

A Note about Legislation

The 2011-16 Mandate

Primary Legislation

Total No of Bills passed – 67 (60 Executive, 5 Private Member's Bills (PMBs) and 2 Committee Bills (on same issue).

There was a great deal of legislative activity in the last year. On 15 May 2015, only 32 Bills had been passed after 4 years of this mandate.

(Note: sixty-three Acts were passed in the 4 year mandate from 2007 and 2011.)

Executive Bills

Executive Bills – 64 were introduced and 60 passed. Bills were introduced to reduce the number of government departments from 12 to 9 from May 2016 and reduce the number of MLAs to five per constituency (rather than six) from 2021 (90 MLAs).

Examples of Executive Bills:

- **Addressing Bullying in Schools Bill** 2015-16 – a legal definition of bullying and requirement on schools to have robust policies and keep records of incidents.
- **Road Traffic (Amendment) Bill** – with section on changes to the rules for learner and new drivers and reduction in amount of alcohol allowed when driving
- **Food Hygiene Bill** 2015-16 restaurants to display hygiene rating (1 to 5) in prominent position
- **Shared Education Bill** 2015-16 defines 'shared education' and requires Government to encourage, facilitate and promote shared education
- **Special Educational Needs and Disability Bill** ensures that young people who need extra support at school are identified early, assessed quickly and given appropriate support to achieve their full potential.
- **Rural Needs Bill** –improves rural proofing of government decisions – the needs of rural communities must be taken into account - and extends the duty to Councils
- **Marine Act** (2013) – conserves animal and plant life in the waters along the shorelines of Northern Ireland
- The **Carrier Bags Act** (2014) extending 5p tax to all carrier bags, not just 'single use' bags
- **Pavement Café Act** (2014) allows Councils to enforce rules about placing furniture in public areas for the consumption of food or drink.
- **Local Government Act** (2014) reduced the number of city/district councils from 26 to 11 and gave them new powers and responsibilities
- **Work and Families Act** (2015) allows entitlement to parental leave (eg maternity leave) to be shared with another person, eg the father.
- **Sunbeds Act** (2011) –banned people under 18 from hiring or buying sunbeds
- **Budget Acts** authorise the spending of money by government departments (12 per year)
- **Pension Acts** have increased age at which you can retire and amount we pay more towards our pension.
- **Houses of Multiple Occupation Bill** ensures better protection for students when renting rooms in a house, eg deposits will be held by independent body and landlords can't keep them without proving that students have damaged the property.
- **Mental Capacity Bill** – a huge Bill to make new provisions for people who lack mental capacity to make independent decisions. This had over 300 sections and was 7-8 years in the making.

Four Executive Bills did not progress through all the stages. The Environment Minister withdrew a Planning Bill. The Education Minister's Education Bill (to set up single all-encompassing Education Skills Authority) did not get beyond Committee Stage (completed in April 2013). The Education Minister later introduced another, less ambitious, Bill to combine the 5 ELBs into one. This was passed and received Royal Assent in December 2014.

The Welfare Reform Bill did not complete. Introduced in October 2012, the Bill was the cause of much disagreement between parties. It fell when the Social Development Minister did not move it to Final Stage on 9th March 2015, despite apparent Agreement on the issue at Stormont House talks in December 2014. Sinn Féin, with support from the Green Party and 2 Alliance Members submitted a *Petition of Concern* which would have caused the Bill to fall. The Bill then became part of the agenda at further talks which produced the 'Fresh Start Proposals' and it was agreed to pass it to Westminster. The Northern Ireland (Welfare Reform) Act 2015 was granted Royal Assent on 25 November 2015. It took only 6 days for the Bill to be passed by both Houses of Parliament. NB: The Assembly established an Ad Hoc Equality Committee on Conformity with Equality Requirements to consider whether the Bill's provisions conformed to statutory requirements for equality and observance of human rights. (It was subject to a total of 48 *Petitions of Concern*)

13 Non Executive Bills introduced:

- 11 *Private Member's Bills* introduced – 5 passed, 6 fell

Passed

- Civil Service Special Advisers (2013) Jim Allister TUV
- Human Trafficking and Exploitation Bill (2015) Lord Morrow DUP (made the purchase of services from sex workers illegal – only other country in Europe where this is case is Sweden)
- Children's Services Cooperation Bill (2016) - requires government departments to work together to meet government targets to improve lives of children and young people in NI **NB** relevant to improving efficiency of the Executive – encouraging co-ordinated working regarding the well-being of children and young people - Steven Agnew, Green Party
- Assembly and Executive Reform Bill (2016) John McCallister Ind
- Licensing Bill (2016), Judith Cochrane

Fell

- Road Traffic Speed Limits Bill ((20mph on residential roads – '20 is plenty') – Conall McDevitt/ Pat Ramsey SDLP
- Civil Service Special Advisers (Special Amendment) Bill – Jim Allister TUV (to reduce salary)
- Rates Relief for Amateur Sports Clubs, Daithi McKay, SF (already get 80% relief – only pay 20%, this Bill was to increase relief to 100%) (fell due to *Petition of Concern* at Second Stage)
- Human Transplantation Bill ((opt out instead of opting in), Joanne Dobson UUP (withdrew Bill
- Scrap Metal Dealers Bill, Roy Beggs UUP (did not have the support of the Committee)
- Local Government (Numbers and Addresses of Buildings in Townlands) Bill Phil Flanagan SF

- The *first Statutory Committee Bills* were passed in this mandate – both introduced in the 2015-16 session by OFMdfM Committee relating to the same issue. The Ombudsman and Commissioner for Complaints (Amendment) Bill extended the tenure of the 2 separate post holders while reform through the Public Services Ombudsperson Bill created a single office for the purpose of dealing with complaints about public services. The OFMdfM Committee did ask the Department to initiate the legislation. When it said no, the Committee decided to do so. The Bill was passed by the Assembly on 10 February 2016 and received Royal Assent on 19 February.

Amendments

A total of 1,953 amendments were made to Bills in this mandate.

The *Executive Bill* which had the greatest number of amendments was the *Reservoirs Bill*. Over 200 amendments were tabled at Consideration Stage after the Agriculture Committee raised a number of concerns during Committee Stage. The Minister agreed to amend the Bill. The Local Government Bill (DoE Minister) which set up the new 'super council' structure had 123 amendments.

There were 121 amendments to Lord Morrow's Human Trafficking *PMB*.

The OFMdfM Public Services Ombudsperson Bill (*Committee Bill*) had 443 amendments. The reason for such a high number of amendments to the Ombudsman Bill is that the Committee voted to change the term "Ombudsperson", used in the title and throughout the Bill, to "Ombudsman", following advice by RAISE that the term is actually a Scandinavian word which cannot be rendered gender neutral. There were 279 instances of the word in the Bill, and each required a separate amendment. The remaining amendments related to reporting requirements, commencement provisions and privilege; aspects of the Ombudsman's role, including powers and remit; and complaints handling procedures.

Several bills passed through the legislative process with no amendments, eg, all the budget bills (2 per year,) Water and Sewerage Services Bill (2013) Health and Social Care Bill (2014) and Off-Street Parking (Functions of District Councils).

Note: the Petition of Concern mechanism can also be used to defeat amendments to Bills, eg, amendments 34 and 50 of the Justice Bill (2015); John McCallister's PMB – the Assembly and Executive Reform (Opposition) Bill (4 times – clauses 13, 20, 21 and Schedule 1).

A **new Exceptional Further Consideration Stage** was introduced into the legislative process for the first time in the 2011-16 mandate. This stage will be triggered if:

"as a consequence of an amendment made to the Bill, either a provision of the Bill is outside the legislative competence of the Assembly, or the Bill has a serious technical defect"

"the Assembly had not fully considered prior to making, or not making, any relevant amendment that the Bill might, as a result, be outside the legislative competence of the Assembly or have a serious technical defect"

It was introduced by the Speaker when an amendment tabled by Lord Morrow to the Justice Bill (2011) and passed by the Assembly was thought to have taken the Bill outside 'legislative competence'. The additional stage prevented the Bill having to be referred to the Supreme Court. The Assembly would have been dissolved by the time the Bill came back from the Supreme Court for an unprecedented **Reconsideration Stage**.

Accelerated Passage – the Assembly voted to allow 17 Bills to be passed without Committee Stage – Budget Bills, Pension and Rates Bills, Air Passenger Duty Bill (reduction to help airports attract new airlines and routes – reserved matter which the Assembly asked Westminster for permission to legislate on) Departments Bill (reducing number from 12 to 9) and Road Races Bill (to allow short notice closure of roads for events like North-west 200 in case of weather causing event to be rescheduled at short notice)

Definition: *Under the Accelerated Passage Procedure a Bill can pass all stages in as little as ten days, but in no less time. This process skips the Committee Stage. The Assembly must vote, on a cross-community basis, to allow a Bill to be passed by accelerated passage. Budget Bills are passed in this way, because the Finance Minister has already fully consulted the Assembly before introducing the Bill.*

Secondary Legislation

SRs passed by the Assembly in the 2011-16 mandate:

The following figures are taken from reports by the Examiner of Statutory Rules. (See link below) The Examiner assists the Assembly and the appropriate Statutory Committees in the technical scrutiny of statutory rules and draft statutory rules. He examines SRs which come from the Departments, drawing to the relevant Committee's attention any issues with the regulations, eg 'defective drafting', 'minor errors', 'could have been drafted better', or 'of doubtful vires' (may not be within the powers of the Assembly to legislate on). The most common reason for the Examiner to draw attention to an SR is that it came into effect too soon, breaching the 21 day rule (the long-established rule of practice in the case of a statutory rule subject to negative resolution whereby the rule-making authority should allow *at least 21 days between the laying of the statutory rule and its coming into operation*)

<http://www.niassembly.gov.uk/assembly-business/legislation/examiner-of-statutory-rules/>

Total **1,262** SRs

Negative resolution **1169** (automatically become law unless prayed against – can be repealed by the Assembly through use of a Prayer of Annulment within 30 calendar days or 10 sitting days of coming into effect)*

Confirmative resolution **56** (already law but will cease to come into effect unless approved by the Assembly within a period specified in the parent legislation)

Affirmative resolution **37** (will not come into operation unless approved by the Assembly)

*Over the 2011-16 mandate, there were 13 prayers of annulment, 5 tabled by Committees, 8 by individual MLAs (parties). Only two of those debated by the Assembly, both tabled by the Environment Committee passed.

Prayers of Annulment: A motion to annul a piece of secondary legislation introduced by a Minister – under a parent Act. This is how the Assembly votes down the finer detail of legislation which it does not support. Some secondary legislation requires *affirmative resolution* – a vote in the Chamber to pass it. Other secondary legislation will come into effect automatically (*negative resolution*) unless the Assembly objects with *Prayer of Annulment*. These can be tabled by Committees or individual members. Over the 2011-16 mandate, there were 13 prayers of annulment, 5 tabled by Committees, 8 by individual MLAs (parties). Only two of those debated by the Assembly, both tabled by the Environment Committee passed.

On 2 February 2015, 2 prayers of annulment motions were tabled by the Committee of the Environment to annul regulations brought forward under the Taxis Act 2008 – one to stop the introduction of a single-tier taxi system in Belfast - a change that would permit all Belfast taxis, not just public hire ('black') taxis, to pick up passengers anywhere, as is the case in the rest of NI; and the other to delay certain provisions to allow more consultation and scrutiny. In relation to the first issue, SF and DUP members of the Environment Committee suggested in this mandate that there should be an exclusion zone to protect Public Hire Taxis, or a time period where only they can pick up anywhere. **Both prayers of annulment were passed, which is significant, as all other prayers of annulment did not.** (NB: In the end, a compromise was made. All taxis can pick up customers on the street at the peak time of 12 midnight to 6 am on weekends and public holidays. At other times, only public hire, or 'black taxis' can do so. This change comes into effect at end May 2016. The legislation also requires taxis to have meters which print receipts. Uber has said this is outdated and receipts can be provided through mobile phone technology. The Department has said it will review this aspect of the new regulations.)

In April 2015, the Committee for Education tried to stop the Department's record Retention and Disposal Schedule coming into effect. The Committee wanted to increase the length of time the Department held on to records. However, in the end, the Department ceded to the Committee's request and it was not necessary to move the motion.

Prayers of annulment motions which **failed to pass** were:

- October 2014 – 5 motions to stop various road traffic orders - tabled by Sinn Féin
- May 2014 – motion regarding testing for income related benefits - fell due to **Petition of Concern**
- April 2014 – 2 motions (tabled by SDLP MLA), relating to a compensation scheme for lower paid civil servants, fell due to **Petition of Concern**
- June 2012 – Increasing parking charges. The motion to annul an increase to parking charges was moved by the Chair of Regional Development Committee but he stated his intention to vote against annulment.
- Oct 2011 – Housing Benefit Regulations – motion to prevent the definition of young person being raised from 'under 25' to 'under 35' fell. (*This meant that only those over 35 would get the level of benefit to enable them to live alone, rather than in shared housing.*) There had been some disagreement in the Social Development Committee over whether to pray against the legislation, but the Chair, Alex Maskey decided to do so when the vote in committee was 4 for and 2 against, with some abstentions.)

Further Note

Re 'types' of legislation, in terms of home-grown, parity or implementation of an EU directive, the Assembly does not record legislation in this way. It would argue that much so-called 'parity' legislation is adapted to suit Northern Ireland's circumstances. Pensions legislation and social security legislation is usually parity, but of course there was huge controversy over the Welfare Reform Bill. Some concessions were won for NI and extra money to mitigate against adverse effects, but some parties (SF, SDLP, Green Party) were still unhappy with the Act which was eventually passed to Westminster to deal with (following the Fresh Start deal).

Regarding legislation originating in the EU, this is very difficult to accurately assess. The Assembly's EU Affairs Officer states:

It is extremely difficult to work out where new or amended legislation was a national or EU idea. Some of the issues in reaching a calculation are:

- *Databases of EU law aren't necessarily totally accurate and timely*
- *If a Government brings in new legislation, it may have decided to legislate in anticipation of EU action and this for example may not show up as EU driven.*
- *Measurements don't capture changes as a result of 'soft' law where national laws could have been amended to take account of non-binding EU recommendations, communications or general European influence etc.*
- *Governments will implement regulations which don't necessarily apply to them – for example, the UK implemented regulations on olive growing*
- *The method of transposition of EU law into national law can affect the numbers - In the UK there is no direct correlation between the number of EC legislative instruments adopted and the number of Statutory Instruments needed to implement them. For example, 26 separate SIs were needed to implement the Council Directive on permissible sound level in exhaust systems of motor vehicles whereas only one SI was needed to implement the Council directive concerning the minimum safety and health requirements for the workplace.*

The House of Commons research section did a paper in 2010 attempting to work this out for the UK and estimated that from 1997 to 2009 6.8% of primary legislation (Statutes) and 14.1% of secondary legislation (Statutory Instruments) had a role in implementing EU obligations but that involvement could be anything from a passing reference to EU legislation to full implementation so again those figures are potentially problematic.

Therefore as far as I know, it's not possible to estimate how much NI legislation originates in the EU given we don't have a definitive answer for the UK and then we'd have to take account of what are devolved and reserved matters. Obviously, it's fair to say that a significant proportion of agricultural and environmental legislation may have its genesis in EU legislation – more so than an area like transport for example.

A recent blog entry from the House of Commons might be useful – as you can see, it's possible to quote a figure for the whole UK of anywhere between 15% and 55% <https://commonslibraryblog.com/2014/06/02/how-much-legislation-comes-from-europe/>