

THE EXECUTIVE PROCESS

1. This paper reviews:

- (i) Current arrangements for the circulation, consideration and agreement of Executive papers.
- (ii) The agreement and circulation of the agenda
- (iii) Access to the agenda by Executive Ministers.

Background

2. While an agreement by written process was available in the 1999-2002 period, all executive papers since the restoration of the devolved institutions in 2007 have been included in the agenda of an Executive meeting. The exception to this are papers agreed by means of the urgent procedure, which are included on the agenda for noting following FM and dFM agreement to the urgent decision being taken.

3. Two key considerations governing the conduct of business are contained in the Ministerial Code:

- The agenda for Executive Committee meetings will be agreed by the First Minister and deputy First Minister, taking account of proposals made by Northern Ireland Ministers (2.11)
- It is the duty of the Chairmen of the Executive Committee to seek to secure that decisions of the Executive Committee are reached by consensus wherever possible.

4. In terms of process, earlier guidance applying to the circulation of papers stated:

“For any time critical issues, it is essential to allow an adequate and realistic timescale for receipt and consideration of responses from other Ministers (including First Minister and deputy First Minister), discussion of issues arising

and the making of any necessary amendments, before the Executive paper can be finalised. Normally, Ministers should be allowed at least 7 working days to comment on draft Executive papers, while in the case of time critical issues, a minimum of four weeks is recommended for the overall process from initial circulation of a draft to finalisation of a paper.” (Executive Papers Process 2010)”.

5. The 2014 Stormont House Agreement included a number of reforms relating to the operation of the Executive, which were incorporated in a Conduct of Executive Business protocol. These included requirements that:
 - the agenda would be circulated one day in advance of an Executive meeting;
 - papers would normally be included as substantive agenda items **no later than the third meeting following initial circulation**
 - any three Ministers would be entitled to request that a matter be placed on the agenda for discussion and decision – this ultimately became the three meeting protocol whereby this facility could be triggered if the paper had not been included after the third meeting since circulation had taken place.

These changes were introduced in the context of fortnightly meetings of the Executive which, depending on the timing of the first circulation of a paper, could have provided up to 5-6 weeks for consideration before it was included on the agenda. There is therefore a tension between the increased frequency of meetings and the three meeting protocol (which in the context of weekly meetings could in theory be invoked within two weeks) although Ministers have been largely restrained in their use of it.

6. Since the resumption of the Executive in January 2020, the Executive has met at least weekly. This increased frequency and the need for rapid decisions on the response to the Covid-19 pandemic, also led to an increased expectation by departments that mainstream departmental papers would also be progressed from initial circulation to the agenda with the same rapid turnaround. This situation prompted the need for revised guidelines which stated that papers circulated after Tuesday of any week were unlikely to be considered for inclusion

on the agenda of that week's meeting, and a reiteration that the agenda would be circulated at least a day in advance of each meeting.

7. As indicated above, protocols governing the conduct of Executive business have been periodically introduced in response to the concerns of Ministers. These concerns have recently re-emerged and have focussed on:
 - The late finalisation of the agenda and issue of papers. Where this meets the one day in advance requirement, it is usually late the night before, with concerns about the impact on staff in departmental Private Offices and other officials who are required to brief Ministers
 - Length of time papers remain under consideration for inclusion in the agenda (this has been exacerbated by the rhythm of weekly meetings which conversely create an expectation of more rapid processing)
 - Lack of clarity as to the reasons why papers are not included in the agenda

Agreement to papers

8. Executive papers will vary in complexity, sensitivity, and the extent to which there is political consensus on the subject matter and proposals. While the length of time taken for consideration will reflect that, the greatest area of difficulty arises in relation to those papers which remain in circulation for considerable periods. Currently, of the 13 papers awaiting inclusion on the agenda, 11 have been in circulation for periods ranging from 7 weeks to 4 months. This usually occurs when significant differences of opinion arise between the sponsoring Minister and the First Minister and/or the deputy First Minister on an aspect of the proposals. It is not always clear to other Ministers to what extent extra-Executive discussions at political level are taking place to resolve these differences.

Potential Measures

9. There may therefore be merit in:

- Reaffirming an understanding of an indicative period (as set out in the Conduct of Executive Business Protocol) between circulation and inclusion on the agenda within which any discussion, negotiation and revision should take place.
- A return to fortnightly meetings of the Executive to allow more detailed consideration of papers and resolution of issues between meetings.
- Greater emphasis on a pre-Executive consultation phase, particularly in relation to legislative proposals, for Ministers to test out emerging policy development, before proposals are formally put into the Executive arena.
- Greater clarity being given to Ministers through dialogue and correspondence on areas of disagreement.
- The reintroduction of the “Papers in Circulation” document at each Executive meeting, where, for papers outside the indicative period above, the issues in dispute/negotiation are described.

Agenda

10. The main source of complaint relating to the Executive process relates to the agreement and circulation of the agenda and associated papers. The minimum commitment is, as stated above, that the agenda will be issued one day in advance of a meeting. While this is sometimes achieved, it is usually late the previous evening/night and on occasions the agenda is not finalised until the morning of the meeting itself. This places pressure on Private Office staff in departments and on officials who are required to provide briefing at short notice.

11. Measures which might remedy concerns relating to the agenda are:

- Dedicated focus on Executive business on Monday and Tuesday to finalise the agenda by Tuesday evening for issue on Wednesday
- A move away from an “event-based” approach to Executive business to a rolling programme of agreement of papers between meetings
- An indicative agenda of papers could be notified to departments in advance of the final agenda being produced to allow briefing to be prepared

- Only genuinely urgent papers circulated in the same week would be considered for that week's meeting

EXECUTIVE OFFICE

JUNE 2021