulfill a very useful role, nobody more so than Mr Dodds.

Mr Robinson: We certainly have a very capable team, and our Members are able to do that. However, given the depth of knowledge that somebody in post will have, it is hard for anybody looking at the range of government responsibilities in the United Kingdom to be able to have that level of expertise, unless, of course, he or she has been in that post in the past.

Q298 Kate Hoey: Peter, if all we want is for Northern Ireland to be much the same as the rest of
the United Kingdom—that is what I want—why would we want it to be different from Scotland and Wales? Why do we need to legislate? Why should we not simply make it happen by force of public concern?

Mr Robinson: With the exception of the SDLP, it is happening.

Kate Hoey: So do we need legislation?

Mr Robinson: In my view, it would have been better to leave it the way it has happened in Scotland and Wales. We had already committed ourselves to bringing it to an end in 2015. Sinn Féin has already made it happen. The SDLP clings on.

Q 299 Kate Hoey: So we might be going through all this legislation just because of Alasdair McDonnell. Mr Robinson: Without personalising it—[Laughter.]

Kate Hoey: He is a member of our Committee, so we can personalise it.

Chair: We will hear from Dr McDonnell in a minute. Ian Paisley: He is in the dock later.

Q 300 Oliver Colville: Thank you very much indeed for what you said, but I am interested in your colleague, who has been sitting there very quietly without saying a single word.

Mr Robinson: Uncharacteristically, I should add.

Oliver Colville: We would be very grateful to know who he is and hear his comments are on some of the discussions. That is putting you in a very difficult position—

Chair: It is for Mr Robinson to delegate, as and when.

Mr Robinson: I am quite happy for Mr Bullick to speak.

Chair: I want to ask you about the very important issue of the Justice Minister.

Q 301 Nigel Mills: Just before we move on, can we ask the usual question about whether double-jobbing in the European Parliament should also be banned? Currently, it is not proposed to ban a Member of the Assembly being a Member of the European Parliament. Do you think that that should be added to the list of things that you cannot do?

Mr Robinson: I think that there is perhaps an even stronger argument for adding the European Parliament to the list of things that you cannot do. A Commissioner elected to the European Parliament would add to the weight of the argument that it is increasingly being seen, but whoever is elected will have cross-community support, which might not necessarily be present, given the running of d'Hondt. If the Justice Minister were one of the normal picks. The other question is probably beyond my pay grade.

Q 302 Oliver Colville: There is a perception that if the Justice Minister were to come from the DUP or Sinn Féin, there could be a problem. Therefore, you need to try to find a way of having some form of independent politician doing that job.

Mr Bullick: That has been the case hitherto. A time goes on, I am not sure that it will be quite as difficult an issue. We would be more than happy to take the Justice Ministry at some point in the future.

Q 303 Oliver Colville: I am sure that you would, but I suspect that that would create trouble on the other side from Sinn Féin. So you need to ensure two things. First, it has to be someone who is viewed as neutral because justice is such an important and sensitive issue in Northern Ireland. Secondly, how can you develop an opposition to the current two-party coalition Government? That does not seem to happen at the moment, so how do you think that could happen?

Mr Bullick: I will deal with the first question and pass the second question back to Peter.

For all the reasons you explained, we have cross-community arrangements for the election of the Justice Minister. They have worked satisfactorily to date, and I suspect that they will continue to work satisfactorily in the future. Whether that leads to the election of an Alliance Minister in the future remains to be seen, but whoever is elected will have cross-community support, which might not necessarily be present, given the running of d'Hondt, if the Justice Minister were one of the normal picks. The other question is probably beyond my pay grade.

Q 304 Kate Hoey: What do we need in the Bill, Peter, to bring about change to allow normal politics, or is that not going to come about by legislation?

Mr Robinson: If we are dealing with the issue of opposition, it would be wrong for you to go away with the idea that we do not have an opposition, because we have a very strong and well-informed one. The difficulty is that they are within the Executive because the two smaller parties have tended to act as if they were an opposition. So we have Ministers in opposition as part of our system. That is unhealthy, leads to the leaking of confidential Executive documents to the press for party political advantage and does not have the open aspect of opposition that is healthy, which you would recognise from Westminster.

There is a difficulty in that there would not be unanimity around the Chamber on whether there should be a proper, recognised, official opposition. We favour having an opposition and believe that we have to move step by step towards normal democratic outcomes. You can do that only if you have an official opposition. We have put some proposals forward that
Mr Robinson: I would far rather have an opposition outside the Executive than an opposition inside the Executive. If it is within the Executive, it can hold back decisions being taken and make the processes of government more cumbersome. There will always be difficulties within the Executive, but if we have people who are deliberately being difficult, it puts a brake on the ability of government to govern in a speedier and better way.

Mr Robinson: It is a problem that will face any coalition Government at Westminster. Westminster are moving according to a Programme for Government. In our case, however, we have a Programme for Government against which at least one of the parties has voted in the Assembly but for which their Minister is bound by the ministerial code to work.

Chair: If it were up to you, how would you design a new system?

Mr Robinson: Of course, anybody can be in opposition now. All they have to do is go out of the Executive. It is the extent to which you recognise their position as an opposition by giving them additional speaking time. I could not foresee a small party of a dozen Members having the same speaking time as an Executive party that has 50 or 60 Members. There has to be some recognition of the speaking rights of that party beyond what they would normally be entitled to. If some level of funding is required, we are also prepared to consider that.

Mr Robinson: Three of the political parties that represent a significant majority in the Assembly have said that it should be in line with what is happening in Scotland and Wales, that the Assembly election should be in 2016 and that we should have five-year terms. I think that it is beneficial if all the jurisdictions have their elections at the same time and if there is some commonality in the length of the Assembly term. I think that the Secretary of State is leaving that possibility open for a later stage, and, in my view, that is a sensible course to follow.

Mr Robinson: There is; Parliament can do it now. There is nothing to stop Parliament legislating over the head of the Assembly. There are conventions that constrain them, but Parliament is sovereign, and Parliament can legislate.

Mr Robinson: Not only would I be happy for it to happen but I suggested to the Secretary of State that it should happen for the National Crime Agency.

Mr Robinson: As the years have passed, I have been encouraged that the other political parties have moved to the position that we adopted many, many years ago. However, they may not yet have gone as far as we would like. We believe that the appropriate size for the Assembly is between 70 and 80 Members. We believe that we should reduce the number of Departments to at least eight or nine. I think that there is a move in that direction. As for the number of Members, it is fair to say that the psephologists in the political parties start to look at the impact on their own political parties. I suppose that that is human nature. Given the size of Northern Ireland and the size of the Assembly, it is totally inappropriate to have 108 Members. It should be reduced, and it seems to me that between 70 and 80 Members would be a good start. I suspect that a number of voices will say that it should be between 90 and 100.

Mr Robinson: If the Bill is not the right place to achieve the reduction, the power has to be given for the Assembly to legislate, with the consent of the Secretary of State.

Chair: Excellent. That was a very useful session. Thank you for attending.
Examination of Witnesses

Witnesses: Mr Conall McDevitt MLA and Dr Alasdair McDonnell MP MLA, Social Democratic and Labour Party, gave evidence.

Dr McDonnell: This is a whole new experience.
Chair: It is as for us all. I ought to mention publicly that one or two members have to leave before the end of the session to get flights back to London. It is nothing personal to this witness or, indeed, the following witness. Dr McDonnell, thank you very much for joining us in this capacity.
Dr McDonnell: I shall take it as being personal, very personal. [Laughter.]

Q312 Chair: You know the format. Would you like to open with a very brief statement?
Dr McDonnell: I have a few bits and pieces of thoughts. I begin with expressing some disappointment at the general lack of engagement of the Government here and, indeed, on the content of the Bill overall. I think that it is light. That said, there is a need to recognise the fact that Northern Ireland is different. We are still in a post-conflict period; in fact, I am not sure that we are yet post-conflict, but we are getting there. To an extent, instability is continuing.

The settlement that we had with the Good Friday Agreement was strong on parity of esteem and equality, but we have not quite got there yet, and much of the content of the settlement has not been followed through. So, in my opinion, any changes that are to be made here, institutional or otherwise, need to be fully embedded in the principles, values and understandings that underpinned the settlement that was the Good Friday Agreement. Broad support is needed. If that is not there, instability will increase, as we have seen on the streets over the past 10 to 12 weeks. To some extent, if we do not want to slide back, I feel that there is a need for a re-endorsement of the settlement and its values, principles and institutions.

That is the broad thrust of the overall politics, as I see it. We should not fool ourselves that, somehow or other, we have reached the promised land. We have a bit to go, even though I would rather it were otherwise. Part of the reason why we still have a bit to go is that we have not fully utilised the opportunities that were available to us over the past 15 years so we have ended up with degrees of instability.

Q313 Chair: Thank you. In order to move towards normalised politics, transparency on donations has been proposed. How does your party feel about that?
Dr McDonnell: We are broadly in favour of as much transparency as possible. That is the principle, and we want everybody to move in that direction. Our difficulty is that we feel that we were particularly vulnerable in the past, in that some of our donors felt vulnerable and threatened. In principle, it would be wonderful to reach the promised land and stability.

Sometimes, the threat is not even direct, but people are put under pressure and told, “You gave the SDLP £1,000 last week; we think that we are entitled to £2,000 this week.” The threat is at that level. In a situation in which there are still a handful of people moving about with guns, that threat is there. We are not a wealthy party at all—far from it—so it is not as though we are dealing with large sums of money. I will put it this way: it would be three times as hard to get money in from people. They would think twice or three times before they would want to expose themselves. We could reach that point, perhaps, three or four years down the road. We would like to be at that point because we have nothing to hide, but we want to protect people from threat.

Q314 Chair: You do not think that we are there yet.
Dr McDonnell: I do not think that we are there yet.

Q315 Ian Paisley: The menacing scenario that you outline is a true scenario. It does happen. You indicated that it happens. Sinn Féin threatens people for money—is that what you are saying?
Dr McDonnell: No, I am not saying that. I am saying that others have threatened people for money. I will not be specific because, obviously, in those cases you do not know who it is. We have a long history of protection rackets running in neighbourhoods, building sites and all the rest. I know for a fact that those who were, in some cases, posing as representing organisations, were in fact representing only themselves. Quite honestly, there is still a level of threat. If I thought that the dissidents and the loyalist paramilitaries had calmed down, gone away, folded up their tents and all the rest, we could then indulge ourselves with total transparency.

Q316 Chair: Political parties in Northern Ireland can attract foreign donations, whereas in GB, they cannot. Are you happy with that situation?
Dr McDonnell: It depends on what you mean by foreign donations.
Kate Hoey: The Republic of Ireland.
Chair: My question relates to beyond the UK.
Kate Hoey: America.
Dr McDonnell: The difficulty is— the Member for Vauxhall has raised the point—that we do not see the Republic of Ireland as foreign. Indeed, in the past, the SDLP has found much of its funding from people of goodwill in Dublin who wanted sanity and stability here.

Q317 Kate Hoey: What about America?
Q318 Ian Paisley: Legally, and de jure, however, it is a different sovereign state. Should the issue of moneys arriving to a political party operating within this jurisdiction be on the same basis as in Scotland, England and Wales?
Dr McDonnell: Yes, I think so, but I will hand over to Conall.
Mr McDevitt: I think that Mr Paisley makes an important point. However, the agreement states, and it is enshrined de facto in the British constitution and as a matter of fact in the Irish constitution, that people in Northern Ireland have the right to be British, Irish or both. Therefore, you can consider the question of donations at two levels. You can consider it in a territorial sense and say that only people resident in
particular geographic boundary should have the right to support a political party, or you can consider it from the point of view of citizenship. Given that people in Northern Ireland have the right to be Irish citizens and that it is their constitutional right, as enshrined in the British constitution, to pursue their ambition to form part of an Irish nation, it must therefore be their right to be supported by fellow Irish citizens in their lawful, democratic political objectives. Therefore, it is not a situation where you can legitimately—I would go as far as to say constitutionally—argue that it is the border, in any sense, that defines the limit of one’s ability to donate. I suggest that, if anything, it is more to do with the question of citizenship, and it should be the right of an Irish citizen to support an Irish political party.

Q319 Ian Paisley: If we take it off the existential and go to the legal—
Mr McDevitt: No, that is a matter of fact, Ian.
Ian Paisley: Yes, but if we go to the legal position—
Mr McDevitt: That is the legal position.
Chair: Order.
Ian Paisley: Let me finish the sentence. If you are on the electoral register, you can donate. It is unlikely that a person living in Cork who donates to a party in Northern Ireland is on the electoral register in this jurisdiction. It is probably your party that suffers the most as a result of this, because of the problem here, which has been addressed by your leader. Your leader said that it should be on the same standing as the rest of the United Kingdom.
Mr McDevitt: The question is whether or not it is a legal fact that people have the right to be British or Irish or both.
Ian Paisley: I am not even arguing that.
Mr McDevitt: If they do and they wish to support political parties whose major objective and principle is to bring about the reunification of the Irish people—
Q320 Ian Paisley: It is about donating money. I am asking a specific question. Should a person who is not on the electoral register in this jurisdiction be allowed to donate money?
Mr McDevitt: We believe that people of an Irish identity have the right to support Irish political parties. That is a belief of ours.

Q321 Ian Paisley: By donation?
Mr McDevitt: By donation, of course.

Q322 Ian Paisley: That is different from the position that your leader just said.
Dr McDonnell: No, it is not.
Mr McDevitt: No, it is not. It is exactly the same.
Ian Paisley: The record will show that he said that we should be on the same standing as England, Scotland and Wales.
Chair: I think that is what was said. It may have been in a slightly different context.
Mr McDevitt: No. You were asking, in the context of transparency, should the transparency rules apply in this jurisdiction the same as they should elsewhere. Of course they should.

Q323 Chair: Transparency, yes.
Mr McDevitt: As Mr Paisley acknowledged, or as his body language suggested, we do live in a society where there is still a culture of extortion. We are being blunt about that, and that is a matter of fact. I presume that all of us around this table wish that that was not so, but it is there. With the greatest respect to the Committee, the entitlement to donate is a separate question. The entitlement to donate is—
Ian Paisley: The question that I asked—
Mr McDevitt: interlinked with the constitutional settlement.

Q324 Chair: Order. There are two questions there. When I posed the first one, I did not specifically mention the Republic of Ireland. We got on to that. Of course, donations to the Conservative Party, for example, to London would not be permissible. They would be if the Conservative Party had a base here and received them. Is that fair?
Mr McDevitt: I do not want to pass comment on the Conservative Party, but what I can say is—
Chair: Or another party. I think that you know the point of the question.
Mr McDevitt: The point is that we are a political party that is organised only in Northern Ireland, but we are a party that has a proud ambition to see the reunification of the people of this island in a just, peaceful and reconciled island. Therefore, we believe that it is our right to be able to seek support in kind from people who are Irish citizens. We do not believe that that right should end at the border.

Q325 Kate Hoey: I am just trying to be clear, seriously. You think that you should have the right to have donations from anywhere in the world.
Mr McDevitt: If it is from an Irish citizen. If you think logically about the outsourcing of the guarantees and the provisions that underpin the Good Friday Agreement, that is the logical outsourcing. As you will know, Ms Hoey, the reality of the situation is that British law qualifies this. British law does qualify it, and so be it, but we are certainly saying that, in our opinion, it would be against the spirit and the values and, arguably, be constitutionally inaccurate to place any limitation on people in the island of Ireland from being able to support the SDLP.

Q326 Chair: OK. We have to move on to another subject now. What is the SDLP’s position on dual mandates?
Nigel Mills: We have not done all the donations issues, have we?
Chair: Do you have a specific question on donations?

Q327 Nigel Mills: Alasdair, back in 2010, your predecessor, Margaret, promised to publicise donations over £5,000. Do you still think that you should do that? Have you had any donations over £5,000?
Dr McDonnell: At the time that Margaret made that comment, things were much more stable. Earlier, I outlined to you the fact that instability has crept in. People have been killed, and attacks have been
mounted by dissidents. Generally, people are much more apprehensive about the safety level.

Q 328 Nigel Mills: Without mentioning any names, have you had any donations of over £5,000 since 2010 that you are aware of?
Dr McDonnell: None that I am aware of. We are talking here about a hypothetical situation. We do not have a lot of people coming along with £5,000. The bigger end of our donations is in £300, £400 and £500, and a lot of it is smaller. We are quite keen on the broad principle of transparency. We have no difficulty with it. It is just the safety dimension of it, and the security situation has deteriorated in two years. As leader of the party, I encourage people to perhaps consider contributing, and some of them are hesitant. Some of them hear that it may be published down the road. If you are someone with a business somewhere in Tyrone and are surrounded by people who might be dissident or whatever, you do not feel the need to put your head in the noose. You do not feel the need to buy your way into the noose, as it were. The broad principle is fine, ethical and proper, but the circumstances find themselves in make the principle impractical at this time.

Lady Hermon: I apologise for being a little bit late: I had a meeting with the Northern Ireland Office Minister. It is always very nice to see you, Alasdair. It is quite a different configuration to have you as the witness rather than a member of the Committee, but it is still lovely to see you.

Dr McDonnell: You will not ask me any hard questions.

Q 329 Lady Hermon: I am getting round to the hard question. You were probably present yesterday when we were taking evidence. The threat of violence was described as a “smokescreen”. Parties agree that, in principle, greater transparency of donations is preferable but say that it is too soon to have it. The suggestion was made in evidence to us that the PSNI and the Chief Constable should have a role in validating threats to donors. You talked about extortion. Should we amend the Bill so that transparency of donations is increased with a built-in check by the PSNI?

Dr McDonnell: That is an interesting concept. Yesterday was the first time I heard it. Certainly, I want to consider it in more detail. However, at this stage, I am not prepared to make a formal commitment in case somebody takes it down and uses it in evidence against me.

Lady Hermon: As if we would do that.

Dr McDonnell: We want to get the thing right; we want it to be ethical; and we want to make sure that it is honest. However, we come under a bit of pressure. We come under pressure in that we have no money and that people who might support us because of the things we are doing politically feel that they would be exposing themselves. Even people under the thresholds are worried that there will be retrospective publication down the road. There is nothing underhand about it. It is just that if someone has a small business, is a small builder or whatever, in a rural area, they are vulnerable. I know that, having built a health centre a couple of years ago: there was £50,000 worth of damage done to it one night because the builder did not hand over the money. Such threats are still there at a very low level. It is at a low intensity level, and people do not want to buy the aggro.

Chair: We have to move on as quickly as we can.

Oliver Colvile: Thank you very much, Alasdair, for coming to see us. This is a very strange position to be in.

Dr McDonnell: It is a pleasure.

Q 330 Oliver Colvile: The issue of perception is the one that is foremost, I think, in all this. Why do you think it is that businesses are willing to give money to political parties? How can we make sure that that is not perceived as people trying to influence the decision-making or policy-making process?

Dr McDonnell: Quite honestly, I am not for sale and the SDLP is not for sale, so we are not buyable. When people give me money or give the party money, I make it very clear to them that there are no strings attached. You have to be blunt: you cannot prostitute yourself. Equally, the whole thrust of the view in the business community here, and this is not confined to the particular party politics of a businessman or woman, is that it wants stability. I would like to think that the SDLP contributes a bit to that stability. I am sure that unionist parties draw money from people who might be perceived as nationalist, and we draw money from people who might be perceived to be unionist—people in business who basically want to see good politics and want to see us contribute to stability. For some reason or other, and it may be that we have earned it, people perceive the SDLP as being constructive and a party that is trying to move things on and to create prosperity. It is that creation of prosperity that appeals to a lot of people out there. There are actually people in business who are not looking for a return. There are people who will give money—again, small amounts—or buy a table at a dinner or event to see the SDLP succeed. The important point is that we have managed to come out of a tremendously dangerous and nasty conflict here. Even though I differ from other parties, as you would expect me to, there is consensus among all the parties that we have to create a better future. The consensus coming from business is very robust at the moment. Every day here, I am inundated, as others are, by business people asking us to get things back on the road. Retail, in particular, is suffering because of the turbulence at the moment. People are prepared. I would never, and I do not think that any of my colleagues would ever, be in the business of being corruptible.

Chair: We have got to move on. Sorry, Oliver. Stephen, you can ask one very quick question.

Q 331 Mr Hepburn: I have heard your argument, and I have heard the argument of the previous witness. It seems to be all about protecting the funding of your political party. Now, surely, the greater good for democracy is full disclosure. If a businessman wants to give money, he can give money—that is a free choice—but it should be disclosed. If he does not
want to give, he is on a par with every other member of the electorate. Why is the argument about protecting political funding for parties, rather than the greater good?

Dr McDonnell: Conall will want to come in on that. Stephen, but I want to say to you that we have struggled here to create a degree of democracy. We are not quite there yet. Sometimes, we forget that and try to pretend that we are. We have a bit to go. Quite frankly, if one or more of the current political parties were to fold through lack of funding, which is quite possibly, your democracy would end up being considerably weakened.

Mr McDevitt: I think that you have put your finger on it. It is the point about democracy. The great tragedy of our challenge is that we are not yet fully stable as a democracy. You will know the trials and tribulations that we have lived through in the past 10 weeks or so. There are still people in our society who would quite happily undermine our democracy and drag us back. It is extremely important that you guys are doing this work, because it is exceptionally important that not just the political parties but the civic class, which you refer to, are continuously challenged to be more open and upfront about advocating and supporting democracy. It is extremely important that they are able to be seen to publicly support democracy by supporting parties, because that is what they are doing. However, it is about understanding that we need to do so in a way that does not expose people to risk, because we have a basic duty to protect the integrity of human life. That is something that I do not say lightly; it is a matter of fact. We also need to do so in a way that actually strengthens our democracy, whether it is Lady Hermon’s thoughts about exploring ways and means in which to be able to offer some sense of security to civic society—that if you are making an investment in a political party, you are not going to expose yourself to what you might believe would happen today—or something else. That would be very helpful to us. Unfortunately, we still have fundamentally anti-democratic elements in our society, and they are on both sides of our community.

Chair: We will move on to dual mandates. Fairly briefly, what is your party’s position on that?

Dr McDonnell: We would stick to the statement we made on dual mandates to the Committee on Standards in Public Life, which went back to the review of MPs’ expenses. I will quote from the document and will leave it with you. It is a document that we have put in to the NIO on the preparation for this Bill. We said: “Additionally and crucially in the context of politics in Northern Ireland an agreed solution must be put in place to provide a timely solution to the issue of dual or multiple mandates. This could be facilitated by an all-party agreement on a definitive timetable for ending dual mandates.”

Unfortunately, our proposals along those lines in the Assembly were voted down. It was fairly obvious that other parties favoured a more flexible approach. We, in broad principle, endorse the ending of dual mandates. We have led on that. Our Minister has worked very hard to remove the dual mandate situation between local government and the Assembly. The other two MPs, Mark Durkan and Margaret Ritchie, both resigned from the Assembly. However, the SDLP has argued that there is a benefit in the party leader being able to appear in both Houses and carry representation from both Houses. I articulated in private, at our meeting last week, some of the issues around that. Personally, I am fairly flexible around it. I fully accept the broad principle, but I do accept that there is a benefit in terms of connectivity and communication.

Chair: There is the benefit of connectivity, obviously. However, as party leader, you are a lot busier than if you were a Back-Bench MLA.

Dr McDonnell: I work seven days a week.

Q332 Chair: Indeed, but can you possibly do both? If this Committee met on a Tuesday in Westminster instead of its normal Wednesday, how could you be in two places at once?

Dr McDonnell: It would be difficult perhaps to be in two places at once. The point is that this Committee has always been very obliging. Your good self, Chairman, and your predecessor were always very obliging and ensured that the Committee met mainly on a Wednesday. There are some Tuesdays that the business ends early here and it is quite convenient. The bulk of business is done here on a Monday and a Tuesday morning. Quite often, I move on and get a flight at that stage. It is possible to move between the two. It is a heavy load. The biggest difficulty is that I spend most of my Saturdays and Sundays preparing, mopping up or following up.

Q333 Oliver Colville: The proposals would prohibit Members of the Assembly here in Northern Ireland being part of the House of Commons, but would not prohibit anybody from being a Member of the House of Lords or, for that matter, a Member of the Republic of Ireland’s Parliament. That seems a bit of an anomaly. How would you deal with that?

Dr McDonnell: You could deal with it at various levels, but I think that there should certainly be consistency across the House of Commons and the House of Lords. Although the Lords does not have an electorate or a mandate and is slightly different, nevertheless, I do believe that the issue requires some further scrutiny.

Q334 Oliver Colville: And the Irish Parliament?

Dr McDonnell: That is not an issue at the moment. Rarely have Members been Members here and in the Irish Parliament. It is a hypothetical situation.

Mr McDevitt: There is a landmark case involving Seamus Mallon, a very eminent former Member of the Houses of Parliament and former deputy First Minister here. I think that, unless the law has changed—I only say “think” I do not know for a fact—it would be impossible right now, from a Southern law point of view, to be a Member of the Oireachtas and a Member of this House. Maybe Lady Hermon can answer that.

Q335 Lady Hermon: Actually, that is our difficulty with the Bill. As it is presently drafted, it would sadly mean the loss of, for example, your party leader
maintaining his dual mandate, because it is specifically mentioned that the mandate of those sitting in the Assembly and those sitting in the House of Commons, but not the House of Lords, would be prohibited. However, there is not a prohibition under the Bill for a Member sitting as a TD in the Dáil and also sitting in the Assembly. The logic has to be this: if you do not like dual mandates in principle, as the SDLP has indicated, surely the Bill has to be changed.

Mr McDevitt: That is the logical argument, and it is very difficult to disagree with that logic. However, as with everything in this jurisdiction, we look both ways.

Lady Hermon: Certainly you do.

Mr McDevitt: One thing I will refer the Committee to is where Irish statute is on that question. I am not sure, but you may find that there is a statutory bar on a Member of the Oireachtas being a Member of another Parliament. Therefore, the disqualification would work from the Southern side rather than the Northern side.

Lady Hermon: That is a great relief. We can look at that.

Mr McDevitt: You should check that out. I cannot be held to it, but I am pretty sure that that is the case.

Q336 Nigel Mills: To be clear, the SDLP’s view is that there should be no double-hatting, and that should be for the House of Commons, House of Lords, European Parliament and Irish Parliament. Is that your view?

Dr McDonnell: In broad principle, yes. We have had a bouncy, turbulent history in this building. The Assembly was up and down a number of times. We are getting there. There are probably only about 10 or 12 councillors with a dual mandate through being Assembly Members. Although at the start nearly all the MPs were Assembly Members, with the exception of Lady Sylvia here, that is now down to three. I see that disappearing, so there has been a genuine effort here. Circumstances often have to be dealt with. We are down from having probably 15 MPs being Assembly Members to three. I see that disappearing in the short to medium term.

Q337 Lady Hermon: Do you think that the provision in the Bill to legislate only in Northern Ireland and not in Scotland—so the dual mandate could remain doable in the Scottish Parliament and Westminster—is using a sledgehammer to crack a nut, when only three hold dual mandates? Could we not just let it run its course? Dual mandates are not popular with the public, and people will just give up one or other position. Is this not heavy-handed?

Dr McDonnell: My view is not as extreme as that. The issue is there, people are concerned about it, and it needs to be dealt with. It may be overreaching and over-provision, but I leave that for others to decide. I am on this side of the table at the moment—Lady Hermon: I am not used to your being there.

Dr McDonnell:—giving a view on behalf of the SDLP, and that view is fairly consistent: dual mandates should disappear. There may be the odd exception to that. However, we believe that, five years down the road, there will be no dual mandates.

Q338 Lady Hermon: Yes; the point that I am making is that we do not need a legislative provision to ban it only in Northern Ireland. If they are going to ban it, let us ban it in legislation in Scotland, Wales and Northern Ireland.

Dr McDonnell: You talk about Scotland. I am not a unionist and will not tell unionists how to think, but in the past I have drawn attention to the fact that it may be useful if somebody senior in Scotland was able to attend the House of Commons. I am not going to tell unionists how to keep the United Kingdom in one piece, but linkages—Lady Hermon: They are very important.

Chair: There are a number of Scottish MPs who attend the House of Commons, obviously. We are right at the end of the session. May we briefly get your views on the Justice Minister changes?

Dr McDonnell: Our views are simple. We believe that the Justice Ministry should be part of the normal d'Hondt process for appointing Ministers. We have difficulty understanding why it is not. Yes; all sorts of reasons are advanced, but we believe that the Justice Ministry should be in the pot and if somebody wants to take it first or second, let them. Certainly, the proposal is an improvement on the present system, which was totally fabricated, is unhelpful and, to some extent, weakens the moral authority of the Justice Minister. I would like to see the Justice Minister appointed regardless of what party he comes from. That would be the way to work it. The proposal here improves slightly on the arrangement previously used.

Chair: OK. We are out of time. Thank you very much indeed, both of you.

Dr McDonnell: Thanks; it has been a whole new experience. I will leave with staff that note, which may be useful to you.

Chair: Thank you.

Examination of Witnesses

Witnesses: Mr Raymond McCartney MLA and Mr Sean Oliver, Sinn Féin, gave evidence.

Q339 Chair: We will move straight on. Mr McCartney and Mr Oliver, you are very welcome and thank you very much for joining us. I think that you know that we are looking at the Bill. Would you like to make a brief—very brief, if I may ask—opening statement on how you see the Bill, what is in it and what is not in it?

Mr McCartney: OK. First, I welcome you here and thank you for this opportunity. Tá fáilte romhaibh agus gabhaim buíochas libh go léir. I was to be joined by Caithrina Ruane, but she is proposing a motion in the Assembly, so her absence is down to that, unfortunately. She may be able to join us, but I am not sure. Thank you very much for this opportunity to
present here today. I suppose that it will come as no surprise that Sinn Féin, as an Irish republican party, would be for the maximum transfer of powers to the Assembly. We feel that many of the issues that we will be discussing today are issues that could be legislated for here in the Assembly. I also want to acknowledge the task that you have and the fact that you have shown an interest in taking presentations from us as a party. I know that you have taken presentations from all the parties represented in the Assembly. I know that some of the issues that were first outlined in the proposed Bill are not ones that you will be dealing with in the short term—perhaps you feel that that may be a longer term piece of work—but I should let you know that the Assembly and Executive Review Committee is working on some of those issues around the size and number of Departments. Both Caitríona and I are members of that Committee, and we are tasked to look at those issues, as well as some of the issues that you are tackling here today.

The principles that will guide us in any deliberation of these issues, and, indeed, any outstanding issues, are inclusivity, representativeness, equality, parity of esteem and mutual respect. At this meeting, Chair, I will be guided by you, but we will be making a written submission to your Committee’s deliberations, which will be with you forthwith. If you wish, I can go through the particular issues, or maybe there are questions I can go through the broad headlines of the issues, if that would be helpful.

Q340 Chair: We will start with questions if that is OK; in view of the fact that we have only a limited amount of time. Thank you very much for the statement. We will look at the transparency of donations first. What is your take on that?

Mr McCartney: We say that all political contributions should be published. We believe in openness and transparency. Indeed, our party publishes all our accounts, all donations and all public contributions made to the party. We think that that is the best way forward. I think that people who are involved in any political system, particularly the people who elect you, should know who the contributors to all the major political parties are. We welcome some of the steps that you are taking and feel that you should go further and ensure that all political contributions and donations are in the public domain.

Q341 Oliver Colville: Including membership of your own party? The membership should be seen in a public document.

Mr McCartney: Absolutely. We would have no issues around membership of the party being public, but we particularly feel that donations should be public.

Q342 Oliver Colville: You do not think that that would end up putting people off? They may feel that they were being supportive of a political party, but do not want to put themselves in a position of potentially being victimised.

Mr McCartney: If there is a conflict of interest and they are making donations to the party, they should say that they are also a member of the party. There may be some concerns here around people having a published list, but our party is very open in terms of our cumann structure right up to our national executive—the Ard Chomhghairle—and people would be aware of the membership of the party.

Q343 Oliver Colville: But the public would not necessarily be. You would not be able to go on the internet and find out who the members of Sinn Féin are.

Mr McCartney: I would say that, for most of our structures, you could.

Q344 Mr Hepburn: There have been two basic arguments put forward to us to keep the present situation as it is. The first is that, if political donations were disclosed, donors would be put under threat from dissidents, say, or whoever. Secondly, it would lead to a reduction in donations and that would be a threat to democracy, because it would affect the running of political parties, which are part of the democratic process.

Mr McCartney: First of all, people can say that they may feel that they would be under threat, and that is something that perhaps has to be tested. Saying that people who give donations may not if it was open, again, has to be tested. However, there are certainly many people who are suspicious—and I think that the electorate is suspicious—about the fact that people can make donations to a political party without that being open and transparent. It leaves people in political life open to the accusation that people make donations for favours. If it was published, you would do away with that. I think that there would be more concern about that than there perhaps would be about people saying that those who donate would be put off simply because of a threat. That is an issue that you certainly have to take recognition of. There is the idea that people will be put off simply because it would be published, and they would feel that it would undermine democracy, but I think that it would strengthen any sense of democratic accountability.

Q345 Nigel Mills: I think that I agree with that answer. The second argument, after security, was that it may be very difficult for a business to publicise a donation. There is a concern that, if the business has customers from both sides of the community, there could end up being some kind of boycott or commercial action, if not a violent reaction. Is that something that you see as a reasonable concern, given Northern Ireland’s history, or do you think that transparency is more important than those commercial concerns?

Mr McCartney: I have no doubt that it may be a concern, but I think that you have to avoid exaggerating the concern to the point that people will perhaps feel that you are looking for an excuse, rather than a reason, for not doing something. It is always difficult to say that you can speak on behalf of other people’s opinion. Over recent years, a lot of people have felt that there can be a veil over many of the transactions in and aspects of politics, particularly around public money and donations. Therefore, I think that we have to be strident and say, "Let us do it." We could then
perhaps build some sort of review mechanism into it. I think that there is a tendency to believe that people do not want this to happen. It allows the public to say that they are doing it for reasons of protection, and I think that we should be trying to remove that.

Q346 Nigel Mills: Say, for instance, that I gave £1,000 to the SDLP to help with its campaign. If that were public, could you envisage a situation in which Sinn Féin would tell people not to go to my shop because I support the other party? Do you think that no political party should do some kind of—

Mr McCartney: I do not think that there is any evidence for that. I am sure that there are people in political life who own businesses, and I do not think that they have provided any evidence that people have been told not to go to Joe or Josephine’s shop because they are a member of a different political party. I think that people are a bit more mature than that.

Q347 Lady Hermon: Raymond, it is very nice to see you. Am I right in saying, Mr Chairman, that this is the first time that Sinn Féin has given us evidence in public session here in the Senate?

Chair: We hold regular meetings in informal session.

Mr McCartney: We made a presentation at the Stormont Hotel at one time, but it might not have been in public.

Q348 Lady Hermon: You are very welcome. Is this a sign of things to come? Can we expect Sinn Féin to take up invitations to give evidence to the Northern Ireland Affairs Committee at Westminster? I mean that sincerely. I know that your MPs do not take their seats, but is that something that we can look forward to?

Mr McCartney: If the request is made, I assume that the party will see whether it is fitting to do that. I do not see any reason why we would not do that, if the request were made. I am sure that it would be done on a request-by-request basis.

Lady Hermon: Thank you. That is to be welcomed.

Oliver Colvile: You are an important part of the decision-making process here in Northern Ireland.

Mr McCartney: We like to think so.

Q349 Lady Hermon: It is to be welcomed. I will go back to the question that I am supposed to be asking. I was very interested in your response to Nigel’s question; in fact, I took note of it. It was said that people may feel that they might come under threat. Your response to that was that it would have to be tested. For clarification, how would that be tested? I ask that, because the overwhelming evidence that we have received is that people would certainly feel a very significant and real threat if the anonymity of political donations were lifted. A suggestion was made, which was not mine, that there should perhaps be a role for the PSNI and the Chief Constable if a donor wishes to make a donation and feels under threat. It was suggested that that should somehow be built into this draft Bill to allow for greater anonymity for those who feel under threat. Is that what you had in mind when you said “tested”?

Mr McCartney: I do not think that you want any situation where a person feels that they are under threat or can be placed under threat. In many of the big issues that we have faced over a number of years, there has perhaps been a reluctance to do something, as people were frightened or put off because they may have been intimidated. However, they then take the decision to do it, and they see that the threat was not as big as had been perceived. I do not want to be reducing any perceived threat, but I do not think that we should be talking it up in such a way that means that we do not make decisions, which, in the wider context, will be seen as the right decision.

Q350 Lady Hermon: Let me repeat my question: do you think that there is a role for the PSNI that could be built into this Bill to allow it to test the threat and say that it is actually minimal?

Mr McCartney: That is worth exploring. If the PSNI were to say that a person’s life could be threatened if they made a donation to Sinn Féin, the SDLP, the Ulster Unionist Party or the DUP, you would have to examine that realistically.

Lady Hermon: So, there could be a possibility for testing that. Thank you.

Q351 Nigel Mills: I will ask about international donations and the receipt of money from people who are not electors in the United Kingdom, which, clearly, is the position for those of us on the mainland. Presumably, Sinn Féin’s view is that that would not be appropriate for Northern Ireland and that funding from people in the South should still be permitted.

Mr McCartney: We do not see that in the international context. Obviously, as an Irish republican party, we see Ireland as a single entity. We lay great store on the fact that there is an Irish diaspora, and people are very supportive of Sinn Féin internationally. So, we do not see that there should be any prohibition on people contributing to the party as long as it is done openly and transparently.

Q352 Nigel Mills: So, does that apply not just to people who are resident in the Republic of Ireland? Should people resident anywhere in the world be able to donate to parties in Northern Ireland?

Mr McCartney: Absolutely, yes.

Q353 Chair: Is that based on citizenship? How would you define their ability to donate, if, for example, they lived in Australia?

Mr McCartney: Our party has a support network in those countries. All donations are subject to the laws of the country in question, and all the accounts are published for people to see. I know that, in the United States, any money that is raised can be spent only there, and that is right and proper within its jurisdictional law. That is the way that people should proceed. I think that if it is open and transparent, people can make their judgments on whether it is right, wrong or indifferent.

Q354 Nigel Mills: So, you publish already every donation over a certain amount?

Mr McCartney: Yes.
Mr McCartney: It is published on our website. The party took a decision to do that, because we believe that, if the process is to be open and transparent, you should show a lead by doing that.

Mr McCartney: If I were to look at that, I could see how much each individual donated and where in the world they are. Is that what you publish?

Mr McCartney: Yes.

Chair: Can we ask you about the dual mandate proposals? Presumably, you are in favour of them.

Mr McCartney: We are indeed. The party has an internal policy through which we have ensured that, over recent times, none of our elected representatives carries a dual mandate. Indeed, there will shortly be a by-election in Mid Ulster, because Martin McGuinness was the last Sinn Féin Assembly Member to be in that place. Going forward, our policy will be that anyone who is elected at any level will hold one single mandate.

Lady Hermon: I am not pinpointing Fermanagh and South Tyrone, but I am originally from that constituency. Its MP was elected in the same year as I was and is a very fine young lady, if I may say so. Am I right in saying that Michelle Gildernew will remain as an MP?

Mr McCartney: Yes.

Lady Hermon: She will be an absentee MP. Can I ask you about the dual mandate?

Mr McCartney: Yes.

Lady Hermon: So, how does Sinn Féin see her role with other MPs from Northern Ireland at Westminster? Will she be there more often? Can she, for example, come and sit in the Public Gallery at the Northern Ireland Affairs Committee? How do you see the role of those who have this now rather isolated role as an absentee MP? How do you think that their constituents in Mid Ulster or Fermanagh and South Tyrone feel about their contribution at Westminster?

Mr McCartney: There are two levels to it. She may be described as an absentee MP on the matter of taking her seat in the British Parliament. She certainly is a hard-working MP, and she represents the people who elected her.

Lady Hermon: I am not making any criticism of the—

Mr McCartney: I know that you are not, but I am just trying to lay it out. So, when the party took the decision to do away with dual representation or dual mandates, a programme of work will have been laid out for our five Members of the British Parliament, as the party does for each of us. Their programme will entail an intensity and direct working with—

Lady Hermon: Will you publish on your website your programme of work for each of your MPs so that we can check, just as we can with the donations?

Mr McCartney: Perhaps all MPs should do that; we might then get a better read of many MPs' work.

Lady Hermon: Is that required in the Republic of Ireland? Is that where you publish it, or is it published on your website here as well?

Mr McCartney: It is published on our website. The party took a decision to do that, because we believe that, if the process is to be open and transparent, you should show a lead by doing that.

Gerry Adams resigned his seat in the Assembly and his seat at Westminster to take up his role in the Dáil. We are indeed. The party has an internal policy through which we have ensured that, over recent times, none of our elected representatives carries a dual mandate. Indeed, there will shortly be a by-election in Mid Ulster, because Martin McGuinness was the last Sinn Féin Assembly Member to be in that place. Going forward, our policy will be that anyone who is elected at any level will hold one single mandate.

Lady Hermon: Yes.

Nigel Mills: Is that extended to the Dáil?

Mr McCartney: Absolutely.

Lady Hermon: We have identified an anomaly in the Bill.
Q363 Lady Hermon: So, he is not planning a comeback.
Mr McCartney: No. I am sure that he could have stayed and still won the seat in Louth, but, in line with party policy, he decided not to.

Q364 Lady Hermon: Had you formulated that party policy before Gerry Adams ran for the Dáil?
Mr McCartney: We would have phased out such practice. Part of the initiative came from local structures. In my constituency of Foyle, we had a policy at comhairle contae level, whereby anybody who was ever elected to the Assembly resigned their council seat shortly after. Michéal McLaughlin did that, and Mary Nelis was the first to do it. We had the sense to know that you cannot wear two hats and serve people in different ways.

Q365 Lady Hermon: Was the feedback that people just did not like it? If you listen to 'The Stephen Nolan Show', I think that you would get that impression, but is that what you felt on the ground early on?
Mr McCartney: Our decision predated 'The Stephen Nolan Show'. That is part of the reason, but structurally, if you want your party to grow and you want more experience, why would people want to do two roles when there are others in the organisation who are capable of performing the roles and bringing more to them?

Q366 Lady Hermon: So, it was planned.
Mr McCartney: Yes.

Q367 Nigel Mills: Can I push my luck a little? We are talking about Sinn Féin MPs taking their seats and getting the greater experience that taking part in Chamber debates would no doubt give them. If you had your border poll, and if, from my perspective, the result went the right way, although you might take a different view of that—
Chair: Do you want to concentrate on the Bill, please?
Nigel Mills: On the two-hatted issue, if the border poll said that the majority of people want to stay in the United Kingdom, would that change your view on taking your seats? Would you say, 'We have had our democratic chance, and now we should fully commit'?
Mr McCartney: In my opinion, no.
Chair: Can we stick to the Bill? We have explored that very interesting subject, and, no doubt, we will return to it again, but can we stick to the Bill?
Oliver Colville: I had every intention of doing so. A number of those who have been before us during the past couple of days have talked about how useful they have found it to be able to walk the corridors of power in Westminster and have conversations with Ministers quietly behind closed doors, in the tea room or over a beer, which, as I am sure that you can tell, I have never done. Therefore, that has left it very much to the civil servants, and you have no formal opportunities to be able to get things for your constituencies and so forth. Do you think that, by not having that dual mandate for the Assembly and the House of Commons, you have missed the opportunity to be able to improve your constituents’ lives by getting resources or to give their views?
Mr McCartney: I do not think that you need a dual mandate as your baseline. A great deal of what you said was almost that a lot of the real work takes place outside.
Oliver Colville: Yes, it does.
Mr McCartney: I think that our MPs are well placed to do that. We have shown over many years that, when it comes to getting access to ensure that decisions are made in the best interests of the people we represent, we can find the doors that we have to knock on.

Q368 Oliver Colville: Thank you very much for coming to address this meeting; I am genuinely very grateful to you for doing that. It would potentially be helpful if you were part of the decision-making process and, more importantly, influencing politicians at the Executive. That would be incredibly helpful, because it is another voice and another issue that is going to be taken into account.
Mr McCartney: In case there is any confusion, that would still mean that, just as we do already, we place ourselves before the electorate on the basis that we will not take our seats. They elect us accordingly.

Q369 Chair: We are running out of time, but can we ask you how you view the changes to the appointment of the Justice Minister?
Mr McCartney: Notwithstanding our view that the Justice Minister should be elected like any other Minister, we are aware of the peculiarity or particular of the circumstance. We believe that the provisions in the Bill are appropriate. The Justice Minister should have the same security of tenure as all other Ministers. We also believe that it should count in the d'Hondt process so that there is no skewing that then results in unequal representation.

Q370 Chair: Would you just run d'Hondt completely?
Mr McCartney: That would be our preferred opinion, and we have said that. As I said in my opening remarks, we majored on the fact that we wanted the maximum transfer of power. Part of ensuring that was that we had a particular or peculiar way of electing the Justice Minister. We think that that was in the electorate's best interests. All being equal, the Justice Minister should be the same as any other Minister. However, in these circumstances, we support the provisions that you are laying to secure the tenure of the Minister and to ensure that the position counts under d'Hondt.

Q371 Nigel Mills: Do you envisage there being a DUP or Sinn Féin Justice Minister in the short or medium term?
Mr McCartney: I see no reason why there should not be. It might not be a realisable goal in the short-term, but I do not see any reason why it should not be in the future. We would say that, once you stand in front of the electorate and lay your policies, d'Hondt should be run accordingly and as envisaged.
Q372 Lady Hermon: When you say "not in the short term", does that mean at the time of the next Assembly election, when the Bill should be on the statute book? Would Sinn Féin not wish to have the Justice Ministry?
Mr McCartney: No, we would certainly wish to have it. However, as in any situation, you make decisions in the here and now. I do not want to give any false hope that it is going to happen today or tomorrow, but we certainly see no reason why it should not.

Q373 Lady Hermon: I am sure that you know that, under the Bill, if the 108 Assembly Members cannot agree on who is going to be the Justice Minister after the next Assembly election, there is no saving mechanism. How would you get out of that predicament?
Someone suggested this morning in evidence—I could not possibly say who it was—that we should just build into the Bill a reference that we should all go to a castle. That is not going into the Bill, I do not propose that it should go into the Bill, and you agree with me on that. How would you resolve the stalemate? The alternative suggestion, of course, is that there should be some saving mechanism in the Bill that means that, if you cannot pick a Justice Minister in seven or eight days or whatever, there has to be some alternative mechanism for picking and forcing MLAs to agree on suitable candidate.
Mr McCartney: I suppose that I come at this from a very optimistic point of view. I think that we have the mechanism for picking and forcing MLAs to agree on who is going to be the Justice Ministry?

Q374 Lady Hermon: What gives you such confidence that you can do that with the Justice Ministry?
Mr McCartney: We have done it twice already.
Lady Hermon: You followed the legislation that was there twice, and we ended up with the same gentlemen, who is doing a first-class job.
Mr McCartney: Therefore, we ensured that there was a Department of Justice and that powers were transferred from Westminster for the people whom we represent. I think that most people see that as the way forward. People would not forgive us if we created a stalemate for ourselves, so I am hopeful that we will stay clear of that.
Lady Hermon: That is very interesting. Thank you.

Q375 Oliver Colville: For clarity, am I right in thinking that you would be perfectly happy to have a DUP Minister of Justice? Do you think that it is important to have someone who is objective and who is not seen to be so closely tied to one section or other of the community? Would you be quite happy for a DUP Justice Minister to be in place?
Mr McCartney: We are on record as saying that, once the electorate decide, d'Hondt should be run. Whoever selects that Ministry should hold that Ministry. Unfortunately, that was not realistic in the past two mandates, so we came up with a solution to a particular problem. In the long term, however, it is very clear that, once the electorate decide, d'Hondt should be run as the legislation lays out.
Oliver Colville: Thank you very much.

Q376 Nigel Mills: Moving on to talk about what is not in the Bill, what do you think the right number of MLAs is? Do you have a view on moving to a situation where there is an official opposition?
Mr McCartney: That is part of the work of the Assembly and Executive Review Committee. Indeed, this morning, that Committee took evidence on that. The model of the Good Friday Agreement was put together by a number of building blocks, and I think that there is a tendency now for people to try to separate those building blocks and to think that they can reform particular aspects of it. In all that we do, be it in an opposition or the size of the Assembly, we will be guided by representativeness and inclusivity. Therefore, we have to be careful that we do not say that something will provide a solution for one particular aspect but will give us another problem somewhere else. Whatever we do will be done in a holistic way, rather than one element being separated from the other.

Q377 Nigel Mills: Do you think that, in an ideal world, a smaller number of MLAs would be the right answer?
Mr McCartney: Possibly not. We did not live in an ideal world when we made the agreement. Parties in the Assembly have the right to leave the Executive and to form an opposition, although it may not be formal in that particular sense. Overall, whatever we do and whatever reforms are made to the size or nature of the Assembly, we will always be guided by the need not to undermine the principles that brought about the Good Friday Agreement.

Q378 Nigel Mills: When you are seeking to negotiate a change in the Executive Committee or whatever, are you, in principle, in favour of a funded official opposition rather than a grand coalition of all the parties? Do you think that that would be a positive step forward for how Northern Ireland is run?
Mr McCartney: It could be a positive step if we could show that we are in a position to do that. Remember, the history here is that, for too long, there was majority rule, which led to the suppression of one group of people. Whatever we do, we will be guided by a need not to repeat the mistakes of the past by doing something that, in principle, sounds grand, but that, in reality, is the complete opposite.

Q379 Nigel Mills: OK. If you had an Administration that is made up of two cross-community parties, just as you have with your party and the DUP, and the next two biggest parties from each side formed the official opposition and were funded, do you think that that might make sense as a rough principle?
Mr McCartney: It could make sense, but it would depend on the circumstances and the provisions. They would have to be underwritten by representativeness and inclusivity.
Chair: We have time for a final question.

Q380 Lady Hermon: Chairman, you are very generous; thank you very much indeed. A n issue was brought to our attention yesterday afternoon when we took evidence from the Northern Ireland Human
Rights Commission. The presentation and evidence confirmed that there was concern about the guarantees that were given about the Northern Ireland Human Rights Commission’s independence. Those guarantees were given in the Belfast Agreement, which was signed on Good Friday 1998. The concern was that, if those are transferred, they really have to be transferred to the Northern Ireland Assembly, not the Northern Ireland Executive. Have you, as a party, looked closely at the Bill’s implications for the effectiveness, working and appointment of the Northern Ireland human rights chief commissioner and the changes that it would bring about? If so, what is your party’s response?

**Mr McCartney:** Whatever flexibility is built into the legislation through the miscellaneous part and section 75, it should not undermine the good work that is done on equality. That may impinge on the Human Rights Commission’s work. I did not hear its presentation, but that is certainly something that we will address, and we will ensure that it is in our written submission to your Committee.

**Lady Hermon:** I ask you, if you have the opportunity, to look through the evidence that was given yesterday at the very end of our session. It was very concerning.

**Chair:** We have to wind up. I thank you very much for coming before us.

**Mr McCartney:** Thank you.

**Lady Hermon:** The first of many, I am sure.

**Chair:** I also thank all the other witnesses who have been before us, including Alasdair and many others. I thank Mr Speaker for allowing us to use this beautiful room.

**Several hon. Members** Hear, hear.

**Chair:** The public session is now over.
Wednesday 6 March 2013

Members present:
Mr Laurence Robertson (Chair)
Mr Joe Benton
Oliver Colvile
Mr Stephen Hepburn
Lady Hermon
Kate Hoey
Naomi Long
Dr Alasdair McDonnell
Nigel Mills
Ian Paisley
David Simpson

Examination of Witness

Witness: Sir Christopher Kelly, Chair of the Committee on Standards in Public Life, gave evidence.

Chair: Sir Christopher, thank you very much for joining us. As you know, we are conducting a brief inquiry into the present Bill that is before us—both what is in it and perhaps what is not in it as well. We are very grateful to you for coming to help us with our deliberations. We are not going to offer an opening statement, because there are many questions we would like to ask. In the interests of time, we will crack straight on if that is okay. Can we start by talking about dual mandates, Ian?

Q381 Ian Paisley: Thank you, Mr Chairman. I about dual mandates, Ian?

Q382 Ian Paisley: In Scotland and Wales, legislation has not been a requirement. It has occurred; it has naturally evolved. Should Northern Ireland just not be allowed to allow this? Clearly it is going in the right trajectory.

Sir Christopher Kelly: If you think that will happen, then legislation is clearly unnecessary.

Q383 Ian Paisley: What is your opinion?

Sir Christopher Kelly: I don’t know enough about the position of the parties. Am I right in thinking there is only one party that has not committed to doing it? I don’t know enough about whether they are likely to change that—

Q384 Ian Paisley: With all respect, Sir Christopher, you are the commissioner of standards. You must know; you must have an opinion on this.

Sir Christopher Kelly: As I say, my opinion is that double-jobbing ought to come to an end. The mechanism for doing that is not a standards issue; the mechanism for doing it is an issue of what is practical. As I have said, if it is necessary to legislate to bring it to an end, then I personally, and my Committee, would be in favour of legislation.

Ian Paisley: You would be in favour?

Sir Christopher Kelly: If that is what is necessary to bring it to an end, yes.

Q385 Ian Paisley: Should that therefore then apply to all parts of the United Kingdom?

Sir Christopher Kelly: If it is necessary to bring it to another part of the United Kingdom, yes.

Q386 Ian Paisley: What I am worried about is the unintended consequences of that, which maybe other Members will come in on. I know Lady Hermon is a particular expert on this, with regards to how that might affect discrimination across the rest of the United Kingdom. I do have some concerns, if you were to just bring it in for one part of the United Kingdom. It may then therefore have other consequences, unintended but nonetheless consequences, in terms of discrimination legislation within Europe.

Sir Christopher Kelly: That is a technical question, which I am not competent to answer. If that is the case, then clearly the legislation ought to apply to all three legislatures.

Q387 Kate Hoey: Surely if there is no legislation, Scotland and Wales, which at the moment may not be doing it, could next year decide something and a particular MP could.

Sir Christopher Kelly: Indeed, they could. All I am saying is the principle—and our Committee is largely concerned with principle—is it ought to be brought to an end. If it is necessary to legislate to bring it to an end in any of the three devolved legislatures, then in my view legislation should be put in place.

Q388 David Simpson: You said that you understood that not all the parties had committed to end double-jobbing. Is that right? I understood that all the parties had. I am not sure about the SDLP, but I know the rest of the parties had committed that, by 2015, it would be phased out.

Sir Christopher Kelly: In that case, I stand corrected.
David Simpson: I said I do not know about the SDLP, but maybe you can inform the Committee what the situation is, because I understand all parties have.

Dr M Donnell: The SDLP is in favour of the end of double-jobbing.

Chair: We have established that.

Q389 Ian Paisley: Can I then come back and maybe give you a chance to reflect on your answer? Is it therefore necessary to have legislation, if all of the parties, as you have now heard confirmed, have either commenced or succeeded in ending double-jobbing or are committed to ending double-jobbing?

Sir Christopher Kelly: I have been around long enough to know that not everything that people commit themselves to do actually happens. I say that because the last but one report we did was on party funding, which I imagine we are also going to talk about, where there are manifesto commitments from the three main Westminster parties to do something about it and nothing yet has happened.

David Simpson: Good point.

Q390 Oliver Colvile: First of all, Sir Christopher, thank you very much indeed for coming to see us, and it is a pleasure to have you in front of us. We have all rather taken it as read that your Committee has agreed to look at it. Could you explain to us why and could you also explain to us whether or not any members of the Committee have ever been elected to anything?

Sir Christopher Kelly: Yes. We have three representatives nominated by the political parties—one Member of the House of Lords and two Members of the House of Commons.

Q391 Oliver Colvile: Okay, that is fine. Could you just explain to us why?

Sir Christopher Kelly: It came about because of the report we did on MPs’ expenses. We were given a quite explicit remit from the then Prime Minister as to what we should cover, and that included the question of outside earnings. Our focus was not on the Assembly; our focus was on the House of Commons. He explicitly asked us to look at the question of outside earnings, which otherwise is not strictly speaking a standards issue. We took the view, I hope you will agree rightly, that it was none of our business to express a view on how a Member of Parliament ought to go about their job, but we also took the view that, if the job was done properly, it was, to all intents and purposes, virtually a full-time job. That did not rule out, in our view, external earnings of some kind and purpose, virtually a full-time job. That did not do justice to either role, when the matter of facts in all of this though, is there not? Dual-mandated Members do not get dual salaries and, secondly, the measurements that organisations like TheyWorkForYou use actually demonstrate that dual-mandated Members—a little inconveni ent matter of facts in all of this, is there not? Dual-mandated Members do not get dual salaries and, secondly, the measurements that organisations like TheyWorkForYou use actually demonstrate that dual-mandated Members—appear to be in the higher echelons of those who give a number of speeches, those who attend a number of votes and those who ask the most written questions. That is how they are measured by outside organisations. If they are giving that value for money, how do you reconcile what you have just said now to the Committee with your 2009 report, where you said that those with dual mandates do not do justice to either role, when the measurements that are used make it appear that actually many of them do?

Sir Christopher Kelly: On your first point, as I said, it is not about the money. On your second point, what you say is interesting. All I can say is that the people we spoke to at the time we did our report, including people in Northern Ireland and the focus groups we had, took the view that they expected their Member of Parliament—the focus is on the Member of a Westminster Assembly or any of the other devolved legislatures.

Q392 Oliver Colvile: It was driven very much by the financial implications.

Sir Christopher Kelly: No. I only mention the financial implications because that was why the Committee, which is a committee on standards of behaviour, got into this question of whether or not it was right for people to do both the job of a Member of Parliament and another job at the same time. We were asked to express a view. The view we expressed was, as I say, that occasional earnings were fine, but something that is akin to a full-time job seemed to us to cause doubt as to whether or not the person concerned was able to give full value to their constituents in both places. That was a recommendation with which people are entitled to disagree.

Q393 Oliver Colvile: If they had been prohibited from earning two lots of money for doing both jobs, that is one thing, but the fact of the matter is that they can use a lot of the experience and the knowledge that they have by being both a Member of, let us say, the Northern Ireland Assembly and also a Member of Parliament.

Sir Christopher Kelly: As I tried to explain, it was not a question of money; it was a question of time. I have seen that, in the evidence to this Committee, people have talked about the advantages of dual membership. All I can say is, I think I am right in remembering, because it is now some time ago, that in the considerable discussions we had while we were preparing the report, including some in Northern Ireland, this point about the value of being able to network in the corridors here was not raised with us.

Q394 Ian Paisley: There is a question too, which I want to deal with, which again follows on from what my colleague has said. There is the little inconvenient matter of facts in all of this, is there not? Dual-mandated Members do not get dual salaries and, secondly, the measurements that organisations like TheyWorkForYou use actually demonstrate that dual-mandated Members—appear to be in the higher echelons of those who give a number of speeches, those who attend a number of votes and those who ask the most written questions. That is how they are measured by outside organisations. If they are giving that value for money, how do you reconcile what you have just said now to the Committee with your 2009 report, where you said that those with dual mandates do not do justice to either role, when the measurements that are used make it appear that actually many of them do?

Sir Christopher Kelly: On your first point, as I said, it is not about the money. On your second point, what you say is interesting. All I can say is that the people we spoke to at the time we did our report, including people in Northern Ireland and the focus groups we had, took the view that they expected their Member of Parliament—the focus is on the Member of...
Parliament, not on the Member of the legislative assembly—to be working fulltime.

Q395 Ian Paisley: That is really interesting. You say the public—"they expected". I measure the public by two things. Edmund Burke said that Members of Parliament are to exercise their industry and their judgment. One of the finest parliamentarians, Winston Churchill, said you have to trust the people. The public, you say, "expect". When someone stands before the public for election and they are dual-mandated, the public is not blind to that fact. They know it; they see it; and they cast a judgment. Surely, at the end of the day, the final and best arbiter in all of this is actually the people you describe as "they". The public vote and they determine whether or not you have a dual mandate.

Sir Christopher Kelly: That is a strong argument, I accept.

Q396 Oliver Colvile: My understanding is that the draft Bill is talking about how it is that double-jobbing will stop for people being Members of the Assembly and you, at the same time, being Members of the House of Commons. It does not actually say the same thing about Members of the Assembly also being Members of the House of Lords. That seems to be rather strange, doesn't it?

Sir Christopher Kelly: As I say, we were not preparing a report on double-jobbing. We were preparing a report on the House of Commons. Having been asked to look at this question by the Prime Minister, we only looked at it from the point of view of Members of Parliament. It is an entirely separate question, which we did not look at, because we were not focusing on the Assembly, as to whether or not it was consistent for people to be Members of the Assembly as well as Members of the House of Lords.

Oliver Colvile: The irony is that Members of the House of the Lords are also Members of the Parliament, in one form or another.

Q397 Chair: Why was the distinction made? MPs could be forgiven for thinking, at that time, there was a witch hunt against Members of Parliament. The House of Lords is a very important body. I voted against the Bill to abolish it recently, because that is what the Bill was for: abolition. It plays a very valuable role here, but it does demand time. Why was that distinction made?

Sir Christopher Kelly: The distinction was made because the issue did not arise. I keep on saying our focus was on Members of Parliament. Members of Parliament cannot be Members of the House of Lords, so the issue as to whether it was consistent to be both a Member of the House of Commons and a Member of the House of Lords did not arise, and we were only interested in Members of the legislative Assembly in relation to the House of Commons, because that is where our focus was.

Q398 Chair: It goes back to Ian's point that it is alright to be appointed to another body, but it is not alright to allow the electorate to decide whether to send you to two bodies.

Sir Christopher Kelly: No, that is not what I have said.

Chair: That is the implication, though. That is the implication.

Sir Christopher Kelly: The implication is that we were told, I think by all the parties to whom we spoke at the time, that they agree that double-jobbing was actually something that ought to be phased out. We were not presenting a recommendation against the grain of what we were told when we visited Belfast. I say the distinction is not about whether you are appointed or elected; the distinction is about whether it is possible to do justice to your constituents.

Chair: Yes, but if you are in the House of Lords on a Monday or Tuesday, you cannot sit in the Assembly.

Q399 Lady Hermon: It is very nice indeed to have you before us this afternoon, Sir Christopher. Could I just come back a little bit about the connections within the United Kingdom post-devolution? I am very mindful of something that in fact had been written and highlighted by a very senior, now retired, civil servant in Northern Ireland, Sir Kenneth Bloomfield. You may well know Sir Kenneth. It was something that in fact I think he highlighted in one of his several books, and that was when Stornmont, the old Stornmont, was sitting in Northern Ireland for such a long time, there was something of a disconnect with Westminster.

What I am concerned about with the Bill as presently drafted, in which we are taking evidence, is that a complete end to double-jobbing—and again, like Mr Paisley here, to my right, I have never been an Assembly Member and an MP—however, I think I have come full circle. I do think that there is a strong reason, post-devolution, so much to Northern Ireland, to maintain the links within the union with the Westminster Parliament. While, when you were doing your report, post the MPs' expenses and all that fiasco, and there was the general anger, perfectly understandable anger and rage of the public towards MPs, now, with hindsight, and just looking at the implications of devolution, let us say in Scotland, do you not think there is a case to be had, perhaps—and I know we have a leader of a political party, the SDLP, on this Committee, for preserving the link that either the leaders of political parties who sit in the Assembly could also be represented in the House of Commons or, at the very least, my own preference would actually be that the finance Ministers, from Scotland, Wales and certainly Northern Ireland, are present in the House of Commons as elected MPs on the day the budget is delivered by the Chancellor and can look him in the eye? Is there an argument to be had for maintaining those bonds?

Sir Christopher Kelly: You are pressing me on an issue on which I do not feel an expert. As I said, our Committee is a committee on standards of behaviour; it is not a committee on constitutional issues. I can give you a personal opinion, and my personal opinion is that of course there is value in the argument you have put but, to sustain it, you would need to demonstrate that the Welsh Assembly and the Scottish Parliament have suffered, because they have not had this connection. I do not know enough about what they would say there. You may know better than...
I, as to whether they feel there is this deficiency, which the Assembly would feel, if they were in the same situation as Edinburgh and Cardiff.

Lady Hermon: I think that perhaps the recent history and not-so-recent history of Northern Ireland would indicate that, in fact, constitutionally, a closer link with Westminster is a benefit, as compared to Scotland and Wales.

Q 400 Oliver Colvile: My understanding is that, on the other hand, they could be members of the Northern Ireland Assembly, but they could also be members, if they wanted to, of the Irish Parliament as well. I am asking you for your personal view. I recognise that your Committee has not thought about this and discussed it, but do you think that is right?

Sir Christopher Kelly: From reading evidence to this Committee, I thought that the Irish Parliament made that impossible.

Q 401 Chair: We understand that they do, but it is curious that, specifically in the Bill, we do not. The majority of us found it odd.

Sir Christopher Kelly: If you press me, on the assumption that the time commitment necessary to do your job properly in the Dáil is equivalent to the time spent necessary to do your job in this House, then of course logically I would have to take the same view.

Oliver Colvile: I thoroughly agree that we should do as much as we possibly can to try to reduce the amount of legislation we end up producing, but I think that was one area that we need to look at.

Q 402 Kate Hoey: Sir Christopher, could you just explain if you are the Chairman of the Standards Committee responsible for the whole of the United Kingdom public life, including Northern Ireland?

Sir Christopher Kelly: The Committee on Standards in Public Life is appointed by the Prime Minister with a remit that covers the whole of public life.

Q 403 Kate Hoey: In the United Kingdom?

Sir Christopher Kelly: In the United Kingdom except, because we are appointed by the Prime Minister of the United Kingdom, we do not think our remit, in theory, ought to cover matters that are devolved. It is almost certainly the case that, in the past, we have not always been as correct in respecting that as probably we ought to have been.

Q 404 Kate Hoey: You treat Northern Ireland in the same way you would treat Scotland or Wales.

Sir Christopher Kelly: Where issues are reserved, then we regard that as a matter for us. Where things are devolved, we regard that as an issue on which, if the Northern Ireland Assembly, the Scottish Parliament or the Welsh Assembly asked us to express a view, as has happened—I have given evidence to Committees of the Assembly in the past—then of course we, of course, we respond to that. When we have done inquiries under my chairmanship, we have always made a point of taking public evidence in Belfast, Cardiff and Edinburgh, as well as in London. That is not just to show that we are even-handed; it is actually because it is often the case that there is something to be learned, because some things are done differently in the different legislatures or in other forms of public life. There is often something to be learned by looking at what is done differently.

Q 405 Kate Hoey: Is your Committee representative of the whole of the United Kingdom in membership?

Sir Christopher Kelly: There is a member of the Committee appointed to represent the Liberal Democrats party. He is a member of the House of Lords who comes from Northern Ireland.

Q 406 Kate Hoey: On transparency, you talked in your report about transparency being a foundation block to building confidence in the political system. Do you want to just tell us, very simply, in practice, what you mean by transparency when it comes to donations and how this Bill, as devised at the moment, will deal with that?

Sir Christopher Kelly: I am puzzled by some aspects of the Bill, and perhaps I will come on to that. Kate Hoey: That would be very helpful.

Sir Christopher Kelly: Openness, which is another word for transparency, is one of the seven principles of public life that there were originally formulated by Lord Nolan, in the very first report of my Committee. The view taken ever since 2001 is that, in the field of the financing of political parties, quite clearly in the past there was certainly the perception and, almost certainly, the reality that large donations were given or solicited in the hope of some favour being given in return. The belief in 2001, following recommendations by a predecessor Committee, was that the best way of regulating that was transparency of all donations over a certain amount, so that people could see and it would be fairly obvious that, if a particular individual, pressure group or representative body gave a large donation, and that same individual then appeared in the House of Lords or there was then some policy that happened clearly favouring that individual, then the connection would be made. Exposure to the media and so on would be sufficient, either to detect that after the event or, more importantly, to prevent inappropriate donations happening in the first place. That almost certainly, in my view, has had some effect on stopping some of the excesses that have happened before, though evidence is very difficult to come by. In our report on this subject, we expressed the view that, actually, transparency was not enough. Some things you would not want to happen did still happen, although you could not demonstrate that conclusively, but whether or not that was the case, the public perception was very clearly that donations were given and solicited in the expectation of some favour. Therefore, we recommended as we did that there should be a limit placed on the amount that anyone could give.

The reason I am slightly puzzled by the Bill is because the argument is that everyone—and I use that term loosely—seems to have accepted in principle that the same arrangements as in the rest of Great Britain should apply to Northern Ireland. The issue is one of the right time, because of the fear, as I understand it from the evidence that you have already received, that
if it became apparent who was donating, then either there would be intimidation or a boycott in a way that would have the effect of damaging the finances of Northern Ireland political parties.

I have two problems with that argument. One is the transparency arrangement is there for the public interest and a belief that this is in the public interest to do that. Although the argument about the effect on the finances of political parties is clearly a powerful one, because I firmly believe that it is in the interests of democracy that there should be properly funded political parties, nevertheless, it does not self-evidently trump the public interest one. There is an argument to be had. Is the impact on the finances of the Northern Ireland political parties so great that, actually, it overrides the public interest in transparency? A lot of the debate seems to be conducted as if it was obvious that that was the case. It seems to me that that is an issue.

Q407 Kate Hoey: What is actually wrong with the Bill?
Sir Christopher Kelly: Secondly, however, the arrangements in the rest of Great Britain are that the only donations that have to be declared are donations to a political party that are over £7,500 in any one year, or £1,500 to an accounting unit of a political party or £500 to an individual. What we were told in evidence when we did this report, and what you seem to have been told in the evidence that you have received so far, is that there are very few, if any, donations to Northern Ireland political parties that are more than £7,500. I believe that that is what the First Minister said to you. Sinn Fein, I read, although I have not checked this myself, says that they put their donations on their website, so it is possible to check that.

If there are no donations above £7,500, then bringing Northern Ireland into line with Great Britain would have no effect at all. Either someone is not being completely honest about the extent to which there are significant donations or it is an entirely academic issue and, if donations above £7,500 were published, the impact on individual parties would be very small.

Q408 Kate Hoey: If you had been writing the Bill, what would you have put in there?
Sir Christopher Kelly: The first step, and what we recommended, was that the Electoral Commission should disclose whether or not there are any donations above £7,500. In a sense that would deal with the issue. What the Bill does is to give the power, as I understand it, for the Electoral Commission to publish, effectively, anonymised data, so that you would be able to tell if there are any donations over £7,500 and, if so, how much they are. Then you could judge whether there would be an impact from making them transparent, rather than go through this whole convoluted procedure. If it is true that there are no donations or very few donations over £7,500, you might as well move to it straight away.

Q409 Kate Hoey: I know I could probably look it up, but just in the interests of transparency, how much do you get paid?

Sir Christopher Kelly: How much do I get paid as the Chairman of the Committee on Standards in Public Life?
Kate Hoey: Yes.
Sir Christopher Kelly: I get paid £50,000 a year.

Q410 Kate Hoey: Is that a set number of days a week you have to work? How does it work?
Sir Christopher Kelly: No, it was calculated on the basis that I would spend two days a week doing it.

Q411 Kate Hoey: You are getting £12,000 less than we are getting for doing a full-time job.
Sir Christopher Kelly: Yes.
Kate Hoey: Okay, I just wanted to have that on the record.
Sir Christopher Kelly: It is a matter of public record.
Kate Hoey: I know, but I had not looked it up, so thank you.

Q412 Lady Hermon: Sir Christopher, can I just take you back to when you were taking evidence in the run-up to your report? I know that in fact you did take evidence when you were in Northern Ireland as well as taking evidence over here. Did any donor to a political party give you evidence, or give anyone in your Committee evidence, that they themselves were fearful for their lives, fearful of intimidation, or fearful of revenge through a boycott of their business? Did any single person make that submission to you?

Sir Christopher Kelly: Not that I recall—but am looking behind me. No is the answer. I should say, however, we did, as you might expect, take advice from the Northern Ireland Office, whose advice was, “This is a possibility, and please don’t upset the applecart.”

Q413 Naomi Long: We are very pleased to have you with us giving evidence today. You mentioned that Sinn Fein publish on their website and we should be able to look up whether they have donors. We have tried, is the answer, and we have been unable to locate the information. I know that we publish voluntarily our information as a party, in the Alliance Party. We have had one donation over £7,500, a bequest I think, last year, in the time that we have been doing this on a voluntary basis. I would have to say, in our party, those kinds of donations would be few and far between. But surely it is possible to establish that. You have mentioned that the Bill will, if you like, allow them to publish the anonymised donations. Surely it would be possible to establish quickly, before legislating, whether or not there are significant donations that fall into that category and cast the legislation in light of that information, the factual information.

Sir Christopher Kelly: That was the point I was seeking to make. My understanding is you are seeing the Electoral Commission next, and you can ask them. I suspect they would say that they, legally, are not able to disclose that information, because we asked them that question when we were doing our report, and they said, “Sorry, the legislation says the information has to be given to the Electoral Commission, but they are not allowed to make it publicly available.”
Q414 Naomi Long: The draft Bill provides the Secretary of State with a power to increase the political donations and loans transparency. In 2011, you recommended that it would be helpful if the Government were to publish a timetable for the introduction of full transparency on the same basis as the rest of the UK. Do you believe that the Bill represents a timetable, within which that will happen, or does it not meet the test of what you said was necessary?
Sir Christopher Kelly: We made that recommendation partly because, when we were having the discussions leading up to the report, everyone said in principle they were in favour of transparency but the time was not right. We slightly got the impression that the time would never be right, and it seemed to us that the right thing to do was therefore to put some discipline behind this. Clearly, it is possible to take a view, but it seemed to us the right position to be in, which is where we are at present. The presumption should be that transparency should be introduced and you should have to demonstrate that there was a strong reason not to introduce it, rather than the other way round—having to prove that it would be alright to introduce transparency. If there is a problem, then I agree that you can deal with it in the Bill.

Q415 Naomi Long: Can I also just ask very briefly: in answer to the last question, you said that none of the donors who gave evidence said that they had concerns. How did you compile that group of people?
How did you bring those together? Did they come and offer evidence to you or did you go out and seek donors through the political parties? I am just interested, because we have heard, in the evidence sessions that we had had, a contrary view from political parties that say that their donors would be concerned about their security. It is not something that would have been raised with us, with my own party, which is one of the reasons why obviously we have been able to move ahead and publish, but I am just wondering how you got that list.
Sir Christopher Kelly: We could not approach any donors, because we did not know who the donors were. What we did was, as is normal on these occasions, to invite evidence. All I am saying in response to Lady Hermon was that no one came forward and said that to us. It would have been good to have had a discussion of that kind, but unless you can identify the donors, you cannot have that discussion.

Q416 David Simpson: Some of these points Sir Christopher may have already dealt with, but I want to go over them again. The draft Bill that is before us would allow the publication of donation information that does not reveal the identity of the donors but, in your report of 2011, you recommended that the total volume of donations above the reported limit would be published, as well as the amount of donations being accepted from Irish citizens. If there is currently no transparency in Northern Ireland, we are unable to ascertain whether this is a problem.

Q417 David Simpson: Are there any other categories that you would feel should be in the public domain in relation to donations?
Sir Christopher Kelly: Everything else above £7,500 is in the public domain. We made some recommendations in the report about donations from companies, which have almost entirely died out from quoted companies, since it was made a requirement some time ago for donations from quoted companies to receive the approval of their shareholders before they were made. That had the effect of killing that stone-dead. As far as parties operating in the UK are concerned, there are still, in some cases, significant donations coming from private companies. We had some concerns because the ownership of private companies is sometimes a bit obscure. There was some concern about whether or not they were being used to hide where the donations were coming from, as well as some technical difficulties associated with one particular donor to one party, as to whether actually the donations were coming from a company, all of whose earnings and activities were overseas, rather than the UK, which is not supposed to be the case. I don’t think either of those applies in Northern Ireland.1

Q418 David Simpson: Subsequent to the question that Naomi put at the very last, as regards people who are donating and feel that they would be threatened in some way, we did take evidence at Stormont and one or two of the witnesses indicated that there was concern. Businesspeople had approached them. In fact, one of the witnesses indicated that there was a website that had been set up to boycott individuals who were members of cultural organisations or whatever, to boycott their businesses or whatever, because they would have been seen to be aligned or have allegiances to one political party or the other. We find that, of course Northern Ireland being what it is, there have been issues right down through the past number of 30 or 40 years. I think you did indicate that in the evidence that you took very little concern was raised on that point. Is that correct?
Sir Christopher Kelly: No.

Q419 David Simpson: Except for the Northern Ireland Office. They indicated something; is that right?
Sir Christopher Kelly: No. What I said was none of the donors—we had not had any donor who came to us and said, “If you did that, if this happened, we would stop the donation.” A number of the parties, I believe I am right in saying, expressed concern to us that that would be the consequence. It was the parties that did that.
David Simpson: Just to clarify, it was the donors then.

1 Note from witness—As there is currently no transparency in Northern Ireland, we are unable to ascertain whether this is a problem.
Sir Christopher Kelly: As I say, the interesting question, it seems to me now, is whether this is an entirely academic point or not.

Q420 Dr McDonnell: Thank you very much for being here, and it is a privilege to hear your views on many of these issues. It is in the proper interests of democracy that political parties be properly funded. Do you have any views or have you expressed any views, in any of your reports, about better state funding?

Sir Christopher Kelly: Yes, and that was one of the reasons why the recommendations we made in this report have caused such a difficulty. We took the view, when we made our recommendations about party-political finance, that the only way to prevent the substance of inappropriate donations, and certainly the perception of inappropriate donations, was to put a limit, a cap, on the amount anyone could give. We suggested that that cap should be put at £10,000, and we did extensive financial modelling about what the impact of that would be on the main parties. Again, we were told it was almost irrelevant to the smaller parties or the parties only in Scotland, Wales or Northern Ireland. We were told that this would leave a gap—a gap that could be filled partly by spending less. A number of witnesses said to us, “Wouldn’t it be good if parties didn’t have the money to spend on advertising hoardings at the time of elections?” It could be filled partly by greater efforts by the parties to obtain smaller funds. Although every party told us that they tried very hard to do that, actually, the marginal gain from adding an additional supporter, the marginal financial gain you get from targeting, is likely to be very close to the cost of acquiring an additional supporter. Therefore, we took the view that, although we did not want to recommend it, actually, if you felt sufficiently strongly about the importance of imposing a cap, in the short term at least it would probably be necessary to increase slightly the amount of public funding that was provided. We estimated that that was equivalent to about 50p per elector, per year—a very small amount—although it is possible to make it appear larger by multiplying it up by the number of electors and then multiplying it by the number of years of a Parliament. That proposition, of course, meant there was then a gap—a gap that could be filled partly by spending less. A number of witnesses said to us, “Wouldn’t it be good if parties didn’t have the money to spend on advertising hoardings at the time of elections?”

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Q421 Dr McDonnell: It is getting towards the thing. The point is that, sitting where I am sitting with a by-election tomorrow in Mid Ulster, and without the necessary resources to basically communicate a message of sanity to the electorate, the philosophy of this is a thousand miles from the practicalities of surviving. Political parties cannot be expected to communicate effectively, in today’s modern age with all sorts of new media and all the rest, unless they are properly resourced. It is a rock and a hard place, in my opinion. I do not support, in any shape or form, or in any way, corruption, corrupt practices or corrupt donations, but I do feel that there has to be some method of funding political parties. I believe now that we are rapidly reaching a state where it becomes very difficult to survive financially.

One of the questions in that context I wanted to ask was that you talked about the few suggestions that anybody was uncomfortable with publishing donations over £7,500. Are there any suggestions that people who might have donated £6,000, £9,000 or £10,000 scaled it back to £4,000 or £5,000 to avoid the unnecessary exposure?

Sir Christopher Kelly: In response to the first bit of your remarks, I think we are in agreement. I think we are saying the same thing. In answer to your second question, you will have to ask the Electoral Commission but, since the only donations that have to be reported are those of £7,500 or more, there is no general information about the number of people who donate £7,499.99. There is anecdotal evidence that a number of people pitched their donations at that level. There is anecdotal evidence that if you want to donate £15,000 and you have a partner, then it is perfectly legitimate for both of you to donate £7,499.99.

You would think that there ought to be information available from the accounts of the political parties that demonstrates where their funding comes from but, actually, one of the things we found when we looked into this is that the accounts of most of the parties are actually fairly obscure on this issue of where their funds come from. Moreover, they are drawn up in a way that makes comparisons between the parties actually quite difficult. The Electoral Commission has been doing something about that. Again, you can ask them about it, but they now have agreement of a sort to do with the preparation of the accounts of political parties, which ought to make it a lot easier for people to be able to see how the parties are actually funded and also easier for people to make comparisons between the different parties.  

2 Note from witness—This agreement is equivalent to a Statement of Recommended Practice
Q422 Dr McDonnell: Chair, very quickly—I don’t want to drag the questions on—clause 1(2) of the draft Bill requires the Secretary of State to consult with the Electoral Commission before increasing transparency. In the light of the conflicting evidence around, in terms of security and otherwise, should he extend to the Chief Constable so that there could be a proper risk or a detailed risk of any security threat?

Sir Christopher Kelly: I don’t think that is a standards issue. Again, this is a personal opinion rather than anything else but, if this remains an issue, if it is the case that there needs to be such consultation because there are donations, then it would seem to me fairly logical that, if you needed to take a view as to whether or not the security situation allowed this to happen, you should ask the people best positioned to provide you with that advice. If that is the Chief Constable, then that would seem to me to be a reasonable thing to do.

Q423 Dr McDonnell: From the evidence that we have had, the two points that are emerging are that there is a continued risk from terrorism and generally from harassment and intimidation, and there is a potential risk of boycott, threat or undermining a business, aside from the direct threat or the threat of violence. Would you accept, generally, that alienation of our customer base is legitimate enough a reason to stall or slow the shift to transparency?

Sir Christopher Kelly: As I tried to say at the beginning, without in any way downplaying the importance of the argument about the security situation, it does seem to me that it does not follow, as night follows day, that that argument automatically trumps the public interest in transparency. A judgment has to be made as to whether it does, and where that judgment falls would depend, I guess, on a number of factors, including how serious the security situation is, on the one hand, and, on the other hand, how serious the impact would be if the results that people feared happened on the finances of the political parties. On that latter point, you keep on coming back to needing to know whether or not there are any donations at present that would be affected.

Q424 Mr Hepburn: Talking particularly about Northern Ireland politics, where do you think the balance lies between having vibrantly funded political parties to stimulate debate and, on the other hand, protecting the anonymity of potential donors who might fear loss of customers or threat to life? Where do you think the balance lies?

Sir Christopher Kelly: Is that the choice?

Mr Hepburn: Yes. Where do you think the balance lies?

Sir Christopher Kelly: As I have tried to say, and as we say in the report, it is very important that there should be properly funded political parties. If they did not exist, you would have to invent them.

Q425 Chair: Are you sure about that?

Sir Christopher Kelly: Maybe not all of them, but political parties quite clearly provide a public good. Otherwise, what are voters—sorry; there is a whole PhD to write on that. The basic point is, I fully agree with you, if that is the basis of your question, that properly funded political parties are an important thing to have, which is why we made the recommendations we did on that. It is not obvious to me that that means that you cannot publish donations above £7,500 in Northern Ireland.

Q426 Naomi Long: On the issue of the legislation, we have had very mixed evidence in terms of what sort of information should be able to be published retrospectively, if the legislation were to go through, about donations that were made during the prescribed period. Some witnesses have argued that donor identities should be made public retrospectively, while others have suggested that this could undermine confidence in the regulatory regime, where people had donated with an expectation of anonymity to then have that removed. The draft Bill allows the Electoral Commission to publish donor identities retrospectively, but only where the donor actually consents to that being the case. Do you believe that that balances properly the public interest of which you have spoken and the need to, if you like, protect the donors in a way that they would have an expectation of anonymity at the time of the donation to have been protected?

Sir Christopher Kelly: I said earlier that transparency or openness was one of the seven principles of public life. Honesty is another of the principles of public life, and honesty is almost the quality, when we talk in our focus groups to members of the public, that they put above everything else. There is an issue of honesty with this question. If people were given to understand that their donations would not be disclosed, as I understand was the case in practice, even if not legally—there was something about explanatory notes or whatever—if it is the case that people were given to understand, my personal view is that it would be monstrously unfair to publish their details now. Also, the principle is about going forward. The principle is about transparency going forward, and absolutely no purpose seems to me to be served by going backwards. That would be the wrong thing to focus on.

Q427 Naomi Long: Essentially the provision that they can publish that information with the permission of the donor seems to be entirely in line with what you have said about integrity and honesty, but also in terms of transparency.

Sir Christopher Kelly: Absolutely, yes.

Q428 Oliver Colville: In a previous life, Sir Christopher, I was a Conservative Party agent, and I started doing that job in the 1980s. Believe you me, one of the things that we had to go and do was to go out and actually make the members, in order to be able to pay our salaries. One of the things that I think, in some ways, has been quite hampering is the invention of the computer, because all political parties were told, “You have computers. You can write to people, and people will end up then actually giving you lots of money. That will be a very easy way of doing it.” What we have stopped doing is going out and physically knocking on doors and actually talking to people about membership, and how they can
Chair: Blame him. Thank you very much.

Sir Christopher Kelly: Can I respond to that? I agree. I agree that the consumption devoutly to be wished is actually the political parties being able to survive on money they raise from their own supporters, with some quite difficult issues when those supporters — this is an entirely different issue — trade unions, and the nature of affiliation fees, on which we also wrote. I entirely agree with you.

Oliver Colvile: Don’t worry; I think people should have to opt in to political parties.

Sir Christopher Kelly: What we always try to be in our recommendations is practical. The view we took was, although that is where we would like to be and where, over a period of time, we would hope we could be in the short term, it was quite important to put a limit on donations. If the only way of doing that and still allowing political parties to have the means to do what they needed to do was some increase in public funding, then not as a principle, but as a matter of pragmatism, then that was what we thought should happen. I hope that it would be short term.

Q429 Oliver Colvile: I have to say, I suspect you end up not doing that and what we will end up doing is actually making sure that there is a short, sharp attack upon that. The two things that I just want to know are: do you think it would be right and proper to reduce the cap, from £7,500 maybe down to about £5,000, so that everybody has to declare? Secondly, do you also agree with me that, as I probably think, actually, if you are going to receive donations, individuals should be allowed to put that against their tax bill as well? That is very similar to what happens in the United States of America.

Sir Christopher Kelly: On your second point, yes; we made a recommendation to that effect. It would need to be limited. We made the recommendation quite deliberately, partly because of the point I made earlier, that actually you need to help people to do what they ought to be doing anyway, and by giving small tax relief, you create a situation that slightly alters the relationship between the cost of getting additional members and the return you might get from them. We thought that was important, because we thought that engagement was important. It is not just a matter of getting in the money; actually, engagement is an important part of the way to make—

Oliver Colvile: It is actually about making individuals play a part within the whole thing, rather than just expecting corporate governance to take place.

Sir Christopher Kelly: I am sorry; I have forgotten the other point you made.

Oliver Colvile: Whether or not you should reduce.

Sir Christopher Kelly: No, I don’t think you should. It would be untold bureaucracy and completely unnecessary to reduce the £7,500 to £5,000. There is no reason to do that. No one would seriously think that a donation of less than £7,500 to a national party would really buy you a favour. There is an issue as to whether £7,500 should be raised, not lowered. Indeed, there is an issue, although we don’t go into it, that if you did have a cap of £10,000, you might do away with transparency altogether and thereby save the cost of administration and bureaucracy.

Q430 Naomi Long: Obviously you have emphasised that most of the Northern Ireland parties — and certainly it is the impression that has been given in the evidence that we have received — would claim that there are very few donations that exceed the £7,500 limit. They are much lower. Their incomes are also much lower than would be the case for a national party and, therefore, the point being made is the point at which influence could be exerted over policy in practice would be at a lower threshold. That is the case that has been made for reducing the threshold. Is there any argument for looking at this on a regional basis, or do you believe that the same standard should apply right across the UK, regardless of the size of the party and the size of the income? Should it be, for example, a percentage of the party’s income? I am just interested to know what you think about this.

Sir Christopher Kelly: As always, it is right to go back to the principle and the principle is that what you want is transparency above any amount that people think would be sufficient to buy some favour in return. If a serious case could be made that something less than £7,500 in particular circumstances, in Northern Ireland, achieved that, then you would certainly have to consider a different level; although that would then, I suspect, run into the sort of difficulties that Mr Paisley was talking about earlier in relation to double-jobbing. It is partly for that reason, I guess, that the limit on the transparency of donations to individuals is set at £500, on the basis that £7,500 during a constituency campaign might well be enough, for an MP short of cash, to affect their campaign in some way.

Chair: Thank you. We are way over time. It has been a very useful session, Sir Christopher. Thank you very much for joining us.

Sir Christopher Kelly: Thank you. As will be obvious, I felt much more comfortable talking about party funding, which I think really is a standards issue, than I did on the issue of double-jobbing, which we only got into because the Prime Minister asked us to.

Chair: I blame him. Thank you very much.
Examination of Witnesses

Witnesses: Seamus Magee, Head of the Electoral Commission in Northern Ireland, Anna Carragher, Northern Ireland Commissioner, and Peter Horne, Director of Party and Election Finance, gave evidence.

Q431 Chair: Thank you very much for joining us. Sorry to keep you waiting. The previous session ran over a little bit. One of our colleagues was going to ask the first question, but I think she has had to leave the room for a minute. I will ask it myself, if you don’t mind our going straight into questions. You have stated that, “It is clear that there has been a significant and worrying decline in both the accuracy and completeness of Northern Ireland’s electoral register”. Is the Bill going to correct that?

Anna Carragher: The research we carried out at the end of last year did show that, in accuracy and completeness, the methods that the Chief Electoral Officer was using for data-matching were not adequate to the changes in population, particularly in population movement. We are confident that a combination of measures that the Chief Electoral Officer has agreed to put in place, and the Northern Ireland Office has agreed to as well, will actually do two things. It will stop the immediate problem, in that, by the time we come to the next set of elections, the register will be complete and accurate and that, ongoing, measures will be put in place to ensure that the accuracy and completeness do not fall, because we will have remedied some of the deficiencies in the previous ways of updating the register.

Q432 Lady Hermon: It is very nice to see you all here this afternoon. I want to ask the question that the Chairman has directed me to ask, and then I want to follow on a subject that was actually raised by the previous witness. In your report of 2012, you made various recommendations. Could I just ask you to tell us frankly: regarding the Bill to improve the things that you, as the Electoral Commission, would have wished to see in the Bill to improve the efficiency and efficacy of the Electoral Office in Northern Ireland? If there are, could you elaborate upon them for us, please?

Seamus Magee: In terms of one of the things that we would like to see in the Bill, it is performance standards extended to the Chief Electoral Officer in Northern Ireland.

Q433 Lady Hermon: Performance standards. Could you specify?

Seamus Magee: In 2006, performance standards were set for registration officers and returning officers in Great Britain. We think it would be very helpful if those performance standards were extended to the Chief Electoral Officer in Northern Ireland. That would cover registration as well as elections. For example, standards would be set that might be around, for example, planning elections, developing the risk register for elections. Overall, the Chief Electoral Officer would then be able to compare his performance with his colleagues across the rest of the UK. We think that would have the potential of raising standards in Northern Ireland. It would also mean that returning officers and registration officers in Great Britain could also look to Northern Ireland, because of very significant developments that have happened there, in terms of individual electoral registration. They would be able to learn lessons from there in addition.

Q434 Lady Hermon: There have been standards in the rest of the UK, but not in Northern Ireland, since 2005.

Seamus Magee: Yes. Standards were introduced in Great Britain in 2008, but were not extended to Northern Ireland.

Q435 Lady Hermon: Yes, so it is five years ago. For five years, Northern Ireland has fallen behind the standards that are applicable in the rest of the UK.

Anna Carragher: We don’t really know, because we cannot make the direct comparisons, because performance standards don’t apply in Northern Ireland. What we would like to do is have performance standards applied in Northern Ireland, so it is possible to look at comparisons across the whole of the UK and actually also to ensure that best practice is spread across the whole of the UK.

Q436 Lady Hermon: Why has Northern Ireland lagged behind for such a long time? What is the justification?

Seamus Magee: The legislation passed in the 2006 Electoral Administration Act did not include Northern Ireland in respect of performance standards, and that is something we would like to see the Bill address.

Q437 Lady Hermon: Have you made a submission to that effect to the Secretary of State for Northern Ireland?

Seamus Magee: We have. We have made that in terms of a written submission and, indeed, since 2006, largely we have been arguing for the extension of performance standards to Northern Ireland.

Q438 Lady Hermon: Are you allowed to intimate to the Committee whether in fact there has been a positive response to your submission to the Secretary of State?

Seamus Magee: Yes, and indeed also with the Chief Electoral Officer in Northern Ireland. We are currently running a pilot with the Chief Electoral Officer, in terms of piloting registration standards, and he is working with us on those, but we do need those put on to a statutory footing.

Q439 Lady Hermon: Excellent. That is very good. This is the supplementary question I just want to follow up from the evidence given to us, just towards the end, by Christopher Kelly. He said to the effect—this is not verbatim—that the accounts of political parties that are presented and given to the Electoral Commission did not appear to be particularly clear to the general public. How could they show clearly where the funding comes from? Is there a degree of blurring in the funding and how we know where the funding comes from? Of course we have had
evidence—we will come back to that—clearly from Sinn Fein that we could identify their political donations on their website. We would just like to know whether the Electoral Commission can identify where Sinn Fein get their individual donations from.

Peter Horne: If I can give some background to the differences between the level of transparency that there is in Great Britain and the level of transparency that there currently is in Northern Ireland, in Great Britain the level of transparency was set through PPERA in 2000, and then updated in 2006, for donations and then, subsequently, loans. The same legislation was applied in Northern Ireland for donations in 2007, and then loans in 2008. There is a requirement for political parties to report to the Electoral Commission the donations above a certain level. The Electoral Commission is then statutorily mandated to check those donations—that they are from permissible sources under PPERA.

There are two differences for Northern Ireland versus Great Britain, the first one of which is donations that come from individuals and organisations that are in Northern Ireland must remain confidential. That is the case under the legislation. The second is that sources for donations in Northern Ireland may include sources from the Republic of Ireland, so those sources mirror those of Great Britain’s political parties but, in addition, they include Irish citizens, provided they have the appropriate certification.

Now, going back to the question, which is what are the opportunities around increasing the level of transparency and making that visible to voters, as we have noted and stated publicly, we are keen to see increased transparency, and we welcome that the Bill is bringing that forward. We think there are two steps that could be taken, the first one of which is enabling the Electoral Commission to release data around the types of sources. Donors up until this point, be they individuals or organisations, have got a pre-existing expectation of confidentiality. In our view, from a date in future, so perhaps from the beginning of July this year, the Government could indicate that future donations would be made public. Now, they do not necessarily need to be made public at that point in time, but they could be made public in future. Potentially, I believe, 30 September 2014 is the date suggested at the moment.

The second point is that the Electoral Commission would be able to give you more information than I can give at the moment. Although we hold the information, I cannot actually release whom the donations are from or anything more around that. We are, in addition, looking at standardising the statement of accounts that come from political parties.

Q440 Lady Hermon: Thank you. That was really the question I wanted you to address. That was something that in fact was raised towards the end of the evidence, just before you came in. When the accounts are submitted to the Electoral Commission by individual political parties in Northern Ireland, are they sufficiently transparent for you, as the Electoral Commission, which has a duty to keep lots of information confidential—and you have that legislative duty to do that—to understand where parties have got their funds from?

Peter Horne: We look at two things. Yes, parties submit their accounts to us, but they also submit their donations. It is our requirement to check where the donations come from. For example, if a party were to submit a donation from a company based in the Republic of Ireland, we would be required to check that that company based in the Republic of Ireland was undertaking business at that point, and meeting the requirements of the checks. Similarly, if an individual were to be donating to a party in Northern Ireland, we would be required to check that they were, for example, on the electoral roll. Statutorily, we are required to check 50% of individual donations and 100% of all other donations above the minimum levels. We actually check 100% of all donations that are reported to us.

Anna Carragher: Can I come in on that as well, and say that this requirement for the standardisation of accounts is going to happen from 2014. All parties across the UK will be required to present accounts in a way that will enable voters to make comparisons and look at accounts—direct comparisons between the different parties.

Q441 Ian Paisley: Can I just, before my question, say a huge thank you to the Electoral Commission and put that on record? It is important and you do a very good job. You should be commended and commended publicly. I know, as a member of a political party working with your organisation, how easily you communicate and work with political parties, and take us over difficult areas. I think it is important to place that on the record. Thank you to you and your staff, and your members.

Could I turn to the issue of registration and administration? How difficult is it now, in Northern Ireland, to steal a vote off someone?

Seamus Magee: The introduction of individual electoral registration in Northern Ireland under the Electoral Fraud Act in 2002 has meant that it is actually very difficult, because people are now required to register on an individual basis. They need to provide their date of birth and their National Insurance number. That information is then checked against the Department for Work and Pensions, but at polling stations people do need to provide photographic ID. Since 2003, in terms of all elections since 2003, there have been no complaints in respect of vote-stealing on polling day. That information has been confirmed. We do that at every election with the PSNI.

Q442 Ian Paisley: Is there anything else the Bill could do to ensure that that remains the case and that you remain confident that votes cannot be stolen and, secondly, that actually electors, and those electors who are not on the register and should be on the register, are encouraged to get on to it and encouraged to exercise their democratic right, which is the fundamental right to vote?

Anna Carragher: One of the things we are doing with the Chief Electoral Officer, in connection with the electoral registration work that is going ahead, is we...
are building a public awareness campaign, which will be telling people how to register to vote and encouraging them to register to vote. That is very much part of the plans going forward.

Q443 Lady Hermon: I have just a very short supplementary on the wonderful electoral identity cards— and they are; they are brilliant.

Ian Paisley: There is a lovely picture on that one.

Lady Hermon: I could not possibly comment—my eyesight is not good enough. They are valid for 10 years. We took some evidence earlier on about the Bill that indicated that there is a specific provision about the electoral identity cards. It was to do with making it a criminal offence to give false information in relation to a usual signature. At that stage, I must say, given my late husband’s condition and my awareness of other people who have dementia, but who do wish to exercise their franchise, and those with a learning difficulty who also want to exercise their franchise, there was an explanation given that some people, apparently, were trying to use the electoral identity card in order to build up a false identity. Is that information that the Electoral Commission has, that you have any evidence or has it been reported to you that there are suspicions that the electoral identity card is being used to build up a false identity?

Seamus Magee: If there are any particular difficulties with the electoral identity card, that information would be communicated to the Chief Electoral Officer in Northern Ireland, who would do various checks around that. There has been no evidence coming to the Electoral Commission in Northern Ireland about that particular concern.

Q444 Oliver Colvile: Mine is just a very quick question. Registration is one thing, but absent votes and the misuse of absent votes is another one as well. How easy is it for you to police to make sure that you do not have fraud on absent votes, because most certainly there are parts of the United Kingdom where I think that has happened?

Seamus Magee: As you know, absent voting is different in Northern Ireland, in that you cannot get an absent vote on demand, and you can in the rest of the UK. You do need to give a reason for an absent vote. The percentage of absent votes applied for in Northern Ireland is around 1% to 1.5% at every election. Elsewhere in the UK, I think it is 25% to 26%.

Oliver Colvile: I think we in England have an enormous amount to learn from Northern Ireland on this matter.

Anna Carragher: It is quite interesting; we have just been carrying out some preliminary research working on electoral fraud, in the Electoral Commission. Maybe some people in this room have been consulted on it. The very preliminary findings are showing that there is a sense that people in Northern Ireland have been much more confident about the integrity of the vote than is the case elsewhere in the United Kingdom, so I think there are lessons to be learned.

Q445 Dr McDonnell: You are all very welcome. It is a privilege. I would want to echo Ian’s point that you do work very hard and very comfortably with my political party. I commend you for that. I am sure your good will and kindness extends to all parties, as Ian has suggested. Thank you for that.

You mentioned earlier the question of standards for the Chief Electoral Officer that applied in Britain but not in Northern Ireland. We understood that you had agreed a set of draft standards. Is that correct?

Anna Carragher: Yes.

Q446 Dr McDonnell: They are currently being piloted. Do you have any indication of the early findings that you might be prepared to share with us?

On the back of those, should those be implemented? Do you think the Chief Electoral Officer will require any additional support from the Northern Ireland Office or the Secretary of State? If that support is required, will it lead to or would primary legislation be necessary?

Seamus Magee: A pilot has been ongoing since October last year, with the Chief Electoral Officer. The performance standards that we have agreed with him cover 26 areas in total. The plan is that he is currently working through those. Come March this year, at the end of this month, we expect to hear a report back from the Chief Electoral Officer in terms of how he has worked with those, how easy it is for him to gather the information, whether or not it has taken additional staff resource, etc. All of that will come back in terms of the pilot exercise that we are conducting with him. We then plan to tweak those standards and run them forward for a year, whereby he will report in his annual report to the Secretary of State how well he has met those standards.

We are not trying to create another tier of reporting. We feel that the Chief Electoral Officer currently reports, given the statutory registration standards, to the Secretary of State, but what we are looking at are management standards to improve the overall management of elections and the overall management of registration. There are 26 areas, as I said. We will do an analysis of how well those have been met and how he has worked with those. We will change those if necessary. He is very much in favour of performance standards himself and we have worked very closely with him in terms of developing those. As I said earlier, it is very important that they are put on a statutory footing. I think the Bill has the opportunity to do that.

Q447 Dr McDonnell: You are aware of the high level of non-registration currently in Northern Ireland, I am sure. It is very worrying and very distressing. Having knocked on a few doors in Mid Ulster over the last few weeks, I am finding that every fifth house is without a vote in some areas, and I do believe I would urge you to get those standards into place as quickly as possible.

Seamus Magee: What we currently have in Northern Ireland are a lot of people registered, but unfortunately quite a proportion of those people are not registered at the correct address. What we want to do, from autumn onwards, is to work with the Chief Electoral Officer in terms of conducting a canvass across Northern Ireland, in terms of where he contacts all households,
gathers registration information and creates a new register in time for the European and possibly local elections in 2014. We know that the Northern Ireland Office is working through secondary legislation, which will address the concerns that we have had, which were addressed in the registration report that we published at the end of last year.

**Q448 Naomi Long:** It is good to have you with us. On the issue of donations and loans, there was an issue just raised in Sir Christopher Kelly’s evidence, which I want to just quickly address with you. We are clear that you are unable to disclose donors and donations above the £7,500 schedule. Is it also the case—can you confirm this for us?—that you cannot indicate whether there are such donations in existence or not, as well as not being able to give any detail on those?

**Peter Horne:** That is correct.

**Q449 Naomi Long:** That is helpful, because that is one of the issues that I wanted to explore. In your written submission to the Committee, you made a series of recommendations to improve the clauses on political donations and loans, and mentioned that the new Order power could be used to allow the Electoral Commission to publish anonymised details of all individual donations and loans made since 2007. That amendment would allow the Electoral Commission to publish donor information between when the Bill is published and the end of the prescribed period, and that would then move us to full transparency potentially by September 2014. Have you made those recommendations to the Secretary of State and, if so, have you been advised as to why they were not included in the draft Bill? That is the first question.

**Peter Horne:** I would like to preface this by pointing out that I joined the Commission in February, so I was not fully involved in those discussions. I understand that representations were made and my understanding was that the Government view was that it was difficult to balance the protection of the confidentiality of individuals before that point, but I don’t understand exactly their reasons.

**Q450 Naomi Long:** Can you advise how you think the draft Bill could be amended to improve voter confidence in the political institutions in Northern Ireland? Do you have any views on that?

**Peter Horne:** If it is a specific question around donations and loans, my view is voters have said to us, and we put in our evidence, that they are keen to see increased transparency. Consistently, six out of 10 voters say they wish to understand more about how political parties are funded and how they spend their money. In our view, the steps that you can take towards that are, first of all, the ability for us to publish anonymised information of the period to date; but, secondly, an additional phase that is looking at the clauses on political donations and loans, and mentioned that the new Order power could be used to allow the Electoral Commission to publish anonymised details of all individual donations and loans made since 2007. That amendment would allow the Electoral Commission to publish donor information between when the Bill is published and the end of the prescribed period, and that would then move us to full transparency potentially by September 2014. Have you made those recommendations to the Secretary of State and, if so, have you been advised as to why they were not included in the draft Bill? That is the first question.

**Peter Horne:** That is correct.

**Q451 Naomi Long:** In terms of the discussion we had with Sir Christopher Kelly, there were two issues. The first was he challenged the premise that actually asking people to publish all donations over £7,500 would expose donors to risk, in that his contention was, and indeed the evidence that has been presented by parties is, that there are very few donations of that scale in Northern Ireland. I am not trying to draw you into commenting on whether there are or not, but one of the phases that he suggested would be helpful was the anonymised donations publication. Do you think that there is logic in that argument, that if the donations can be anonymised and published in terms that the public can understand—how many donations of that kind are received—that would be a good first step in terms of actually moving forward?

**Peter Horne:** The question around the security risk to individuals or organisations is not one for the Electoral Commission to decide, at that point. The question around whether we think that it is a sensible step to take to allow us to published anonymised data—absolutely that is the case.

**Q452 Naomi Long:** The other point that he made was in relation to retrospective publication and the issue of honesty and integrity. If people have been donating with the expectation that their donations would not be disclosed and their names would not be disclosed, it would not increase confidence certainly from them in the public process and so on, if that were later to be undertaken. Do you agree with the provisions that are suggested that we should publish only those donors retrospectively who give consent? Do you believe that that strikes a balance, in terms of integrity of the process?

**Anna Carragher:** I think that the Commission would feel that, when people have donated on the understanding that that donation would be anonymous, that was an undertaking that was given in good faith and taken in good faith. It is right and proper that that should remain the case, very much so. One of the problems, when the Secretary of State in the past has been extending the prescribed period, that was not in the legislation, so any end to the prescribed period would have meant that those donations would have become public. What this Bill now does is remove that particular bar, and therefore it removes the consideration the Secretary of State will have to take into account when he or she is making their deliberation, which was there in the past, and that is helpful.

**Q453 David Simpson:** It is good to see you again, Seamus, and your team with you. I don’t want to blow your heads up too much, but I echo the comments. In 2011, the Committee on Standards recommended that the total volume of donations and the amount received by Irish citizens overseas should be published. If the draft Bill comes into effect as it is currently drafted, what categories of information would you expect to
be made public about donors in cases where you would not be permitted to reveal their identity? Is there anything else?

**Peter Horne:** In my view, given our views around transparency, we need to be balancing people’s pre-existing views on their anonymity, be they organisations or individuals, but we should be able to be publishing the data that allows voters to understand the sources of funding for political parties. Provided it did not identify the individual or organisation—

**David Simpson:** Sources. Is there anything else? That would be the top of your list, would it? Thank you.

**Q454 Ian Paisley:** Just talk us through that a wee bit more. Say, for example, I go out and fundraise on behalf of my party in Australia, Canada or the United States of America. Money is brought back. How would you deal with that and register that? That is a donation to a political party. What would happen? What would the public then see?

**Peter Horne:** Are we talking post the Bill becoming an Act?

**Ian Paisley:** Say I go out next month and raise £10,000 and bring it back to our party.

**Peter Horne:** If I look at our role as the regulator of party and election finance, there are certain rules that are set out. First of all, for the treasurer of your party, under PPERA, as it was amended for Northern Ireland, there is an expectation that all donations above £500 should be PPERA-compliant. What that means in practice, so for a party in Northern Ireland, is that either it can come from— and you will forgive me if I use a slightly long and probably slightly incomplete list—a Great Britain political party; it can come from individuals on the UK electoral roll; it can come from companies based in the UK; and it can come from another range of organisations. It can additionally come from an equivalent mirror source of organisations that are based in the Republic of Ireland or, alternatively, from Irish citizens.

The requirement for visibility for us, under the legislation that is set out, is that political parties should be reporting to us, if they are a central unit, donations over £7,500. In your example, a donation would need to be registered and brought to us. At that point there, there would be the appropriate certification that would need to be provided. Say, for example, it was from a company, we would check that that company was doing business. If it was an Irish company, we would be checking the appropriate Irish register and checking that they were taking part in business. Alternatively, if it was from an individual, we would be checking their certification for Irish citizenship. That is the approach that we take at the moment.

**Q455 Ian Paisley:** Would I be right in saying that I could come back and say, “I’m a company, I’m donating that money to my party,” and therefore I get around anything of concern and so on? Secondly, could I say, “This is a whole lot of individual donations of less than £500 each from this number of people”?

**Peter Horne:** The legislation currently sets out a set of rules around agency—an individual who acts on behalf of another group—and, in those cases, it should be treated in the same way. The agent cannot claim to be the individual who is donating. Doing so, I understand, is an offence. Secondly, on misrepresenting a donation and saying that it is a whole series of donations under £500, actually the requirement for the treasurer is that multiple donations that come from the same single source are treated as a cumulative donation, i.e. if you as an individual happen to donate £500 15 times, at that point your donation would become a reportable donation.

**Q456 Ian Paisley:** There is a wee bit of flexibility there, though, isn’t there?

**Peter Horne:** The flexibility that you describe is a description of the legislation that was prescribed to us by Parliament. We have to apply it.

**Ian Paisley:** I appreciate you have to work with what you are given.

**Q457 Lady Hermon:** Are there any political parties in Northern Ireland that are aware of the flexibility that you have just indicated to the Committee? In fact, are there any political parties, or how many political parties in Northern Ireland are aware of the flexibility that you have just explained to the Committee?

**Peter Horne:** I am not sure I understand the question.

**Q458 Lady Hermon:** You have responded to my colleague here, Mr Paisley, by saying that in fact there is some flexibility, but you are operating within the legislation that was given to you, which of course you are doing. I am really interested to know whether in fact there are political parties with, I am sure, very clever legal advice and maybe their own in-house advice for all I know, that are able to take advantage of the flexibility that you have just discussed with the Committee. That is not asking you to disclose anonymity; it is not asking you to disclose donors. I just want to know if you can disclose to the Committee, please, whether there are political parties based in Northern Ireland that use the flexibility just explained to this Committee.

**Peter Horne:** I am not sure I can discuss what I would view as a hypothetical situation. The legislation exists. We as an organisation ensure that, when contributions are reported to us, we will check and make sure that they are compliant with the legislation. We are absolutely keen to see increased transparency so that voters can see that too. My view is that, in the months that I have been in this role, as an organisation we have the appropriate checks in place to make sure that parties are complying with legislation. Where organisations or individuals have suspicions that there are any issues with that, they have the opportunity to report them to us and we will investigate them.

Over the years that we have been regulating donations and loans in Northern Ireland, we have over time received a number of allegations. We have over time undertaken investigations and found out. Secondly, could I say, “This is a whole lot of individual donations of less than £500 each from this number of people”? If you look upon our website since, I believe, January last year, we have publicly listed the actions that we have taken. One action has been taken against a political party in Northern Ireland, which I believe was for a late statement of accounts. I will correct that
later, if that is wrong. I will be happy to provide you with some detail around the sorts of actions that we have taken in the past.

Q459 Ian Paisley: Could I ask the question the other way round? Are you an accountant?

Peter Horne: I am not an accountant.

Q460 Ian Paisley: As someone serving on the financial side of the House, would there be measures or are there measures that you feel could be introduced that would strengthen the regulatory impact to prevent someone being creative with their accounts?

Peter Horne: In our view, there are two routes on this. The existing PPERA, which has been in existence since 2000, can be improved. We undertook a project last year to look into the individual bits of the legislation. We came out with a series of recommendations on that, which we are due to be publishing this summer. In our view, there are certain aspects of that that are more significant than others, but there is some tweaking that can be done to make sure that there is more transparency. There are some areas there, and I appreciated earlier the comments made around us supporting parties complying with the legislation.

In addition to that, the major step here, in and around helping voters have confidence in the system and confidence in the funds going into the system, is transparency. This Bill itself, bringing through voters' ability to see where the funds are coming from and which organisations and individuals the funds are coming from, will actually be the key step.

Q461 Oliver Colville: First of all, thank you very much to you for coming. My understanding is that the Secretary of State has to consult with you about various aspects of the legislation, should this become the case. We have had a number of people who have come to see us who have explained that they think that more transparency, potentially, could end up by creating problems for those organisations, those businesses and those individuals who may want to make donations to political parties. They feel that they would open themselves up to intimidation and things like that. Have you any views on that and have you had a considered thought about how that might be managed, so we can make sure that people can end up making donations, or individuals or businesses can make donations, without running the threat of being intimidated and being potentially beaten up and harassed?

Anna Carragher: First of all, the Commission is very aware that, in terms of the Secretary of State making a decision on this, it is a balance; there are a number of things to be taken into account. It would be a decision that would have to be taken at some point in the next few years. We believe it is in the voters' interest to have transparency of party funding. We believe it will build trust and confidence in politics and the political system in Northern Ireland. We are aware that it is what voters do say, when we carry out research, that they want, and we are also aware, as I know my colleagues will be, that the fact that there is not transparency can lead to suspicions and misinformation. Sunlight is the best disinfectant, as it were. That is the first point. The second point would be that, in the past, one of the issues has been that people donated with the assurance of confidentiality. Had it been lifted in the past few years that would not have been the case. This Bill will fix that, so people who have donated in the past will be able to donate in the future. We are aware that there are other areas of political life in Northern Ireland where people's names are in the public domain—for example people who are nominating for elections, people who are working for various parties—so there are areas where people who are politically involved and politically active are involved in public life.

We are also aware that, across the UK, there are other areas where there are potential security threats. Nonetheless, parties in the UK do have transparency of donations. That is not in any way to minimise the security risk. Certainly at the point when the Secretary of State comes to make this decision, he or she will certainly have to take account of the security situation. We would hope that that would be a robust assessment of it, but we are very conscious, as I said, that there are a number of issues to balance in making that decision.

Q462 Oliver Colville: Do you think that the amount of money that people can donate—I think it is £7,500 at the moment—should come down? Some people have suggested it should come down to £500.

Peter Horne: The limit used to be £5,000. It was raised by Parliament to £7,500. In our view, the first step in Northern Ireland should realistically be transparency. At the moment, you don't know who has donated or which organisations have donated, at whatever level. It is the case that there is a balance to be struck around the level. Political parties do need funding. There is a bureaucratic burden that is placed on political parties around requiring them to report. We recognise, as the Electoral Commission, that a significant proportion of treasurers of political parties are in fact volunteers, even in the larger parties, so there is a balance to be struck there. However, in my view, over time with the potential around technology to make steps easier, there can be an ongoing debate as to what that level should be. Transparency for voters and voters being able to see how their parties are funded is our goal. How we get to that is something we will come to over time.

Q463 Lady Hermon: Do you mind if I call you Anna or would you rather I called you M's Carragher? I used to know Anna when she worked for the BBC. We follow your career. [Interruption.] No, I thought she did a very good job, actually.

Chair: Get on with it.

Lady Hermon: A quick question—stop interrupting me.

You mention, and I took the words down very quickly, that the Secretary of State would have to make "a robust assessment" whenever she comes to remove the anonymity of political donations. We have, as you probably are aware, been given evidence by various
individuals that it may be helpful, useful or wise indeed to have some involvement written into this Bill, actually written into this Bill where it is not currently in black and white, that the PSNI invite the Chief Constables to make some assessment. Is that what you have in mind when you talk about a “robust assessment” that the Secretary of State to Northern Ireland has to make? Should there be involvement by a Chief Constable in the PSNI?

Anna Carragher: I am not sure that is really for the Commission to say. When I say a “robust assessment”, we know the voter in Northern Ireland does view this as important. Nobody wants to jeopardise the security of individuals but, at the same time, we want assessments to be made that are not complacent. The word “realistic” is a better word than “robust” in this context. I do not think the Commission has a particular view as to whether or not the PSNI— to describe who is making that assessment. That is for the Secretary of State.

Q464 David Simpson: Very simple question: do you believe that the current term of the Assembly or the mandate should be extended for another year and, if so, should it be incorporated in the Bill?

Anna Carragher: I don’t think the Commission has a particular view on the length of Assembly term.

Q465 David Simpson: If you are having two elections on the one day, it makes it more difficult for you guys to administer. Is it better to have an extended time for this Assembly that they do not have two or three concurrent elections in the one day?

Seamus Magee: Maybe I could just comment in terms of two elections or three in the one day. As you know, in 2011 we had three elections in the one day. What we found after the election—we did quite a lot of surveys among voters—was that 89% of voters found that it was fine and there were three ballot papers. One of the difficulties that we did find, and that would help for future combined elections, was that if the name of the actual election was written clearly on the ballot paper. We understand that the Northern Ireland Office is addressing that in secondary legislation. Certainly in terms of having two elections in the one day, we have recently surveyed voters in Northern Ireland about having the Assembly election and the UK parliamentary election on the same day in May 2015. 44% of voters of Northern Ireland feel that there is no issue with them being on the same day, 30% had no view one way or the other, and the rest felt that they should be held separately. Largely the majority of people don’t have a particular issue. The key thing is that those elections, if they are combined, have good planning and the combined legislation is in place six months in advance of any election taking place. That allows the Chief Electoral Officer to plan in a very systematic way for elections that are combined but, in terms of voters, voters are fairly sophisticated in terms of taking part in one or two elections in the same day.

David Simpson: Okay. That is interesting.

Q466 Lady Hermon: Your voice sometimes is very soft indeed, and I just want you to reiterate in response to the supplementary question to ensure that you have actually covered it. In light of the criticisms that we did have in Northern Ireland—very significant criticisms— of the triple elections in 2011, it has always been my view that voters are perfectly competent and well able to distinguish and to vote in two elections or three elections. If you just give us the figures again, just to confirm.

Seamus Magee: We were doing some public opinion survey just before Christmas last year. In terms of having combined elections in 2015, 44% of those surveyed had no issue about both elections being combined; 30% had no view one way or the other; and the rest felt they should be held on a separate day.

Q467 Lady Hermon: The Electoral Commission has already made suggestions to the Chief Electoral Officer that there could be improvements: for example the title of the election at the top of the individual ballot paper, and please not white ones and pale grey ones at the same time.

Seamus Magee: In the report that we did on the 2011 elections, we have made a total of 29 recommendations to the Chief Electoral Officer, and he is currently working through those. Just this week we have published a further update report on the 2011 polls and some of those recommendations, in terms of how he wants to take them forward, are outlined in the report.

Q468 Lady Hermon: There is no significant evidence to show that either voters do not want elections in the same year or at the same time. In fact, quite the opposite.

Seamus Magee: Providing there is effective planning in place and the legislation is in place six months in advance of the polls taking place, they are happy with that.

Q469 Chair: If we can take a supplementary just on the length of the term, the four or five-year term, from your own point of view, do you have a view on what is best?

Anna Carragher: From my own point of view, what is best is that the voter knows what is happening, that the planning is in place, that the voter is able to cast his or her vote effectively and efficiently, and that the electoral process is well carried through.

Q470 Nigel Mills: I think in your submission you said that, if we legislate to stop dual-mandating and double-hatting in Northern Ireland, that might have implications for Scotland and Wales. What are you envisaging for that? Are you envisaging that we should apply the legislation everywhere?

Anna Carragher: One of the things that the Commission tries to do is ensure that there is consistency across the UK, bearing in mind that, of course, different populations have different needs. Therefore, one would not want to be particularly adamant about this. There may well be an issue if a particular set of legislation applies to the devolved assembly in Northern Ireland, but not to Wales and Scotland. There may also be issues around why one particular set of dual occupation is forbidden and
We conducted some research from Queen's University in Belfast into the planning system, and what comes over very strongly in that some research is being done. We believe that this is a very necessary step to begin to reach out and improve relationships between people and politicians, and this is a powerful one that is long overdue. Overall, we believe that UK citizens have been denied a right. It was established in 2000 that UK citizens were going to be able to know who funds their political parties, but all UK citizens are living under the shadow of donor secrecy across one part of their country, which is Northern Ireland, so we feel that this is a very necessary step to begin to reach out and improve relationships between people and politicians, which are disimproving in Northern Ireland.

Declan Allison: We conducted some research from Queen’s University in Belfast into the planning system, and what comes over very strongly in that
is that people think there is a very close relationship between developers and politicians. The people who responded were often developers themselves; they were planners; they were politicians; they were interested members of the public. A cross the board, there is a perception that the relationship is too close. Transparency is a way of overcoming that perception.

Q478 Nigel Mills: There is quite a strong perception of that in the rest of GB—that people on planning committees are being bribed by developers—even though it is probably entirely untrue and any donations are actually declared. Do you think this would really make that transformational difference or would people just believe it was still happening and still not being declared?

Niall Bakewell: If we could maybe explain why Friends of the Earth is sitting here talking about this, this is entirely about planning. This is only one aspect of a bigger planning campaign that we have now been running for two years. It is about the fact that planning powers are being devolved to local councils in 2015. If we have donor secrecy remaining at that point, the necessary good faith in the planning system that we think citizens need to have if it is going to be a healthy and happy planning system would be greatly undermined, and we would like political parties to have the ability to point to the donor register and say, “This applicant is not on there.” It really does give great certainty to political parties that they can look their constituents in the eye and say, “We didn’t take any money from this person.”

Q479 Ian Paisley: Mr Allison, Mr Bakewell, you are very welcome. Can I just say that is the most impressive moustache that has ever appeared in front of this Committee? Seriously, I have to say well done.

Declan Allison: It has taken me a while.

Niall Bakewell: I watched its progress from the beginning. It really has been amazing.

Ian Paisley: I hope it was not done for Movember.

Declan Allison: I don’t think so. To add to what my colleague has said, we currently have a coalition government. It is not beyond the bounds of possibility that the next election could result in a hung parliament, in which case there will be lots of negotiations going on in order to form a government. It is conceivable that Northern Ireland politics could enter negotiations in order to form a government, in which case we have secretly funded MPs entering government. That is a gross injustice for the rest of the UK: that there are people who are secretly funded in government, making decisions, and we don’t know if their decisions are being influenced by their funders or whether they are acting in the public interest.

Q480 Ian Paisley: You don’t think you overegged the pudding?

Niall Bakewell: I don’t think we overegged the pudding at all.

Declan Allison: I don’t think so. To add to what my colleague has said, we currently have a coalition government. It is not beyond the bounds of possibility that the next election could result in a hung parliament, in which case there will be lots of negotiations going on in order to form a government. It is conceivable that Northern Ireland politics could enter negotiations in order to form a government, in which case we have secretly funded MPs entering government. That is a gross injustice for the rest of the UK: that there are people who are secretly funded in government, making decisions, and we don’t know if their decisions are being influenced by their funders or whether they are acting in the public interest.

Q481 Ian Paisley: I have been elected now for—this will be my 17th year in the Northern Ireland Forum, the A assembly and now this Westminster Parliament. I have never once, apart from when I met you, Niall, at Queen’s University—

Niall Bakewell: It was our office volunteer.

Ian Paisley: I have never once been directly lobbied by any elector come to see me about this specific issue. My advice centre is open; it is advertised. People come to see me with all sorts of things about gross injustices elsewhere, but this “gross injustice” has never once been brought to my attention by any individual. Therefore, in terms of that as a priority, I am not saying it is not a gross injustice—in your eyes, if you think it is an injustice, it is therefore an injustice—but as a priority, as a gross injustice, it does not appear to be up there with the many other things that electors come to see us about.

Niall Bakewell: It is interesting. When you bring it up with the voters, as we have been doing all summer and autumn throughout Northern Ireland, on many occasions—I am not exaggerating—the clipboard was grabbed out of my hand before I finished the line, “Would you not like to see who is funding your political parties?” “Give me that,” was what people would say, as they started scribbling down their names and addresses on the postcards we will eventually be presenting. Let us face it, there is a lot of clamour and noise going on in Northern Ireland politics. It is hard
to focus on all the various issues going on, but once you inform people, and a lot of people are not aware of the discrepancy between Northern Ireland and the rest of the UK, they are very, very quick. I think I am very safe in saying the vast majority of people who stopped to talk to any of us, when we were out getting postcards signed—as you saw when we were at Queen’s—they had no equivocation in signing those postcards and wanting to know.

**Q483 Ian Paisley:** Do you not find that any campaign that you bring before the public in that way, whilst you are going to the public on a specific issue, they are exercised by that? It is really what they do beyond that. I don’t speak for everyone on this Committee, but I imagine my experience is something similar to colleagues around this table: that there is no clamour to my door about this issue. I am not saying that it is not an injustice: I am not saying that it is right or wrong; I am just saying that in the public perception this is way down the radar level in terms of interest and, therefore, if something is going to be done about it, it has to be further up the list.

**Declan Allison:** I would suggest that it is not so much down their list of priorities in terms of interest, but it may be in terms of knowledge. People simply don’t know about it but, when asked about it, they think transparency is important.

**Niall Bakewell:** I have done several of these petition-type campaigns and, before that, I was a street fundraiser for years. I have witnessed all sorts of reactions to different issues from members of the public. I have never had clipboards ripped out of my hands before so often as I have on this campaign. People were stopping me mid-sentence saying, “You had me at ‘donations’.” It really has been the most interestingly positive response to a campaign I have ever come across in my interactions with the general public.

**Q484 Lady Hermon:** Sorry, could you quantify the number of people who have snatched your clipboard from you?

**Declan Allison:** I think we stopped counting our postcards after about 4,500.

**David Simpson:** So 4,500 people ripped it out of your hand?

**Niall Bakewell:** No, no. If you are asking how many times it happened, I would say at least a dozen times to me personally. There was that level of “gimmie”.

**Q485 Lady Hermon:** Let us backtrack just a little bit here, so that we have an idea of how strong Friends of the Earth is in Northern Ireland. What is your membership like?

**Declan Allison:** That is a very good question and it is one we struggle to find the answer to ourselves.

**Q486 Lady Hermon:** Do you have a register of members?

**Declan Allison:** We don’t actually have members—it is a constitutional thing—but our supporter base is somewhere between 800 and 1,000. It kind of varies.

**Niall Bakewell:** That is not counting people on our mailing lists, people who are members of our local groups, people who would have a strong close affiliation with people who we offer advice to and people we work in partnership with. Our reach is greater than our finance and supporter list.

**Q487 Lady Hermon:** If you don’t actually have a register of your members, then the next question is going to be difficult to answer as well. I am always curious to know whether in fact there is an overlap between members of Friends of the Earth and other political parties, so that in fact the evidence that you are giving to this Committee could in fact be influenced by party political membership.

**Niall Bakewell:** As in that our policy formation is being influenced by our membership feeding up policy to us?

**Lady Hermon:** Yes.

**Niall Bakewell:** This policy was formulated in isolation by the members of staff of Friends of the Earth Northern Ireland.

**Declan Allison:** Our supporters—we would describe them as supporters, but other organisations may describe them as members—that is those people who pay their subs, whatever it is, £3 a month or £5 or whatever, they have no constitutional arrangement with Friends of the Earth. Our constitutional arrangement is with our local groups, who are autonomous campaigning groups. There is no mechanism for individual donors to influence policy.

**Q488 Lady Hermon:** A gain, just so that I understand Friends of the Earth, would many of your supporters also be politically active?

**Declan Allison:** Quite possibly.

**Lady Hermon:** Which is fine, I am just curious.

**Niall Bakewell:** I am aware of members of local groups who belong to various political parties, so across the board, but they have no involvement at all in our policy formation. They are autonomous groups.

**Q489 Lady Hermon:** That is actually very helpful to the Committee. Could I just reflect on something that you have said about the complete transparency of donors? The impression that was created, and I am sure you did not mean to create this impression, was that in fact Northern Ireland really was not any different from anywhere else in the United Kingdom and we could have complete transparency. Surely you would accept, given our very, very, very troubled history—though the two of you are so young, you actually do not remember the appalling loss of life in Northern Ireland. 302 murdered police officers in 30 years is an awful lot of dead police officers in Northern Ireland. 302 murdered police officers in 30 years is an awful lot of dead police officers in Northern Ireland. What is your policy formation is being influenced by our membership feeding up policy to us?
They genuinely believe in the union and want to make a donation, but do genuinely fear that, if their name was published on a register, that at the dead of night, when they are parking their car, they get a bomb underneath their car or they get shot. Does Friends of the Earth cast aside perhaps the genuine fears that donors have?

Declan Allison: Absolutely not.

Q490 Lady Hermon: Thank you. I just wanted to put that on the record, because you came in and you gave the impression that you did not really care.

Declan Allison: I apologise if that was the impression we gave you. We in no way want to downplay the reality. You say we are too young; I was born in 1970; I lived through the worst of the Troubles. I am perfectly aware of it. It would be ludicrous to try to deny that reality. The issue for is that it is a reality of political life, not just in the rest of the UK, but across the world. You were up at Stormont hearing evidence. If you could just maybe reflect on your experience of entering Stormont, and compare that level of security with the level of security here, where there are armed police guards with submachine guns on every corridor, where there are armed police officers in committee rooms, with a ring of steel around. That simply does not exist in Stormont. I think it is wrong to overplay the level of risk that is experienced in Northern Ireland.

Niall Bakewell: I was just going to add something else, which is that we already have a great deal of willing partisan participants, who are doing things for parties. None of you could get elected without your nomination papers being signed. Those people who are signing those nomination papers, some of them own businesses, prominent businesses, and it is easy to find out where these businesses are. We are accepting that risk. We are accepting because, otherwise, we could not have politics. If we did not have openly named candidate sponsors, then we would not have politics, and yet still you, representatives from Northern Ireland, can find people willing to do that. As you say, there may be a risk in that. If we are happy with that, then we should be happy with this other choice of—let us face it—going above quite a high threshold in order to be publicly named. You can give quite a lot of money to a political party in Northern Ireland and never be named in the future transparency or not.

Q491 David Simpson: I cannot grasp your point on this issue about the threat level, because I think you have said, at one point here, that there is no special risk to Northern Ireland donors, in the evidence or the paperwork that you gave us. You are talking about people signing their names on nomination forms. That is a world of a difference compared to somebody who would supply 10, 15, 20 grand to a party, if that wasn’t the figure. Take someone living in South Armagh. You said you lived through the Troubles, Declan, in relation to it. Consider someone who is maybe in a very small minority of a unionist population, maybe one individual businessman, always gave money to a certain party that he wanted to support, because that was his allegiance; all around him was perceived to be a republican area, bandit country, all the rest of it. That guy’s name goes forward and he is exposed, for the want of better words, that he supports a unionist party, tradition or whatever. Surely there is a risk to that individual putting his name forward. You are saying that around these corridors you have armed police officers and people outside. You have armed officers both in the hallways and outside the Stormont Assembly as well.

Declan Allison: You do, yes.

David Simpson: What I am saying is, there is a world of a difference. I think you were at the last evidence sessions in Stormont that were taken with the Committee. Someone tried to align Northern Ireland’s troubles with international terrorism in England and all the rest of it. I think it was the Green Party. There is a world of a difference in the terrorism that we faced in Northern Ireland and the threat levels to individuals for the past 30, 40 years. Surely there is a difference there, in relation to that. That person living in a border area—his name has been exposed that he is a fundraiser or donor to a unionist party. There has to be.

Declan Allison: I would suggest that the example that you have given of a unionist Protestant businessman or whatever:

David Simpson: It does not matter. It could be the other way about.

Declan Allison: It is just the example you gave—I accept it is applicable the other way around. I would suggest that that individual is at risk, not because they have given money, or not just because they have given money to a particular party, but precisely because they are a unionist, a Protestant, living in an isolated area surrounded by republicans or whatever it happens to be.

Q492 David Simpson: What if he has been there, Declan, for 30 years in business? No one has bothered with him.

Declan Allison: I am not trying to suggest there is no danger there. I am merely suggesting that we live in a deeply divided society, highly sectarianised, and that person is at risk simply because of whom they are, not because of the party they made a donation to.

Q493 David Simpson: Absolutely, so why take the risk of exposing them?

Declan Allison: They are already exposed.

Q494 David Simpson: No, not to the same level. If you have a person who is in business for 30 years in a certain area and they are going on with their business, they have everyone from across the community going in to—whatever—fill up his car, buy groceries or whatever the case may be. He is perceived as Joe Bloggs; he has been there for a long time, the family has been associated with that, but all of a sudden, his name is put out there as supporting a particular party.
Niall Bakewell: Can I make a point here, Mr Simpson? I am from the country, I am from a reasonably divided community. I was born in 1975, so I also remember quite a lot of the Troubles. One thing I know about most people in Northern Ireland is they are not fools. If someone has got a business that good, in what you are describing as a very hostile environment, that they have got £10,000 or £15,000 spare to give to a party, I think that their clientele will probably eventually rally back to frequenting their business again, if there is a period of hostility from the community. It sounds like their business is awfully good and that they will be coming back there again.

Q495 David Simpson: Do you accept that there have been campaigns, as you heard in evidence given, on websites, or whatever, to boycott businesses because they will have been perceived as being one side of the community or another?

Declan Allison: Yes, absolutely; these boycott campaigns do exist, without a doubt. We are not trying to deny that. But how effective are they? Is there any evidence that they have actually made a difference?

Q496 David Simpson: In the evidence that was given by one of the political parties, the businesspeople actually told them not to send out letters and letter heading for donations or whatever, because the very postman delivering it—

Declan Allison: That comes down to a perception. It is not an actual—

David Simpson: No, I stand to be corrected, but the evidence actually said he was approached by businesspeople who said their name could not be put on websites, if they found out a local Muslim businessman gave Mr Khan £10,000, that could easily lead to a similar sort of cultural-backlash boycott campaign against him.

Declan Allison: I understand that point. The point I am trying to make is that that request was made because there is a perception of boycotting, not because there is an actual boycott.

Niall Bakewell: Sorry, can I just add to that? There is every possibility that such a boycott campaign could be launched against party donors for various reasons over here. For instance, if we look at the recent controversy that Sadiq Khan faced for his support of gay marriage and people calling him an apostate on websites, if they found out a local Muslim businessman gave Mr Khan £10,000, that could easily lead to a similar sort of cultural-backlash boycott campaign against him.

Declan Allison: Not wishing to isolate you, but I suspect some of your colleagues in Scotland, for example, may also face some difficulties, in strong SNP or Labour areas. Similarly, there may be Labour MPs in the south-east of England, for example, who may be in strongly Conservative areas who would also face the threat of boycott. I don’t think this is unique to Northern Ireland.

Niall Bakewell: Can I add something, because Mr Simpson did say a lot? There was something that we really did feel we had to bring up. You kept using the words “international terrorism”. We have heard it over a couple of days now. From the period of 1999 until 2010, we looked at the people who committed acts of extremism of various kinds, starting with David Copeland, the nail bomber in 2005, born in Isleworth. Three out of the four of the 7/7 bombers were British citizens born and bred. The mastermind behind the Glasgow Airport attack in 2007 was a British citizen, born and bred. All of the 2006 aircraft plotters were British citizens, born and bred. The woman who stabbed Stephen Timms because of his support for the Iraq War—I forget her name—was also a British citizen, born and bred. How international are these acts of terror if they are being committed by British citizens on British soil against other British citizens?

Q497 David Simpson: I would challenge you to look at the figures. What you have given us is minute, compared to the people who come to me, in my constituency, which is perceived to be a unionist constituency, Upper Bann, who have been threatened. The police have visited their homes on a regular basis because they are perceived to be one side of the community or the other. It is the same with security force members, prison officers or whatever. The bottom line is there is a higher risk, percentage-wise, within Northern Ireland than there is here, on the mainland.

Niall Bakewell: And yet you ask people to sign your nomination papers.

David Simpson: That is entirely different.

Niall Bakewell: Put it this way: you could get elected with virtually no money. Now, it is very rare, but we did check back on the 2011 spending, and a couple of candidates did get through with very little of their allotted permitted spending. But you could not get elected without a sufficient number of nominating sponsors. In many ways, no, it is not the same. You could survive if people dropped their donations down below £7,500, but you could not if you could not get enough people mustered together to give you validation and credibility as a candidate.

Chair: Okay, we have made the points now. I think we are in danger of going around in circles.

Oliver Colvile: Can I just correct a point?

Chair: As long as we can move it on slightly.

Oliver Colvile: Mr Allison suggested, I think, that he may have misunderstood which political party I represent. I am a Conservative. We are somewhat isolated in Scotland, in that we only have one Conservative Member of Parliament.

Declan Allison: Exactly; that is the point I was making. In an area dominated by Labour or the SNP, a Conservative may feel—

Oliver Colvile: I would not want you to think I am a member of the SNP, because I certainly am not.

Declan Allison: No, I was making the opposite point.

Q498 Lady Hermon: Trying to respond to both points made very forcefully in the last five minutes, and that is Mr Simpson’s and your own point, you were present at Stormont when in fact a suggestion was made in evidence to us about one way of testing how serious the threat is to an individual. You very kindly have accepted that, in fact, in Northern Ireland there is still a significant terrorist threat, which is the point Mr Simpson was making. Would it be wise, useful and helpful, to address your point, where you want greater transparency, in fact complete transparency, and also getting the balance right,
because we do not want to put people’s lives at risk—no one of us wants to do that—that in fact we write into this Bill that the PSNI is involved, or the Chief Constable is involved, that the Secretary of State has a duty to take advice from the Chief Constable, in relation to donors who perceive themselves to be under threat?

Declan Allison: Can I ask a point of clarification? When you say that, do you mean the Chief Constable is obliged to make a general risk assessment about donor anonymity or is it on a case-by-case basis?

Q499 Lady Hermon: Case by case. The evidence has been given to us that individual donors would feel themselves under threat, in peril of their lives, if their anonymity was to be lifted. We have to get the balance right. We want to move towards transparency. I think we are agreed on that. Certainly that is the case that you are putting in front of us. Would it be helpful to put into the Bill a provision that is not in the Bill as it stands, because that is what we are busy doing—reviewing this Bill and improving its drafting—that the PSNI would give advice on individual donors, just in the way an individual might ask for personal protection? There is obviously a PSNI assessment in that. Again, for an individual who feels that their donation will be a significant donation—there is a limit of £7,500. That is a large amount of money that would oblige them to have—

Declan Allison: Can I ask one additional point of clarification?

Lady Hermon: I think actually the Committee is here to ask you the questions.

Declan Allison: I know, but before I answer the question, if the advice comes back to that individual that it is unsafe for them, does that mean that they remain anonymous?

Lady Hermon: I am not drafting that legislation. I would assume—

Declan Allison: I am just asking in that kind of—

Lady Hermon: I do not want anybody in danger if they are making a political donation to a political party.

Declan Allison: I would say we would have no difficulty with writing into the legislation a statutory duty or a statutory responsibility of the chief executive. I am not entirely sure that it is necessary, because I would imagine they would be asked their opinion as a matter of course anyway. If it helps, it could be written into the legislation to make it a statutory duty. That is fine. I would have difficulty if then the advice comes back that this individual is at risk; therefore, they should remain anonymous. I would have a difficulty with that. At that point, it then becomes the decision of that individual whether they want to donate or not.

Q500 Oliver Colvile: Just tell me what you want to have physically written down and what information you want required. Do you want absolutely everything?

Niall Bakewell: No. As we have said in our evidence, we grudgingly accept that, because the prescribed period was passed, there is now a duty on Parliament to protect the identities of prescribed-period donors, whenever that prescribed period ends, which sounds like it might be sooner than we thought, from what we have just heard from the Electoral Commission. We believe there should be absolute donor transparency from a date named in the future, no later than 1 October 2014, but sooner if possible, and that donors can adjust to that information and make their choices as they want. On prescribed-period donors, I think what we talked about was that, if you replaced the identifying names and addresses of donors on the electoral register with a code, everything else could be in there.

One thing that is very interesting for us is, if there are any of these donations and it sounds like there may not be but, if there are, are they cross-funding? Are two or three parties receiving a donation from the same donor and some sort of coding, so “Donor One gave £8,000 each to three of the five executive parties”? That is of interest to us. If they are doing that continually year on year that two, three, four or even five parties are receiving the same amount of money from the same donor, that is of more interest than the identity of the donor, when it comes to the prescribed period.

Declan Allison: Also, there is the nature of the business that they are involved in. Are housing developers giving lots of money or the roads-construction industry giving lots of money?

Q501 Oliver Colvile: It sounds to my mind that, first of all, what you are suggesting is that there may be some people who want to stuff everybody’s face with gold.

Niall Bakewell: We don’t know. We are only speculating, because we cannot see the donor register.

Q502 Oliver Colvile: It sounds to my mind that what you are talking about is that you have great concerns about things like planning applications, development and potential contracts as well. Is that right?

Niall Bakewell: We have great concerns about public perception being toxic to belief in the planning system and we want to get that straight.

Oliver Colvile: I should declare an interest in that, before I got elected to this place, I ran a communications company that gave advice to developers on how to get planning permission. Rest assured that one thing that we never ever ended up doing was any of that at all. I can assure you of that.

Q503 Mr Benton: Sorry if I am going back on your point. I just wanted clarification really over the comparable effects of the person who, to use your analogy, signs the nomination paper, as opposed to the person who is, say, for example, in a high-profile business atmosphere donating £50,000, for example’s sake. In terms of publication, the person who has merely signed a nomination paper, that would go by the board without any sort of—certainly I would not imagine there would be much media interest in publishing somebody as described there, but there would be for a person in the business situation I am talking about, a donor of £50,000, say, who holds a prominent position in a business.
I also think that we cannot ignore the historic factor. I know we can make comparisons, such as the one that you made before, about indigenous British citizens being involved in terrorism and all that, and that is very true, but the point is that with the incidence and the amount of violence pro rata, comparatively, historically, these things take on another dimension against that background, if you take the point. I personally am of the opinion that there is a difference that has to be considered in terms of individuals’ own vulnerability. To that end, of course, I am having difficulty in understanding the comparisons you are effecting. I would invite you to comment on that, because I do not think that has been highlighted to us.

**Declan Allison:** Can we start with the £50,000 coming from a prominent businessperson? That is a lot of money. If you take the proportionality in Northern Ireland politics, that is a colossal amount of money. Now, you have to ask the question: their right to choose to give that money absolutely risk-free, appreciating the society we are still living in, versus the public interest in us needing to know if such a donation has been made, or if they were a donor. Sir Christopher Kelly did keep talking about this; the public interest does need to be weighed against this. I agree with him that I feel it has not been spoken about enough so far in these Committee hearings. When you are talking about that level of donation, it is enormously in the public interest that we find out. Otherwise, that is genuinely toxic.

**Mr Benton:** Perhaps I am posing an extreme example.

**Declan Allison:** I would say even £20,000 is a lot of money.

**Mr Benton:** The distinction I truly wanted to make was between signing a nomination paper and being actively a donor to a party.

**Declan Allison:** It is very active to sign a nomination paper.

**Q504 Mr Benton:** Let me put it this way to you: I would suggest that it happens here in all the elections. Sometimes you get it from a supporter, because he likes some particular thing that you say about a particular aspect of it or a particular theme that is current at the moment. All I am saying is that it is not quite a like-for-like situation. I honestly think that somebody who is making, let us say, a sizeable donation—and that will vary from community to community: £500 would be a hell of a lot in my community, quite honestly; it would be an awful lot of money for somebody to make an individual donation of £500. Perhaps, rightly or wrongly, it would maybe describe the level of the fervour for that particular political party or that particular thing. It is really against the background of what has happened historically, I can see an inherent danger in the greater publicity that they attracted, in terms of declaring openly and overtly their support. I could see them being in a more vulnerable and dangerous situation than I could see would happen in my constituency in Merseyside.

**Declan Allison:** No one is more overtly declaring an interest in a political party than someone who stands for election and they are all in the public domain. Why are they allowed to expose themselves to danger, but this other group, this subset of people, is protected? I can see no logical reason why one group is expected to expose themselves and another group is given special protection.

**Declan Allison:** Substantial donations are very rare. Most people cannot participate in public life in such an influential way. You have to start asking the question of party donors in Northern Ireland, “Why do you get special treatment, when everyone else involved in politics in Northern Ireland, including everyone on the electoral register, at some point exposes themselves to somebody’s knowledge of whom they are and where they live?”

**Q505 Lady Hermon:** Could I just ask for a quick response really? That is, as we know at the present time, the Alliance Party and the Green Party do actually publish their donations on their website. You will also know that we did take evidence last week, because you were present, from Sinn Fein, which claimed that, in fact, they too were very open and transparent about their donors online. Are we content with that level of publication and transparency by those three political parties?

**Declan Allison:** Do you mean voluntary as opposed to mandatory?

**Lady Hermon:** Yes.

**Declan Allison:** No, we want the rollout of PPERA to be completed. We want the UK to finally enjoy true donor transparency across the whole realm. We are not satisfied with this sort of self-regulation, no. We would like to see the full rollout. Really what we would be curious about is what would be the change in society, in England, Scotland and Wales, before you would roll back on this.

**Lady Hermon:** I actually was inviting you to comment upon how useful you found the information that has been put online, which is on the website.

**Q506 Oliver Colville:** In fact, do you find all of the information that we have understood to be declared?

**Declan Allison:** From the Alliance Party and the Green Party, yes, but Sinn Fein, no.

**Oliver Colville:** You have not been able to find that.

**Declan Allison:** No.

**Declan Allison:** We have tried.

**Q507 Ian Paisley:** What is the difficulty with obtaining it?

**Declan Allison:** I suspect it is possibly a misunderstanding, rather than a deliberate attempt to mislead. They say they publish their accounts on their website, and indeed they do. You can go and find their accounts. That is no problem. There is one assumption that their accounts include the names of their donors, but they do not. Whether that is deliberately misleading or whether that is a misunderstanding, I do not know, but the names of their donors are not included in their accounts and they are not anywhere online that I can see. Can I just make a follow-up to the point you were making at the end there about the Alliance Party? We of course have had a recent spell of elevated troubles
in Northern Ireland and the Alliance Party has been
the primary target of that. Their donors have not been
targeted. There is proof positive that donors are not at
a higher level of risk than other political activists.
Niall Bakewell: Having lived as long as Declan and I
have, we have seen several periods of upsurge of
violence, and I have never seen political parties so
openly and aggressively targeted as has been the case
since December, and yet, as Declan said, so far—and
we hope this remains—there has been no trouble
there. Chair: Okay, that was a very useful session. Thank
you very much for coming to see us.
Thursday 7 March 2013

Members present:
Mr Laurence Robertson (Chair)
Mr Joe Benton
Oliver Colvile
Kate Hoey
Naomi Long
Nigel Mills
Ian Paisley
David Simpson

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Examination of Witness

Witness: Rt Hon Mrs Theresa Villiers MP, Secretary of State for Northern Ireland, gave evidence.

Chair: Welcome, Secretary of State. It is good to see you again.

Mrs Villiers: It is good to be here.

Q508 Chair: Thank you very much. As you know, we are looking at the Bill you are about to introduce. Would you like to very briefly introduce your team and make a brief opening statement?

Mrs Villiers: Yes, I would be happy to do that. I have with me Alan Whysall, who is Deputy Director of the Constitutional and Political Group in the Northern Ireland Office, and Philippa Saunders, who is the Policy Officer in the Constitutional and Political Group.

I would like to start by saying that I very much welcome NIAC’s involvement in the pre-legislative scrutiny process. I know you have had some excellent evidence sessions already, some of which took place in Northern Ireland, and I am sure that your input is going to mean that we end up with a better result at the outcome of the pre-legislative and legislative process. It is also a step forward that this is the first piece of Northern Irish legislation that has been through this pre-legislative scrutiny process, which indicates the contrast with previous Northern Ireland Bills, which have often been passed in response to some kind of crisis or to rescue failing institutions. It is a testament to some of the progress achieved over recent years that we are introducing this Bill in far more normal circumstances than have often been the case with legislation in the past.

As you will appreciate, there may be matters that will be added to the final Bill, most notably on the duration of the Assembly term and the size of the Assembly; it would be particularly helpful to hear NIAC’s view on those but also on the substantive content of the draft Bill. I believe these are important constitutional measures to improve the way the settlement works. You will appreciate that it does not seek to rewrite or reshape the terms of the devolution settlement, but I believe that the measures we are putting forward, for example on transparency, dual mandates and the Justice Minister, will actually improve the way politics works in Northern Ireland and be another step forward in the progress made there over the last 20 years.

Q509 Chair: Thank you very much. Can we just very briefly touch on the deadline for submissions? Easter intervenes and there is quite a long recess at Easter. It does seem a very short consultation period.

Mrs Villiers: It is quite a tight timetable; I acknowledge that. I think it gives people an opportunity to make their voice heard, and also we did consult on the key measures back in the summer. We feel that we have given people a chance to have their say. Of course, the debates in Parliament during the legislative process itself will provide further opportunity for parliamentarians to make the views of their constituents known.

Chair: I should probably also thank your officials for the briefing they gave us on the Bill a couple of weeks ago, which was extremely useful. Perhaps we could now ask a few questions and start with the issue of political donations and loans.

Q510 Naomi Long: It is good to have you with us this morning. I apologise that I may have to slip away before the end of the session. During the evidence we received yesterday from Sir Christopher Kelly, he raised a number of issues. First, he said that the evidence they have received, and indeed the evidence we received from Northern Irish parties, is that there are very few donations that exceed the threshold for publication of donor names. Therefore, the question that he posed was: is it a balance between the public interest test and risk to donors? If there are no or few donors who exceed that threshold, is there a significant risk that should prevent publication? He raised that question. One of the things he suggested that the legislation could do was enable the Electoral Commission to publish anonymised data so that the evidence we have been given—that there are very few donations of that kind—can be tested and enable them to move beyond that and publish down the line. Do you have any views on that, or is there any reason why that has not been done to date?

Mrs Villiers: The possible publication of anonymised data could be helpful in increasing transparency. That is something that would be made possible by the provisions in the Bill. The way the Bill works is that it gives us the enabling power to publish that kind of data. If we chose to, we would need secondary legislation as a follow-up, but certainly that kind of information about the size of donations is something that would be a logical candidate to include in the additional transparency measures the Bill would enable us to take forward.

Q511 Naomi Long: Given the evidence we have received from parties which say that they receive very few large donations and given that the income of
Northern Ireland political parties tend to be lower than that of national parties, do you believe there is any argument—it certainly has been put by the Greens and others—that the level at which donations should be published, because of their degree of influence on policy or direction, should be lower? Do you think there is any merit in looking further at that in this Bill?

Mrs Villiers: I cannot for the moment see a case for a tougher regime for Northern Ireland than for the rest of Great Britain in terms of the thresholds. The thresholds that apply seem to work pretty well in terms of the limits for what needs to be declared to the Electoral Commission. Of course, once the Bill is hopefully on the statute book, we would happily listen to ideas about further changes that might be needed. Although I am aware of the Greens’ proposal, I cannot see there is pressing need to treat Northern Ireland differently in terms of the thresholds from the rest of Great Britain. The key area where I see Northern Ireland continuing to be different is in relation to the security situation, which is why we are not proposing to publish information that could identify donors.

Q512 Naomi Long: Very briefly on the security situation, as you know, my own party has taken a different view on that despite the security situation and the threat from both dissidents and loyalists that we have faced over recent years, and we have published voluntarily in order to stand for local election in Northern Ireland you require signatures from those who live in the constituency. Those are published and there has never, to my knowledge, been a case of someone unable to stand for local election because they were unable to get people willing to sign, even at the height of the Troubles, when one would assume that risk could be placed on individual citizens who did. There are also many examples of politicians who own and run businesses in Northern Ireland successfully and have not been subject to boycott and so on, as suggested, or if they have, they have been able to continue to function as a business throughout that. So it has not deterred businesses from being involved in politics or individual citizens from openly declaring their support politically. How significant do you think the risk is, from your assessment, to people who actually make donations?

Do you have any evidence that any donors have been threatened or intimidated if their donations have become a matter of public knowledge or wider knowledge within parties?

Mrs Villiers: The security situation is as severe as it was when these rules were first introduced in 2007. Sadly, we have not seen a significant improvement in the general security situation. In terms of specific cases where donors might have been threatened, obviously our access to that kind of information is limited because we do not have access to information about who the donors are. I appreciate that some parties publish on a voluntary basis. I have not seen specific information in relation to threats to individual donors, but I do have to bear in mind the overall security advice I am given, which is that the threat from terrorism remains severe in Northern Ireland. Also, we have to bear in mind the fact that it is not just the actual security situation but also the perception. If the perception is that donations might be followed by threats and intimidation, that genuinely does deter people from giving money to political parties. From that perspective I think that would be unfortunate in terms of people’s democratic right to support different political parties, if they are essentially frightened out of donations that they would otherwise give.

Q513 David Simpson: You are very welcome, Secretary of State, and your officials with you. Contrary to what Naomi has said, the evidence from the witnesses before us has been conflicting, with some saying there are no threats and others saying there have been threats, where business people have come forward and said, “We are donating but it is anonymous, and if our names appear we will stop donating.” When it comes to the threat and all the rest of it, should the Chief Constable have a say in this, whether it is an overall view of the security risk in regard to organisations or even to individuals? Should he have a say in this, to give the overall commitment or qualification of whether it should be transparent or not?

Mrs Villiers: In terms of a move, ultimately, to a completely transparent system that would be the same as the one operating in GB, that decision would need to be consulted on carefully. Certainly, the views of the Chief Constable would be very relevant there in terms of assessing the security situation. I gather an idea that has been floated in your discussions with other witnesses is whether we could move to a system whereby decisions on publications of individual donors could be made on the basis of an assessment by the PSNI as to the risk to individual donors. It is an interesting idea. My concern would partly be the burden on the PSNI in having to make those assessments, and a slight reluctance to bring the PSNI that directly into a fairly political space. Also, if we were to move to a system that says, “Your name gets published as a donor unless the police say there is a threat to you,” there would still be a concern about a chilling effect; people would be anxious, when making a decision whether to donate, that, ultimately, their name might be published. So while it is an interesting idea, I am not sure it would work in practice in relation to individual donations. As I say, in terms of progression towards publication of names in the same way as they are published in GB, that is of course something we would take the advice of the Chief Constable on in relation to the security situation.
otherwise would give, which, as I said, would not be healthy for our democracy or political life in Northern Ireland.

Q515 Kate Hoey: Thank you for coming in, Secretary of State. There are security risks, and then we took evidence from people who are operating in some of the smaller country towns, who are concerned that, if they were to be publicly giving donations, there would not be a threat from security but there would be a boycott of their particular business, by one element or other of the community. Is that something you feel could happen, or do you think that risk is exaggerated?

Mrs Villiers: I think it could happen, but that is not the rationale we are looking at here. That kind of boycott could easily happen in Great Britain. Our concern would be that, whether it is a business or an individual making a donation, the publication of their names could lead to risks to them personally or to their employees. It is really the security question and the deterrent effect it might have on donations that is my concern and which motivates me in the pace of change I am suggesting, rather than the risk of boycotts, which could be a part of any political system.

Q516 Kate Hoey: One final point: have you been able to see the Sinn Féin donations on the website? They say they publish them on the website; have you been able to find them?

Mrs Villiers: I have to say I have not looked for them. David Simpson: You would have difficulty finding them.

Q517 Oliver Colvile: Welcome and thank you very much indeed for coming to talk to us. When we were in Northern Ireland last week, one of the comments made was that there seemed to be a real frustration that there was not an opposition of any sort to the Executive, because both the DUP and Sinn Féin are both in Government in Northern Ireland. We also had a discussion yesterday afternoon with Sir Christopher Kelly about, potentially, more public funds going to individual political parties. I have to say that I am loth to see more taxpayers’ money being spent on political activities, because I think it just gets us out of touch with the whole thing and it also stops the political parties from doing it. What is your view, first of all, on how we can try to encourage more opposition, or an opposition of some sort, which would be a really good example of how Northern Ireland has moved to a much more democratic world, and, secondly, of how that might be funded? Do you think it should be down to the individual political parties?

Mrs Villiers: To be fair to the current system, the Assembly provides quite rigorous scrutiny and often quite considerable, vocal criticism of the Executive, so it is not fair to say that there is not scrutiny or opposition. You will find, in the consultation the Government published that we can see a case for moving to a more conventional system of Government and opposition. There are two reasons why that proposal is not in the Bill. First, for the moment we do not see that there is a broad enough consensus on this. Secondly, in many ways this is a matter for the Assembly to decide. They have many of the tools at their disposal to create a formal opposition if they choose to, because that kind of status can be granted by the Assembly. The Assembly has a fair degree of funding and how they allocate that between Executive and opposition is a matter for them. I welcome the fact that is now being looked at by a committee within the Assembly. That could be very positive.

I am absolutely adamant that any change, whether it comes from Government or the Assembly, needs to be consistent with the power-sharing principles of the Belfast Agreement. It seems to me that it may well be possible for the Assembly to move in the direction of a more conventional Government and opposition system if they choose to. Really it is, to a large extent, within their gift if they want to do that. We still have the opportunity, between now and the final version of the Bill being published, to potentially put something in our legislation but, as I say, at the moment there is not a broad enough consensus for one solution. Also, it may well be that the Assembly can do it without our assistance if they choose to.

Q518 Chair: On donations, the Bill, correct me if I am wrong, gives you as Secretary of State the power to change it; it does not change it itself. Is that correct?

Mrs Villiers: Yes, apart from one change, which allows the Electoral Commission to publish names if the donor consents. Otherwise, yes, it is an enabling power.

Q519 Chair: An enabling power could kick in by September 2014, or does it kick in immediately?

Mrs Villiers: The enabling power would be in operation as soon as the Bill is on the statute book, but in order to exercise it, we need secondary legislation. That would require a period of drafting and consultation before actual further transparency measures were brought into effect.

Q520 Chair: Have you discussed in general terms with the Chief Constable how sensible it would be to change things to increase transparency and how quickly that could happen? Has that conversation taken place with the Chief Constable?

Mrs Villiers: I have not had a conversation with him directly on this, no. As I say, his input in terms of the security situation is always going to be helpful in deciding how far and how fast to go on transparency measures.

Q521 Mr Benton: Good morning, Secretary of State. I want to follow on from where David Simpson left off on the point of the vulnerability of people making donations as it applies to Northern Ireland. I share some of the concerns that have been expressed by different witnesses. That is not to say that I am totally against full transparency, but I do think it is a particular situation in Northern Ireland, where there might be a greater degree of vulnerability than there is if you make a comparison with the UK. This leads on to your response to David Simpson earlier on. You felt it was quite relevant to consult, in certain cases,
the Chief Constable. I am wondering, if that opinion is valid, how that would be incorporated in law? For example, if the Chief Constable is empowered through the legislation to say, “We do not recommend that this name be publicised,” would it not be interpreted that the Chief Constable, by virtue of having the power to do that, would, in effect, running the legislation or having an undue influence on the legislation? I wonder just how, in the light of your remark that, yes, it would be appropriate for the Chief Constable to be consulted, that would be incorporated into legislation, because it is another area of concern in terms of transparency. I hope you get the drift of my point.

Mrs Villiers: I do. As I said, I think there would be some difficult issues if we were to give the PSNI a role in relation to individual donations. I am concerned about the bureaucratic impact of that and the extent to which it would bring the Chief Constable into a political space. As I say, in a future debate on whether to go for further transparency, including full publication of names, as is the case in GB, obviously an assessment of the security situation would be important, and therefore the views of the Chief Constable would be important. I do not think that we need to put that directly in the legislation; it is just a matter of common sense that you would have to consult on changes to the transparency regime, and ensuring that the views of the PSNI were fed into that process would be very important.

Q522 Mr Benton: But in terms of the publication of this Bill, would it be right to describe your disposition now as being that, in this connection, the status quo remains and there would be exemptions from full declaration?

Mrs Villiers: The Bill would enable the Government to produce secondary legislation to introduce more transparency. For the moment, I have made it clear that I do not think there is a case for going the full way to the same regime as applies in GB. I do not think at the moment it would be appropriate to publish the names of individual donors and corporate donors. Actually, there are a range of transparency measures—one could publish on an anonymised basis—that would give us a better understanding of political donations in Northern Ireland and not give rise to the same security concerns or the same anxiety about donating.

Q523 Ian Paisley: Secretary of State, you are very welcome; it is good to see you again. On dual mandates, if your legislation goes through in the way that it is framed, an anomaly will be created where a Member of this House could not be a Member of the Legislative Assembly in Northern Ireland, but a Member of the Legislative Assembly in Northern Ireland could not sit as a Member of the Legislative Assembly by law, but a member of a foreign jurisdiction’s Parliament, which is the law for the United Kingdom, could sit in a devolved Assembly in Northern Ireland. We have a party leader for Northern Ireland who is a TD. I imagine there would be great political capital and embarrassment made out of that fact which could be very destabilising in political terms. The safest way to do this would be to add a change to Section 1 that would demonstrate that TDs were held in the same regard as Members of Parliament, and that therefore they too should be excluded, if we are going to go down this disqualification route.

Kate Hoey: Could I just add to that? Why was it allowed to stay in? Who drafted it and left it in when you were producing a new Bill about a new way of doing it?

Mrs Villiers: As I say, I do not see that there is a pressing case to deal with issues in relation to—

Kate Hoey: So you think it is quite—

Chair: Is the Secretary of State answer, please.

Mrs Villiers: I do not see a pressing case to make that change, whereas we consulted on ending dual mandates in relation to the House of Commons, and there was considerable support expressed for that. As I say, of course I am happy to listen to proposals that this Committee may bring forward in relation to further changes that could be made in the Bill, but we are focusing on a matter of concern to many of the general public in Northern Ireland, a number of whom contributed responses to the consultation, which was about this Parliament, not about the Irish Parliament.

Q524 Ian Paisley: Secretary of State, so far every party that has come in front of us, when this point has been put to them, have accepted that this is an anomaly and that it should not stand. I think that is without exception. I cannot speak for the Committee, obviously; it is up to the Committee to decide this, but if the Committee did recommend an amendment to Section 1, you would be strongly advised to take it because of the impact it would have.

Mrs Villiers: This, of course, is the benefit of this process. You are questioning a wide range of people,
and I will be looking very carefully at your conclusions and also all the evidence put before you in making a decision on what ultimately goes in the Bill.

Q526 Kate Hoey: Can I just press you a little bit further on that? I think it actually says something quite important. I appreciate that you have said that, if we produced an amendment, you would look at it very seriously. Don’t you think that perhaps a lot of people in Northern Ireland probably were not consulted about this particular part of the Bill or did not understand this? Don’t you think that it sends out a message, a very strange message, that the United Kingdom Government has produced a Bill that actually allows a foreign country’s Member of Parliament to be a Member of the Assembly in Northern Ireland, when it is not going to allow a Member of Parliament in the United Kingdom Parliament—and I agree that it should not be the case—to be a Member of the Assembly. What message does that send out other than there is some kind of special pleading for members of a foreign country and citizens of a foreign country?

Mrs Villiers: If this is an issue that people have not understood properly and have not been sufficiently aware of, then this is an important role for NIAC and the pre-legislative scrutiny process. This is exactly the sort of debate that we need to have. As I say, I have not seen a case for making that change, but if you can demonstrate a groundswell of opinion on this, of course I will look at it seriously.

Q527 Kate Hoey: So you would not mind anyone being a Member of Parliament anywhere in the world and being a Member of the Northern Ireland Assembly, as long as they are not a Member of the British Parliament?

Mrs Villiers: What I have focused on is making good the promises that were made in the Conservative manifesto to deal with dual mandates between the Assembly and the House of Commons, to focus on the issue that has caused concern in Northern Ireland.

David Simpson: With the greatest respect, Secretary of State, there are a lot of things in the Tory manifesto that did not happen, but we will not go into that either.

Chair: We might do later.

Q528 David Simpson: Pushing on further from what Kate has said, it gives the impression that a special arrangement has been made for those in the Dáil who can come up and be Members of the Assembly. That gives the impression that special status has been given there, and it has not been given to the rest of the United Kingdom. Why is that? Surely that is nonsense and should not be allowed. It should be taken out.

Kate Hoey: I noticed one of your officials was smiling. Would any of your officials like to mention how it got into the Bill?

Mrs Villiers: The reality in this Bill is that we are seeking to address concerns that have been expressed through the consultation over the last few years. There was clearly a concern that dual mandates between this Parliament and the Assembly caused concern; that is one of the reasons why all the political parties have reached the conclusion that they should probably be brought more or less to an end. I know that is not unanimous, but there is a recognition that dual mandates are not appropriate for the House of Commons. That concern has not manifested itself in relation to the Dáil up until now. As I say, I am happy to continue to keep this matter open.

Ian Paisley: Secretary of State, in evidence we have found that all the parties, even those that continue to hold dual mandates, are ending those dual mandates. Either they have completed ending them, are in the process of doing so or are about to, which shows that the trajectory is the right way. Whether legislation is therefore necessary after 2015, who knows? But what is amazing is that, when we put this point to some parties, they believed that the Irish law precluded a TD from being an MLA. The Irish law does not. Therefore, there probably will have been a significant degree of ignorance about the anomaly that is being created. I wonder if it was by accident or design that this is here. I hope it is by accident. I would always give you the benefit of the doubt, Secretary of State. Your officials may have a different point of view, but I would give you the benefit of the doubt.

Q529 Naomi Long: Just on the issue, I think perhaps the reason this has not been raised by the general public is that there have not been many instances of double jobbing, whereas it was very live in the public mind because of the degree to which there was double jobbing between Westminster and the Assembly. There are historical reasons why that is the case. My argument very strongly, and that of my party, would be that those arguments no longer hold—the instability in the Assembly and other things. That ship has sailed. I do not agree with Ian when he says there is unanimity on how that should be handled, because I have heard Members of this Committee make an argument for continuation of dual mandates, so I would be in favour of legislating. I think if we are doing that, it is because we believe that these are full-time roles that require full-time commitment, and that is what we are aiming towards. That argument would hold true for Members of the Dáil. It is a full-time job with full-time commitment. The same conflicts of interest could arise, and the same challenges of how you can be in two places at one time would arise. So the arguments in favour of ending dual mandates do apply in the case of dual mandates with TDs and the Assembly. I am not going to impugn anybody’s integrity or suggest people were trying to create a deliberate difference. It simply was not on the radar because the only TD who we had, who was elected to the Assembly, did stand down. So there was not a conflict; it happened automatically.

Ian Paisley: They did not get good legal advice.

Naomi Long: Obviously not. I dare say now we have the legal advice some people may want to reverse it, which is another good argument for why it would be important, when we have this opportunity, to make sure it is fair and equitable and treats both the same. The arguments are the same in either direction, and it makes sense, if the argument is substantive, that people should be committed to doing one job and focused on that. We should take that to its full extension. To be fair, Ian is right. One of the reasons
Gerry Adams stood down when he became a TD was the expectation that he could not hold both posts, as opposed to the choice that he would not hold both posts.

Now that it is clear that that was perhaps not accurate, there is an opportunity here, with fairly minor import and implications in terms of immediate representation in the Assembly and so on, to actually resolve the issue.

Mrs Villiers: The Committee has made its view clear on this, and I will reflect on the views you have expressed.

Q530 Oliver Colvile: Just taking it a stage further, not only is it the case that Members of the Northern Ireland Assembly can actually be part of the Irish Parliament but also Members of the Northern Ireland Assembly can be Members of the House of Lords as well. We have said that we are not going to have double jobbing for elected Members of Parliament, but they can be appointed to the House of Lords. Don’t you think that is a bit of a dichotomy?

Mrs Villiers: In some ways there is the same issue here. It is not something that has caused a huge amount of public concern in relation to the House of Lords in the same way it has with the House of Commons. We do need to recognise that the House of Lords, as currently constituted, has always been a different type of set-up to the House of Commons. It has always recognised that people would continue to hold other jobs and have outside interests. The rationale for a change in relation to the House of Lords simply is not as strong as it is in relation to an elected House, in the House of Commons.

It is also worth bearing in mind that, as House of Lords reform progresses—obviously radical reform of the House of Lords does not look like it is going ahead any time soon, but there are more modest reforms allowing peers to retire and things like that—in the future the House of Lords may well wish to look at this matter themselves in relation to dual mandates as part of a wider package of reform. Again, we really wanted to focus on what was promised at the General Election and what people in Northern Ireland had expressed concern about, which was the House of Commons.

Q531 Oliver Colvile: Hypothetically, what could happen is that a Member of the Assembly could not only be a Member of the Southern Ireland Parliament but a member of the House of Lords as well. Not only could they be double jobbing; they could be triple jobbing as well. They could be in Northern Ireland on a Monday and perhaps on a Tuesday; they could go down to the Dáil on a Wednesday; and they could come here and the House of Lords on a Thursday. They could have a wonderful time travelling around the country.

Mrs Villiers: When it comes to legislating and changing the law of the land, we need to focus on scenarios that are likely. I do not think there is an immediate likelihood of triple mandators from the Dáil, the Lords and the Assembly.

Oliver Colvile: It is an interesting concept, though, which I suspect you had not thought about before either.

Naomi Long: You are barred from sitting in two sovereign Parliaments.

Q532 Chair: I do not think you can be in two sovereign Parliaments. Leading on from that, there are no double jobbers, I think, from Scotland or Wales at the moment; there are only three from Northern Ireland. Would it not be sensible, while we are doing it, to include Scotland and Wales in that concept?

Mrs Villiers: It is certainly not impossible that, in due course, the Government will choose to legislate on Scotland and Wales as well. It is something that is certainly being considered in the Welsh context. As you say, there are not currently any dual mandates between those two Assemblies and the House of Commons. The reality is that it has been more of a characteristic of Northern Ireland politics than it has been in Wales and Scotland. That is for understandable reasons—concern about the Assembly collapsing, for example—but, as Naomi pointed out, those reasons have largely gone away in relation to Northern Ireland, so we feel it is time this practice came to an end.

Q533 Chair: One question we have put to witnesses is: is it for the Government to say you should not be an MLA and an MP? Is it not for the electorate to look at it and decide? For example, they might say that Sammy Wilson, Finance Minister, going to Westminster is actually a pretty good idea. Is it not for the electorate to decide rather than Parliament?

Mrs Villiers: We feel that there is a strong enough case to legislate. It has been a cause of concern in Northern Ireland in recent years, and the fact that so many of the political parties are supportive of that move is also important in our decision making.

Q534 Naomi Long: That point has been raised before: that the public have the right to decide. In the case of a Westminster election, for example, in the South Antrim constituency, people will weigh up two things. They might want to vote DUP in South Antrim but the only candidate there is also an Assembly Member. Then they have to decide whether they want to vote for the DUP or for someone who will only be doing one job. That might not completely influence their decision to vote for someone else. The fact that people get re-elected, even though they hold dual mandates, is not necessarily evidence that the public are not disquieted by the practice but perhaps evidence that their loyalty to the particular political party exceeds their concern about it. We need to be cautious of assuming that people being voted for when they have a dual mandate means that people are accepting of that particular practice. It is very telling that all parties committed, prior to the last Westminster election, to ending dual mandates, so many of the people who voted for those with two mandates did so in the expectation that that would not continue in this parliamentary term.

Mrs Villiers: Yes, it is a fair point that people vote on a range of issues at a General Election, and it may be that the potential for a dual mandate is lower down the list of their priorities compared with other priorities.

Ian Paisley: But it is high enough for you to legislate.
Naomi Long: I am sorry, it is East Antrim. I should not move Sammy into William’s territory, that could cause problems.

Q535 Nigel Mills: Isn’t the point here that we have a choice of letting the electorate decide or choosing to legislate, because we decide that double jobbing is such a bad thing?

Oliver Colville: Or triple jobbing?

Nigel Mills: Aside from your strange scenarios, Oliver, let us just stick to double jobbing. I presume the principle here is that you should not be a Member of the House of Commons and be a member of anything else at all, or you should not be a Member of the Assembly and be a member of anything else at all. If we are legislating, shouldn’t we legislate for that principle? If you want to serve in the Assembly, you should not serve in any other Parliament or Assembly anywhere else—which therefore excludes the House of Lords, the European Parliament and the Irish Parliament. Shouldn’t we say that is the principle we are going for, rather than one item out of the principle? That is what the plan is now.

Mrs Villiers: I think we have to focus on the areas that have caused concern. I do not think we need a dogmatic approach to the House of Lords, for example. There has been a problem in relation to the House of Commons and the Assembly. It is something that various reports have commented on: the proliferation of dual mandates, or indeed in some cases in the past we had people who used to have a triple mandate with the European Parliament. We fought an election on a manifesto that called for an end to dual mandates between the Assembly and the House of Commons. We are seeking to put that promise into effect.

Q536 Nigel Mills: Isn’t it better to end double jobbing completely rather than just risk moving it to a different set of double jobbing? If what we are saying is it is wrong to be in the Assembly and have somewhere else taking up part of your time, that should be wrong in every situation.

Mrs Villiers: As I said, the House of Lords continues to be a different institution. Its members, on the whole, are not paid salaries in the same way those of the House of Commons are. It has always been a Chamber that drew on people who had a job outside of their role in the House of Lords. As I said, if the nature of the House of Lords were to change in the future, in particular if they were to adopt more flexibility in terms of leaves of absence and retirement, then maybe they would want to include in that looking at the dual mandate question again. With the way the House of Lords is at the moment, the concern and need for legislative change just is not there in the same way as it is in relation to the elected Chamber.

Q537 Nigel Mills: What about the European Parliament, which does not have the same advantages the House of Lords has?

Mrs Villiers: At the moment dual mandates are not permitted between the European Parliament and the House of Lords or the House of Commons. My understanding is that they are permitted between the Assembly and the European Parliament. Again, it would be a matter for the European authorities to consider whether they want to make a change on that score. We are, as I say, pressing forward with the commitment we made on double jobbing in our manifesto. As far as I understand, we did not include in our manifesto a reference to potential dual mandates between the European Parliament and the Assembly.

Q538 Ian Paisley: We should make it clear that this was your manifesto in Northern Ireland.

Mrs Villiers: It was in our manifesto in Northern Ireland, yes.

Ian Paisley: And you did not get anyone at all elected in Northern Ireland. I am sorry to rub the point home.

Mrs Villiers: It is alright.

Ian Paisley: It does not carry that much weight with the electorate, if these points were made to the electorate and they did not endorse them.

Mrs Villiers: I am shocked, Ian, that you are saying that what is in one’s manifesto does not make much of a difference.

Ian Paisley: When you do not get elected, you might have to review it.

Q539 David Simpson: Secretary of State, where do you draw the line when it comes to double mandates? We take the House of Lords example, which is not an elected house. For example, in the House of Commons we have barristers and lawyers who commit two days a week to the House of Commons, and the remainder of their days are spent in the courts defending people. There are scenarios of that case. I am not condemning them for that, by the way. I think that in elected life you need people with all skills. A survey recently was carried out, last year some time, about how many MPs actually had ever any experience in running a business or were running a business. There were 47 out of 650. You need people with all sorts of skills.

Chair: You were one, I think.

David Simpson: I was one.

Naomi Long: Yes, that is why he is highlighting it.

David Simpson: Yes absolutely, and I make no apology for that. Where do you draw the line in this whole thing? At the end of the day, double mandates are going but surely there should be a practical balance in all this?

Mrs Villiers: Certainly we do look at practicalities. Yes, of course, MPs engage in outside interests.

David Simpson: Very well paid outside interests.

Mrs Villiers: The concern in Northern Ireland about this issue is reflected in the fact that almost all of the political parties in Northern Ireland have accepted that it is time for dual mandates between the Commons and the Assembly to end. It is a sign of the maturity and importance of the Executive and the Assembly that it is now recognised that it is better for people to focus on one or the other, rather than seeking to do both. Yes, of course it is important for MPs to have a perspective that goes beyond just their job in the House of Commons. It does not detract from the fact that there is a recognition that dual mandates and
double jobbing have been a problem in Northern Ireland. It is time to move on. The circumstances that could have justified their routine use in Northern Ireland simply no longer apply.

Q540 Oliver Colville: Can I slightly move it on? The key issue also is that we want to make sure we rebalance the Northern Irish economy. That is an important thing to happen. One of the things that is incredibly useful for me as a Member of Parliament is that I can come and find you in the Lobby, talk to you about issues, and I am not going to be dependent on the Civil Service structures and things like that, so I can have a relationship with you as an individual. Sammy Wilson is not only the Finance Minister in Northern Ireland but also is a Member of this House. How useful do you find it to have that interaction? How can we ensure that, if we are going to stop double jobbing, those relationships continue to happen and are not going to be somewhat neutralised by the fact that everything in this House has to go through the Civil Service?

Mrs Villiers: I am very confident that we can retain very close and constructive links with the Assembly and the Executive in the absence of dual mandates. I very much enjoy the opportunity to see the Northern Ireland MPs in an informal setting in Parliament. That is a very important channel of communication, which will still be available with the end of dual mandates. It is always going to be important for MPs and Ministers here to have very good working relationships with Ministers in the Northern Ireland Executive. That is crucial. We have a joint interest of rebalancing the Northern Ireland economy and building a shared future. I do not think we need dual mandates to make those relationships work properly.

Q541 Oliver Colville: Do you think that one of the ways we might actually make sure we continue to have that interaction between politicians is to say that, fine, they cannot go into the Chamber and participate in debates and things like that, but they can have access to the Estate? Is that an option?

Mrs Villiers: That is the first time I have heard that suggestion. Obviously it is a matter for the House’s authorities who have to decide to admit to the Estate. I do not think that access to the building is the key issue here. The key issue is making sure that I, as Secretary of State, and my colleagues in Government keep in very close touch with Northern Ireland Executive Ministers. To be honest, in terms of my contact with Sammy, they more often take place in Northern Ireland in his role as Minister than they do in the corridors in the House of Commons.

Q542 Naomi Long: On that point, I can only speak as somebody whose party leader has never been in Westminster. I am the deputy leader. With our Ministers there would be no sense that their brief would benefit from being in Westminster as well. I know that David Ford, as Justice Minister, has particular relationships with the Northern Ireland Office, as required for security reasons, and it seems to function perfectly well. The same would be true, to a lesser degree, because of the degree of devolution of issues, in terms of contact for example between Stephen Farry and BIS. We certainly would not make an argument from our experience that that is an issue, but it would be interesting to know whether, as Secretary of State, you feel that there is a distinction between how Ministers can engage. Obviously you, as Secretary of State, have a particular focus on Northern Ireland and spend time there. That would not be the case for the Business Secretary or the Chancellor and so on. Do you feel that there is perhaps an argument that those direct relationships may be more difficult? It is not our experience but it may be something that other Members are concerned about.

Mrs Villiers: I find that I have just as good a working relationship with, say, Arlene Foster as I do with Sammy Wilson, despite the fact that Arlene is not a Member of Parliament and Sammy is. I also have a particularly close working relationship with David Ford. I genuinely think that is the case for my ministerial colleagues as well. There is a lot of contact between us, for example, in this whole debate on the National Crime Agency. I know my Home Office colleagues have been in very regular touch with Executive Ministers. It is very much the same in relation to welfare reform, because we completely understand how sensitive these decisions are in Northern Ireland.

Again, those conversations on the whole have tended to take place Minister to Minister either in London or in Northern Ireland. I do not think a huge amount has come through informal processes via MPs who also happen to be Executive Members or Assembly Members. I genuinely think we can maintain these close working relationships in the absence of dual mandates.

Q543 Chair: This is probably a good point to move on to changes made to the Justice Minister. You stopped short of putting it into the d'Hondt system. Would it not be wise at this point to take that opportunity? Have we not moved on sufficiently in terms of relationships to move in that direction?

Mrs Villiers: The post remains very sensitive, so I believe there is still a case for a cross-community vote. Given the huge effort that went into building the confidence needed to enable the devolution of policing and justice powers to go ahead, I think we have not moved on sufficiently to move to a system where this is one post among others that gets allocated according to the d'Hondt system. I think a cross-community vote continues to be a sensible way to deal with this. If there is further normalisation in the future, and the sensitivities and the tensions around the portfolio lessen over time, then we can come back and look at that.

If we were to move to a straight d'Hondt system, that would be perceived as destabilising the devolution settlement of policing and justice. I have not seen a broad-based push for that. Most people seem to think that the changes in relation to the Justice Minister’s security of tenure are fairly sensible and necessary. I have not had representations telling me that we should do something different and move to a simple d'Hondt process.
Q544 Kate Hoey: What would happen if no Alliance members got elected to the next Assembly?  
Mrs Villiers: It is not impossible for a member of a different party to command support across the community. I think a lot depends on the personality of the individual concerned and, again, there is progress towards reducing sensitivity in this area. There is the fact that the PSNI enjoys a considerable degree of public support; its approval ratings are very high and its efforts on community policing have been very successful. Obviously we have seen a bit of controversy recently over the flags protest, but overall there is a broad degree of public support for the PSNI. Over time that may mean that the sensitivities lessen. I do not by any means see that the justice portfolio is one that has to be held by a particular party. You just need a candidate who can engender confidence within both parts of the community. That is not impossible for someone from a nationalist party and it is not impossible for someone from a unionist party.

Q545 Ian Paisley: I agree that hopefully sometime in the future the Assembly will be ready to do that. You have mentioned some of the difficulties, and you identified the National Crime Agency and the failure of the Executive to legislatively consent for that matter. Are you minded to put in a mechanism or indeed deliver that National Crime Agency to Northern Ireland over the head of the Assembly, given its national importance both to criminality and indeed to national security, knowing that it will cause problems but hopeful that the place is still mature enough to accept the fact that this is the sovereign will of this place?  
Mrs Villiers: We have no plans at the moment to go ahead with an NCA role in the devolved sphere without a Legislative Consent Motion. We are certainly looking at the possibility of an NCA role in relation to expected matters and how that might operate. Really, assuming the Executive sticks to its decision not to accept the NCA for devolved matters, it is up to them to look now at how they develop the alternative capability they would need to replace the work currently done by SOCA.

Of course, I am very disappointed that it looks like the Executive is not going to accept an NCA role in relation to ordinary policing and criminal matters. We certainly worked hard to ensure that the new legislation was consistent with the devolved settlement and retained the primacy of the Chief Constable, retained the important role for the Police Ombudsman, and also ensured there was a relationship with the Policing Board as well. The Home Secretary was very keen to provide assurance. David Ford asked for a number of changes, which the Home Secretary was prepared to give in order to make sure that NCA’s role was consistent with the devolved policing settlement. Sadly, it has still been impossible to achieve the Legislative Consent Motion, which I think is very disappointing.

NCA could have brought real advantages in assisting the PSNI in relation to child protection, cybercrime, organised crime and international crime. Obviously the cross-border work of the NCA would have been particularly helpful in Northern Ireland with its land border.

Q546 Ian Paisley: That is why I share your discontent. I am wondering if there is more that you could do to cajole the Assembly or the Executive into doing this by reminding them that actually power rests here and that this place could legislate on this matter, or indeed could put it in place, and the Assembly would be better accepting it—as I think the majority vote has, but a quirk of the system means it is being held back because of a minority opinion. We do know that significant players, criminals like Mr Hughes and Mr Murphy, who are involved in serious organised crime on our border, are associated with a political party in Northern Ireland, and stop this from happening; they have significant gains to make as a result of this legislation not going through. Surely you need to just cajole them a little bit more and say, “This is happening and we are going to protect all the citizens of all the United Kingdom, no matter which side of the Irish Sea they live on.”  
Mrs Villiers: I am continuing to make the case for NCA’s role in Northern Ireland. I think it could be very helpful in tackling serious crime. I know that David Ford has worked very hard, not only to get the changes needed to ensure the framework is consistent with the devolution settlement, but in terms of seeking to persuade his Executive colleagues that a role for NCA in Northern Ireland is appropriate. I will continue to make that case, certainly.

Q547 Kate Hoey: Again, could I push you on this? These are United Kingdom citizens in Northern Ireland who are going to be suffering the effects of what should be a United Kingdom issue in crime prevention cross-border and all the things this Committee has been looking into. Why is the Secretary of State and the Northern Ireland Office so reticent always about exerting the idea that Northern Ireland is part of the United Kingdom, this is in the interest of the United Kingdom as a whole, and therefore we are going to step forward and bring this in if we cannot get the Northern Ireland Assembly to do what they should be doing?  
Mrs Villiers: I am afraid that is the way devolution works. That is the inevitable consequence of devolution. There will be instances where the UK Government wants to do something but the devolved Executive does not. As things are at the moment, the devolved Executive gives every indication that it does not want the National Crime Agency to be operating in relation to devolved policing matters.

Yes, technically speaking, that could be overruled by a vote in Parliament, but that would have constitutional implications in relation to the Sewel Convention, for example. Of course, policing and justice continues to be particularly sensitive, not least because of Northern Ireland’s history. It would be quite controversial if we were to go down the route of seeking to overrule the Executive, which is why at the moment we have no plans to do that.

Q548 Naomi Long: On that specific point, you have referenced the changes made by the Home Office to
ensure that the NCA was compliant with all of the
devolved arrangements and policing structures, and
that is important. There is the other aspect of it. I
believe that those who opposed it have said that they
have a series of issues that they are concerned about.
Is there any prospect of those issues being addressed
with the Home Secretary, so if there is any robustness
or substance to them, they can actually be resolved,
or is there any prospect of people actually changing
position—is there anything that you detect there as
room for manoeuvre as opposed to having to go in
and actually override the decision of the Assembly? I
know our perspective on this was that those issues had
been addressed and that in some ways they were a red
herring that were being raised in the Executive. Has
any analysis of the issues that were raised been done
by the Home Secretary, has any response been
provided on those, and is there any prospect of
progress with the parties who, to date, have held us
back? It is hugely important. Somebody recently was
arrested and accused of being involved with the
Calabrian Mafia and so on. We are talking about crime
here that does not have borders, so the idea that we
are not networked into those powerful institutions puts
us at risk. I would be interested in your take on that
in terms of how it can be resolved.

**Mrs Villiers:** The Home Secretary really was trying
very hard to reach an accommodation. As well as the
changes announced, she was very much prepared to
look at whether there were further compromises that
could be made. The discussions have not so far
provided the answers wanted by the two nationalist
parties who are opposing this in the Executive. It got
to the point where it felt like whatever was offered
would not ever be enough for Sinn Féin or SDLP,
which is very unfortunate. There have been continuing
conversations on this matter, and I know that the
Home Secretary remains open minded in terms of
trying to get a solution on this.

Obviously the timing of the legislation is such that we
have pretty much run out of road on this. If it is not
agreed now, it looks very difficult to find a way to get
it agreed. Certainly the Home Secretary was prepared
to consider further changes, but there was no
indication that they would be sufficient to bring the
nationalist parties on board here.

**Naomi Long:** That confirms what I thought.

**Chair:** Does anybody have any questions on other
matters that are in the Bill? Then perhaps we could
look at one or two other issues.

**Q549 Ian Paisley:** I have one issue that hangs over
from a previous discussion. For the record, can you
clarify if you, Secretary of State, or any of your
officials have had any conversations or any
communications with the Irish Government about the
TD/MLA dual mandate issue?

**Mrs Villiers:** I certainly have not discussed with the
Irish Government our proposals on dual mandates. It
does not look as if my officials have discussed those
matters, given that they are internal to the UK.

**Q550 Ian Paisley:** Again, on the NCA, has there
been any cross-border, cross-Government discussion
at a national level?

**Mrs Villiers:** I have had a number of conversations
with Irish Ministers on this. I have certainly discussed
it with Eamon Gilmore and with Alan Shatter, setting
out our concerns and seeing if there is any influence
they can bring to bear in terms of the debate. Our
working relationship cross-border is very important in
relation to our efforts to tackle both criminality in its
ordinary sense and terrorism. A high-quality, cross-
border operation focusing on criminal matters in the
NCA would be helpful in terms of improving still
further our relationship with the Republic of Ireland
when it comes to policing matters.

**Q551 Oliver Colvile:** There are two other issues,
though. One is to do with the size of the Assembly
and the other one is moving the timetable for the
election. To have your thoughts on that would be
helpful.

**Mrs Villiers:** Yes, in terms of the size of the
Assembly, obviously a number of political parties that
responded to the consultation indicated they were
content to see the Assembly reduced in size, but we
are yet to have a joint position from the Executive. In
light of that, we felt unable to put it in the draft Bill,
but there is still time for it to go in the final version
of the Bill if consensus can be built. I would be
interested to hear what NIAC concludes is the best
option. There seems to be quite a considerable degree
of public support for a slightly smaller Assembly,
given the comparison, for example, with the Welsh
Assembly, the Scottish Parliament or indeed the
London Assembly. I think the London Assembly has
25 Members for 8 million people. There is quite a
contrast between some of the other Assemblies in the
UK, which would suggest that a move to a smaller
Assembly would make sense, but we are still waiting
for the Executive to give us its formal position on a
reduction in the number of Members.

**Oliver Colvile:** My view is that the more we can
reduce the number of politicians, the better. Indeed
that has been the thrust we had not only in the
potential reform of the House of Lords but what we
were seeking to try to do, which the Liberal
Democrats voted against. I think the London Assembly
is a good example of potentially reducing by 500 down
to 600 if we are in the business of trying to send
messages out, that would be a helpful thing to do in
my opinion, but I do not speak for others.

**Q552 Chair:** That view was certainly put forward by
a number of witnesses, as was a point we touched on
briefly earlier, which is the lack of opposition as such.
I accept that there are different strands of opinion
within the Executive, obviously, but it was something
that came out from a number of witnesses.

Interestingly there was not consensus about how you
structure the Assembly to bring that about, and I
suspect that is where the difficulty comes in. Would
you like to say a little bit more about that?

**Mrs Villiers:** On Government and opposition?

**Chair:** Yes.

**Mrs Villiers:** I would be happy to. I would like to see
that change happen. A more conventional opposition
set-up would be good for politics in Northern Ireland,
so long as a way could be found that would be
consistent with the principles of power sharing and inclusiveness contained in the Belfast Agreement. It is entirely possible to set up a system that would be consistent with those principles.

As yet, we do not have a broad enough consensus on that. As I have said, the levers are already in the hands of the Assembly. If they want to change the way they allocate speaking time and the way they allocate financial support for Assembly members to incentivise or set up a formal opposition, then it is within their hands to do that. As I say, there are a few more weeks before the final Bill has to be produced. If those who want a Government and opposition are serious about doing it and want something in the legislation, then it is important that they build support for it amongst different political parties. Like all constitutional change, it is best to do that on the basis of consensus, and that is particularly important given the sensitive balance enshrined in the Belfast Agreement.

Q 553 David Simpson: I just want to follow up something I think Oliver mentioned in part of his question. In relation to the current mandate of the Assembly, for which the elections are due in 2015, would it not be sensible to have them on the same level as Scotland and Wales and to extend the mandate for another year?

Mrs Villiers: Certainly arguments have been put forward to extend the mandate to 2016. I know that at least some of the political parties would like that to happen. To be honest, the results of our consultation were not terribly conclusive on this. There was very little opinion put to us—it, but then there were not that many responses. When it went into the consultation, under my predecessor, he always made it clear that we were open-minded and prepared to look at the case for an extension of the Assembly term. But it is quite an unusual thing to do, and we would have to be clear about the benefits it would bring, the additional achievements that could be made by the Executive in that extra year, and also have a very clear case made publicly to that effect by the Northern Ireland political establishment. As yet, we do not feel that case is out there being made, but there is still time before the Bill needs to be finalised, so we remain open. If the Executive and the Assembly can make the case for this and they can make the case for it convincingly, then, yes, we may well choose to put it in the Bill.

Q 554 David Simpson: You may not know this but your officials may know: how many responses were there to that consultation?

Mrs Villiers: Overall it was only about 25 or so.

Q 555 David Simpson: Out of 1.7 million people?

Mrs Villiers: Indeed. That is why I say we have not had a conclusive answer from the consultation. Although the responses on the whole were not positive about an extension of the term, there were not many responses. That still leaves the question open.

Q 556 Chair: Why do it, is the other question, isn’t it? If it is to avoid coinciding with elections here, then, yes, we have Fixed-term Parliaments Act, but there could be an election in 2016 in this place; it is not beyond the realms of possibility is it?

Mrs Villiers: It is important to look carefully at this issue about whether having elections on the same day causes a degree of confusion, and also the issue about whether a General Election would overshadow the Assembly elections in a way that would not be helpful to Northern Ireland politics. I can understand concerns on that, which is why it was in the consultation and why we remain open to doing it. However, because it is quite a significant step to give an Assembly five years when it was, technically speaking, elected on four years, we need to have a clear case in favour of that made by the political establishment in Northern Ireland. They may well be capable of making that case, particularly in relation to what they would be able to achieve with that extra year.

Q 557 Kate Hoey: This is sort of relevant to this Bill but not directly. There is intense frustration that we still pay people huge amounts of money who do not take their seats. Is there anything more that you can do, as Secretary of State, to either ask those Members to take their seats— and I am sure they would listen to you—or, more importantly, in terms of stopping the money they are getting, which seems to those people who do not get any representation here in Parliament to be quite wrong.

Mrs Villiers: I would like to see all people elected as MPs for Northern Ireland taking their seats. That is something I have said to Sinn Féin, as have previous Secretaries of State. In terms of the position in relation to allowances, you will appreciate that this is a House matter as far as representative money is concerned, and it is a matter as far as the other allowances are concerned. I know that it has been highlighted on a number of occasions by the DUP and by Nigel Dodds. If the House were to express a view on this, then my colleague, the Leader of the House who has responsibility for these matters, would look very carefully at whether changes to the status quo are needed. There are issues, of course, if people know who they are voting for, with Sinn Féin being elected on an abstentionist platform. I know that there are concerns about the way the current system is working, and we will consider them carefully. It is a matter really for the House, perhaps through the Backbench Business Committee, to express a view, and then we will reflect on that as a Government to see whether changes are appropriate. Certainly the best way to solve this would be for Sinn Féin MPs to take their seats; then this issue would go away as a problem. That would be the best outcome for everyone.

Q 558 Chair: We put that to them. In fact it was the first time ever they had given evidence in a public evidence session last week, which we felt was a significant move forward. We did press them on that particular issue. On allowances, it cannot be for IPSA to decide something of that magnitude; that has to be taken in Parliament surely?

Mrs Villiers: Legally, IPSA can do what they want here, but my understanding is that they have given an indication they would like a steer from Parliament on this.
Q559 Chair: They usually do what they want, but I think that issue is too big even for IPSA to handle. There is one other question on the capacity to deliver two elections on the same day. Are you happy that the Electoral Office for Northern Ireland has that capacity and resource?

Mrs Villiers: I think they do have that capacity, yes. The practicality of running two elections on a single day is not really the issue here. The issue here is whether that is best in terms of voters’ understanding of the political issues, and whether there is a case for saying that the Executive is going to be able to deliver dramatically more with an extra year than it could within its current term.

Q560 Nigel Mills: Can we ask about how the Bill will proceed?

Chair: Yes, that is a good point. When do you envisage the Second Reading being?

Mrs Villiers: My understanding is that we are still in the core number of Bills the Government is hoping to take forward in the third session. Final decisions on which Bills will go forward have not actually been taken yet. We would certainly hope to present the legislation pretty soon after the start of the third session. Again, that is a decision by the business managers that has not yet been made. As soon as we have further information that we can share with the Committee, I will certainly do that.

Q561 Nigel Mills: Are you envisaging this Bill being referred to a Northern Ireland Grand Committee or will it just have an ordinary Second Reading?

Mrs Villiers: I was envisaging an ordinary Second Reading, but we have not made final decisions on exactly the way in which it will proceed through the House.

Q562 Nigel Mills: I guess there are some constitutional issues in this Bill. Will it be a Committee of the whole House or will it be an ordinary Bill Committee up here?

Mrs Villiers: Again, we have not made a final decision, but I was assuming it would be a Committee in ordinary way. If that is an issue that NIAC wishes to provide advice and views on, I would certainly be interested to hear those.

Q563 Chair: Given that it involves Members of the House, it may be something we would express a view on. I do not know what that view would be.

Mrs Villiers: It is certainly worth considering that kind of approach.

Chair: Thank you very much indeed Secretary of State. Could I ask all Members to stay behind just for a few moments, but the public evidence session is over.

Mrs Villiers: Thank you Chair.
Written evidence

Written memorandum from the Green Party in Northern Ireland

1. Are the proposals in the draft Bill sufficient to balance the dual objectives of increasing transparency of political donations and providing proportionate protection to past and present donors? Could they be improved, if so how?

The Green Party regards the present lack of transparency in donations to political parties in Northern Ireland as completely incompatible with a functioning, fair, honest and accountable democratic system. Every political decision in Northern Ireland is open to questions of undue influence from vested interests—from planning decisions to procurement contracts.

There is little doubt that the situation created as a result of the lack of political transparency in Northern Ireland is undermining trust in the democratic process. The general belief that politicians are not acting in the interests of the people was arguably one of the key reasons why violence manifested on the streets in the past months.

The Green Party strongly recommends that the legislation should end the right for donors to remain anonymous and that the information about all donations, including those donations made during the prescribed period, should be made available to the public.

The Green Party recommends that, given the smaller size of political parties in Northern Ireland and the fact that smaller amounts of money could result in greater levels of influence, the level at which donations ought to be declared to the electoral commission and published should be lowered from £7,500 per year to £500.

Comments on the Bill

The Green Party notes that the enactment of clauses 1 and 2 in this Bill would end the need for Westminster to renew the prescribed period through primary legislation if it wanted to extend donor anonymity beyond 2014. The Green Party is therefore very concerned that this bill would establish a lack of donor transparency as the norm in NI rather than as the exception.

The Green Party notes that this Bill proposes to facilitate retrospective anonymity for donors who made, or make, donations between 1 November 2007 and 30 September 2014. The Green Party are strongly against this proposal and would question the Government’s rationale for implementing retrospective anonymity to protect donors if the Government decides to open up other donations to transparency on the basis of their assessment of the security situation.

The Green Party would also question what justification the Government has for keeping all the other information about donations, such as how much was donated and on what date secret from the public. In addition, we would also question the appropriateness that under this Bill the Secretary of State rather than an independent third party (such as the Chief Constable) will continue to assess the security situation and, therefore, the extent to which donors ought to remain anonymous.

2. The draft Bill contains clauses which would prevent Members of the House of Commons from sitting concurrently in the Northern Ireland Assembly. To what extent are the Government’s proposals on dual mandates justifiable and proportionate? Should a similar provision apply in respect to Members of the House of Commons sitting in the Scottish Parliament and Welsh Assembly?

The Green Party agrees that there is a need to end dual mandates and considers the proposals outlined in the Bill to be reasonable.

3. Should the Government consider including a clause in the final Bill which permits the leader of a party to hold a dual mandate as both a MLA/MP?

The Green Party does not believe that such a clause is necessary and notes that MEPs are not permitted to hold dual mandates.

4. To what extent do the Government’s proposals relating to the appointment and tenure of the NI Justice Minister adequately reflect the expectations of the Northern Ireland Assembly and the wider community in Northern Ireland?

The Green Party notes the anomaly that a party with only 8 seats in the Assembly currently controls two ministries. We therefore concur with the Government’s proposal that the Justice Minister should be appointed through d’Hondt in the same way as all other Ministers on the Executive.
5. In addition to the clauses pertaining to Electoral Registration and Administration, the Government had stated that it intends to implement recommendations made by the Electoral Commission in its 2012 report on the electoral register in Northern Ireland. What further issues should the Government consider in order to ensure that the electoral regime reflects high performance standards?

The Green Party notes the recommendation of the Electoral Commission in their 2012 report to conduct “a review of the current arrangements in place for data matching and consideration of other data sources that could be used to enhance the accuracy and completeness of the electoral register” and would suggest exploring the potential of using NHS Medical Card Data (for address changes and people entering the register at 18) and Register of Deaths data (for people exiting the register due to death) to update the electoral register as they tend to be much more accurate than other sources.

6. The Government has identified a number of measures which are still under consideration for potential inclusion in the final Bill. These include the size of the Northern Ireland Assembly; Length of Assembly Terms and Future Election Dates; Government and Opposition; and Devolution of responsibilities relating to Arm’s-Length Bodies. The Government has made clear that any significant institutional changes would only be made on the basis of broad consensus among both NI parties and the wider community

(a) What steps, if any, should the Government take to build consensus on the matters still under consideration? Is sufficient consensus on any of these issues likely to develop before this draft Bill completes pre-legislative scrutiny?

The Green Party is strongly of the opinion that given that the changes proposed would alter the Agreement, they would need to be endorsed through a referendum by the same people who endorsed the Agreement. As such, we do not consider the Government’s proposal to include them in the final bill as appropriate and we would contend that any changes to the Agreement without the consent of the people undermines the legitimacy of the framework of the institutions. Similarly, we do not believe that the Government is likely to secure sufficient consensus with the parties on these matters unless they engage the public in a much broader debate. The Green Party would recommend that the British and Irish Governments should initiate a much broader civic conversation to enable a much wider public discussion of the issues outlined above and to examine ways in which the institutions could be reformed. The Irish Constitutional Convention is one example of a model on which to base such a civic conversation. The dispute over flags and emblems which manifested as a result of a sense of disengagement alongside continually falling turnouts in elections signals that there is a very real need to reengage the public with the political process. We contend that there is also a need in a civic conversation to examine the other aspects of the agreement which have not been fully implemented including a civic forum and a NI bill of rights. In addition, a civic conversation presents an opportunity to come to a long term Agreement on the dispute over flags and emblems.

(b) If not, what timetable would be realistic so as to tackle these issues with the agreement of Northern Irish parties?

As outlined above we believe that the timetable for reform ought to be based on the outcome of a civic conversation.

(c) What work is already being undertaken on these issues within the Northern Ireland Assembly?

The Green Party is not represented on the Assembly Executive and Review Committee, the body responsible for discussions regarding Assembly reform at the NI Assembly.

7. The number of seats in the Assembly would have decreased from 108 to 96 as a result of the planned reduction in Westminster constituencies associated with the Parliamentary Voting System and Constituencies Act 2011. However, the House of Commons has decided to delay work on a boundary review which would be needed to facilitate this change until the next Westminster election (which is scheduled for 2015)

(a) What, in your opinion, would the optimum number of MLAs be and why?

The Green Party is committed to a smaller Northern Ireland Assembly and elected a form of multi-member constituency PR-STV with a “top-up” regional list. Assuming this, the Green Party believes that 4 MLAs should be returned from each constituency and that there should be a top up list of MLAs elected on a regional basis with the size of the list equal to the number of constituencies. This would equate to 90 MLAs in total.

We argue that the Assembly electoral system is critical in determining how representative the Northern Ireland Assembly is. By excluding consideration of electoral systems the AERC has eliminated the possibility of examining how to make the Assembly more representative (in terms of minority views, number of female representatives etc) at the same time as delivering a smaller Assembly.

(b) Should the Government consider legislating to reduce the number MLAs as part of the final Bill, or should the final decision on this matter be delayed until the Westminster boundary review has taken place after the next Westminster election?

The Green Party believes that the next election should take place on the basis that 108 MLAs will be returned to the next Assembly. We believe that any reform of the Assembly structures should be preceded by
a civic conversation to discuss these issues. The Green Party believes that there need not necessarily be a link between the Westminster boundary review and the final decision on the number of MLAs at the Assembly. More importantly the Green Party believes that a reduction in the number of MLAs should occur alongside a reduction in the number of government departments and possibly a reduction in the number of MLAs on each committee. The Green party would also suggest that it is important to consider the number of MLAs in reflection to the number of areas where legislative competence has been devolved to Northern Ireland.

8. Although no draft clauses are currently available for pre-legislative scrutiny, should the Government consider drafting provisions, as part of the draft Bill, to avoid future concurrence of elections while still moving to five year terms for the Assembly?

The Green Party concurs with the Government’s proposal to hold the Assembly election in 2015 and then following this in 2019. We do not believe that the Assembly term should be extended by one year until 2016. In order to ensure that both the Assembly election and the Westminster election are not held at the same time we would suggest that the next Assembly election be brought forward by two months to March 2015.

9. The Government has noted that there is insufficient consensus in Northern Ireland on the issue of Government and Opposition in order for draft clauses to be included in the draft Bill. What is your position on the issue of Government and Opposition? What, if any, steps should the Government take on the issue of Government and Opposition? Are you satisfied that the Assembly’s work on procedural and institutional change is likely to produce developments which receive cross-community consensus?

The Green Party NI notes the sensitivities surrounding changes to the Agreement and believes that any such changes need to be thoroughly considered as part of a broad package of reforms following a civic conversation and endorsed through a referendum by the people of both Northern Ireland and the Republic of Ireland. Traditionally the Green Party has promoted decision making on a consensual basis and as such we see merit in the Government considering the benefits of electing the NI Executive and Committee chairs and deputy chairs through the matrix voting mechanism. For further information see:


In addition, the Green Party would advocate an end to unionist/nationalist designations in the NI Assembly and consequently we would endorse legislative decision making through a weighted majority.

10. Is there a case for devolving responsibilities relating to Arms-Length Bodies? Do you foresee any problems with devolving some of functions currently held by the Secretary of State, by agreement, to the Northern Ireland Assembly and Executive?

The Green Party would like more information on the specifics of any proposals before commenting.

11. Are there any risks or gaps in the draft legislation which the Committee should consider?

12. Does the draft legislation give rise to any human rights or equality concerns?

Clause 11

The Green Party would wish to clarify and strongly recommend that this legislation should not result in the situation where any public body presently subject to section 75 will no longer be fully designated.

Clause 13

The Green Party believes the retention of biometric data ought to be subject to adequate safeguards and controls in order to protect a person’s right to privacy. We note the submission on this issue by the Northern Ireland Children’s Commissioner and the NI Human Rights Commissioner to the Northern Ireland Assembly Justice Committee on the Criminal Justice Bill presently passing through the NI Assembly and would recommend that all biometric data held by the Government adheres to their recommendations.

February 2013

Written memorandum from the Northern Ireland Human Rights Commission

Introduction: Status and Functions of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a national human rights institution (NHRI). It was created in 1999 by Parliament through the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998.

2. The Commission takes note of the proposal whereby the responsibilities of the Secretary of State for Northern Ireland relating to the Commission may be devolved to the Northern Ireland Assembly and Executive. This proposal may have implications for the Commission in the carrying out of its functions. The Commission
welcomes the opportunity to advise the NI Affairs Committee with regard to this proposed aspect of the draft Northern Ireland (Miscellaneous Provisions) Bill.

3. The Commission’s powers and duties are derived from sections 69 and 70 of the Northern Ireland Act 1998 and sections 14 to 16 of the Justice and Security (Northern Ireland) Act 2007. Under the 1998 Act as amended, the Commission has the following duties:

— to keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights;

— to advise the Secretary of State for Northern Ireland and the Executive Committee of the Northern Ireland Assembly whether proposed legislation is compatible with human rights standards;

— to promote understanding and awareness of the importance of human rights in Northern Ireland by, for example, undertaking or commissioning or otherwise assisting research and educational activities; and

— to provide advice to the Secretary of State for Northern Ireland on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights.

4. In addition, under sections 69 and 70 of the Northern Ireland Act 1998, the Commission has the following powers:

— to give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;

— to bring proceedings involving law or practice concerning the protection of human rights;

— to conduct such investigations as it considers necessary or expedient for the purpose of exercising its other functions; and

— to publish its advice and the outcome of its research and investigations.

5. The Justice and Security (Northern Ireland) Act 2007 refers to the Commission at sections 14–20 inclusive, amends sections 69 and 71 of the 1998 Act and gives the Commission additional powers:

— to institute, or intervene in, legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;

— to require a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation; and

— to enter a specified place of detention in Northern Ireland, in respect of an investigation.


7. The Commission is prescribed as a person, for the purposes of the Public Interest Disclosure (Northern Ireland) Order 1998, to whom disclosures of information on matters engaging human rights may be made.

8. The Commission is accredited with “A” status by the International Co-ordinating Committee of National Institutions for the Protection and Promotion of Human Rights (the ICC). This is the highest level of recognition by the United Nations. The Commission is one of the United Kingdom’s three NHRIs, all of which have “A” status. This accreditation has been granted following an assessment of the Commission against the UN Principles relating to the Status of National Institutions (The Paris Principles). The Paris Principles set out criteria for assessment which include composition and guarantees of independence and pluralism; extent of mandate; adequate staffing and budget to effectively protect and promote human rights. As a result of its “A” status the Commission is entitled to full participation rights in the proceedings of United Nations Human Rights Council.

ISSUES WHICH THE COMMISSION WISHES TO BRING TO THE ATTENTION OF THE COMMITTEE

9. The matter of whether or not the responsibilities of the Secretary of State regarding the Commission should be devolved is a political consideration. The Commission does not take a view in this regard. However any new arrangement must ensure that the Commission continues to carry out all of its functions independently of Government, in full accordance with the Paris Principles.

The Commission advises that the Committee seek an assurance that any new arrangement will be in full accordance with the Paris Principles and will not inhibit the Commission from carrying out all of its current functions independently of Government.

10. The Commission is under a duty to keep under review the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland. This duty extends to both devolved and non-devolved matters. The Commission must advise both the Secretary of State and the Northern Ireland Executive on measures which ought to be taken to protect human rights.
The Commission advises that the Committee seek an assurance that any new arrangement will not inhibit the Commission from reviewing the adequacy and effectiveness of law and practice relating to non-devolved matters. Furthermore provision should be made for the Commission to advise and raise matters with the Westminster Government and Parliament.

11. Should the functions currently exercised by the Secretary of State with respect to the Commission be devolved, they should be relocated to the Northern Ireland Assembly. This would be in keeping with the arrangement for the Scottish Human Rights Commission, which is accountable to the Scottish Parliament.

12. The Commission refers the Committee to the Belgrade Principles which set out the basic requirements regarding the relationship between NHRIs and Parliaments. The key requirements listed in the Principles include:

"Parliaments should ensure the financial independence of NHRIs by including in the founding law the relevant provisions."  
"NHRIs should submit to Parliaments a Strategic Plan and/or an Annual Programme of activities. Parliaments should take into account the Strategic Plan and/or Annual Programme of activities submitted by the NHRI while discussing budget proposals to ensure financial independence of the institution."  
"NHRIs should report directly to Parliament."  
"NHRIs should submit to Parliament an annual report on activities, along with a summary of its accounts, and also report on the human rights situation in the country and on any other issue that is related to human rights."

13. The Commission notes that the Joint Committee on Human Rights (JCHR) recently referred to the Belgrade Principles and queried the appropriateness of the Non-Departmental Public Body Model for NHRIs. In addition the Equality and Human Rights Commission has proposed a number of measures to further develop its accountability to Parliament.

Taking account of the above considerations the Commission advises that the Committee recommend that if provision is made for the devolution of the Secretary of State's functions relating to the Commission it be on the basis that they are transferred to the Northern Ireland Assembly.

14. The Northern Ireland Act 1998 designates all matters relating to the Commission as excepted matters (along with matters such as defence of the realm and immigration).

Taking account of the fact that all matters relating to the Commission are excepted matters, the Commission advises the Committee to consider if there would be adequate Parliamentary scrutiny of all issues arising from a transfer of the Secretary of State's functions relating to the Commission.

15. The Commission was established pursuant to a commitment within the Belfast (Good Friday) Agreement 1998, which was endorsed by way of a referendum. In light of the very particular origins of the Commission and the infrastructural significance of the proposal under consideration, the Commission advises the Committee to recommend that any proposed devolution of the Secretary of State's functions relating to the Commission be subject to public consultation.

February 2013

Written memorandum from Friends of the Earth

1. Introduction

1.0.1 In this document we will answer the questions:

"Are the proposals in the draft Bill sufficient to balance the dual objectives of increasing transparency of political donations and providing proportionate protection to past and present donors? Could they be improved, if so how?"

1.0.2 For the purpose of brevity when we refer to donors in this document, we mean donors and lenders; and, when we mention the amount £7,500, this also refers to £1,500 to an individual or accounting unit.

1.0.3 We will argue that Clauses 1 and 2 should be rewritten to guarantee absolute transparency for all major donations to Northern Ireland parties given after 1 October 2014, and the release of as much information about donors who gave during the Prescribed Period as is possible without risk of legal action against the UK Government.

1 The Belgrade Principles were agreed at international expert level in February 2012, the conference organised by the Office of the High Commissioner for Human Rights and ICC was attended by experts from NHRIs, Parliaments and Universities from 10 jurisdictions including the United Kingdom.
2 Ibid
3 JCHR Sixth Report, "Reform of the Office of the Children’s Commissioner: draft legislation" 2012 paras 113
4 EHRC—Enterprise and Regulatory Reform Bill 2012–13 Clause 56: Amendments to the EHRC's remit
House of Lords, second reading Equality and human rights impact statement November 2012
1.1 False dichotomy

1.1.1 There is no need to, “balance these dual objectives,” because political donors and lenders don’t deserve any more protection than the rest of us, and never did. Parliament’s duty should be to adequately protect the people of Northern Ireland from the toxic effects of secret party funding—an issue that blighted politics in Great Britain in the mid to late 90s.5

1.2 Injustice compounded by anomaly

1.2.1 Friends of the Earth believes that it is regrettable that we must respond to this consultation at all. There was no need for Parliament to pass Section 14 of the 2006 Northern Ireland (Miscellaneous Provisions) Act 2006, and Schedule 1 of Political Parties, Elections and Referendum Act 2000, for reasons we will lay out below.

1.2.2 The injustice of the “Prescribed Period” introduced by these measures was compounded by the insertion of a sentence in Part 3, point 10 of the explanatory notes of the 2006 Miscellaneous Act, which states:

“However, to guard against intimidation of legitimate donors, reports submitted before the end of October 2010 (or later, if this period is extended with the approval of Parliament) will remain confidential”

1.2.3 In that one sentence the Government made a promise to those who gave large donations to Northern Ireland parties during the Prescribed Period that their identities would never be revealed, but the legislation itself made no provision for this promise to be kept. Were the Prescribed Period to lapse, the donor register from 1 November 2007 would be automatically available to the public, and party benefactors may have grounds to take legal action against the UK Government.

1.2.4 The Government should not have interpreted the legislation in this way. The information on the donor register from 1 November 2007 should be the public property of the citizens of the United Kingdom. To draw such an inference without the legislative provision to honour it was a dereliction of duty on the part of those who wrote the explanatory note.

1.2.5 The unintended consequence of the discrepancy between the promise made by the explanatory note, and the lack of power to deliver on that promise in Section 14 of the Act, was to require repeated renewals of the Prescribed Period, and new primary legislation—a waste of Parliament’s time and taxpayers’ money.

1.3 The bare minimum

1.3.1 We believe that the Government must now seek advice as to how much information they can release from the 2007–14 Northern Ireland political donor register without fear of legal challenge. This should then inform what measures need to be taken in the 2013 Bill to apportion Prescribed Period donors the minimum protection to which they are entitled as a result, but no more. The Government’s only concern should be to protect itself from legal action, and not at all to protect Prescribed Period donors from public scrutiny.

2. Why we never needed the Prescribed Period Part 1—It’s safe enough for everyone else in Northern Ireland

2.1 Why disapplication was acceptable

2.1.1 There are two main reasons why Friends of the Earth agrees with the decision made in 2000 to temporarily disapply from Northern Ireland the clauses of the Political Parties, Elections, and Referendums Act that dealt with political donations when they came into law in 2001:

(1) our devolved institutions were nascent and deserved a settling in period before the stricter provisions of the Act came into force; and

(2) a large minority of our elected representatives were from parties who believed in a United Ireland, and wanted to retain the right to raise funds from individuals and organisations based in the Republic of Ireland, something banned by PPERA.

The second issue required new primary legislation to create a special case for Northern Ireland based political parties. The first issue needed nothing more than the automatic expiry of the disapplication period to come into effect in the middle of the last decade.

2.2 The Prescribed Period—unnecessary and unjust

2.2.1 Instead, Parliament enacted the complicated measures that created the Prescribed Period, and the Government added the anomalous explanatory note mentioned above. The rationale for doing this was that the

5 http://www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf (Section 4.10)
security situation in Northern Ireland was not yet right for major political donor transparency. The PSNI’s own statistics confirm that a sectarian motive is at play in less than 1% of recorded crime in Northern Ireland. Individuals and businesses are more likely to experience burglary than sectarian harassment.

2.2.2 We have seen no evidence to suggest that those giving over £7,500 a year to a political party are any more at risk than any other willing, partisan participant in Northern Ireland politics. The Northern Ireland Office has never published data suggesting that those who donate are any more at risk.

2.3 Restored democracy and the Chuckle Brothers

2.3.1 Devolution was restored in spring 2007, as a result of the St Andrew’s Agreement, six months before Northern Ireland parties began to register their major donors with the Electoral Commission. In those heady days of the so-called “Chuckle Brothers”—when a sudden warmth and easy working relationship between Martin McGuinness and Ian Paisley was portrayed as one of the great political rapprochements of history—the message being given out to the people of the UK, and further afield, was that Northern Ireland was now a peaceful, functioning democracy.

2.3.2 In March of the same year, the Electoral Office in Northern Ireland began compiling, for public information, the names of all sponsors and agents of electoral candidates. These are people living in the constituency where the candidate is standing, who choose to publicly declare their support for said candidate.

2.3.3 Northern Ireland was a safe place to stand for election, a safe place to declare your candidate preferences on record, a safe place to knock on your neighbour’s door and ask them to vote a certain way, but according the 2006 Northern Ireland Act it was unsafe to be seen to bankroll parties.

2.3.4 To just state the general security situation as an excuse to perpetuate donor secrecy is to discriminate against all other political actors when doing out state protection. Northern Ireland political parties are on the one hand persuading rank-and-file activists that it’s safe to publicly declare their membership and affiliations, and on the other telling Parliament and the media that the threat of intimidation and violence is too great for their wealthy benefactors to bear.

2.4 Exclusive elite

2.4.1. We do not use the term “wealthy benefactors” lightly. £7,500 is much more money than most individuals or organisations have spare in any twelve month period. That amount is over twice what most families in the UK spend annually on food. Bear in mind that the Northern Ireland donor register began to be compiled nearly two months after the start of the credit crunch. Only an exclusive elite of individuals and organisations could possibly have had such a surplus of cash during a sustained downturn in the global economy, especially in a region like Northern Ireland, which has been particularly badly impacted.

2.4.2 This is the only factor that distinguishes major donors to parties from all other willing, partisan participants in Northern Ireland politics—their ability to give away substantial sums of money. In politics generosity is a two-way street, and it is probable that some of these large donations were made with the expectation of some influence being exerted as a result. Some individuals and organisations may have used their wealth to sway the outcomes of our political system in their interests, which could be viewed as a hefty supplement to the universal franchise for those who can afford it.

2.5 Public perception

2.5.1 Even if there has been zero influence brought to bear on our politicians by their benefactors, the public perception that this is the case is enough to damage faith in our democratic institutions, and there is strong evidence that the public believe their politicians to be too open to influence from the wealthy in our society.

2.6 The risk to all of us

2.6.1 Meanwhile, the same political parties that are telling us we can’t be trusted to know who finances them are entitled to see the electoral register which lets them know where we live. Four of the five political parties that make up the Executive define themselves primarily by their stances on the constitutional future of Northern Ireland, and overtly link that to cultural/religious identity for the purposes of electoral success. These parties are able to profile large sections of our population using cultural/religious indicators such as Christian and surnames.

2.6.2 If the security situation is safe enough for electoral candidates to see the names and addresses of citizens, then it is safe enough for citizens to see the identities of our political parties’ major benefactors. If, however, political parties and their benefactors need protection from us, then we demand protection from them.

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6 http://www.psnir.police.uk/sectarian_incidents_and_crimes_in_northern_ireland_2005-06_to_2011-12.xl
9 overview.html#tab-Household-expenditure
http://www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf (2.3 to 2.7)
10 http://www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf (2.3 to 2.7)
2.7 A gross injustice

2.7.1 That a privileged elite in our society is permitted to participate in our political system, in a potentially disproportionately influential manner, with the added advantage of being the only political actors in Northern Ireland to do so outside of public scrutiny, is a gross injustice. Clauses 1 and 2 of the 2013 Bill would compound this injustice were they to become law, and therefore must be completely rewritten.

3. Why we never needed the Prescribed Period Part 2—How safe is British politics?

3.1 A calculated risk

3.1.1 In Great Britain if you wish to donate to a party you must first weigh up the potential reward you may receive against the potential impact on your reputation or public perception through your association with an individual or said party. This is a calculated risk, a decision similar to many others a business or prominent individual must take.

3.1.2 Potential donors in Northern Ireland should have to exercise the same judgement as those donating to Labour, the Liberal Democrats or Conservatives. Every political choice a business or individual makes will often be opposed by many. This fact has not inhibited the ability of GB parties to find widespread support.

3.2 Very British dangers

3.2.1 The political process in Great Britain is not without its dangers and certainly not without those individuals and organisations vehemently opposed to its decisions. Whilst we unreservedly condemn any threat to any elected representative we understand some individuals may attract significantly more public ire than their peers.

3.2.2 Controversial groups such as British National Party have publicly registered with the Electoral Commission a list of dozens of individual financial donors.11 These individuals are potential targets for those antagonistic to the BNP’s political position, yet in the interests of transparent democracy their identities must be in the public realm.

3.3 Attempted murder

3.3.1 The 395 MPs who supported the Iraq War have also been subject to intense public opprobrium. This fervour may have inspired the attack on Stephen Timms MP in May 2010, when he was stabbed at his constituency office.12 His attacker stated in interviews with investigating police that it was his support of the war that led her to attempt to murder him. This attack resulted in the removal of a website calling for Muslims to “raise the knife of jihad” against these MPs.

3.3.2 Similarly, this month, Sadiq Khan was threatened by religious extremists due to his support for equal marriage.13 He was told to review his personal security arrangements after an extremist Islamist group posted the following statement online:

“[It’s] time to account these apostate MP’s, they changed something that Allah made Haram [forbidden] to Halal [allowed] by voting for gay marriages.”—www.spectator.co.uk, 18 Feb 2013

There has been no discussion around removing his financial supporters from the public domain.

3.4 Threat levels

3.4.1 In the aftermath of the UK’s worst terrorist atrocity of the 7/7 bombings the public’s ability to access the donor register remained unchanged. Since 7/7 the UK threat level has been set at Critical three times.14 The current threat level in Northern Ireland is Severe, one notch below that. It seems like there is no terror threat level high enough for the GB donor register to be hidden, but no level low enough for the Northern Ireland register to be revealed.

3.5 Adequate deterrents

3.5.1 Donor secrecy is an unnecessary extra layer of protection against crime in Northern Ireland, and is detrimental to transparent democracy and public faith in our institutions. If existing criminal justice sanctions are viewed as an adequate deterrent to crimes against major donors in Great Britain, then they should be considered the same for Northern Ireland.

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12 http://www.bbc.co.uk/news/uk-england-london-11667620
14 http://en.wikipedia.org/wiki/UK_Threat_Levels#History
4. Why donor anonymity is toxic to democracy

4.1 What’s already been said

4.1.1 The Committee on Standards in Public Life’s Fifth Report, published in 1998 is the definitive justification for the principle of donor transparency in the UK.15

It paints a picture of British politics before PPERA that was murky, and lacking in public trust. It also refers to overwhelming public support at the time for transparent party funding.

4.1.2 The 2010 NIO consultation on the issue revealed massive public desire for full transparency.16

77% of respondents to this consultation, who called for full transparency, were ignored. That overwhelming support for full disclosure should have hastened action to rectify the anomaly that was preventing Parliament from letting the clauses in Schedule 1 expire. The two years between February 2011 and February 2013 were ample time to use whatever instrument necessary to sort this out.

4.1.3 Our own findings in our survey on public attitudes to the Northern Ireland planning system speak of a public perception of cosiness between politicians and developers.17

4.1.4 The conclusion coming out of all three of these documents is that the majority of the public want clarity on who donates to the parties that dominate UK politics.

4.2 Voter disengagement

4.2.1 In the last Assembly Election in 2011, just over 55% of the eligible electorate exercised their right to vote.18 That is the lowest turnout in Northern Ireland history.

Public suspicion and cynicism, however unjustified, is toxic to democracy, and every possible remedy should be applied to assuage people’s fears that politicians are not working in the public interest.

4.2.2 In the last Northern Ireland Life and Times Survey, over 50% of respondents were dissatisfied with the way MLAs are doing their job, and only 23% were satisfied.19 A culture of dissatisfaction and disengagement is fertile ground for speculation and paranoia, especially in a divided society.

4.2.3 There is no special risk to Northern Ireland donors, and the need to use some mechanism to restore faith in democracy, and minimise the spread of rumour and innuendo, outweighs any short-term negative consequences of bringing the wealthiest political participants in our society into the light of day with the rest of us.

5. Conclusion

5.0.1 There is no logical justification for granting Northern Ireland political parties a unique privilege on these islands to raise funds outside of citizen scrutiny. Parliamentarians have been persuaded to repeatedly grant this privilege on the basis that Northern Ireland isn’t a safe place in general.

5.0.2 We have put our case to you that:

(a) Everyone else in Northern Ireland is expected to exercise their democratic rights publicly, and all registered voters are required to permit any electoral candidate access to their names and addresses.

(b) Nowhere in the UK is particularly safe to be political, particularly during the 12 years since PPERA came into law.

(c) Donor anonymity is antithetical to normalisation of democracy and society in Northern Ireland, while donor transparency has the potential to improve the relationship between the disengaged electorate and our politicians.

5.1 What we want from the Northern Ireland (Miscellaneous Provisions) Bill 2013

5.1.1 We would like to see Clauses 1 and 2 to be completely rewritten from scratch in order to deliver the following outcomes:

(1) To fix the anomaly between Section 14 and Explanatory Note 10 of NIMPA 2006, so that the Electoral Commission will be able to publish the maximum amount of information about donations to Northern Ireland political parties during the Prescribed Period without the UK Government being open to legal challenge by donors on that list.

(2) To remove the powers of the Secretary of State to extend the end date of the Prescribed Period beyond 1 October 2014, thus guaranteeing that Northern Ireland citizens will face no further period of unjust secret political funding at the hands of Parliament.

17 http://www.foe.co.uk/resource/reports/public_and_stakeholder_opi.pdf
19 http://www.ark.ac.uk/nile2010/Psychological_A_titudes/SATMLAS.html
5.1.2 It is the duty of the UK Parliament to act as the guarantor of the rights of all citizens of this realm, and never unnecessarily infringe upon them. The Prescribed Period has been, and continues to be an unnecessary infringement of rights enjoyed by almost every other European citizen, and this gross injustice must be stopped at the earliest available opportunity.

5.1.3 Transparency cannot be a halfway house. The information on the donor register is only illuminative when it is extant. To call anything other than full disclosure transparency is disingenuous.

February 2013

Written memorandum from Ciaran McClean

I write to you as a citizen of Northern Ireland who feels that the system around “political donations” is encouraging unhealthy politics in this part of the United Kingdom. I believe that politics should be transparent and be seen to be transparent. I recently invited Andy Atkins, Chief Executive of Friends of the Earth to West Tyrone to witness for himself the destruction that is taking place regarding unauthorised quarrying. In his words he was “appalled” at what he witnessed, it was widely reported in the local media. I don’t know if there is a link between the politicians and the developers, however it is alarming that after seven years (in some cases), developers can still operate without a licence whilst those elected to Parliament and Stormont seem indifferent to their unauthorised activities. I am asking this committee to raise the issue of “political donations”, in my opinion citizens should be able to examine financial transactions of parties and be certain that politicians are working for their voters, not their benefactors.

This society needs full transparency before local councils take over planning powers in 2015, otherwise a culture of suspicion among citizens will destroy confidence in the system, and decrease participation. Keeping the identities of major political donors secret is toxic for public faith in democracy, and Northern Ireland needs that faith to sustain forward momentum in the peace process.

The Prescribed Period was unnecessary and unjust—every other willing participant in Northern Ireland politics must partake in public view. Protecting major donors but no one else discriminates against all but the wealthiest. Major donors should take their chances with the rest of us. Donor transparency would only expose those giving over £7,500 a year to a party. If you want to remain anonymous, give less. £7,499.99 is still a substantial sum of money. Why do parties need any more from an individual or organisation in any 12 month period?

There has never been any public evidence that this elite group of party benefactors are in more danger than anyone else involved in politics. Threatening anyone because of their political affiliation is already a crime and does not require an extra layer of security. Criminal justice should be a sufficient deterrent. All electoral candidates have full access to the electoral register. We are asked to trust that they won’t use that information against us, so we should be trusted with the information on the donor register.

England, Scotland and Wales have had a tumultuous decade of home-grown terrorism, racial and religious tension, and the rise of political extremism. The UK-wide terror threat level has been at the highest setting, Critical, three times in the last seven years, but never has the public been banned from seeing the Great Britain donor register. The Northern Ireland threat level is currently Severe, one notch below that, but this is being used as justification for maintaining donor secrecy.

Parliament is not there to maximise the ability of NI political parties to accrue major donations at the expense of a normal, healthy, transparent democracy.

March 2013

Written memorandum from Dawn Bourke

I am responding to this bill as I am concerned about transparency in political funding in Northern Ireland.

I am referring specifically to Clause 1 and 2.

1. I do not believe this has been raised as a high profile issue by the politicians or media. I think the general public do not have an awareness of the importance and possible impacts these decisions may have on them.

2. I think there needs to be greater public education and debate on this issue.

Instead the Bill should: Guarantee the end date of the Prescribed Period on 1 October 2014, by removing the power of Parliament to extend it beyond this date. Citizens should be able to examine financial transactions of parties and be certain that politicians are working for their voters, not their benefactors.

We need full transparency before local councils take planning powers in 2015, otherwise a culture of suspicion among citizens will destroy confidence in the system, and decrease participation.
3. Protecting major donors but no one else discriminates against all but those with most money. Those who give small amounts to political parties are not protected therefore this is an unfair provision to protect only those with most money. As those who donate a small amount do not appear to need protection where is the basis then for the larger donor protection?

4. Threatening anyone because of their political affiliation is already a crime and does not require an extra layer of security. Criminal justice should be a sufficient deterrent.

5. England, Scotland and Wales have had in recent years many examples of terrorism, racial and religious tension, along with a rise of political extremism. The NI terror threat is currently below that in England yet there is donor transparency there.

6. It is my opinion that this legislation is undemocratic and leaves us at the mercy of future Secretaries of State who will make a decision behind closed doors using security advice none of us will ever see. The “Prescribed Period,” was only due to last until October 2010 but its end date has been repeatedly extended, and just recently it was pushed back for the third time, until 1 October 2014.

The proposed Northern Ireland (Miscellaneous Provisions) Bill 2013 will change the date of the prescribed period ending to a state of permanent anonymity until the Northern Ireland Secretary of State decides otherwise.

In conclusion permanent donor anonymity is not conducive to open and honest government, and I totally oppose it. A state in which the government exercises such rigid and repressive controls over is not a healthy, modern democracy and is open to corruption.

Secrets breed suspicion, not a good plan for the continuation of the peace process.

March 2013

Written memorandum from Sinn Féin

Sinn Féin welcomes the Committee’s inquiry into this draft legislation, and in this submission we wish to expand on the points we put to the Committee at the public evidence hearing in which we participated in Parliament Buildings, Belfast on Tuesday 26 February.

Introduction

As an Irish republican party, Sinn Féin wishes to see the maximum transfer of powers from Westminster to the political institutions in the north of Ireland.

We are also clear that many of the issues listed in the Bill can successfully be dealt with and legislated for in the Assembly.

Our approach to all of these matters lies in the wording, legislation and spirit of the 1998 Good Friday Agreement, and subsequent agreements made by the political parties and the British & Irish governments. In particular, the core principles of equality, mutual respect and parity of esteem are our guide in addressing these, and other related issues.

In this submission we set out our position on the issues addressed in the Bill, and also comment on issues which it is indicated are still under consideration for inclusion.

Issues under Consideration in the Draft Bill

1. Donations and loans for political purposes

Sinn Féin has consistently called for the maximum level of transparency in this area. We feel that information on those making donations to political parties should be accessible to the public.

While issues around security concerns were raised at the evidence session by some committee members, and we recognise that on occasions this may be an issue to be taken into account, we strongly feel however that there is an overriding need to reassure public opinion that donations to political parties are not in any way given in receipt for, or in expectation of, favours or preferential treatment towards the donors or the various interests, groups or organisations they might represent or be associated with.

Public confidence in the political system has, in recent times, suffered considerably from a lack of transparency around how parties and the political institutions deal with party financing and expenses. Arguments in favour of continuing with systems and procedures which are not transparent have no credibility and, if allowed to prevail, will serve only to further damage the credibility of the political process.

2. Dual mandates

Sinn Féin fully supports the steps suggested in this draft legislation to bring to an end the practice of “double-jobbing” or the holding of dual mandates, in terms of individuals being both Westminster MPs and MLAs in the Assembly in Belfast.
Over the last year Sinn Fein has moved unilaterally, in line with standing party policy, to address this issue. None of our five MPs are MLAs. Last June four of our MPs resigned their Assembly seats and were replaced by co-option. At the end of last year Martin McGuinness resigned his Westminster seat, choosing to concentrate on his roles as an MLA and Deputy First Minister rather than continue as MP. A bye-election in his constituency is to be held in the next few days to elect a replacement.

Following the logic of our position on this would mean that we would support an ending of the potential for double-jobbing between the Assembly and the Oireachtas. Indeed our party president Gerry Adams resigned his Assembly seat in order to seek election as a TD for County Louth.

### 3. Justice Minister

Sinn Fein supports the measures set out in the draft legislation relating to the arrangements for both the appointment and security of tenure of the Justice Minister in the Assembly.

We feel that these steps are sensible. The Justice Minister should have the same security of tenure as other Ministers. We also support the need for the allocation of the Justice Ministry to be taken into account for the purposes of d'Hondt and the allocation of the other Ministries. This then logically requires the Justice Ministry to be allocated after the election of the First and deputy First Ministers and before the nomination of other Executive ministers.

### 4. Electoral Registration and Administration

Sinn Fein supports the measures proposed in the draft legislation in respect of these matters.

The ability of all citizens to participate in the electoral process is paramount, and each of the measures outlined assists in increasing people's ability to do so.

We particularly welcome, consistent with the provisions of the Good Friday Agreement relating to respect for different identities, the measures to allow those qualified to vote as overseas voters in elections here to declare themselves as Irish citizens.

### 5. Miscellaneous provisions

The draft legislation proposes introducing flexibility whereby public authorities here can be partially designated in terms of their statutory equality duties under Section 75 of the Northern Ireland Act—this would apply to bodies which currently cannot be designated in their entirety.

While we would welcome this as a step in the right direction in terms of Section 75 compliance, we would also be very clear that such a facility for partial designation does not allow bodies currently fully designated to resile on their current commitments in this important field.

The legislation does not address the issue of extending the list of designated public authorities. We believe however that a number of bodies should be added to the list with respect to the fulfilment of their remit in the six Counties. These include the BBC, and the office of British Secretary of State.

In terms of clause 13, dealing with the use of DNA samples, which allows for the making of an order regarding the retention, use and destruction of DNA, the provisions indicate that an order by the British Secretary of State under this section may also make provision in respect of a transferred matter, where that matter is ancillary to an excepted matter or reserved matter.

Initial reading would indicate that the points in the draft would allow the British Secretary of State to trespass upon biometric provisions in the devolved field, and, as such, we would require further information in respect of what would constitute "ancillary" for the purposes of this legislation, and how this would be intended to work in practice, particularly where a counter direction may exist in respect of the transferred matter.

### 6. Measure still under consideration for potential inclusion in the Bill

The draft Bill lists a series of issues under this heading—size of the Assembly, length of current and future Assembly terms, government and opposition, and devolution of responsibilities relating to arm’s length bodies.

All of these matters are currently under discussion within the Assembly’s AERC (Assembly & Executive Review) Committee and we feel that that is the appropriate forum for those discussions, and for decisions on these matters to be arrived at by the parties in the Executive, and we are fully engaged in the discussions on all of the matters above.

On the specific topic of “government and opposition”, we would point out that at present any party or parties are free to take up an oppositional role in the Assembly by declining to take the Executive places to which they are entitled through the d'Hondt system of allocation.

We note that the notes accompanying the draft legislation acknowledge that any of these issues can only be legislated for on the basis of a broadly based consensus among the parties here, and the wider community.
We would concur with that, given our view that the parties elected and represented here are capable to resolving such issues amongst us.

We also agree with the acknowledgement in the draft that any proposed changes must be consistent with the power-sharing and inclusive government at the heart of the "Belfast Agreement".

The values of inclusivity, mutual respect, parity of esteem and equality must be at the heart of any proposals to remodel any aspects of the political institutions here or their functions.

In addition, any such discussion on the institutional arrangements set out in Strand One of the GFA must necessitate a review of the current arrangements set out in Strand Two (north-south) and if appropriate in Strand Three (east-west).

March 2013

Written memorandum from Tom White

With regards to Party Funding and donor secrecy in Northern Ireland I am dismayed by two things:

(1) that it is still ongoing; and

(2) that there is a provision in the Bill to remove the requirement on the Northern Ireland Minister to review the situation periodically—ie we are facing a presumption of continuance of the “status quo”; a retrograde step in my opinion, and one which shows that there is no real motivation by the government in Westminster to actually further democracy here.

Transparency in Politics is mandatory. IF the Government feels that Political parties must opt for secrecy, then surely the other side of the coin is to look at government funding for all political parties in Northern Ireland.

I believe in answer to the Question “Are the proposals in the draft Bill sufficient to balance the dual objectives of increasing transparency of political donations and providing proportionate protection to past and present donors? Could they be improved, if so how?”

1. Guarantee the end date of the Prescribed Period on 1 October 2014, by removing the power of Parliament to extend it beyond this date.

2. Provide no more than the minimum necessary protection to donors who gave between 1 November 2007 and 1 October 2014, so that we can be as informed as possible without leaving the UK Government open to legal action.

I believe that politics should be transparent and be seen to be transparent.

Citizens should be able to examine financial transactions of parties and be certain that politicians are working for their voters, not their benefactors.

We need full transparency before local councils take over planning powers in 2015, otherwise a culture of suspicion among citizens will destroy confidence in the system, and decrease participation.

Keeping the identities of major political donors secret is toxic for public faith in democracy, and Northern Ireland needs that faith to sustain forward momentum in the peace process.

The Prescribed Period was unnecessary and unjust—every other willing participant in Northern Ireland politics must take part in public view.

Protecting major donors but no one else discriminates against all but the wealthiest. Major donors should take their chances with the rest of us.

Donor transparency would only expose those giving over £7,500 a year to a party. If you want to remain anonymous, give less. £7,499.99 is still a substantial sum of money. Why do parties need any more from an individual or organisation in any 12 month period?

There has never been any public evidence that this elite group of party benefactors are in more danger than anyone else involved in politics.

Threatening anyone because of their political affiliation is already a crime and does not require an extra layer of security. Criminal justice should be a sufficient deterrent.

All electoral candidates have full access to the electoral register. We are asked to trust that they won’t use that information against us, so we should be trusted with the information on the donor register.

England, Scotland and Wales have had a tumultuous decade of home-grown terrorism, racial and religious tension, and the rise of political extremism.

The UK wide terror threat level has been at the highest setting, Critical, three times in the last seven years, but never has the public been banned from seeing the Great Britain donor register.
The Northern Ireland threat level is currently Severe, one notch below that, but this is being used as justification for maintaining donor secrecy.

Parliament is not there to maximise the ability of NI political parties to accrue major donations at the expense of a normal, healthy, transparent democracy.

March 2013

Written memorandum from Connal Hughes

For the purposes of this response I will use the term donors but it also applies to those making loans to NI parties.

Preamble

0.0 Thank you for the opportunity to respond to the Northern Ireland (Miscellaneous Provisions) Bill (Draft) 2013. I specifically give thanks as since 2007 the views of the general public have often not been sought or have been ignored with regards to the vexed issue of transparency in political donations. The consultation in 2010 produced conclusive results thatfavoured increasing transparency but the concerns of the parties who could lose money were prioritised over public’s right to know.

0.1 To summarily wave through three continued extensions of anti-democratic privilege for the elite of Northern Ireland society using the unknowable criteria of security concerns for six years is deplorable. Public faith in elected representatives started from a low ebb given the divided nature of our society but the ability to secretly raise money with impunity has been resultant in significant further damage. Northern Ireland politicians have paid lip service to the idea of transparency for too long but it is merely an obfuscation to allow them to promote their particular Party brand and outspend new entrants.

0.2 Whilst observing the evidence of Raymond McCartney MLA to the Northern Ireland Affairs Committee on Tuesday 26 February it came to my attention that he made an inaccurate claim. He stated that Sinn Fein publish details of their donors on their website. This is erroneous. They have published their accounts from 2008 and it states how much they have received in donations but it does not state the sources of those donations. I think it is extremely important for the Northern Ireland Affairs Committee to be fully aware of this discrepancy between Mr McCartney’s statement and the truth. The committee should also recognise that despite Sinn Fein’s stated desire for transparency they have taken no steps to publish their donors. There is nothing preventing parties from revealing their donors as the Alliance Party began to do last year. It is only a criminal offence for the Electoral Commission employees to put donor details into the public domain.

Question 1: Are the proposals in the draft Bill sufficient to balance the dual objectives of increasing transparency of political donations and providing proportionate protection to past and present donors? Could they be improved, if so how?

1.0 I firmly believe that the case has not been made to continue to protect donors. Northern Irish citizens have seen no evidence that donors are at any more risk than any other political actors. Currently, the Electoral commission publishes details on candidates, sponsors and election agents. Special Advisors, constituency staff and Assembly researchers openly declare themselves party employees or advocates in public and online. This group does not merit any discussion around anonymity. If the threat to political donors is real, why is it not real for this much larger group of people?

1.1 The idea that businesses will face boycott due to associations with one community is another exercise in misdirection. The reality of the situation in NI is that people are easily identifiable as being from one tradition long before they consider financially backing an MLA. Businesses with enough finance to spare to endorse a political party are unlikely to be vulnerable enough to be affected by a boycott.

1.2 The threats itself to donors and the extortion Dr McDonnell MP alluded to in his evidence to NIAC are both already serious crimes. Is this legislation an admission that the PSNI cannot protect individuals from these crimes? My primary concern is who is protecting the public from the effects of this secret funding streams? We have no public or fourth estate oversight into the fruits of the relationships that this money creates.

1.3 I also assert strongly that if the time is deemed suitable for current donors to be made public then historical donors should also be revealed. I realise that through the discrepancy between the legislation and the explanatory note donors believed they would not be made public. However, I think that the Government has an obligation to provide this information for public analysis so we can make more informed choice at the polling booth. Furthermore, I cannot understand why historical donors would be at any more risk that contemporary ones. I understand the worry about potential legal challenges but these concerns should be secondary to the public’s right to know the full rationale behind what decisions were made over the last six years by their representatives with their taxes.

1.4 If the legal concerns are deemed too great then I would propose a Historical Ethics Enquiry Team which would investigate all past donations above the threshold and examine whether they had any effect on decisions made by those parties receiving the donations. Currently, the Electoral Commission’s role does not
involve examining relationships but merely validating donors. This historical team could confidentially investigate the past transactions and only publicise donors if charges are brought. This would meet the goals of maintaining historical secrecy and reassuring the public that nothing untoward had transpired in this period of secrecy. Parties have claimed that all donations were legitimate supporters and they should have no objection to this retrospective examination for their good of their reputations.

1.5 The terrorist threat in GB is as real as it is in NI. Several times the threat levels have been above NI levels and no moves are made to anonymize donors. Controversial groups such as the British National Party have their donors publicly available and they are undoubtedly at threat from extremists. The decisions taken by MPs have far reaching global impacts but the consequences are much more likely to be felt locally through events such as 7/7 bombing and the deplorable attack on Stephen Timms MP. This tangible threat has never been deemed significant enough to extend anti-democratic measures such as those imposed on NI citizens.

1.6 Standing for election in NI grants you access to the electoral roll but who is protecting citizens from those parties with past and present connections to paramilitary organisations. Why are convicted murderers and terrorists allowed access to names and addresses of constituents yet the public are not trusted to find out who sustains these organisations financially. This shows the illogical nature of the situation. Either we are all safe or none of us are safe. To suggest that only the wealthy are in danger and to use this to deny citizens their right to make an informed political choice is deceitful in the extreme.

1.7 I understand that the perception of threat is real but mostly because it has been talked up by the parties who wish for the status quo to be maintained. However, it is not the role of this committee to ensure NI parties can continue to raise money. If there is a downturn in donations due to the promise of public scrutiny then so be it. This committee nor the Secretary of State has no legal or moral responsibility to ensure parties can raise as much money as possible.

1.8 The specifics of this Bill actually reduce the amount of transparency for the NI public. It resets the regime from one whereby anonymity will end at a specific date (the prescribed period). Instead, indefinite anonymity becomes the new rule until a future Secretary of State deigns to change it. So whilst the foreword may suggest the bill provides more transparency, the bill itself accomplishes the opposite. There is nothing compelling the Secretary of State to act. It allows a GB party representative to have control over the transparency arrangements for a subsidiary party located in NI. Should a Labour Secretary of State have final say over how much donor information a NI Labour Party MP candidate has to declare? This arrangement is ripe for abuse and will only foster suspicion that decisions will be made in the party rather than the public interest.

1.9 Any plans to introduce a halfway house or partial transparency are nothing short of a waste of time. They serve only to massage the public perception of underhand dealings whilst actually providing no useful information whatsoever. We do not need to know the nationality or the amount of donors but instead the names of businesses and individuals inputting game-changing sums of money into our political system.

1.10 The Bill should be amended to ensure that the transparency regime in Northern Ireland comes into line with Great Britain from 1st November 2014 with full public declaration of donors above the agreed threshold. On that date the Government should also either release historical donor information or have legally constituted a Historical Ethics Enquiry Team to investigate past donations. The excuse of security cannot be used indefinitely by those parties who by their very actions do more to stir up sectarian tensions than any single donor could ever hope to achieve. It is incumbent upon this committee to grant Northern Ireland citizens the same rights as their counterparts in GB.

Question 2: To what extent are the Government's proposals on dual mandates justifiable and proportionate? Should a similar provision apply in respect to Members of the House of Commons sitting in the Scottish Parliament and Welsh Assembly?

2.0 Legislation should prevent representatives from taking seats in more than one elected body at a time. This includes NI Assembly, House of Commons, House of Lords, Dáil Éireann or Seanad Éireann and the European Parliament. They should also not be able to sit as both local councillors and MLAs in Northern Ireland although I am unsure if that power is beyond the scope of this Committee. The same provisions should be applied to Scotland and Wales.

Question 3: To what extent do the Government's proposals relating to the appointment and tenure of the NI Justice Minister adequately reflect the expectations of the Northern Ireland Assembly and the wider community in Northern Ireland?

3.0 The Justice Minister should be appointed in line with the other ministerial posts using the d’hondt system.
Question 4: What steps, if any, should the Government take to build consensus on the matters still under consideration? Is sufficient consensus on any of these issues likely to develop before this draft Bill completes pre-legislative scrutiny? If not, what timetable would be realistic so as to tackle these issues with the agreement of Northern Irish parties?

4.0 The Assembly has shown itself unwilling to act on these issues and to enact change will inevitably mean some parties will no longer be in the Executive. The Government needs to forcefully compel the Northern Ireland parties to discuss these issues in a constructive and productive manner. They should use whatever measures at their disposal to initiate and facilitate these discussions. The 2013 summer recess is the perfect opportunity for parties to sit and discuss how to improve the operation and opposition within the Assembly. If parties are unwilling to engage then the Government should prepare legislation to enact the reforms it sees fit to make.

4.1 Any of these discussions that are taking place in Government must be run along broad civic conversations around the same topics. The public have been excluded from the political process and denied their right to a Civic Forum which was a mandatory structure set up through the Good Friday Agreement.

4.2 Any decisions on changes to the size structure of the Assembly, presence of an opposition or length of terms must be put to a public referendum. This is an absolute necessity. Northern Ireland has suffered enough anti-democratic activities and measures over both the conflict and the peace without further altering the Good Friday Agreement without public consent.

4.3 These changes should have publicly discussed and the institutional changes should be voted on prior to the next Assembly election. This will allow parties to differentiate themselves and present an alternative policy direction or vision for NI. The electorate need to have the ability to change their government.

4.4 The Government should at a bare minimum propose legislation which will allow parties not to be in government and provide them with a formal structure or recognition of their role as Opposition. This will include, but not be limited to, speaking rights, a degree of committee oversight and recognition of opposition party leaders. The move from mandatory coalition to voluntary coalition will hopefully be enabled and encouraged by these changes.

Question 5: Are there any risks or gaps in the draft legislation which the Committee should consider?

4.5 Furthermore, I regard the inappropriate use of the Petition of Concern as the major stumbling block for any progress in the Assembly. The Government needs to legislate to ensure protection but stop the current abuse. Parties wield it about any policy with which they disagree, irrespective of there being any sectarian nature to the policy. The petition is designed to protect the interests of the minority and is instead played whenever the dominant parties disagree with a particular policy. Eg DUP using it against the Equal Marriage Motion in September 2012.

4.6 This indiscriminate use of the petition of concern also disenfranchises those MLAs who are not designated Nationalist or Unionist. This means that the individuals who voted for these MLAs are similarly disenfranchised. This is unacceptable and requires immediate reform. The time is right for ensuring that the petition of concern is only used to protect a minority community instead of blocking reforms the majority of the house may otherwise agree with. It is a key issue and allows any party with 30 MLAs to veto the entire legislative programme of the rest of the Assembly. Safeguards need to be put in place to act as an independent arbiter of when a piece of legislation is actually aimed at disadvantaging one of the sectarian communities and the petition can legitimately be used.

4.7 An addendum to the issue of the petition of concern is the fears that DUP MLAs have all signed a resignation letter prior to their election as MLAs. This perception alone is very worrying and profoundly anti-democratic. An MLA should have the right to reject the party whip on issues if they so wish without their electorate having to suffer their resignation. The fact that a resignation in a multi-seat constituency allows the party to simply replace the resigning individual rather than endure a by-election may mean that people are simply voting for a DUP representative of the party’s choosing rather than an individual.

4.8 This practice surely needs further investigation by the Northern Ireland Affairs Committee and is deeply troublesome if found to be true. An individual should not be forced to sign a petition of concern or vote against their will for fear of party reprisal. If this is indeed the case it needs to be brought to public attention and dealt with immediately.

4.9 The Northern Ireland Executive should be formed by discussions between parties after elections between groups who have also agreed a Programme for Government. These Executive Ministers and their Programme for Government should be subject to endorsement by the Assembly by a 66% majority of elected MLAs present and voting.

4.10 It must be the goal of the Northern Ireland Affairs Committee to ensure the Assembly moves towards a situation whereby community designations are no longer used. This body needs to start moving to remove the moral corruption of sectarianism from its operation, its implementation and its structures. If it wishes to provide over a desecarianised society, a move to a voluntary coalition is a necessity and the petition of concern
becomes merely a quaint reminder of the past. I thank you for the opportunity to respond and I urge you to end the secrecy of political donations in Northern Ireland.

This submission is made in an entirely personal capacity.

March 2013

Written memorandum from the Irish Human Rights Commission

On behalf of the Irish Human Rights Commission I am pleased to write to you regarding your Committee’s Inquiry into the draft Northern Ireland (Miscellaneous Provisions) Bill as it may impact on the Northern Ireland Human Rights Commission.

Our Commission expresses its appreciation for the outstanding achievements of the Northern Ireland Human Rights Commission. It has since its inception gained significant standing with other National Human Rights Institutions (“NHRI s”) internationally. As with our Commission, it is recognised by the United Nations as an “A” status NHRI under the United Nations Principles Relating to the Status of National Institutions (The Paris Principles).

As you will be aware, both the Northern Irish Human Rights Commission and the Irish Human Rights Commission have their origins in provisions of the Belfast/Good Friday Agreement of 10 April 1998. The Agreement stipulated with regard to the Irish Commission that it have, “a remit equivalent to that within the Northern Ireland”. More generally, the Agreement stated that the Republic of Ireland should ensure an “equivalent level of protection of human rights as will pertain in Northern Ireland”. We recall these important provisions and urge the United Kingdom authorities to ensure that any changes in devolution responsibilities not adversely impact on the ability of the Northern Irish Human Rights Commission to effectively discharge its mandate as a fully independent NHRI in accordance with the Paris Principles.

In particular, we would wish to ensure that the standards of equivalency to which the United Kingdom also committed itself in the Agreement be upheld. As an important determinant of equivalency, we refer to the UN Paris Principles. As noted, both Irish and Northern Irish Commissions benefit from the highest tier of compatibility with the Paris Principles—so called “A Status”. It is important that any revised institutional arrangements strive to meet the high international standards required, which above all rely on an appropriate mandate, complete independence from Government and financial security whereby it can retain the current ranking.

The Belfast/Good Friday Agreement, in addition, provided for the establishment of a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of human rights issues in the Island of Ireland. This body was mandated to, “consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the Island of Ireland”. On the basis of the work of the joint committee, the two Commissions recently completed a draft of the elements of such Charter. There is still much to be done by the Commissions, working jointly concerning the Charter and other cross-border human rights issues. The Irish Human Rights Commission trusts that the high importance of this collaborative partnership will be taken account of in the development of considerations of the current Bill.

I trust that the foregoing will be of assistance to your Committee in its deliberations.

March 2013

Written memorandum from John Barry

I am writing to submit my views on the draft Northern Ireland Bill.

In relation to the “Donations and Loans for Political Purposes” Clauses of the Bill I think that a democratic political future for Northern Ireland requires openness and transparency, and this includes the funding and financing of political parties. I believe the continuation of the Prescribed Period, unjust and unjustified and there is not a strong case for permanent donor anonymity.

Thus in relation to the consultation question:

“Are the proposals in the draft Bill sufficient to balance the dual objectives of increasing transparency of political donations and providing proportionate protection to past and present donors? Could they be improved, if so how?”

I think that all donors to political parties should be treated equally like every other person involved in democratic politics. Therefore I would suggest, both as a citizen of Northern Ireland and a local politician that the following courses of action be followed:

(1) Guarantee the end date of the Prescribed Period on 1 October 2014, by removing the power of Parliament to extend it beyond this date.
CAJ welcomes the opportunity to provide Written Evidence to the Committee on its inquiry into the Draft Northern Ireland (Miscellaneous Provisions) Bill, which was published in February 2013 (Cm8563). CAJ would like to raise the following issues:

1. Clarity on the proposal to grant the Secretary of State powers to “part designate” public authorities for the purposes of the statutory equality duty found in s75 of the Northern Ireland Act 1998;
2. The proposal to empower the use of secondary legislation to change the status of a key Belfast/Good Friday Agreement institution—the Northern Ireland Human Rights Commission;
3. Consideration of using the bill to amend the Public Processions Act 1998 to bring the framework for decision making on parades restriction more explicitly into line with a framework based around provisions of the European Convention on Human Rights (ECHR);

PART DESIGNATION OF PUBLIC AUTHORITIES UNDER STATUTORY EQUALITY DUTY

The paper on the draft bill includes a section on “measures still under consideration for potential inclusion in the bill”. This includes “devolution of responsibilities relating to arms length bodies” and singles out the Northern Ireland Human Rights Commission. Consideration appears to be given to using the current bill to provide a power to transfer, by secondary legislation, the Commission—an independent body currently with the NIO as its sponsor department—to the devolved institutions.

POWER TO CHANGE STATUS OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Written memorandum from the Committee on the Administration of Justice

1. CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.
2. At present only one body, the Public Prosecutions Service is in effect “part designated” under the legislation, having an exemption for its prosecutorial functions (Northern Ireland Act 1998 s75(4A)). The post-conflict democratising politics we witness in Northern Ireland would be strengthened, not weakened, by ending donor anonymity. I believe we should in Northern Ireland follow the example of countries like Germany with its requirement for annual reporting on all party funds and the public disclosure of the identities of donors and amounts donated.

March 2013

Northern Ireland Human Rights Commission. Consideration appears to be given to using the bill to amend the Public Processions Act 1998 to bring the framework for decision making on parades restriction more explicitly into line with a framework based around provisions of the European Convention on Human Rights (ECHR);

PART DESIGNATION OF PUBLIC AUTHORITIES UNDER STATUTORY EQUALITY DUTY

3. An important safeguard provided for in the Belfast/Good Friday Agreement was the introduction of a statutory equality duty on public authorities in Northern Ireland, which was subsequently legislated for under section 75 of the Northern Ireland Act 1998. Many public authorities in Northern Ireland are subject to the requirements of the duty by virtue of coming under the purview of the commissioner of complaints or ombudsman, others require designation by the Secretary of State in order to be covered by the duty.
4. Clause 11 of the draft bill would amend s75 to allow the Secretary of State to “part designate” public authorities for the purposes of the duty, ie to allow certain functions, but not others, to be designated. We understand the purpose of this is to allow part designation of currently undesignated bodies operating in Northern Ireland, such as the BBC, in a manner similar to that afforded under the Equality Act 2010 in Great Britain.
5. CAJ appreciates this measure may affect a relatively small number of bodies that require s75 designation, and has the potential to bring functions of bodies currently excluded from the duty within its scope. Nevertheless we would want to guard against a future situation where new bodies requiring Secretary of State designation are routinely part designated. CAJ would therefore welcome the Committee seeking further detail from the Northern Ireland Office as to the intended purposes for which this power will be exercised and any safeguards which could accompany it.

POWER TO CHANGE STATUS OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

6. The paper on the draft bill includes a section on “measures still under consideration for potential inclusion in the bill”. This includes “devolution of responsibilities relating to arms length bodies” and singles out the Northern Ireland Human Rights Commission. Consideration appears to be given to using the current bill to provide a power to transfer, by secondary legislation, the Commission—an independent body currently with the NIO as its sponsor department—to the devolved institutions.
7. As the Committee will be aware the Northern Ireland Human Rights Commission is a key safeguard provided for and established as a result of the Belfast/Good Friday Agreement. The Commission is formally accredited within the UN system as an “A status” National Human Rights Institution (NHRRI) and its existence, powers and status engage a number of the UK’s international commitments. CAJ believes any change in the Human Rights Commission’s status would require detailed consideration to ensure that it is not retrogressive in relation to the Belfast/Good Friday Agreement and other international obligations. CAJ does therefore not...
believe it would be appropriate to allow any such change through secondary legislation, where a change of some significance could be subject to very limited scrutiny.

8. For example matters which would require consideration are as to whether a devolved Human Rights Commission would still maintain competence to scrutinise the actions of the British government in Northern Ireland or whether its powers, as is the case in Scotland, would only extend to devolved matters. In addition consideration should be given to how such a move affect the UK’s international commitments and the ability of the Commission to function as an “A status” NHRI. Furthermore beyond stating it “may become appropriate” to transfer the functions the draft bill document offers no rationale for proposing the transfer. The Committee could explore government’s intentions in relation to the move, including whether the proposal relates to facilitating a merger of the Commission with other bodies.

Parades Regulation Legislation

9. Whilst it is not currently listed under the matters under consideration for inclusion in the Bill the Committee will be aware that there is currently discussion underway in relation to the certain provisions in the Public Processions Act 1998. This includes legal certainty issues in relation to the Parades Commission issuing determinations for unnotified public processions, and when action will be taken against persons who organise or participate in unnotified processions. There has also been a longer term discussion regarding updating the explicit criteria in the Act the Parades Commission is to have regard to in determining restrictions. This relates to bringing the criteria more in line with a framework based on explicit provisions of the ECHR.23

10. As the Committee will be aware as a result of the St Andrews and Hillsborough Agreements significant reviews were undertaken of the arrangements for regulating parades, in which such a framework was advocated. The Interim Report of the Strategic Review of Parading (Ashdown Review) set out such an ECHR framework in detail. This was to include criteria for restriction decisions to include consideration of the ECHR provision for the “rights of others”. This itself, it was envisaged, would incorporate the Belfast/Good Friday Agreement right to freedom for sectarian harassment. The Hillsborough Agreement was to build on this indicating the anticipated framework, which it was later clarified would be based on the ECHR, would reflect the key principles of “Respect for the rights of those who parade, and respect for the rights of those who live in areas through which they seek to parade. This includes the right for everyone to be free from sectarian harassment.”

11. Both review processes ultimately did not lead to legislative change due to a lack of agreement on other matters. However whilst there may be no legal imperative to open up the broader discussions on parade regulation mechanisms, CAJ would urge consideration is given in the current process to amending s8 of the Act to introduce the ECHR led framework envisaged in the strategic review.

March 2013

Written memorandum from Michael McEvoy

In response to the issue of donor anonymity in relation to the (Miscellaneous Provisions) Bill:

“Are the proposals in the draft Bill sufficient to balance the dual objectives of increasing transparency of political donations and providing proportionate protection to past and present donors? Could they be improved, if so how?”

I believe that politics should be transparent and be seen to be transparent.

Citizens should be able to examine financial transactions of parties and be certain that politicians are working for their voters, not their benefactors.

We need full transparency before local councils take over planning powers in 2015, otherwise a culture of suspicion among citizens will destroy confidence in the system, and decrease participation.

Keeping the identities of major political donors secret is toxic for public faith in democracy, and Northern Ireland needs that faith to sustain forward momentum in the peace process.

The Prescribed Period was unnecessary and unjust—every other willing participant in Northern Ireland politics must take part in public view. Protecting major donors but no one else discriminates against all but the wealthiest. Major donors should take their chances with the rest of us.

Donor transparency would only expose those giving over £7,500 a year to a party. If you want to remain anonymous, give less. £7,499.99 is still a substantial sum of money. Why do parties need any more from an individual or organisation in any 12 month period?

There has never been any public evidence that this elite group of party benefactors are in more danger than anyone else involved in politics.

23 Whilst s8(6) of the Public Processions Act 1998 explicitly provides for regard to be given to public disorder considerations it does not explicitly include other grounds listed in ECHR Articles 10(2) and 11(2)—including the “rights of others”. Other criteria set out in s8(6) includes “community impacts” criterion which were challenged as not corresponding to ECHR permitted grounds in the Application by David Alexander Tweed for Judicial Review (2000) [NICA 24.
Threatening anyone because of their political affiliation is already a crime and does not require an extra layer of security. Criminal justice should be a sufficient deterrent.

All electoral candidates have full access to the electoral register. We are asked to trust that they won’t use that information against us, so we should be trusted with the information on the donor register.

England, Scotland and Wales have had a tumultuous decade of home-grown terrorism, racial and religious tension, and the rise of political extremism.

The UK-wide terror threat level has been at the highest setting, Critical, three times in the last seven years, but never has the public been banned from seeing the Great Britain donor register.

The Northern Ireland threat level is currently Severe, one notch below that, but this is being used as justification for maintaining donor secrecy.

Parliament is not there to maximise the ability of NI political parties to accrue major donations at the expense of a normal, healthy, transparent democracy.

March 2013

Written memorandum from the Electoral Commission

1. The Electoral Commission is an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. Our objectives are:
   - Transparency in party and election finance, with high levels of compliance.
   - Well-run elections, referendums and electoral registration.

Our principles for free elections that support a healthy democracy are:
   - Trust: people should be able to trust the way our elections work.
   - Participation: it should be straightforward for people to participate in our elections, whether campaigning or voting; and people should be confident that their voice counts.
   - No undue influence: there should be no undue influence in the way our elections work.

2. Since the establishment of the Electoral Commission in 2001 the electoral landscape in Northern Ireland has changed significantly. Key developments have included:
   - the introduction of individual electoral registration and continuous registration;
   - the ending of the annual household canvass of electors;
   - the requirement for photographic identification at polling stations; and
   - the confidential reporting of donations and loans to political parties since November 2007.

3. Taken together, these developments have gone someway to restoring public confidence in the electoral and democratic process in Northern Ireland.

4. Although some progress has been made in modernising the management and delivery of electoral registration and elections further work is required. We have identified seven key areas requiring change. These are:
   - Achieving improved transparency in how political parties are funded.
   - Extending performance standards to Northern Ireland.
   - Implementing the recommendations in our report on the Northern Ireland Assembly election 2011.
   - Improving accountability in how electoral services are managed and delivered in Northern Ireland.
   - Delivering public awareness activity in Northern Ireland
   - Improving electoral law in Northern Ireland.
   - Clarifying the timing and sequencing of the 2015 polls.

5. This submission sets out our views on the Government’s Draft Northern Ireland (Miscellaneous Provisions) Bill and makes specific reference to the following:
   - donations and loans for political purposes;
   - dual mandates; and
   - electoral registration and administration.

6. We have also commented on the length of Assembly terms and future election dates as these are particularly important to voters and the work of the Commission in Northern Ireland.
Donations and Loans for Political Purposes

7. We have consistently said that we want to see the rules on the reporting of donations and loans to political parties in Northern Ireland brought into line with those in the rest of the UK. We have been calling for transparency since 2005 so that voters in Northern Ireland can access information on how political parties are funded.

8. We welcome the provisions within the Draft Bill which:
   - Will resolve the problem of what happens to confidential information about past donors to political parties and others.
   - Will enable us to publish some information about donations and loans reported since 2007 without identifying individual donors.

9. Voters have said they want information on how political parties are funded in Northern Ireland. Our most recent survey conducted in December 2012 found that 62% of respondents were of the opinion that information about who donates to political parties should be available publicly. Less than one in ten (7%) said it should remain confidential and 31% had no firm view one way or the other. These results have been consistent since 2009 when we first asked the public for their views on this matter.

10. Since 2001, political parties in Great Britain have had to report donations to the Electoral Commission, and we publish information about the sources and values of these donations. The rules on donations did not apply to Northern Ireland parties, but it was envisaged that Northern Ireland would be brought into line with the rest of the UK once the security situation allowed.

11. From November 2007, political parties in Northern Ireland have had to report quarterly to the Electoral Commission donations received over a certain threshold. This information is held confidentially and we cannot make it public. It was originally intended that this confidentiality requirement known as the “prescribed period” would end on 1 October 2010. However it has been extended on a number of occasions since then, most recently to 30 September 2014. The period has been extended partly because of on-going concerns about the security situation, and partly to ensure that the names of those who donated since 2007 were not published. Under the legislation as currently drafted the Commission is under an obligation to publish donor details as soon as the “prescribed period” ends. When the legislation was introduced the political parties and the Commission understood that information on who donated to political parties during the “prescribed period” would not be made public and would be protected permanently.

12. We therefore welcome the provisions within the Bill that will permanently protect the identities of those who donated or made loans to political parties during the “prescribed period”, and will therefore allow the prescribed period to lapse as soon as the security situation allows. The Bill will also provide the Secretary of State with the power to make an Order enabling the Commission to publish some information about donations and loans made to parties since 2007, while continuing to protect the identity of individual donors. This has the potential to provide the public with some information about previous donations and loans but will not address their concerns about transparency. To ensure that voters have access to as much information as possible before the move to full transparency, we recommend that the new Order-making power be used to permit us to publish anonymised details of all individual donations and loans that have been reported since 2007. We should also be able to indicate where multiple donations have been made by a single anonymous donor.

13. As drafted the Bill does not allow the Commission to publish information about the identity of donors who donate after the Bill is introduced, but before the prescribed period ends in October 2014. To enhance voter confidence we believe that the Bill should be amended so that when the prescribed period ends, we could also publish information, including donor identities, about donations and loans received after the Bill is published (eg from 1 July 2013). If this is done, then by this point, political parties and prospective donors will know that details of future donations and loans will eventually be made public.

14. We had understood that Government saw some merit in this approach but it has not been adopted in the draft Bill, possibly due to legal concerns about retrospection. We believe that the idea of defining protected information as relating to donations received before 1 July 2013 deserves further consideration. We acknowledge that the retrospection issue needs to be carefully considered, but note that if the Bill is amended on the lines we have proposed it would be clear to parties and prospective donors that the identities of those donating after the cut-off date will eventually be published.

15. On a more general point, the explanatory notes to the Bill refer to the “Government’s commitment to modify the law gradually to make more information about donations and loans to political parties available to the public, without compromising the security of individuals or businesses, before a move to full transparency”. Given the clear benefits of moving to full transparency as soon as possible, we think the prescribed period should end in September 2014 without any further extensions, unless there is clear evidence that the security situation makes this untenable.

24 All donations received by the central party over £7,500 and all donations over £1,500 received by an Accounting Unit of the party must be reported to the Commission. Similar controls for loans were introduced in July 2008.
DUAL MANDATES

16. There are currently 28 MLAs who hold dual mandates in Northern Ireland. Of these 25 are local councillors and three are MPs. One is also a member of the House of Lords. We are not aware of any evidence or research conducted with the public on the issue of dual mandates and it has not been an issue that we have previously considered. However, we are aware that there is no legislation in Scotland and Wales to prevent dual mandates. If legislated for in Northern Ireland consideration will need to be given to the wider implications for the rest of the UK.

ELECTORAL REGISTRATION AND ADMINISTRATION

17. We welcome the provisions included in the draft Bill to improve electoral registration. We previously raised with Government the three month residency requirement for eligible electors given individual electoral registration, the requirement for photographic identification at polling stations and that no such provision exists elsewhere in the UK.

18. We welcome the provisions to improve access to the absent voting process. In our report on the 2011 Northern Ireland Assembly election we recommended that those who applied to be registered during the late registration period should be able to apply for an absent vote if eligible. This will improve participation in the electoral process for late registrants who require an absent vote. In the past some political parties have made representations to the Commission regarding the rules on overseas voters. They proposed that eligibility should be extended to Irish citizens as well as British citizens in respect of overseas postal votes. We welcome the Government’s intention to clarify this matter in law.

19. We welcome the Government’s commitment to implementing the recommendations contained in our report on continuous electoral registration in Northern Ireland.25 The findings of our research showed that the register was 73% complete for the UK Parliamentary register and 78% accurate and the quality of the registers had deteriorated since the previous estimates in 2008. We concluded in our report that the main cause of the decline was that the processes employed by the Chief Electoral Officer to manage the register under continuous registration were unable to keep pace with either population change or home movement.

20. To improve the position we made a number of recommendations to the Chief Electoral Officer and the Northern Ireland Office including legislative change. We welcome the fact that these are being addressed through secondary legislation in the form of the Representation of the People (Northern Ireland) (Amendment) Regulations 2013. Other recommendations are being addressed by the Chief Electoral Officer, including an assessment of the current data matching arrangements and what other agencies could assist in keeping the registers up to date. We plan to publish a further report on the accuracy and completeness of the register in 2014–15.

21. In our report on the 2011 Northern Ireland Assembly election and our 2012 report on continuous electoral registration in Northern Ireland we recommended that the Electoral Administration Act 2006 be amended to extend performance standards to Northern Ireland. These currently apply to Electoral Registration Officers (EROs) and Returning Officers (ROs) in Great Britain but not to the Chief Electoral Officer for Northern Ireland.

22. The Chief Electoral Officer for Northern Ireland is currently the only electoral registration and returning officer in the UK whose performance against these standards is not reported on publicly to electors. However he is required to report an annual basis to the Secretary of State for Northern Ireland on how he has met his registration objectives. The extension of performance standards to the Chief Electoral Officer for Northern Ireland is not intended to replace the current accountability mechanism in place between the Secretary of State for Northern Ireland and the Chief Electoral Officer.

23. The Commission first set standards for EROs in 2008, and has monitored their performance against these in each year since. The framework focuses on the arrangements EROs have in place to maintain complete and accurate registers. Where our monitoring of performance against the standards identifies any issues, we work with those EROs to recommend actions to improve performance. We have reported annually on EROs’ performance against the standards.

24. Similarly, we have in place a framework for ROs which was last revised in 2011 and monitors how key electoral processes— including absent voting, polling station voting and the verification and counting of votes— are administered, with a view to ensuring that elections are well-run and conducted with the interests of voters to the forefront.

25. In October 2012 the Chief Electoral Officer agreed to work with the Electoral Commission on a voluntary basis to pilot a set of registration performance standards. The performance standards will provide a framework within which he will report on the detail of the work he carries out to meet his registration objectives. The Chief Electoral Officer will provide evidence in support of his assessment of performance which will help to demonstrate how effective both the data he receives and the action taken in response to it are in enabling him...
to maintain complete and accurate registers. Later this year we will start work on performance standards for the planning and delivery of elections.

26. The development of a performance standards framework for Northern Ireland would bring the Chief Electoral Officer closer to other EROs and ROs in the U.K. It would enable him to benchmark his registration and election activities against his counterparts in the rest of the U.K. It would facilitate the identification and sharing of best practice across the U.K. The Draft Bill should be amended to extend performance standards to the Chief Electoral Officer for Northern Ireland.

Length of Assembly Terms and Future Election Dates

27. Following the 2007 Scottish Parliamentary elections and during the passage of the Fixed Terms Parliaments Bill in 2011 we advised the UK Government that there was a need for research to be conducted into the implications of combining elections. To date this research has not been done but if undertaken it should provide a robust evidence base to inform decisions about the timings of electoral events. It should consider the impact of the timing of electoral events on voters, electoral administrators, political parties, candidates and the media and also take account of the possible impact of moving the date of scheduled elections from May to another time during the year. It would be important to involve the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales in taking this research forward.

28. In making any decision on combining the 2015 elections and/or moving the Northern Ireland Assembly to a fixed five year term we would again stress the need for a UK wide comprehensive research study to fully evaluate the impact across all of those who have a stake in the electoral process.

29. There are a number of key electoral events scheduled to take place in Northern Ireland over the next three years. However, there remains uncertainty about the timing of some of these, particularly with regard to the local council elections and the next Northern Ireland Assembly election. To ensure the elections are well managed it is imperative that there is agreement by November 2013 about the dates on which each of these electoral events will take place.

30. Combined elections in Northern Ireland are not unusual. In 2005 the UK Parliamentary election was combined with local government elections while in 2011 the Northern Ireland Assembly election was combined with local government elections and the UK wide referendum on the voting system used to elect MPs. While these both passed off largely without incident on polling day, the 2011 election was characterised by poor planning and communications at the count. Since then the Chief Electoral Officer has undertaken a review of elections and counts with a view to introducing change for future elections. We have recently published an update report on the progress being achieved by the Chief Electoral Officer in taking forward our 2011 recommendations. Further update reports are planned.

31. As part of our on-going public opinion research we sought the views of a representative sample of the Northern Ireland public on holding the 2015 UK Parliamentary general election and the Northern Ireland Assembly election on the same day. Altogether 44% of respondents said that they favoured the two elections being held on the same day while 24% were against and 30% did not mind either way. After the 2011 Northern Ireland Assembly elections we conducted a post-election survey of voters and non-voters. The findings showed that 89% of respondents in Northern Ireland found it easy “to fill in more than one ballot paper on the same day” with only 6% finding it difficult.

March 2013

Written memorandum from the Police Service of Northern Ireland

Thank you for asking the Police Service of Northern Ireland (PSNI) to comment on the draft Northern Ireland (Miscellaneous Provisions) Bill currently being considered by the Northern Ireland Affairs Committee. The Chief Constable has requested that I reply on his behalf.

The majority of clauses in the draft Bill refer to political and democratic arrangements and it would not be proper for PSNI to express an opinion on these matters.

Clause 13 is a technical amendment to the Protection of Freedoms Act 2012 that reflects the position that the Criminal Justice Bill currently before the Assembly has been delayed beyond the time period initially envisaged in the Protection of Freedoms Act 2012. The relevant provisions in the Protection of Freedoms Act 2012 serve to bring the biometric retention framework into line with the rest of the United Kingdom as regards certain reserved matters. Whilst this is ultimately a matter of political judgement it is incumbent upon me to highlight that this is a very important provision that enhances the protection offered by the biometric retention framework to the community in Northern Ireland.

If you have any further queries in respect of this matter please do not hesitate to contact me.

March 2013

Written memorandum from the Chief Electoral Officer for Northern Ireland

Please see below my views on the issues in respect of which you have asked me to comment.

1. CLAUSES ON ELECTORAL ADMINISTRATION AND REGISTRATION

"To what extent do the provisions in the draft Bill reflect your expectations and suggestions for electoral legislation, is there anything missing from the draft Bill?"

I am satisfied with the clauses on electoral registration contained in the Bill. I have one additional suggestion to make and would respectfully suggest that a clause permitting the use of electoral registration information by the Registrar General and the staff of the Northern Ireland Statistical Research Agency (NISRA) for the purpose of statistical and analytical work connected to the census should be included.

By way of background, colleagues from NISRA are assisting my staff to prepare for the canvass of electors which is scheduled to take place in the autumn of 2013. As a result of my discussions with NISRA personnel, I am aware that they would find it very beneficial to have access to information held on the electoral database. I am also aware that the Registrar General will be writing to the Minister of State asking that a clause to this effect should be included in the Bill and I am happy to support his request.

There a couple of other legislative issues which I have previously raised with the Northern Ireland Office and which I am advised can in due course be dealt with by way of secondary legislation. The first of these relates to a recommendation that the title of the election should be included at the top of the ballot papers in the event of a combined poll. The second relates to a recommendation regarding the introduction of electronic counting, or e-counting, for future NI Assembly and Local Government elections. I am advised that the NIO will conduct a consultation exercise on the latter at some point later in 2013.

"Should the Bill extend the performance standards framework in place for registration and returning officers in Great Britain to the Chief Electoral Officer in Northern Ireland?"

The Chief Electoral Officer has a statutory responsibility to report to the Secretary of State annually on how well he has addressed his legal responsibilities with regard to the accuracy and comprehensiveness of the electoral register (Section 10ZB of the Representation of the People Act 1983 refers).

The draft performance standards recently agreed with the Electoral Commission are to large extent the same as those proposed by the former Chief Electoral Officer in 2009. The performance indicators are also largely reflective of information reported in the Chief Electoral Officer’s annual report to the Secretary of State.

I have no objection to participating in the performance standards regime; indeed I concur with the view that the oversight framework should be the same in Northern Ireland as it is elsewhere in the United Kingdom. However I do not believe it would be appropriate for the formal adoption of performance standards to be included in the Bill whilst the Chief Electoral Officer also remains accountable to the Secretary of State for his performance. I would suggest that this matter is re-visited once the performance standards have been firmly embedded and have been proven to add value to the electoral registration process.

2. LENGTH OF ASSEMBLY TERM AND FUTURE ASSEMBLY ELECTION DATES

"What lessons have been learned from the experience of holding triple polls in May 2011 and what steps have you taken to improve arrangements in future elections? Are you confident that problems experienced then have been satisfactorily resolved?"

The triple polls of 2011 were a significant challenge for me and my colleagues in the Electoral Office for Northern Ireland and it is clear that there were some difficulties with the count process. However it is important to note that polling day passed off without any major concerns and at the end of the (albeit lengthy) count process the results were accurate.

After the 2011 polls, my staff and I completed a review of election planning which resulted in over 90 recommendations for change, 27 of which involved significant changes to our current arrangements. A number of those recommendations relate to the increased use of technology to improve administrative processes. There are also recommendations regarding the adoption of online recruitment, selection and training of casual election staff. Implementation of these changes will involve significant additional expenditure and at this stage it is still not clear whether or not funding will be available.

The biggest complaint about the elections in 2011 concerned the slowness of the count, particularly in respect of the NI Assembly election. It is unfortunately the case that prolonged counts are an unavoidable feature of Single Transferrable Vote (STV) elections. It is almost inevitable that in many cases they will require a second day before the results can be declared. The only way in which to significantly speed up the process is by using
e-counting, as previously referred to. E-counting has been demonstrated to work very well in the Scottish Local Government elections (in which STV is also used) and there is no reason why it should not work equally well in Northern Ireland. I remain firmly of the view that e-counting should be introduced.

A number of changes have been made to improve our administrative and operational procedures for elections in light of the 2011 experience. I also intend to use nine count venues (rather than eight as has historically been the case) for the Westminster and NI Assembly elections planned for 2015. This will mean that all four Belfast constituencies will be counted in Belfast and that no more than two constituency counts will be held at any single count location.

I am now satisfied that the issues that arose during the 2011 polls have been, or will be, satisfactorily addressed before the next major election. However I do not think it would be prudent to ever again hold three or more polls simultaneously. My principal concern relates to the impact on the voter and the likelihood for confusion resulting in spoiled ballots. I also have concerns about the operational and logistical demands associated with managing and staffing the counts.

The combination of the Westminster and NI Assembly elections planned for 2015 will be particularly challenging and considerable thought and planning will be required in relation to the arrangements for the counts. I acknowledge that the possibility of being asked to holding a third election on the same day is small, however it would, in my view, be extremely unwise to even consider doing so.

“In cases where more than one poll is held on the same day, do you think that the public is made sufficiently aware of the different issues involved in elections to Westminster and the Assembly and whose responsibility is it to communicate those differences?”

I believe that the Electoral Commission do as much as possible to inform voters about how to vote at combined polls; their advertising and voter awareness material is, in my opinion, of a high standard. Aditional measures, such as the proposed inclusion of the election title on the ballot paper, should help to reduce confusion at future combined elections.

Communication of voter awareness information is primarily an Electoral Commission function. However I believe that everyone involved in the electoral system, including the political parties, has an important contribution to make in ensuring that voters know how to cast their ballots.

“Do you think that the CEO should take on responsibility for public awareness of elections in Northern Ireland and what additional resources would you require from the Secretary of State to perform this role?”

I am firmly of the view that the Electoral Commission should retain responsibility for voter awareness issues. It is a large organisation with considerable experience and expertise in this field. It can also benefit from economies of scale in developing its advertising campaigns and in producing public awareness literature.

In the event that responsibility for this matter was transferred to the Chief Electoral Officer, I would require the appointment of additional staff with expertise in this area, as well as a substantial protected budget to promote public awareness activities.

Going forward, and on a different but related issue, I believe that considerable public awareness work is required on the subject of voter registration. I would like to see regular, ongoing, campaigns (similar in scale to the “Don’t Drink and Drive” campaign) reminding people of the importance of keeping their registration information up to date. I have already discussed this issue with the Electoral Commission and hope to take this forward later in the year before the planned canvass.

I trust that I have provided an adequate response to your questions; please do not hesitate to get in touch if I can be of any further assistance.

March 2013

Written memorandum from Elli Kontorravdis

I am a concerned member of the public responding specifically to clauses 1 and 2 of the Northern Ireland (Miscellaneous Provisions) Bill 2013 relating to donations and loans to political parties.

It is not disputed that the public perception of corruption creates a toxic distrust of politicians— the Political Parties, Elections and Referendum Act 2000 shone a light on to how funds politics in Great Britain but did not extend to Northern Ireland. In 2007, following the Northern Ireland (Miscellaneous Provisions) Act 2006, when the Electoral Commission did begin to compile a record of donations it was felt that the security situation was such in Northern Ireland that it was necessary to keep donors anonymous, this was so as to prevent their intimidation to encourage participation of fringe parties in what was then a nascent democracy. I do not contest that Northern Ireland was a dangerous place in 2007 but I do object to the current unattested application of security arguments in a bid to excuse the undermining of the fundamental democratic right to transparent politics.
I have identified what I consider to be the two most pressing problems created by the existing legislative context and after each explained why the 2013 Bill inadequately deals with them.

(1) The “Prescribed Period” of donor anonymity should never have been renewed after the initial stipulated end date of 2010.

The security argument which has been the crux of the argument used to renew the prescribed period (three times) is a misnomer;

— The risk to donors is not and never has been any greater than the risk that any other political participant, the only difference between a donor and a party canvasser is financial. To provide favourable treatment purely on the basis that donors have the ability to pay is therefore not only anti-democratic but also discriminatory.

— Intimidation and violence against any person is illegal, the existing legislation already protects donors.

— Far greater security threats have been experienced in Great Britain, such as the 7/7 terror attack, which not once led to the donations register being hidden from the public.

The public distrust of politicians in Northern Ireland is evidently deeply damaging.

— The 2010 consultation illustrated that the public overwhelmingly supported an end to donor anonymity. A number of studies since then have confirmed that the public believe that politicians and developers are too close. The manifestation of distrust is evident in dire election turnout as well as the active anti-establishment protesting witnessed in recent months—these protests in particular have been used to bolster short-sighted security arguments without looking contextually to the fact that the actions are symptomatic of the public disengagement created by a weak democracy.

A perception of inadequate scrutiny.

— A freedom of information request has revealed that the Police Service of Northern Ireland have only been granted accessed the donor register once. They do not collect data on the number of times that they have sought access. It would seem that there is a high threshold for accessing the register and that the Electoral Commission may not be the appropriate scrutinising body in respect of suspicions of corruption.

Fewer donations?

— There is no evidence that transparency of political donations led to a decrease in funding for parties in Great Britain as a consequence of PPERA 2000. Even so the desire to fund politics should never be used as a reason to undermine the right to transparent politics.

The proposed Bill would depart from the current position whereby the Secretary of State seeks parliamentary approval in order to renew the Prescribed Period at the end of each period to one of default anonymity (the consequence of s1(1) of the Bill replacing s14 NI(MP)A 2006 with Sch 1 PPERA). Hopes of transparency are then further weakened by entrusting in the Secretary of State the wide discretion to decide when, how much and if to increase transparency at all. For the reasons expressed above I believe that the Prescribed Period must end on the 1 October 2014 and from then on PPERA in its entirety should apply to Northern Ireland—gradual transparency is unwarranted and is no real transparency at all.

(2) I disagree that it was necessary to promise donors within the Prescribed Period that they would never be named but, given the promissory quagmire created in the 2006 legislation, I understand that it became necessary to protect donors who had so given in good faith under this representation. Nonetheless this promise should not prevent the immediate disclosure of information on donations other than that which would lead to the identification of the donor.

The proposed Bill fails to shine any light on donations made between 2007–2014, it delegates complete freedom to the Secretary of State to decide when, how much and even if to disclose such information (s1(2)(1)). As already iterated donors are not at risk and yet even so the donors in the aforementioned period cannot be named—there seems to be no reasoned argument supporting the delegation of any discretion to the Secretary of State on this matter and so I urge you to amend the Bill in favour of the immediate public interest for transparency without frustrating the earlier legislative commitments.

To conclude, I believe that parliament is faced with an opportunity to create essential legislation for the normalisation of politics in Northern Ireland, to be unambitious now will further entrench the public perception that the politicians are not working for the general public but for the minority with the deepest pockets.

March 2013
Written memorandum from Trevor Reaney, Clerk/Director General, Northern Ireland Assembly

Below is a copy of Trevor Reaney's notes for his opening statement, provided to the Committee for information.

Thank you for the invitation to give evidence today. May I welcome the Committee to Parliament Buildings and wish you well in your evidence sessions and deliberations.

I would like to make some brief opening remarks and then I am happy to take questions. In doing so you will appreciate my role is as an impartial official and that I will seek to avoid straying into territory which is more properly addressed by my political masters. However, I hope I can contribute something from a professional parliamentary staff point of view.

The provisions of the draft NI (Misc. Provisions) Bill, and the other matters under consideration, are perhaps one element of a wider scene of institutional reform in NI and more generally. I would like to make some opening remarks in that wider context which I hope are helpful to the Committee in considering the specific provisions of the draft Bill. I would perhaps see the various matters under consideration having more direct impact on the administration of the Assembly than the provisions of the draft Bill itself.

My comments will centre on:

— The overall purpose of the NI Assembly;
— The work of the Assembly and Executive Review Committee;
— Enhancing the effectiveness of the Assembly; and
— Providing certainty for planning purposes.

Role and Purpose

The purpose of the Assembly’s Commission and its Secretariat is stated as—to serve and support the Assembly in its role of representing the interests of the electorate; making effective legislation and influencing the Executive and holding it to account.

Our aim is to see the Assembly and its associated arrangements provide effective government and to see them continually improve the outcomes for the people who elect them, building public confidence. I have no doubt about the value of the political institutions or the role that they have played and continue to play in creating a peaceful, prosperous and stable society.

It is my view that the NI Assembly is still a relatively young institution and that in the early stages of evolution and development of any legislature it is only natural that there are many issues to review and adjust, especially in the particular circumstances of NI. I am sure that improvements can be made over time, drawing on the benefits of experience here and elsewhere. However, I also note that reforming political institutions is generally a slow process!

AERC

You will be aware that some of the issues your Committee is considering have been or are in the process of being addressed by the Assembly and Executive Review Committee (AERC) through its:

— report on Number of MLAs (June 2012);
— report on Reduction in Number of Depts. (Nov 2012); and
— its recently launched call for evidence on an inquiry into D’Hondt, community designation and provisions for an opposition.

One of the recommendations from the AERC’s report on the Number of Members in the NI Assembly was that it would be prudent for the Assembly to make an early start to a review of the Assembly Committee System. This review, which has just commenced, will examine the Assembly’s Committee System in terms of roles, structures, functions and processes. A key aspect of this review will be how in the future we manage the same volume of work through potentially fewer Members and fewer Committees.

Effectiveness

Turning to the issue of effectiveness. Could I say at the outset that I believe we should not let cost nor the corrosive cynicism about politics, politicians and political institutions be the main drivers or determinants for change. More effective government should be the main driver.

There are many factors impacting on effectiveness of a legislature—it is not just about numbers—issues such as its powers; representativeness; parliamentary procedures; resources; relationships; available time; professional development of Members; priorities; amongst many others do impact on effectiveness. You may be interested to note that we have recently launched a number of initiatives to support the professional development of Members, most notably through the PoliticsPlus programme.

In the medium to longer term, we must ensure that we attract the next generation of political leaders. As we consider institutional reform we need to be careful that we don’t make it so unattractive that society denies itself the calibre and quantity of political leaders to do the job well on their behalf in the future.
My fourth point is on providing certainty for planning purposes. The future political and institutional arrangements have been under consideration for some time and this makes planning for the future more difficult in terms of any required changes to the support provided to the Assembly and its Members, and associated staffing and budget issues. Early certainty on these issues would be of great assistance and indeed the Speaker of the Assembly has highlighted this point in connection with the future length of the Assembly’s mandate.

Finally, could I mention the professional staff of the Assembly who have supported the institution through much change and many times of uncertainty in the past. I would take the opportunity to put on record my thanks to them and the confidence I have in them to deliver whatever further change lies ahead.

Happy to take questions and provide any further info which may be of help to the Committee.

March 2013