CARLA LOCKHART MP

POLICY PAPER / PROPOSED LEGISLATION

DELIVERING FUTURE

ACCOUNTABILITY

AND SANCTIONS FOR THOSE WHO DEFY THE LAW AND BREACH THE PLEDGE OF OFFICE

Principle. Courage. Confidence.

- **CRIMINAL CONVICTIONS**
- **MINISTERIAL ELIGIBILITY**
- **ENFORCING THE PLEDGE OF OFFICE**



PUBLIC STANDARDS. CLEAR SANCTIONS.

Proposals and draft legislation



DELIVERING ACCOUNTABILITY

I have been clear that unionism cannot remove every Sinn Fein Minister who defied the law on the Garvaghy Road. We do not have the legal tools available to do so. But unionism can remove the figurehead, Michelle O'Neill, from office. The Assembly would continue until the next election, and other Ministers would remain in post. This is the appropriate political sanction unionism can deliver in the here and now.

However, in the future, there must also be changes to the legal framework governing Ministerial accountability to ensure there is an independent, objective and structured framework to hold accountable those who defy the rule of law or the solemn pledge of office.

This accountability framework cannot leave it to MLAs to regulate themselves, otherwise this is a recipe for partisan efforts to use the mechanisms to remove political opponents. It must be taken out of the hands of MLAs, and subject to independent determination, within a structured framework that applies objective standards to which all Ministers are equally subject.

It is not enough to advance these ideas as abstract concepts, there must be solid legal proposals behind them. In this paper, I have published my proposals for this limited reform to deliver accountability via a Northern Ireland (Public Standards and Sanctions) Accountability Bill. This Bill would have to be tabled in Westminster.

It will not provide effective sanction for the lawbreaking we have seen on the Garvaghy Road, but, if passed in a timely manner, it could operate to ensure that any of those convicted of relevant offences will be unable to take up Ministerial Office in the new mandate if they have been convicted within the 12 months previous.

If this legislation was in force presently, 30 MLAs could in the here and now have referred Sinn Fein lawbreakers to the Attorney General and to the High Court and had them removed from office for the flagrant breach of the pledge of office. This is separate to the sanctions in respect of criminal convictions.

Those tools do not presently exist, which means unionism must use what is available, and that is the ability to remove Michelle O'Neill from office given her brazen and defiant breach of the pledge of office, and clear threat to repeat such actions again if she subjectively believes it is in her political interest.

THREE CORE COMMITMENTS

1. **LAW BREAKERS REMOVED FROM OFFICE FOR A PERIOD OF 12 MONTHS**

2. **NO ONE CONVICTED OF A CRIMINAL OFFENCE ELIGIBLE FOR MINISTERIAL OFFICE IF THE OFFENCE WAS COMMITTED WITHIN 12 MONTHS PRIOR TO THE DATE OF PROPOSED NOMINATION**

3. **THE ABILITY TO HAVE THE HIGH COURT RULE, ON THE BALANCE OF PROBABILITIES, AS TO WHETHER THERE HAS BEEN A BREACH OF THE PLEDGE OF OFFICE. IF THERE HAS, THE MINISTER IS ALSO REMOVED FROM OFFICE.**

WHAT THE PROPOSED BILL WOULD DELIVER

Here is a summary of what the proposed Bill would deliver:

- An objective standard for removing Ministers from office: if convicted of a criminal offence, which carries potential punishment of six months or more, then the Minister would be removed from office for a period of 12 months. Note, this doesn't mean your sentence must be six months imprisonment or more, but rather merely that the offence of which the person has been convicted carries such a potential punishment. It would mean for example anyone convicted of offences under section 7 or section 14 of the Public Processions Act 1998 would be removed from office and could not be renominated to office for a period of 12 months.

- The Bill would not only remove current Ministers from office if convicted of an offence and prevent their renomination for a period of 12 months, but any MLA convicted of an offence would be prohibited from being nominated to Ministerial office if the conviction comes within 12 months of the date of proposed nomination. This would prevent removal from Ministerial office of a lawbreaker, only for another lawbreaking MLA to be nominated to fill the office.

- The pledge of office would be given enforceability. If 30 MLAs believe a Minister has breached the pledge of office, then a referral can be made to the Attorney General and unless this referral reaches the threshold of being "vexatious" or "frivolous", the Attorney General shall refer it to the High Court. At this point a High Court judge would independently determine, on the balance of probabilities, whether there has been a breach of the pledge of office and, if so, the court shall remove the Minister from office.

- The Act would come into effect at the date of Royal Assent, so could apply to offences for which a person has been convicted in the 12 months previous. This could prevent the nomination in a future mandate of anyone convicted within the preceding 12 months of a criminal offence.

THE PROPOSED BILL

The Northern Ireland (Public Standards and Sanctions) Accountability Bill

CLAUSE 1

Insert section 19B to the Northern Ireland Act 1998:

"(1) A Minister who is convicted of an offence punishable by a period of imprisonment of not less than six months shall cease to hold office:

(a) subject to (b) to (c), at the end of a period of seven working days following conviction for such an offence('the relevant date'), or;

(b) if the conviction is appealed, the relevant date shall be the date on which the appeal against conviction is dismissed, or;

(c) If a Minister informs the Presiding Officer within seven working days of his conviction of an offence referred to in (a) above of his intention to appeal against conviction and prosecutes such an appeal the relevant date shall be that established in (b).

(2) When a Minister ceases to hold office in accordance with subsection (1) he shall be excluded from holding any Ministerial office or being nominated for such office for a period of twelve months from the relevant date.

(3) No member of the Assembly shall be nominated for Ministerial office if they have been convicted within the 12 months prior to the date of proposed notification of a criminal offence punishable by a period of imprisonment of not less than six months.

(4) If a requisition signed by 30 members of the Assembly is served on the Attorney General for Northern Ireland expressing their view that a Minister has breached the pledge of office, in so far as the breach relates to a rejection of the criminal law or incitement or encouragement of others to act contrary to the law, then unless the Attorney General determines the matter is vexatious or frivolous, he shall refer the requisition to the High Court.

(5) On referral pursuant to subsection (4) the High Court shall determine whether the Minister has breached the pledge of office in so far as it relates to the matters set out in that subsection or not.

(6) If the High Court determines, on the balance of probabilities, that the Minister has breached the pledge of office the High Court shall order the Minister's removal from office for a period of 12 months beginning with the date of the order. In this period, the Minister shall not be eligible to be renominated to any Ministerial office.

(7) Reference in this section to a Minister includes the First Minister, Deputy First Minister, Junior Minister or Northern Ireland Minister.

(8) This section does not apply to Road Traffic Offences, unless a criminal court has determined the offence involved physical harm caused by a reckless or intentional act, or the offence involved dishonesty."

CONSEQUENTIAL AMENDMENTS

CLAUSE 2

Consequential amendments:

Insert in section 16A after subsection (12)

"(13) this section is subject to section 19B"

Insert in section 18 (9) after (c):

"(d) is removed from office pursuant to section 19B"

Insert in section 18 after subsection (11):

"(11A) subsection (10) and (11) is subject to section 19B"

Insertion in section 19 after subsection (5):

"(6) this section is subject to section 19B"